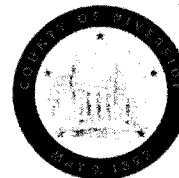


SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.26
(ID # 5342)

MEETING DATE:

Tuesday, October 17, 2017


FROM : TLMA-TRANSPORTATION:

SUBJECT: TR31141 TRANSPORTATION AND LAND MANAGEMENT AGENCY/
TRANSPORTATION: Approval of the Amended and Restated Cooperative Agreement between the County of Riverside, Flood Control and Water Conservation District, and SR Conestoga, LLC for Winchester Hills – Line 3, Stage 2 and Winchester Hills Prairie Crossing Drive Storm Drain, Stage 1 (Tract No. 31141), Project Nos. 4-0-00557 and 4-0-00578; 3rd District [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Amended and Restated Cooperative Agreement between the County of Riverside (County), Flood Control and Water Conservation District (District), and SR Conestoga, LLC (Developer); and
2. Authorize the Chairman of the Board to execute the same.

ACTION: Policy

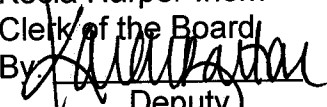

Patricia Romo, Director of Transportation 9/14/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: October 17, 2017
xc: Transp., Flood

(Companion Item 11.4)

Kecia Harper-Ihem
Clerk of the Board
By 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Developer is funding all construction and construction inspection costs. 100%			Budget Adjustment:	No
			For Fiscal Year:	17/18

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Amended and Restated Cooperative Agreement sets forth the terms and conditions by which certain flood control facilities, required as a condition of approval for Tract No. 31141, are to be constructed, inspected, operated and maintained by the Riverside County Flood Control and Water Conservation District and County Transportation Department (Transportation Department). The Tract is located in Winchester area and is south of Domenigoni Parkway.

The Agreement is necessary for the Transportation Department to provide construction inspection, and subsequent operation and maintenance of the referenced storm drain appurtenances.

Upon completion of construction, the Riverside County Flood Control and Water Conservation District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain systems. The Transportation Department will assume ownership and responsibility for the operation and maintenance of the storm drain appurtenances located within the County right of way, including associated catch basins, inlets, outlets and laterals that are 36 inches or less in diameter.

County Counsel has approved the Agreement as to legal form, and the Developer has executed the Agreement. A companion item appears on the Riverside County Flood Control and Water Conservation District Agenda this same date.

Impact on Residents and Businesses

As noted above, construction of these drainage improvements is a requirement for the development of Tract No. 31141. The principal beneficiaries are the future residents of the tracts. Ancillary benefits will accrue to citizens who will utilize the tract's roadways.

SUPPLEMENTAL:

Additional Fiscal Information

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of the mainline storm drain system will accrue to the District. Future operation and maintenance costs of the storm drain appurtenances located within the County right of way will accrue to County Transportation Department and will be absorbed into the existing budget for storm drain maintenance.

ATTACHMENTS:

Vicinity Map

Amended and Restated Cooperative Agreement

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA



Tina Grande, Principal Management Analyst

10/8/2017



Gregory V. Priamos, Director County Counsel

9/25/2017

AMENDED AND RESTATED COOPERATIVE AGREEMENT
Winchester Hills – Line 3, Stage 2
Winchester Hills – Prairie Crossing Drive Storm Drain, Stage 1
Project Nos. 4-0-00577 and 4-0-00578
Tract No. 31141

The Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the County of Riverside, a political subdivision of the State of California ("COUNTY"), and SR Conestoga, LLC, a Delaware limited liability company ("DEVELOPER"), hereby agree as follows:

RECITALS

A. DISTRICT, COUNTY and Ashbrook West Prairie Crossing, L.P. ("PREVIOUS DEVELOPER") entered into that certain Cooperative Agreement, dated December 5, 2006 and recorded as Document No. 2006 – 0954755 in the Official Records of the County of Riverside, hereinafter referred to as "PREVIOUS AGREEMENT", requiring PREVIOUS DEVELOPER, as a condition of approval, to construct certain flood control and drainage facilities as defined in PREVIOUS AGREEMENT; and

B. Pursuant to PREVIOUS AGREEMENT, PREVIOUS DEVELOPER has not constructed the flood control and drainage facilities; and

C. Pursuant to a certain Deed of Trust dated December 4, 2014, DEVELOPER has acquired fee title to the Real Property from PREVIOUS DEVELOPER; and

D. DISTRICT, COUNTY and DEVELOPER now desire to enter into a Cooperative Agreement with the intent that this Agreement shall prevail over the terms of the previous Agreement dated December 5, 2006; and

E. DEVELOPER is the legal owner of record of certain real property, including Tract No. 31141, located within the County of Riverside. DEVELOPER has submitted for approval Tract No. 31141 located in an unincorporated area of western Riverside County. As a

COPY

1 condition of approval for Tract No. 31141, DEVELOPER must construct certain flood control
2 facilities in order to provide flood protection and drainage for DEVELOPER'S planned
3 development; and

4
5 F. The required flood control facilities and drainage improvements, as shown
6 in concept in red on Exhibit "A" attached hereto and made a part hereof, and as shown on District
7 Drawing No. 4-0903, include construction of:

8 (i) Approximately 786 lineal feet of underground storm drain system
9 ("LINE 3 STAGE 2"). At its downstream terminus, LINE 3 STAGE 2 will
10 connect to the proposed Winchester Hills - Line 3, Stage 1 storm drain
11 facility ("PROPOSED LINE 3 STAGE 1"), as shown on District Drawing
12 No. 4-0902;

13
14 (ii) Approximately 1090 lineal feet of underground storm drain system
15 ("PRAIRIE STAGE 1 STORM DRAIN"). At its downstream terminus,
16 PRAIRIE STAGE 1 STORM DRAIN will connect to LINE 3 STAGE 2. At
17 its upstream terminus, PRAIRIE STAGE 1 STORM DRAIN will connect to
18 the proposed storm drain facility for Tract No. 31142. Together, LINE 3
19 STAGE 2 and PRAIRIE STAGE 1 STORM DRAIN are called "DISTRICT
20 FACILITIES"; and

21
22 G. Associated with the construction of DISTRICT FACILITIES is the
23 construction of certain catch basins, inlets, outlets, connector pipes, curbs and gutters, access
24 roads and various lateral storm drains that are thirty-six inches (36") or less in diameter that are
25 located within COUNTY held easements or rights of way ("APPURTENANCES"); and

26
27 H. Also associated with the construction of DISTRICT FACILITIES is the
28 construction of a water quality basin ("DEVELOPER BASIN"); and

1 I. DEVELOPER BASIN is to be located within privately held easements or
2 rights of way, and is to be initially owned and maintained by DEVELOPER and subsequently
3 owned by the Homeowners' Association for Tract No. 31141 and maintained by the Homeowners'
4 Association for Tract No. 31141 or via the anticipated formation of a maintenance Community
5 Facilities District ("CFD"); and
6

7 J. Altogether, DISTRICT FACILITIES, APPURTENANCES and
8 DEVELOPER BASIN are called "PROJECT"; and

9 K. All parties recognize and acknowledge that PROPOSED LINE 3 STAGE 1
10 is to be constructed by DEVELOPER in conjunction with PROJECT and pursuant to a separate
11 Cooperative Agreement, hereinafter called the "LINE 3 STAGE 1 AGREEMENT," between
12 DISTRICT, COUNTY and DEVELOPER. DISTRICT will not accept DISTRICT FACILITIES
13 for ownership, operation and maintenance until PROPOSED LINE 3 STAGE 1 is completed
14 pursuant to the LINE 3 STAGE 1 AGREEMENT and accepted for ownership, operation and
15 maintenance by DISTRICT; and
16

17 L. DEVELOPER and COUNTY desire DISTRICT to ultimately accept
18 ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES.
19 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for
20 PROJECT and subsequently inspect the construction of DISTRICT FACILITIES; and
21

22 M. DEVELOPER and DISTRICT desire COUNTY to accept ownership and
23 responsibility for the operation and maintenance of APPURTENANCES. Therefore, COUNTY
24 must review and approve DEVELOPER'S plans and specifications for PROJECT and
25 subsequently inspect the construction of APPURTENANCES; and
26

27 N. DEVELOPER is willing to assume ownership, operation and maintenance
28 responsibilities of DISTRICT FACILITIES on an interim basis as set forth herein, with the

1 recognition and understanding that the actual acceptance of DISTRICT FACILITIES for
2 ownership, operation and maintenance responsibilities by DISTRICT is entirely dependent upon:

3 (i) the construction of PROPOSED LINE 3 STAGE 1 as being complete; (ii) DISTRICT
4 acceptance of ownership and responsibility for the operation and maintenance of PROPOSED
5 LINE 3 STAGE 1; (iii) DISTRICT FACILITIES being constructed in accordance with plans and
6 specifications approved by DISTRICT and as set forth herein; (iv) DISTRICT'S sole
7 determination that DISTRICT FACILITIES are in a satisfactorily maintained condition; and (v)
8 DISTRICT FACILITIES are fully functioning as a flood control drainage system as solely
9 determined by DISTRICT; and
10

11 O. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
12 specifications for PROJECT; (ii) inspect the construction of DISTRICT FACILITIES; and (iii)
13 ultimately assume ownership and responsibility for the operation and maintenance of DISTRICT
14 FACILITIES, provided DEVELOPER (a) complies with this Agreement; (b) constructs
15 PROJECT in accordance with DISTRICT and COUNTY approved plans and specifications; (c)
16 obtains and conveys to DISTRICT all rights of way necessary for the inspection, operation and
17 maintenance of DISTRICT FACILITIES as set forth herein; and (d) accepts ownership and
18 responsibility for the operation and maintenance of PROJECT following completion of PROJECT
19 construction until such time as DISTRICT accepts ownership and responsibility for the operation
20 and maintenance of DISTRICT FACILITIES and COUNTY accepts ownership and responsibility
21 for operation and maintenance of APPURTENANCES; and
22

23 P. COUNTY is willing to (i) review and approve DEVELOPER'S plans and
24 specifications for PROJECT; (ii) inspect the construction of PROJECT; (iii) accept and hold
25 faithful performance and payment bonds submitted by DEVELOPER for DISTRICT
26 FACILITIES and APPURTENANCES; (iv) grant DISTRICT the right to inspect, operate and
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1 maintain DISTRICT FACILITIES within COUNTY rights of way; and (v) accept ownership and
2 responsibility for the operation and maintenance of APPURTENANCES, provided PROJECT is
3 constructed in accordance with plans and specifications approved by DISTRICT and COUNTY.
4

5 NOW, THEREFORE, the parties hereto mutually agree as follows:

6 SECTION I

7 DEVELOPER shall:

8
9 1. Prepare PROJECT plans and specifications ("IMPROVEMENT PLANS"),
10 in accordance with applicable DISTRICT and COUNTY standards, and submit to DISTRICT and
11 COUNTY for their respective review and approval.

12 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
13 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
14 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS,
15 review and approval of rights of way and conveyance documents and with the processing and
16 administration of this Cooperative Agreement.
17

18 3. Deposit with DISTRICT (Attention: Business Office - Accounts
19 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
20 construction as set forth in Section I.8. herein, the estimated cost of providing construction
21 inspection for DISTRICT FACILITIES in an amount as determined and approved by DISTRICT
22 in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any
23 amendments thereto, based upon the bonded value of DISTRICT FACILITIES. If at any time the
24 costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit with DISTRICT,
25 DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by
26 DISTRICT to complete inspection of DISTRICT FACILITIES, within thirty (30) days after
27 receipt of billing from DISTRICT.
28

1 4. Grant DISTRICT and COUNTY, by execution of this Cooperative
2 Agreement, the right to enter upon DEVELOPER'S property where necessary and convenient for
3 the purpose of gaining access to and performing inspection service for the construction of
4 PROJECT as set forth herein.

5 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
6 permits and rights of entry as may be needed for the construction, inspection, operation and
7 maintenance of DISTRICT FACILITIES. DEVELOPER shall furnish DISTRICT, at the time of
8 providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with
9 sufficient evidence of DEVELOPER having secured such necessary licenses, agreements, permits
10 and rights of entry as determined and approved by DISTRICT.

11 6. Prior to commencing construction, furnish DISTRICT with copies of all
12 permits, approvals or agreements required by any federal, state or local resource and/or regulatory
13 agency for the construction, operation and maintenance of DISTRICT FACILITIES. Such
14 documents include but are not limited to those issued by the U.S. Army Corps of Engineers,
15 California Regional Water Quality Control Board, California State Department of Fish and
16 Wildlife, State Water Resources Control Board and Western Riverside County Regional
17 Conservation Authority ("REGULATORY PERMITS").

18 7. Provide COUNTY, at the time of providing written notice to DISTRICT of
19 the start of construction as set forth in Section I.8., with faithful performance and payment bonds,
20 each in the amount of one hundred percent (100%) of the estimated cost for construction of
21 DISTRICT FACILITIES as determined by DISTRICT and of the APPURTENANCES as
22 determined by COUNTY. The surety, amount and form of the bonds shall be subject to approval
23 of DISTRICT and COUNTY. The bonds shall remain in full force and effect until the PROJECT
24 is accepted by DISTRICT and COUNTY as complete. At which time, the bond amount may be
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1 reduced to five percent (5%) for a period of one (1) year to guarantee against any defective work,
2 labor or materials.

3 8. Notify DISTRICT in writing (Attention: Contract Services Section) at least
4 twenty (20) days prior to the start of construction of PROJECT. Construction shall not begin on
5 any element of PROJECT, for any reason whatsoever, until DISTRICT has issued to
6 DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence construction
7 of PROJECT.
8

9 9. [INTENTIONALLY DELETED]

10 10. [INTENTIONALLY DELETED]

11 11. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
12 the start of construction as set forth in Section I.8., with a complete list of all contractors and
13 subcontractors to be performing work on DISTRICT FACILITIES, including the corresponding
14 license number and license classification of each. At such time, DEVELOPER shall further
15 identify in writing its designated superintendent for PROJECT construction.
16

17 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
18 the start of construction as set forth in Section I.8., a construction schedule which shall show the
19 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry out the
20 various parts of work, including estimated start and completion dates. As construction of
21 DISTRICT FACILITIES progresses, DEVELOPER shall update said construction schedule as
22 requested by DISTRICT.
23

24 13. Furnish DISTRICT with final mylar PROJECT plans and assign their
25 ownership to DISTRICT prior to the start on any portion of PROJECT construction.
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1 14. Not permit any change to or modification of DISTRICT and COUNTY
2 approved IMPROVEMENT PLANS without the prior written permission and consent of
3 DISTRICT and COUNTY.

4 15. Comply with all Cal/OSHA safety regulations including regulations
5 concerning confined space and maintain a safe working environment for DEVELOPER,
6 COUNTY and DISTRICT employees on the site.

7 16. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
8 the start of construction as set forth in Section I.8., a confined space entry procedure specific to
9 PROJECT. The procedure shall comply with requirements contained in California Code of
10 Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit
11 Required Confined Space and District Confined Space Procedures, SOM-18. The procedure shall
12 be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed.

13 17. DEVELOPER shall not commence operations until DISTRICT has been
14 furnished with original certificate(s) of insurance and original certified copies of endorsements
15 and, if requested, certified original policies of insurance including all endorsements and any and
16 all other attachments as required in this Section.

17 Without limiting or diminishing DEVELOPER'S obligation to indemnify or
18 hold DISTRICT harmless, DEVELOPER shall procure and maintain or cause to be maintained,
19 at its sole cost and expense, the following insurance coverage's during the term of this Agreement:

20 A. Workers' Compensation:

21 If DEVELOPER has employees as defined by the State of California,
22 DEVELOPER shall maintain statutory Workers' Compensation
23 Insurance (Coverage A) as prescribed by the laws of the State of
24 California. Policy shall include Employers' Liability (Coverage B)
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1 including Occupational Disease with limits not less than \$1,000,000 per
2 person per accident. Policy shall be endorsed to waive subrogation in
3 favor of DISTRICT and COUNTY.
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5 B. Commercial General Liability:

6 Commercial General Liability insurance coverage, including but not
7 limited to, premises liability, unmodified contractual liability, products
8 and completed operations liability, personal and advertising injury, and
9 cross liability coverage, covering claims which may arise from or out of
10 DEVELOPER'S performance of its obligations hereunder. Policy shall
11 name the Riverside County Flood Control and Water Conservation
12 District and COUNTY, its agencies, districts, special districts, and
13 departments, their respective directors, officers, Board of Supervisors,
14 employees, elected or appointed officials, agents or representatives as
15 additional insureds. Policy's limit of liability shall not be less than
16 \$2,000,000 per occurrence combined single limit. If such insurance
17 contains a general aggregate limit, it shall apply separately to this
18 Agreement or be no less than two (2) times the occurrence limit.
19
20

21 C. Vehicle Liability:

22 If DEVELOPER'S vehicles or mobile equipment are used in the
23 performance of the obligations under this Agreement, then
24 DEVELOPER shall maintain liability insurance for all owned, non-
25 owned or hired vehicles so used in an amount not less than \$1,000,000
26 per occurrence combined single limit. If such insurance contains a
27 general aggregate limit, it shall apply separately to this Agreement or be
28

1 no less than two (2) times the occurrence limit. Policy shall name the
2 Riverside County Flood Control and Water Conservation District and
3 COUNTY, its agencies, districts, special districts, and departments,
4 their respective directors, officers, Board of Supervisors, employees,
5 elected or appointed officials, agents or representatives as additional
6 insureds.
7

8 D. Professional Liability:

9 DEVELOPER shall cause any architect or engineer retained by
10 DEVELOPER in connection with the performance of DEVELOPER's
11 obligations under this Agreement to maintain Professional Liability
12 Insurance providing coverage for the performance of their work
13 included within this Agreement, with a limit of liability of not less than
14 \$2,000,000 per occurrence and \$4,000,000 annual aggregate.
15 DEVELOPER shall require that, if such Professional Liability Insurance
16 is written on a claims made basis rather than an occurrence basis, such
17 insurance shall continue through the term of this Agreement and that
18 such architect or engineer shall purchase at such architect or engineer's
19 sole expense either 1) an Extended Reporting Endorsement (also known
20 as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with
21 a retroactive date back to the date of, or prior to, the inception of this
22 Agreement; or 3) demonstrate through Certificates of Insurance that
23 such architect or engineer has maintained continuous coverage with the
24 same or original insurer. Coverage provided under items 1), 2) or 3)
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1 shall continue for the term specified in the insurance policy as long as
2 the law allows.

3 E. General Insurance Provisions – All Lines:

- 4
- 5 i. Any insurance carrier providing insurance coverage hereunder
6 shall be admitted to the State of California and have an A.M.
7 BEST rating of not less than an A: VIII (A: 8) unless such
8 requirements are waived, in writing, by the County Risk
9 Manager. If the County Risk Manager waives a requirement for
10 a particular insurer such waiver is only valid for that specific
11 insurer and only for one policy term.
- 12
- 13 ii. DEVELOPER must declare its insurance self-insured retention
14 for each coverage required herein. If any such self-insured
15 retention exceeds \$500,000 per occurrence each such retention
16 shall have the prior written consent of the County Risk Manager
17 before the commencement of operations under this Agreement.
18 Upon notification of self-insured retention deemed unacceptable
19 to DISTRICT, and at the election of the County Risk Manager,
20 DEVELOPER'S carriers shall either 1) reduce or eliminate such
21 self-insured retention with respect to this Agreement with
22 DISTRICT; or 2) procure a bond which guarantees payment of
23 losses and related investigations, claims administration, and
24 defense costs and expenses.
- 25
- 26 iii. DEVELOPER shall cause their insurance carrier(s) or its
27 contractor's insurance carrier(s), to furnish DISTRICT with 1) a
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1 properly executed original certificate(s) of insurance and
2 certified original copies of endorsements effecting coverage as
3 required herein; and 2) if requested to do so orally or in writing
4 by the County Risk Manager, provide original certified copies of
5 policies including all endorsements and all attachments thereto,
6 showing such insurance is in full force and effect. Further, said
7 certificate(s) and policies of insurance shall contain the covenant
8 of the insurance carrier(s) that a minimum of sixty (60) days
9 written notice shall be given to DISTRICT prior to any material
10 modification, cancellation, expiration or reduction in coverage
11 of such insurance. If DEVELOPER insurance carrier(s) policies
12 does not meet the minimum notice requirement found herein,
13 DEVELOPER shall cause DEVELOPER'S insurance carrier(s)
14 to furnish a 60 day Notice of Cancellation Endorsement. In the
15 event of a material modification, cancellation, expiration or
16 reduction in coverage, this Agreement shall terminate forthwith,
17 unless DISTRICT receives, prior to such effective date, another
18 properly executed original certificate of insurance and original
19 copies of endorsements or certified original policies, including
20 all endorsements and attachments thereto, evidencing coverages
21 set forth herein and the insurance required herein is in full force
22 and effect. An individual authorized by the insurance carrier to
23 do so on its behalf shall sign the original endorsements for each
24 policy and the certificate of insurance.
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- iv. It is understood and agreed by the parties hereto that DEVELOPER'S insurance shall be construed as primary insurance, and DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
 - v. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.), or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.
 - vi. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
 - vii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.

viii. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this Agreement.

18. Construct or cause to be constructed PROJECT at DEVELOPER'S sole cost and expense in accordance with DISTRICT and COUNTY approved IMPROVEMENT PLANS.

19. Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Contract Administration Section) and COUNTY with written notice that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of DISTRICT FACILITIES and COUNTY conduct a final inspection of APPURTENANCES. It is mutually understood that prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT and PROPOSED LINE 3 STAGE 1 shall have been accepted by DISTRICT for ownership, operation and maintenance.

20. [INTENTIONALLY DELETED]

21. [INTENTIONALLY DELETED]

22. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation

1 and maintenance of DISTRICT FACILITIES and PROPOSED LINE 3 STAGE 1 and COUNTY
2 accepts ownership and responsibility for operation and maintenance of APPURTENANCES.

3 23. Accept all liability whatsoever associated with the ownership, operation and
4 maintenance of DISTRICT FACILITIES until such time as DISTRICT FACILITIES are formally
5 accepted by DISTRICT for ownership, operation and maintenance.
6

7 24. Pay, if suit is brought upon this Cooperative Agreement or any bond
8 guaranteeing the completion of PROJECT, all costs and reasonable expenses and fees, including
9 reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses
10 and fees shall be computed as costs and included in any judgment rendered.
11

12 25. Upon completion of PROJECT construction, but prior to DISTRICT
13 acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide or
14 cause its civil engineer of record or construction civil engineer of record, duly registered in the
15 State of California, to provide DISTRICT with a redlined "record drawings" copy of PROJECT
16 plans. After DISTRICT approval of the redlined "record drawings", DEVELOPER'S engineer
17 shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT'S original
18 mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign the original
19 PROJECT engineering plans "record drawings".
20

21 26. Ensure that all work performed pursuant to this Cooperative Agreement by
22 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and
23 regulations, including but not limited to all applicable provisions of the Labor Code, Business and
24 Professions Code and Water Code. DEVELOPER shall be solely responsible for all costs
25 associated with compliance with applicable laws and regulations.
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SECTION II

DISTRICT shall:

1. Review IMPROVEMENT PLANS and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT prior to the start of PROJECT construction.
2. Provide COUNTY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT'S final approval.
3. Upon execution of this Cooperative Agreement, record or cause to be recorded a copy of this Cooperative Agreement in the Official Records of the Riverside County Recorder.
4. [INTENTIONALLY DELETED]
5. Inspect DISTRICT FACILITIES construction.
6. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS, the review and approval of right of way and conveyance documents and the processing and administration of this Cooperative Agreement.
7. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete.
8. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES from DEVELOPER upon (i) the completion of PROPOSED LINE 3 STAGE 1 construction; (ii) DISTRICT acceptance of PROPOSED LINE 3 STAGE 1 for ownership, operation and maintenance; (iii) DISTRICT inspection of DISTRICT FACILITIES in

1 accordance with Section I.19.; (iv) DISTRICT acceptance of PROJECT construction as being
2 complete; (v) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans,
3 as set forth in Section I.25.; (vi) COUNTY acceptance of APPURTENANCES for ownership,
4 operation, and maintenance; and (vii) DISTRICT'S sole determination that DISTRICT
5 FACILITIES are in a satisfactorily maintained condition.
6

7 9. Provide COUNTY with a reproducible duplicate copy of "record drawings"
8 PROJECT plans upon DISTRICT acceptance of DISTRICT FACILITIES as being complete.

9 SECTION III

10 COUNTY shall:

11 1. Review IMPROVEMENT PLANS and approve when COUNTY has
12 determined that such plans meet County standards and are found acceptable to COUNTY prior to
13 the start of PROJECT construction.
14

15 2. Accept COUNTY and DISTRICT approved faithful performance and
16 payment bonds submitted by DEVELOPER as set forth in Section I.7., and hold said bonds as
17 provided herein.
18

19 3. Inspect PROJECT construction.

20 4. [INTENTIONALLY DELETED]

21 5. [INTENTIONALLY DELETED]

22 6. Grant DISTRICT, by execution of this Agreement, the right to construct,
23 inspect, operate and maintain DISTRICT FACILITIES within COUNTY rights of way.

24 7. Accept ownership and sole responsibility for the operation and maintenance
25 of APPURTENANCES from DEVELOPER upon COUNTY acceptance of PROJECT
26 construction as being complete.
27
28

1 8. Not grant any occupancy permits for any units within any portion of Tract
2 No. 31141 or any phase thereof until construction of PROJECT is complete, unless otherwise
3 approved in writing by DISTRICT.
4

5 9. Upon DISTRICT acceptance of PROJECT construction as being complete,
6 accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located
7 within COUNTY rights of way which must be performed at such time(s) that the finished grade
8 along and above the underground portions of DISTRICT FACILITIES are improved, repaired,
9 replaced or changed. It being further understood and agreed that any such adjustments shall be
10 performed at no cost to DISTRICT.
11

12 SECTION IV

13 It is further mutually agreed:

14 1. All work involved with PROJECT shall be inspected by DISTRICT and
15 COUNTY but shall not be deemed complete until DISTRICT and COUNTY mutually agree in
16 writing that construction is completed in accordance with DISTRICT and COUNTY approved
17 IMPROVEMENT PLANS.
18

19 2. COUNTY and DEVELOPER personnel may observe and inspect all work
20 being done on DISTRICT FACILITIES, but shall provide any comments to DISTRICT personnel
21 who shall be solely responsible for all quality control communications with DEVELOPER'S
22 contractor(s) during the construction of PROJECT.
23

24 3. DISTRICT acceptance of ownership and responsibility for the operation and
25 maintenance of DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely
26 determined by DISTRICT. If, subsequent to the inspection and in the sole discretion of
27 DISTRICT, DISTRICT FACILITIES are not in an acceptable condition, corrections shall be
28 made at sole expense of DEVELOPER.

1 4. DEVELOPER shall complete construction of PROJECT within twelve (12)
2 consecutive months after execution of this Cooperative Agreement and within one hundred twenty
3 (120) consecutive calendar days after commencing work on PROJECT. It is expressly understood
4 that since time is of the essence in this Cooperative Agreement, failure of DEVELOPER to
5 perform the work within the agreed upon time shall constitute authority for DISTRICT to perform
6 the remaining work and require DEVELOPER'S surety to pay to COUNTY the penal sum of any
7 and all bonds. In which case, COUNTY shall subsequently reimburse DISTRICT for DISTRICT
8 costs incurred.
9

10 5. If DEVELOPER fails to commence construction of PROJECT within nine
11 (9) months after execution of this Cooperative Agreement, then DISTRICT reserves the right to
12 withhold issuance of the Notice to Proceed pending a review of the existing site conditions as they
13 exist at the time DEVELOPER provides written notification to DISTRICT of the start of
14 construction as set forth in Section I.8. In the event of a change in the existing site conditions that
15 materially affects PROJECT function or DISTRICT'S ability to operate and maintain DISTRICT
16 FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as
17 deemed necessary by DISTRICT.
18
19

20 6. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed within
21 twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in Section I.8.;
22 however, DISTRICT'S construction inspection staff is limited and, therefore, the issuance of a
23 Notice to Proceed is subject to staff availability.

24 In the event DEVELOPER wishes to expedite issuance of a Notice to
25 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
26 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
27 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
28

1 approval. DISTRICT shall review the individual's qualifications and experience, and upon
2 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized
3 to act on DISTRICT'S behalf on all DISTRICT FACILITIES construction and quality control
4 matters. If DEVELOPER'S initial construction inspection deposit furnished pursuant to Section
5 I.3. exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to eighty
6 percent (80%) of DEVELOPER'S initial inspection deposit within forty-five (45) days of
7 DISTRICT'S approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand
8 dollars (\$10,000) shall be retained on account.
9

10 7. PROJECT construction work shall be on a five (5) day, forty (40) hour work
11 week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless
12 otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work more
13 than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a written
14 request for permission from DISTRICT to work the additional hours. The request shall be
15 submitted to DISTRICT at least seventy-two (72) hours prior to the requested additional work
16 hours and state the reasons for the overtime and the specific time frames required. The decision
17 of granting permission for overtime work shall be made by DISTRICT at its sole discretion and
18 shall be final. If permission is granted by DISTRICT, DEVELOPER will be charged the cost
19 incurred at the overtime rates for additional inspection time required in connection with the
20 overtime work in accordance with Ordinance Nos. 671 and 749, including any amendments
21 thereto, of the County of Riverside.
22

23 8. DEVELOPER shall indemnify and hold harmless DISTRICT and COUNTY
24 (including their agencies, districts, special districts and departments, their respective directors,
25 officers, Board of Supervisors, elected and appointed officials, employees, agents and
26 representatives) from any liability, claim, damage, proceeding or action, present or future, based
27
28

1 upon, arising out of or in any way relating to DEVELOPER'S (including its officers, employees,
2 subcontractors and agents) actual or alleged acts or omissions related to this Agreement,
3 performance under this Agreement, or failure to comply with the requirements of this Agreement,
4 including but not limited to (a) property damage; (b) bodily injury or death; (c) liability or damage
5 pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United
6 States Constitution or any other law, ordinance or regulation caused by the diversion of waters
7 from the natural drainage patterns or the discharge of drainage within or from PROJECT; or (d)
8 any other element of any kind or nature whatsoever.

10 DEVELOPER shall defend, at its sole expense, including all costs and fees
11 (including but not limited to attorney fees, cost of investigation, defense and settlements or
12 awards), DISTRICT and COUNTY (including their agencies, districts, special districts and
13 departments, their respective directors, officers, Board of Supervisors, elected and appointed
14 officials, employees, agents and representatives) in any claim, proceeding or action for which
15 indemnification is required.

17 With respect to any of DEVELOPER'S indemnification requirements,
18 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall
19 have the right to adjust, settle, compromise any such claim, proceeding or action without the prior
20 consent of DISTRICT and COUNTY; provided, however, that any such adjustment, settlement
21 or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S indemnification
22 obligations to DISTRICT or COUNTY.

24 DEVELOPER'S indemnification obligations shall be satisfied when
25 DEVELOPER has provided to DISTRICT and COUNTY the appropriate form of dismissal (or
26 similar document) relieving DISTRICT or COUNTY from any liability for the claim, proceeding
27 or action involved.
28

1 The specified insurance limits required in this Cooperative Agreement shall
2 in no way limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless
3 DISTRICT and COUNTY from third party claims.

4 In the event there is conflict between this section and California Civil Code
5 Section 2782, this section shall be interpreted to comply with California Civil Code Section 2782.
6 Such interpretation shall not relieve DEVELOPER from indemnifying DISTRICT or COUNTY
7 to the fullest extent allowed by law.

8
9 9. DEVELOPER for itself, its successors and assigns hereby releases
10 DISTRICT and COUNTY, their respective officers, agents, and employees from any and all
11 claims, demands, actions, or suits of any kind arising out of any liability, known or unknown,
12 present or future, including but not limited to any claim or liability, based or asserted, pursuant to
13 Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States
14 Constitution, or any other law or ordinance which seeks to impose any other liability or damage,
15 whatsoever, for damage caused by the discharge of drainage within or from PROJECT. Nothing
16 contained herein shall constitute a release by DEVELOPER of DISTRICT or COUNTY, their
17 officers, agents and employees from any and all claims, demands, actions or suits of any kind
18 arising out of any liability, known or unknown, present or future, for the negligent maintenance
19 of DISTRICT FACILITIES and APPURTENANCES, after the acceptance of DISTRICT
20 FACILITIES and APPURTENANCES by DISTRICT and COUNTY, respectively.

21
22 10. Any waiver by DISTRICT or by COUNTY of any breach of any one or more
23 of the terms of this Cooperative Agreement shall not be construed to be a waiver of any subsequent
24 or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or
25 COUNTY to require exact, full and complete compliance with any terms of this Cooperative
26
27
28

1 Agreement shall not be construed as in any manner changing the terms hereof, or estopping
2 DISTRICT or COUNTY from enforcement hereof.

3
4 11. Any and all notices sent or required to be sent to the parties of this
5 Cooperative Agreement will be mailed by first class mail, postage prepaid, to the following
6 addresses:

7 RIVERSIDE COUNTY FLOOD CONTROL
8 AND WATER CONSERVATION DISTRICT
9 1995 Market Street
Riverside, CA 92501
Attn: Contract Services Section

COUNTY OF RIVERSIDE
4080 Lemon Street, 8th Floor
Riverside, CA 92502-1090
Attn: Transportation Department
Plan Check Section

10 SR CONESTOGA, LLC
11 41391 Kalmia Street, Suite 200
12 Murrieta, CA 92562
Attn: Jim Lytle

13 12. This Agreement is to be construed in accordance with the laws of the State
14 of California. If any provision of this Agreement is held by a court of competent jurisdiction to
15 be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force
16 without being impaired or invalidated in any way.

17
18 13. Any action at law or in equity brought by any of the parties hereto for the
19 purpose of enforcing a right or rights provided for by the Cooperative Agreement shall be tried in
20 a court of competent jurisdiction in the County of Riverside, State of California, and the parties
21 hereto waive all provisions of law providing for a change of venue in such proceedings to any
22 other county.

23 14. This Cooperative Agreement is the result of negotiations between the parties
24 hereto, and the advice and assistance of their respective counsel. The fact that this Cooperative
25 Agreement was prepared as a matter of convenience by DISTRICT shall have no import or
26 significance. Any uncertainty or ambiguity in this Cooperative Agreement shall not be construed
27 against DISTRICT because DISTRICT prepared this Cooperative Agreement in its final form.
28

1 15. The rights and obligations of DEVELOPER shall inure to and be binding
2 upon all heirs, successors and assignees.

3 16. DEVELOPER shall not assign or otherwise transfer any of its rights, duties
4 or obligations hereunder to any person or entity without the written consent of the other parties
5 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER
6 expressly understands and agrees that it shall remain liable with respect to any and all of the
7 obligations and duties contained in this Cooperative Agreement.
8

9 17. The individual(s) executing this Cooperative Agreement on behalf of
10 DEVELOPER certify that they have the authority within their respective company(ies) to enter
11 into and execute this Cooperative Agreement, and have been authorized to do so by all boards of
12 directors, legal counsel and/or any other board, committee or other entity within their respective
13 company(ies) which have the authority to authorize or deny entering into this Cooperative
14 Agreement.
15

16 18. This Cooperative Agreement is intended by the parties hereto as a final
17 expression of their understanding with respect to the subject matter hereof and as a complete and
18 exclusive statement of the terms and conditions thereof and supersedes any and all prior and
19 contemporaneous agreements and understandings, oral or written, in connection therewith. This
20 Cooperative Agreement may be changed or modified only upon the written consent of the parties
21 hereto.
22

23 //

24 //

1 IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on

2
3 (to be filled in by Clerk of the Board)

4
5 RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

6
7 By _____
8 JASON E. UHLEY
General Manager-Chief Engineer

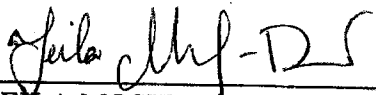
By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

9
10 APPROVED AS TO FORM:

ATTEST:

11 GREGORY P. PRIAMOS
12 County Counsel

KECIA HARPER-IHEM
Clerk of the Board

13
14 By 
15 LEILA MOSHREF-DANESH
Deputy County Counsel

By _____
Deputy

(SEAL)

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25 Amended and Restated Cooperative Agreement:

Winchester Hills – Line 3, Stage 2

26 Winchester Hills – Prairie Crossing Drive Storm Drain, Stage 1
27 (Tract No. 31141)

Project Nos. 4-0-00577 and 4-0-00578

28 AMR:blm

08/03/17

1 RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

2

3 By

PATRICIA ROMO
Director of Transportation

By

JOHN TAVAGLIONE, Chairman
Board of Supervisors

4

5

6

7 APPROVED AS TO FORM:

ATTEST:

8 GREGORY P. PRIAMOS
County CounselKECIA HARPER-IHEM
Clerk of the Board

9

10

11

By

Marsha L. Victor 9/18/17
~~SYNTHIA M. GUNZEL~~ Marsha L. Victor
Supervising Deputy County Counsel

By

Deputy

12

13

(SEAL)

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Amended and Restated Cooperative Agreement:

26

Winchester Hills – Line 3, Stage 2

27

Winchester Hills – Prairie Crossing Drive Storm Drain, Stage 1
(Tract No. 31141)

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Project Nos. 4-0-00577 and 4-0-00578

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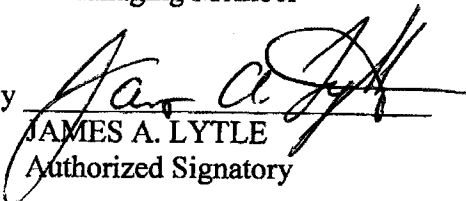
08/03/17

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SR CONESTOGA, LLC
a Delaware limited liability company

By: Conestoga Development LLC
a California limited liability company
Its Co-Managing Member

By


JAMES A. LYTLE
Authorized Signatory

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

See attached acknowledgment

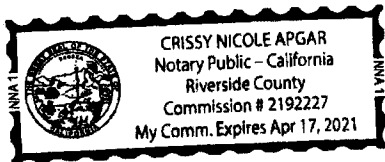
Amended and Restated Cooperative Agreement:
Winchester Hills – Line 3, Stage 2
Winchester Hills – Prairie Crossing Drive Storm Drain, Stage 1
(Tract No. 31141)
Project Nos. 4-0-00577 and 4-0-00578
AMR:blm
08/03/17

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)
On August 7, 2017 before me, Crissy Nicole Apgar,
Date Here Insert Name and Title of the Officer
personally appeared James A. Lytle
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Crissy Nicole Apgar
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

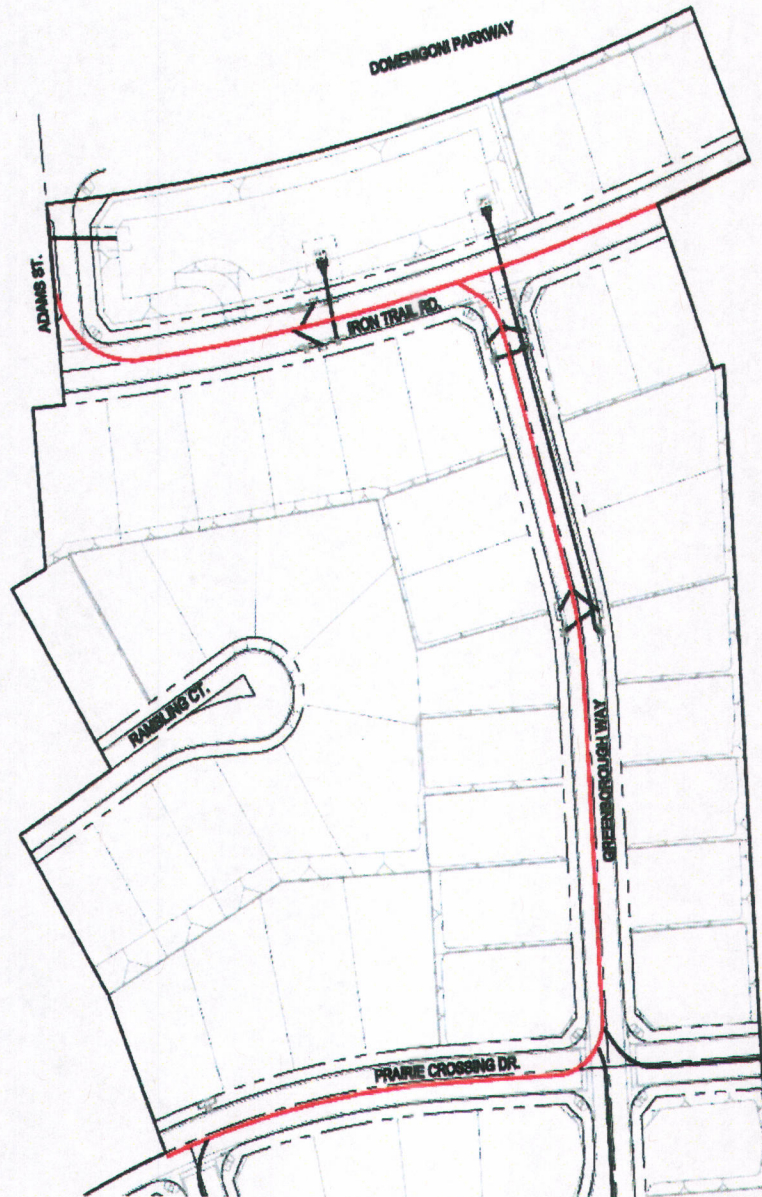
☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Exhibit A



AMENDED AND RESTATED COOPERATIVE AGREEMENT

Winchester Hills – Line 3, Stage 2

Winchester Hills – Prairie Crossing Drive Storm Drain, Stage 1

Project Nos. 4-0-00577 and 4-0-00578

Tract No. 31141

Page 1 of 1