

**SUBMITTAL TO THE FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT  
BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM  
11.4  
(ID # 6382)

**MEETING DATE:**

Tuesday, February 27, 2018

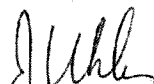
**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Approval of Cooperative Agreement with Riverside County Flood Control (District), the City of Menifee and Sutter Mitland 01 LLC for Salt Creek – Westward Circle Storm Drain, Stage 1; Salt Creek – Whispering Way Storm Drain, Stage 1; Salt Creek – Destry Drive Storm Drain, Stage 1; Salt Creek – Audie West Storm Drain, Stage 1; Salt Creek – Salt Creek Channel Line B, Stage 2 (Parcel Map No. 32269) and Approval of Cooperative Agreement with the City of Menifee and Sutter Mitland 01 LLC for Salt Creek – Westward Circle Storm Drain, Stage 2; Salt Creek – Whispering Way Storm Drain, Stage 2; Salt Creek – Destry Drive Storm Drain, Stage 2; Salt Creek – Clover Creek Storm Drain, Stage 4 (Tract No. 31822); Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380, 4-0-00382 and 4-0-00142 [District 5] [\$0]

**RECOMMENDED MOTION:**

1. Approve the Cooperative Agreements between the District, the City of Menifee (City) and Sutter Mitland 01, LLC (Developer);
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Direct the Clerk of Board to return four (4) copies of each of the executed Cooperative Agreements to the District.

**ACTION:** Policy

  
\_\_\_\_\_  
Jason Uhley

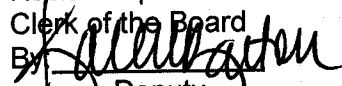
2/14/2018

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Perez, seconded by Supervisor Jeffries 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: February 27, 2018  
xc: Flood

Kecia Harper-Ihem  
Clerk of the Board  
By   
Deputy

**11.4**

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

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

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The Cooperative Agreements (Agreements) set forth the terms and conditions by which certain flood control facilities, required as a condition of approval for Parcel Map No. 32269 and Tract No. 31822, are to be constructed by Developer and inspected, operated and maintained by the District, City and Developer.

The Agreements are necessary to provide for District inspection and subsequent operation and maintenance of the referenced storm drain facilities. Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain system and maintenance access road.

The City will assume ownership and responsibility for the operation and maintenance of:

1. (i) a 12-inch PVC subdrain pipe, (ii) a 4' x 10' reinforced concrete box, (iii) a 42-inch reinforced concrete/corrugated metal pipe, (iv) a 48-inch reinforced concrete pipe, and (v) the project's associated catch basins, connector pipes, headwalls, inlets, riprap structures, bio-retention basins, maintenance access road and various lateral storm drains that are 36 inches or less in diameter that are located within CITY held rights of way for Parcel Map No. 32269; and
2. (i) a 42-inch reinforced concrete/corrugated metal pipe, and (ii) the project's associated catch basins, connector pipes, headwalls, inlets, riprap structures, debris basin, maintenance access road and various lateral storm drains that are 36 inches or less in diameter that are located within CITY held rights of way for Tract No. 31822.

County Counsel has approved the Agreements as to legal form, and the City and Developer have executed the Agreements.

**Impact on Residents and Businesses**

As noted above, construction of these drainage improvements is a requirement for the development of Parcel Map No. 32269 and Tract No. 31822. The principal beneficiaries are the

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

future residents of the tract. Ancillary benefits will accrue to the public 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 District maintained storm drain facilities will accrue to the District.

**ATTACHMENTS:**

1. Vicinity Maps
2. Cooperative Agreements

AMR:blm  
P8/217923

  
\_\_\_\_\_  
Gregory V. Priamos, Director County Counsel      2/15/2018

COOPERATIVE AGREEMENT

Salt Creek – Westward Circle Storm Drain, Stage 2  
Salt Creek – Whispering Way Storm Drain, Stage 2  
Salt Creek – Destry Drive Storm Drain, Stage 2  
Salt Creek – Clover Creek Storm Drain, Stage 4  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379 and 4-0-00142  
Tract No. 31822

The Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Menifee, a municipal corporation of the State of California ("CITY"), Sutter Mitland 01 LLC, a Delaware limited liability company ("DEVELOPER"), hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the County of Riverside. DEVELOPER has submitted for approval Tract No. 31822 located in the City of Menifee. As a condition of approval for Tract No. 31822, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER's planned development; and

B. The required flood control facilities and drainage improvements, as shown in concept on Exhibit "A", attached hereto and made a part hereof, and as shown on District Drawing No. 4-1100, includes:

- i) Approximately 97 lineal feet of underground storm drain system ("LINE C-10"). At its upstream terminus, LINE C-10 will connect to proposed storm drain facility for Parcel Map No. 32269;
- ii) Approximately 1,230 lineal feet of underground storm drain system ("LINE C-9"). At its upstream terminus, LINE C-9 will connect to proposed storm drain facility for Parcel Map No. 32269;

- 1                   iii) Approximately 2,120 lineal feet of underground storm drain system  
2   ("LINE C-7"). At its upstream terminus, LINE C-7 will connect to  
3   proposed storm drain facility for Parcel Map No. 32269;  
4  
5                   iv) Approximately 399 lineal feet of underground storm drain system  
6   ("LINE-AX"). At its upstream terminus, LINE-AX will connect to  
7   DISTRICT existing Salt Creek – Clover Street Storm Drain, Stage 3  
8   facility, as shown on DISTRICT's As-Built Drawing No. 4-0806. At  
9   its downstream terminus, LINE-AX will connect to DISTRICT  
10    existing Salt Creek – Clover Street Storm Drain, Stage 2 facility, as  
11    shown on DISTRICT's As-Built Drawing No. 4-0762. True and  
12    correct copies of the District-approved district drawings are public  
13    records that are within District's possession, and can be made available  
14    upon request. Together, LINE C-10, LINE C-9, LINE C-7 and LINE-  
15    AX are called "DISTRICT FACILITIES"; and  
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17                   C. Associated with the construction of DISTRICT FACILITIES is the  
18                   construction of (i) approximately 88 lineal feet of 42-inch reinforced concrete/corrugated metal  
19                   pipe; and (ii) certain catch basins, connector pipes, headwalls, inlets, riprap structures, debris  
20                   basin, maintenance access road and various lateral storm drains that are thirty-six inches (36") or  
21                   less in diameter that are located within CITY held easements or rights of way  
22                   ("APPURTENANCES"). Together, DISTRICT FACILITIES and APPURTENANCES are  
23                   hereinafter called "PROJECT"; and  
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25                   D. DEVELOPER and CITY desire DISTRICT to accept ownership and  
26                   responsibility for the operation and maintenance of DISTRICT FACILITIES. Therefore,  
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1 DISTRICT must review and approve DEVELOPER's plans and specifications for PROJECT and  
2 subsequently inspect the construction of DISTRICT FACILITIES; and

3 E. On or about December 4, 2017, DISTRICT and DEVELOPER entered into  
4 a Right of Entry and Inspection Agreement that authorizes DEVELOPER to construct  
5 DISTRICT FACILITIES. Pursuant to the Right of Entry and Inspection Agreement,  
6 DEVELOPER has commenced and completed construction of DISTRICT FACILITIES; and

7 F. DEVELOPER, DISTRICT, and CITY desire CITY to accept ownership and  
8 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY must  
9 review and approve DEVELOPER's plans and specifications for PROJECT, and subsequently  
10 inspect and approve the construction of PROJECT; and

11 G. 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 accept 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 CITY 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  
19 PROJECT construction until such time as DISTRICT accepts ownership and responsibility for  
20 the operation and maintenance of DISTRICT FACILITIES; and

21 H. CITY is willing to (i) review and approve DEVELOPER's plans and  
22 specifications for PROJECT, (ii) inspect the construction of PROJECT, (iii) accept and hold  
23 faithful performance and payment bonds submitted by DEVELOPER for DISTRICT  
24 FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain DISTRICT  
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1 FACILITIES within CITY rights of way subject to the terms of this Agreement, and (v) accept  
2 ownership and responsibility for the operation and maintenance of APPURTENANCES,  
3 provided DEVELOPER (a) complies with this Agreement, (b) constructs PROJECT in  
4 accordance with DISTRICT and CITY approved plans and specifications, (c) obtains and  
5 conveys to CITY all rights of way necessary for the inspection, operation and maintenance of  
6 APPURTENANCES as set forth herein, and (d) accepts ownership and responsibility for the  
7 operation and maintenance of PROJECT following completion of PROJECT construction until  
8 such time as DISTRICT accepts ownership and responsibility for the operation and maintenance  
9 of DISTRICT FACILITIES and CITY accepts ownership and responsibility for the operation  
10 and maintenance of APPURTENANCES.  
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12  
13 NOW, THEREFORE, the parties hereto mutually agree as follows:

14 SECTION I

15 DEVELOPER shall:

16 1. Prepare PROJECT plans and specifications, hereinafter called  
17 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and  
18 submit to DISTRICT and CITY for their review and approval.  
19

20 2. Continue to pay DISTRICT and CITY, within thirty (30) days after receipt  
21 of periodic billings from DISTRICT and CITY, any and all such amounts as are deemed  
22 reasonably necessary by DISTRICT and CITY to cover DISTRICT's and CITY's costs associated  
23 with the review of IMPROVEMENT PLANS, review and approval of rights of way and  
24 conveyance documents, and with the processing and administration of this Agreement.

25 3. Deposit with DISTRICT (Attention: Business Office - Accounts  
26 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT  
27 construction as set forth in Section I.8., the estimated cost of providing construction inspection  
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1 for DISTRICT FACILITIES, in an amount as determined and approved by DISTRICT in  
2 accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any  
3 amendments thereto, based upon the bonded value of DISTRICT FACILITIES. If at any time  
4 the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit with  
5 DISTRICT, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary  
6 by DISTRICT to complete inspection of PROJECT, within thirty (30) days after receipt of billing  
7 from DISTRICT.  
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9           4. Deposit with CITY, at the time of providing written notice to DISTRICT  
10 and CITY of the start of PROJECT construction as set forth in Section I.8., the estimated cost of  
11 providing construction inspection for APPURTENANCES, in an amount as determined and  
12 approved by CITY in accordance with CITY's municipal code and regulations. If at any time the  
13 costs exceed the deposit or are anticipated by CITY to exceed the deposit with CITY,  
14 DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by CITY to  
15 complete inspection of PROJECT, within thirty (30) days after receipt of billing from CITY.  
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17           5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
18 permits and rights of entry as may be needed for the construction, inspection, operation and  
19 maintenance of PROJECT. DEVELOPER shall furnish DISTRICT and CITY, at the time of  
20 providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with  
21 sufficient evidence of DEVELOPER having secured such necessary licenses, agreements,  
22 permits and rights of entry, as determined and approved by DISTRICT and CITY.  
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24           6. Furnish DISTRICT and CITY with copies of all permits, approvals or  
25 agreements required by any federal, state or local resource and/or regulatory agency for the  
26 construction, operation and maintenance of PROJECT. Such documents include but are not  
27 limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality  
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1 Control Board, California State Department of Fish and Wildlife, State Water Resources Control  
2 Board, and Western Riverside County Regional Conservation Authority ("REGULATORY  
3 PERMITS").

4  
5 7. Provide CITY, at the time of providing written notice to DISTRICT of the  
6 start of construction as set forth in Section I.8., with faithful performance and payment bonds,  
7 each in the amount of one hundred percent (100%) of the estimated cost for construction of  
8 DISTRICT FACILITIES as determined by DISTRICT. The surety, amount and form of the  
9 bonds, shall be subject to approval of DISTRICT and CITY. The bonds shall remain in full force  
10 and effect until DISTRICT FACILITIES are accepted by DISTRICT as complete; at which time  
11 the bond amount may be reduced to five percent (5%) for a period of one year to guarantee  
12 against any defective work, labor or materials.

13  
14 8. Notify DISTRICT (Attention: Contract Services Section) and CITY in  
15 writing at least twenty (20) days prior to the start of construction of PROJECT. Construction  
16 shall not begin on any element of PROJECT, for any reason whatsoever, until DISTRICT and  
17 CITY have issued to DEVELOPER a written Notice to Proceed authorizing DEVELOPER to  
18 commence construction of PROJECT.

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20 9. Grant DISTRICT and CITY, by execution of this Agreement, the right to  
21 enter upon DEVELOPER's property where necessary and convenient for the purpose of gaining  
22 access to, and performing inspection service for the construction of PROJECT as set forth herein.

23 10. [INTENTIONALLY OMITTED]

24 11. [INTENTIONALLY OMITTED]

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

3           13. Furnish DISTRICT and CITY, at the time of providing written notice to  
4 DISTRICT and CITY of the start of construction as set forth in Section I.8., a construction  
5 schedule which shall show the order and dates in which DEVELOPER or DEVELOPER's  
6 contractor proposes to carry out the various parts of work, including estimated start and  
7 completion dates. As construction of PROJECT progresses, DEVELOPER shall update said  
8 construction schedule as requested by DISTRICT and/or CITY.

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10           14. Furnish DISTRICT with final mylar plans for DISTRICT FACILITIES, and  
11 assign their ownership to DISTRICT prior to the start on any portion of PROJECT construction.

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13           15. Not permit any change to or modification of DISTRICT and CITY approved  
14 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT and  
15 CITY.

16           16. Comply with all Cal/OSHA safety regulations including but not limited to,  
17 regulations concerning confined space and maintain a safe working environment for  
18 DEVELOPER, DISTRICT and CITY employees on the site.

19  
20           17. Furnish DISTRICT and CITY, at the time of providing written notice to  
21 DISTRICT of the start of construction as set forth in Section I.8., with a confined space entry  
22 procedure specific to PROJECT. The procedure shall comply with requirements contained in  
23 California Code of Regulations, Title 8 Section 5158, Other Confined Space Operations, Section  
24 5157, Permit Required Confined Space and District Confined Space Procedures, SOM-18. The  
25 procedure shall be reviewed and approved by DISTRICT and CITY prior to the issuance of a  
26 Notice to Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and  
27 CITY's approval.  
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1           18.    DEVELOPER shall not commence operations until DISTRICT and CITY  
2 have been furnished with original certificate(s) of insurance and original certified copies of  
3 endorsements and if requested, certified original policies of insurance including all endorsements  
4 and any and all other attachments as required in this section.  
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6                       Without limiting or diminishing DEVELOPER's obligation to indemnify or  
7 hold DISTRICT or CITY harmless, DEVELOPER shall procure and maintain or cause to be  
8 maintained, at its sole cost and expense, the following insurance coverages during the term of  
9 this Agreement:

10                   A.    Workers' Compensation:

11                               If DEVELOPER has employees as defined by the State of California,  
12 DEVELOPER shall maintain statutory Workers' Compensation  
13 Insurance (Coverage A) as prescribed by the laws of the State of  
14 California. Policy shall include Employers' Liability (Coverage B)  
15 including Occupational Disease with limits not less than \$1,000,000  
16 per person per accident. Policy shall be endorsed to waive subrogation  
17 in favor of DISTRICT, the County of Riverside ("COUNTY"), and  
18 CITY.  
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20                   B.    Commercial General Liability:

21                               Commercial General Liability insurance coverage, including but not  
22 limited to, premises liability, unmodified contractual liability,  
23 products and completed operations liability, personal and advertising  
24 injury, and cross liability coverage, covering claims which may arise  
25 from or out of DEVELOPER's performance of its obligations  
26 hereunder. Additionally, Commercial General Liability insurance no  
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1 less broad than ISO form CG 00 01. Policy shall name DISTRICT,  
2 COUNTY, and CITY and their agencies, districts, special districts,  
3 and departments, their respective directors, officers, Board of  
4 Supervisors, employees, elected or appointed officials, agents or  
5 representatives as additional insureds. Policy's limit of liability shall  
6 not be less than \$5,000,000 per occurrence combined single limit. If  
7 such insurance contains a general aggregate limit, it shall apply  
8 separately to this Agreement or be no less than two (2) times the  
9 occurrence limit. DISTRICT, COUNTY and CITY must be an  
10 additional insured for liability arising out of ongoing and completed  
11 operations by or on behalf of DEVELOPER. DISTRICT, COUNTY  
12 and CITY shall continue to be an additional insured for completed  
13 operations for two years after completion of the work. If  
14 DEVELOPER maintains higher limits than the specified minimum  
15 limits, DISTRICT, COUNTY and CITY requires and shall be entitled  
16 to coverage for the higher limits maintained by DEVELOPER.  
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20 C. Vehicle Liability:

21 If DEVELOPER's vehicles or mobile equipment are used in the  
22 performance of the obligations under this Agreement, then  
23 DEVELOPER shall maintain liability insurance for all owned, non-  
24 owned or hired vehicles so used in an amount not less than \$1,000,000  
25 per occurrence combined single limit. If such insurance contains a  
26 general aggregate limit, it shall apply separately to this Agreement or  
27 be no less than two (2) times the occurrence limit. Policy shall name  
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1 DISTRICT, COUNTY and CITY and their agencies, districts, special  
2 districts, and departments, their respective directors, officers, Board of  
3 Supervisors, employees, elected or appointed officials, agents or  
4 representatives as additional insureds.  
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6 D. Professional Liability:

7 DEVELOPER shall cause any architect or engineer retained by  
8 DEVELOPER in connection with the performance of DEVELOPER's  
9 obligations under this Agreement to maintain Professional Liability  
10 Insurance providing coverage for the performance of their work  
11 included within this Agreement, with a limit of liability of not less than  
12 \$2,000,000 per occurrence and \$4,000,000 annual aggregate.

13 DEVELOPER shall require that, if such Professional Liability  
14 Insurance is written on a claims made basis rather than an occurrence  
15 basis, such insurance shall continue through the term of this  
16 Agreement and that such architect or engineer shall purchase at such  
17 architect or engineer's sole expense either 1) an Extended Reporting  
18 Endorsement (also known as Tail Coverage); or 2) Prior Dates  
19 Coverage from a new insurer with a retroactive date back to the date  
20 of, or prior to, the inception of this Agreement; or 3) demonstrate  
21 through Certificates of Insurance that such architect or engineer has  
22 maintained continuous coverage with the same or original insurer.  
23 Coverage provided under items: 1), 2) or 3) shall continue for the term  
24 specified in the insurance policy, which shall be reasonably acceptable  
25 to DISTRICT and CITY.  
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1 E. General Insurance Provisions – All Lines:

- 2 i. Any insurance carrier providing insurance coverage hereunder  
3 shall be admitted to the State of California and have an A.M.  
4 BEST rating of not less than an A: VIII (A: 8) unless such  
5 requirements are waived, in writing, by the County Risk  
6 Manager and CITY. If the County Risk Manager and CITY  
7 waive a requirement for a particular insurer such waiver is only  
8 valid for that specific insurer and only for one policy term.
- 9
- 10 ii. DEVELOPER must declare its insurance self-insured retention  
11 for each coverage required herein. If any such self-insured  
12 retention exceeds \$500,000 per occurrence each such retention  
13 shall have the prior written consent of the County Risk  
14 Manager and CITY, before the commencement of operations  
15 under this Agreement. Upon notification of self-insured  
16 retention deemed unacceptable to DISTRICT or CITY, and at  
17 the election of CITY or the County Risk Manager,  
18 DEVELOPER's carriers shall either: 1) reduce or eliminate  
19 such self-insured retention with respect to this Agreement with  
20 DISTRICT; or 2) procure a bond which guarantees payment of  
21 losses and related investigations, claims administration, and  
22 defense costs and expenses.
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- 25 iii. DEVELOPER shall cause their insurance carrier(s) or its  
26 contractor's insurance carrier(s), to furnish DISTRICT and  
27 CITY with 1) a properly executed original certificate(s) of  
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1 insurance and certified original copies of endorsements  
2 effecting coverage as required herein; and 2) if requested to do  
3 so orally or in writing by CITY or the County Risk Manager,  
4 provide original certified copies of policies including all  
5 endorsements and all attachments thereto, showing such  
6 insurance is in full force and effect. Further, said certificate(s)  
7 and policies of insurance shall contain the covenant of the  
8 insurance carrier(s) that a minimum of sixty (60) days written  
9 notice shall be given to DISTRICT and CITY prior to any  
10 material modification, cancellation, expiration or reduction in  
11 coverage of such insurance. If DEVELOPER insurance  
12 carrier(s) policies does not meet the minimum notice  
13 requirement found herein, DEVELOPER shall cause  
14 DEVELOPER's insurance carrier(s) to furnish a 60 day Notice  
15 of Cancellation Endorsement. In the event of a material  
16 modification, cancellation, expiration or reduction in coverage,  
17 this Agreement shall terminate forthwith, unless DISTRICT  
18 and CITY receive, prior to such effective date, another  
19 properly executed original certificate of insurance and original  
20 copies of endorsements or certified original policies, including  
21 all endorsements and attachments thereto, evidencing  
22 coverages set forth herein and the insurance required herein is  
23 in full force and effect. An individual authorized by the  
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1 insurance carrier to do so on its behalf shall sign the original  
2 endorsements for each policy and the certificate of insurance.

3 iv. It is understood and agreed by the parties hereto that  
4 DEVELOPER's insurance shall be construed as primary  
5 insurance, and DISTRICT and CITY's insurance and/or  
6 deductibles and/or self-insured retentions or self-insured  
7 programs shall not be construed as contributory.

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9 v. If, during the term of this Agreement or any extension thereof,  
10 there is a material change in the scope of services or there is a  
11 material change in the equipment to be used in the performance  
12 of the scope of work which will add additional exposures (such  
13 as the use of aircraft, watercraft, cranes, etc.); or the term of  
14 this Agreement, including any extensions thereof, exceeds five  
15 (5) years, DISTRICT and CITY reserve the right to adjust the  
16 types of insurance required under this Agreement and the  
17 monetary limits of liability for the insurance coverages  
18 currently required herein, if, in CITY's or the County Risk  
19 Manager's reasonable judgment, the amount or type of  
20 insurance carried by DEVELOPER has become inadequate.

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22 vi. DEVELOPER shall pass down the insurance obligations  
23 contained herein to all tiers of subcontractors working under  
24 this Agreement.  
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vii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT and CITY.

viii. DEVELOPER agrees to notify DISTRICT and CITY 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 and CITY, at their sole discretion, to provide written notice to DEVELOPER that either DISTRICT or CITY are able to perform their obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of PROJECT due, either in whole or in part, to said breach of this Agreement.

19. Construct or cause to be constructed, PROJECT at DEVELOPER's sole cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

20. Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Construction Management Section) and CITY with written notice that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of DISTRICT FACILITIES, and CITY conduct a final inspection of PROJECT.

21. [INTENTIONALLY OMITTED]

22. [INTENTIONALLY OMITTED]

23. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES and CITY accepts ownership and responsibility for the operation and maintenance of APPURTENANCES. Further, it is mutually

1 understood by the parties hereto that prior to DISTRICT acceptance of ownership and  
2 responsibility for the operation and maintenance of DISTRICT FACILITIES, PROJECT shall  
3 be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to  
4 the inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES are not in an  
5 acceptable condition, corrections shall be made at sole expense of DEVELOPER. It is also  
6 mutually understood by the parties hereto that prior to CITY acceptance of ownership and  
7 responsibility for the operation and maintenance of APPURTENANCES, PROJECT shall be in  
8 a satisfactorily maintained condition as solely determined by CITY. If, subsequent to the  
9 inspection and in the sole discretion of CITY, APPURTENANCES are not in an acceptable  
10 condition, corrections shall be made at sole expense of DEVELOPER.  
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13 24. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
14 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable  
15 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees  
16 shall be computed as costs and included in any judgment rendered.

17 25. Upon completion of PROJECT construction but prior to DISTRICT  
18 acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, and CITY  
19 acceptance of APPURTENANCES for ownership, operation and maintenance, provide or cause  
20 its civil engineer of record or construction civil engineer of record, duly registered in the State of  
21 California, to provide DISTRICT and CITY with a redlined "record drawings" copy of PROJECT  
22 plans. After DISTRICT and CITY approval of the redlined "record drawings", DEVELOPER's  
23 engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's  
24 original mylars at DISTRICT's office, after which the engineer shall review, stamp and sign the  
25 original PROJECT engineering plans "record drawings".  
26  
27  
28





1           7.    Accept ownership and sole responsibility for the operation and maintenance  
2 of the APPURTENANCES upon (i) CITY inspection of PROJECT in accordance with Section  
3 I.20., (ii) CITY and DISTRICT acceptance of PROJECT construction as being complete, (iii)  
4 CITY receipt of stamped and signed "record drawings" of PROJECT plans, as set forth in Section  
5 I.25., (iv) CITY acceptance of all necessary street rights of way as deemed necessary by  
6 DISTRICT and CITY for the ownership, operation, and maintenance of DISTRICT FACILITIES  
7 and APPURTENANCES, (v) DISTRICT acceptance of DISTRICT FACILITIES for ownership,  
8 operation and maintenance, and (vi) CITY's sole determination that PROJECT is in a  
9 satisfactorily maintained condition.  
10

11           8.    Not grant any occupancy permits for any units within any portion of Tract  
12 No. 31822, or any phase thereof, until construction of PROJECT is complete, unless otherwise  
13 approved in writing by DISTRICT.  
14

15           9.    Notwithstanding any of the foregoing, prior to accepting ownership of  
16 APPURTENANCES, PROJECT shall be in a satisfactorily maintained condition as solely  
17 determined by CITY. If, subsequent to the inspection and in the sole discretion of CITY,  
18 APPURTENANCES are not in an acceptable condition, corrections shall be made at sole expense  
19 of DEVELOPER.  
20

21           10.   Upon DISTRICT and CITY acceptance of PROJECT construction as being  
22 complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers  
23 located within CITY rights of way which must be performed at such time(s) that the finished  
24 grade along and above the underground portions of DISTRICT FACILITIES are improved,  
25 repaired, replaced or changed. It being further understood and agreed that any such adjustments  
26 shall be performed at no cost to DISTRICT.  
27  
28

SECTION IV

It is further mutually agreed:

1. All work involved with PROJECT shall be inspected by DISTRICT and CITY, and shall not be deemed complete until DISTRICT and CITY mutually agree in writing that construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

2. CITY and DEVELOPER personnel may observe and inspect all work being done on PROJECT but shall provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DEVELOPER's contractor(s) during the construction of PROJECT.

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

4. If DEVELOPER fails to commence construction of PROJECT within nine (9) months after execution of this Cooperative Agreement, then DISTRICT reserves the right to withhold issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at the time DEVELOPER provides written notification to DISTRICT of the start of construction as set forth in Section I.8. In the event of a change in the existing site conditions that materially affects PROJECT function or DISTRICT's ability to operate and maintain

1 DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT  
2 PLANS as deemed necessary by DISTRICT.

3           5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed  
4 within twenty (20) days of receipt of DEVELOPER's complete written notice, as set forth in  
5 Section I.8.; however, DISTRICT's construction inspection staff is limited and therefore, the  
6 issuance of a Notice to Proceed is subject to staff availability.  
7

8           In the event DEVELOPER wishes to expedite issuance of a Notice to  
9 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
10 DEVELOPER's sole cost and expense. DEVELOPER shall furnish appropriate documentation  
11 of the individual's credentials and experience to DISTRICT for review and if appropriate,  
12 approval. DISTRICT shall review the individual's qualifications and experience and, upon  
13 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be  
14 authorized to act on DISTRICT's behalf on all PROJECT construction and quality control  
15 matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section  
16 I.3. exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to  
17 eighty percent (80%) of DEVELOPER's initial inspection deposit within forty-five (45) days of  
18 DISTRICT's approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand  
19 dollars (\$10,000) shall be retained on account.  
20  
21

22           6. PROJECT construction work shall be on a five (5) day, forty (40) hour work  
23 week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless  
24 otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work more  
25 than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a written  
26 request for permission from DISTRICT and CITY to work the additional hours. The request  
27 shall be submitted to DISTRICT and CITY at least seventy-two (72) hours prior to the requested  
28

1 additional work hours and state the reasons for the overtime and the specific time frames required.  
2 The decision of granting permission for overtime work shall be made by DISTRICT at its sole  
3 discretion and shall be final. If permission is granted by DISTRICT, DEVELOPER will be  
4 charged the cost incurred at the overtime rates for additional inspection time required in  
5 connection with the overtime work in accordance with Ordinance Nos. 671 and 749, including  
6 any amendments thereto, of the County of Riverside.  
7

8           7. DEVELOPER shall indemnify and hold harmless DISTRICT, County of  
9 Riverside, and CITY (including their respective governing bodies, agencies, districts, special  
10 districts and departments, their respective directors, officers, Board of Supervisors, elected and  
11 appointed officials, employees, agents and representatives) from any liability, claim, damage,  
12 proceeding or action, present or future, based upon, arising out of or in any way relating to  
13 DEVELOPER' s (including its officers, employees, subcontractors and agents) actual or alleged  
14 acts or omissions related to this Agreement, performance under this Agreement, or failure to  
15 comply with the requirements of this Agreement, including but not limited to: (a) property  
16 damage; (b) bodily injury or death; (c) liability or damage pursuant to Article I, Section 19 of the  
17 California Constitution, the Fifth Amendment of the United States Constitution or any other law,  
18 ordinance or regulation caused by the diversion of waters from the natural drainage patterns or  
19 the discharge of drainage within or from PROJECT; or (d) any other element of any kind or  
20 nature whatsoever.  
21

22           DEVELOPER shall defend, at its sole expense, including all costs and fees  
23 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
24 awards), DISTRICT and County of Riverside (including their respective agencies, districts,  
25 special districts and departments, their respective directors, officers, Board of Supervisors,  
26 elected and appointed officials, employees, agents and representatives) in any claim proceeding  
27  
28



1 or action for which indemnification is required. With respect to any of DEVELOPER's  
2 indemnification requirements, DEVELOPER shall, at its sole cost, have the right to use counsel  
3 of their own choice and shall have the right to adjust, settle, or compromise any such claim,  
4 proceeding or action without the prior consent of DISTRICT and County of Riverside; provided,  
5 however, that any such adjustment, settlement or compromise in no manner whatsoever limits or  
6 circumscribes DEVELOPER's indemnification obligations to DISTRICT or County of Riverside.  
7 DEVELOPER's indemnification obligations shall be satisfied when DEVELOPER has provided  
8 to DISTRICT and County of Riverside the appropriate form of dismissal (or similar document)  
9 relieving DISTRICT and County of Riverside from any liability for the claim, proceeding or  
10 action involved.  
11

12  
13 DEVELOPER shall also defend, at its sole expense, including all costs and fees  
14 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
15 awards), CITY (including its agencies, governing bodies, directors, officers, elected and  
16 appointed officials, employees, agents and representatives) in any claim proceeding or action for  
17 which indemnification is required. Failure by DEVELOPER to pay such attorneys' fees and costs  
18 may be treated as an abandonment of PROJECT and as a default of DEVELOPER's obligations  
19 under this Agreement.  
20

21 DEVELOPER's indemnification obligations shall be satisfied when  
22 DEVELOPER has provided to CITY the appropriate form of dismissal (or similar document)  
23 relieving CITY from any liability for the claim, proceeding or action involved, and CITY  
24 determines that the form of dismissal is adequate in its sole and absolute discretion.  
25 Notwithstanding the foregoing, DEVELOPER shall enter into no settlement agreement or final  
26 resolution of any pending claim covered under this section, without CITY's prior written  
27 approval.  
28

1           The specified insurance limits required in this Agreement shall in no way limit or  
2 circumscribe DEVELOPER's obligations to indemnify and hold harmless DISTRICT, County of  
3 Riverside and CITY 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, County of  
7 Riverside or CITY to the fullest extent allowed by law.

9           9.     DEVELOPER for itself, its successors and assigns hereby releases  
10 DISTRICT, County of Riverside and CITY (including their agencies, districts, special districts  
11 and departments, their respective directors, officer, Board of Supervisors, elected and appointed  
12 officials, employees, agents and representatives) from any and all claims, demands, actions, or  
13 suits of any kind arising out of any liability, known or unknown, present or future, including but  
14 not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the  
15 California Constitution, the Fifth Amendment of the United States Constitution, or any other law  
16 or ordinance which seeks to impose any other liability or damage, whatsoever, for damage caused  
17 by the discharge of drainage within or from PROJECT. Nothing contained herein shall constitute  
18 a release by DEVELOPER of DISTRICT or the County of Riverside, or their officers, agents  
19 and employees from any and all claims, demands, actions or suits of any kind arising out of any  
20 liability, known or unknown, present or future, for the negligent maintenance of DISTRICT  
21 FACILITIES, after the acceptance of ownership, operation and maintenance of DISTRICT  
22 FACILITIES by DISTRICT.

23           10.    Any waiver by DISTRICT or by CITY of any breach of any one or more of  
24 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
25 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
26  
27  
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1 require exact, full and complete compliance with any terms of this Agreement shall not be  
2 construed as, in any manner, changing the terms hereof, or estopping DISTRICT or CITY from  
3 enforcement hereof.

4  
5 11. This Agreement is to be construed in accordance with the laws of the State  
6 of California. If any provision in this Agreement is held by a court of competent jurisdiction to  
7 be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect  
8 without being impaired or invalidated in any way.

9 12. Any and all notices sent or required to be sent to the parties of this  
10 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

11 RIVERSIDE COUNTY FLOOD CONTROL  
12 AND WATER CONSERVATION DISTRICT  
13 1995 Market Street  
14 Riverside, CA 92501  
Attn: Contract Services Section

CITY OF MENIFEE  
29714 Haun Road  
Menifee, CA 92586  
Attn: Public Works Manager

15 SUTTER MITLAND O1 LLC  
16 3200 Park Center Drive, Suite 1000  
17 Costa Mesa, CA 92626  
Attn: David E. Bartlett

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 Agreement, shall be tried in a court of  
20 competent jurisdiction in the County of Riverside, State of California, and the parties hereto  
21 waive all provisions of law providing for a change of venue in such proceedings to any other  
22 county.

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

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 Agreement.  
8

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

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

21 //

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

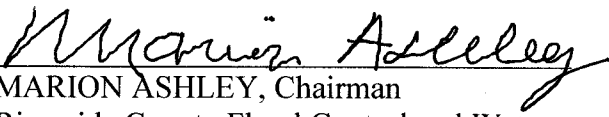
FEB 27 2018

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

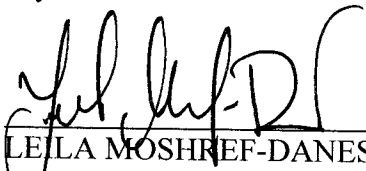
**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

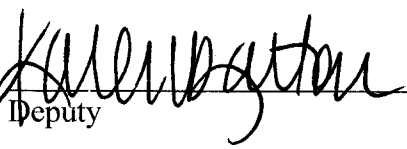
By   
\_\_\_\_\_  
JASON E. UHLEY  
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel  
  
By   
\_\_\_\_\_  
LEILA MOSHREF-DANESH  
Deputy County Counsel

KECIA HARPER-IHEM  
Clerk of the Board  
  
By   
\_\_\_\_\_  
Deputy

(SEAL)

Cooperative Agreement for  
Salt Creek – Westward Circle Storm Drain, Stage 2  
Salt Creek – Whispering Way Storm Drain, Stage 2  
Salt Creek – Destry Drive Storm Drain, Stage 2  
Salt Creek – Clover Street Storm Drain, Stage 4  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379 and 4-0-00142  
Tract No. 31822  
12/20/17  
AMR:blm

RECOMMENDED FOR APPROVAL:

CITY OF MENIFEE

By *Jonathan Smith*  
JONATHAN SMITH  
Public Works Director

By *Armando G. Villa*  
Armando G. Villa  
City Manager

APPROVED AS TO FORM:

ATTEST:

By *Jeff Melching*  
JEFF MELCHING  
City Attorney

By *Sarah Manwaring*  
SARAH MANWARING  
City Clerk


(SEAL)

Cooperative Agreement for  
Salt Creek – Westward Circle Storm Drain, Stage 2  
Salt Creek – Whispering Way Storm Drain, Stage 2  
Salt Creek – Destry Drive Storm Drain, Stage 2  
Salt Creek – Clover Street Storm Drain, Stage 4  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379 and 4-0-00142  
Tract No. 31822  
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**SUTTER MITLAND 01 LLC**  
a Delaware limited liability company

By: Brookfield Southern California Land LLC  
a Delaware limited liability company  
its Sole Member

By:   
\_\_\_\_\_  
DAVID E. BARTLETT  
Vice President

By:   
\_\_\_\_\_  
RICHARD T. WHITNEY  
Chief Financial Officer

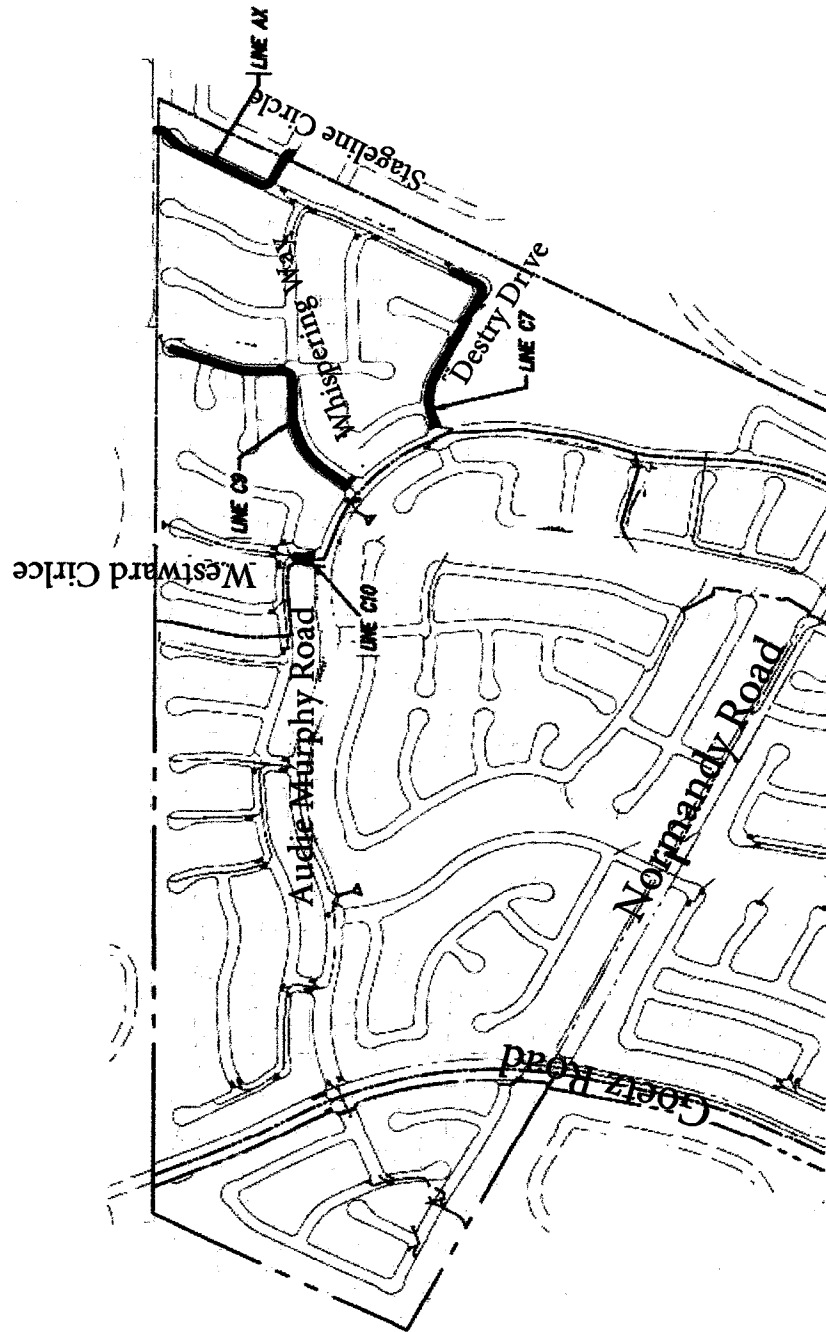
(ATTACH NOTARY WITH CAPACITY STATEMENT)

Cooperative Agreement for  
Salt Creek – Westward Circle Storm Drain, Stage 2  
Salt Creek – Whispering Way Storm Drain, Stage 2  
Salt Creek – Destry Drive Storm Drain, Stage 2  
Salt Creek – Clover Street Storm Drain, Stage 4  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379 and 4-0-00142  
Tract No. 31822  
12/20/17  
AMR:blm





# Exhibit A



## COOPERATIVE AGREEMENT

Salt Creek – Westward Circle Storm Drain, Stage 2  
Salt Creek – Whispering Way Storm Drain, Stage 2  
Salt Creek – Destry Drive Storm Drain, Stage 2  
Salt Creek – Clover Creek Storm Drain, Stage 4  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379 and 4-0-00142  
Tract No. 31822  
Page 1 of 1

COOPERATIVE AGREEMENT

Salt Creek – Westward Circle Storm Drain, Stage 1  
Salt Creek – Whispering Way Storm Drain, Stage 1  
Salt Creek – Destry Drive Storm Drain, Stage 1  
Salt Creek – Audie West Storm Drain, Stage 1  
Salt Creek – Salt Creek Channel Line B, Stage 2  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380 and 4-0-00382  
Parcel Map No. 32269

The Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Menifee, a municipal corporation of the State of California ("CITY"), Sutter Mitland 01 LLC, a Delaware limited liability company ("DEVELOPER"), hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the County of Riverside. DEVELOPER has submitted for approval Parcel Map No. 32269 located in the city of Menifee. As a condition of approval for Parcel Map No. 32269, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The legal description of Parcel Map No. 32269 is provided in Exhibit "A" attached hereto and made a part hereof; and

C. The required flood control facilities and drainage improvements, as shown in concept on Exhibit "B", attached hereto and made a part hereof, and as shown on District Drawing Nos. 4-1099 and 4-1101, includes:

- i) Approximately 775 lineal feet of 10-foot wide by 4-foot high reinforced concrete box and an associated 15-foot wide maintenance access road ("LINE B"). At its downstream terminus, LINE B will connect to DISTRICT's existing Salt Creek Channel, Stage 7 facility, as shown on District Drawing No. 4-0976. True and correct copies of

FEB 27 2018 11.4

1 the District-approved district drawings are public records that are  
2 within DISTRICT's possession and can be made available upon  
3 request;

- 4
- 5 ii) Approximately 689 lineal feet of underground storm drain system  
6 ("LINE B-8"). At its upstream terminus, LINE B-8 terminates with a  
7 concrete bulkhead for future extension;
- 8 iii) Approximately 1,410 lineal feet of underground storm drain system  
9 ("LINE C-7"). At its downstream terminus, LINE C-7 terminates with  
10 a concrete bulkhead for future extension;
- 11 iv) Approximately 92 lineal feet of underground storm drain system  
12 ("LINE C-9"). At its upstream terminus, LINE C-9 terminates with a  
13 concrete bulkhead for future extension;
- 14 v) Approximately 286 lineal feet of underground storm drain system  
15 ("LINE C-10"). At its upstream terminus, LINE C-10 terminates with  
16 a concrete bulkhead for future extension. Together, LINE B, LINE B-  
17 8, LINE C-7, LINE C-9 and LINE C-10 are hereinafter called  
18 "DISTRICT FACILITIES"; and  
19  
20

21 D. Associated with the construction of DISTRICT FACILITIES is the  
22 construction of (i) approximately 70 lineal feet of 12-inch PVC subdrain pipe; (ii)  
23 approximately 111 lineal feet of 4' x 10' reinforced concrete box; (iii) approximately 302  
24 lineal feet of 42-inch reinforced concrete pipe; (iv) approximately 566 lineal feet of 48-  
25 inch reinforced concrete pipe; and (v) certain catch basins, connector pipes, headwalls,  
26 inlets, riprap structures, bio-retention basins, maintenance access road and various lateral  
27 storm drains that are thirty-six inches (36") or less in diameter that are located within  
28

1 CITY held easements or rights of way ("APPURTENANCES"). Together, DISTRICT  
2 FACILITIES and APPURTENANCES are hereinafter called "PROJECT"; and

3 E. On or about September 13, 2016, DISTRICT and DEVELOPER entered  
4 into a Right of Entry and Inspection Agreement that authorizes DEVELOPER to construct LINE  
5 B. Pursuant to the Right of Entry and Inspection Agreement, DEVELOPER has commenced and  
6 completed construction of LINE B; and  
7

8 F. On or about December 4, 2017, DISTRICT and DEVELOPER entered into  
9 a Right of Entry and Inspection Agreement that authorizes DEVELOPER to construct LINE B-  
10 8, LINE C-7, LINE C-9 and LINE C-10. Pursuant to the Right of Entry and Inspection  
11 Agreement, DEVELOPER has commenced construction of LINE B-8, LINE C-7, LINE C-9 and  
12 LINE C-10; and  
13

14 G. DEVELOPER and CITY desire DISTRICT to accept ownership and  
15 responsibility for the operation and maintenance of DISTRICT FACILITIES. Therefore,  
16 DISTRICT must review and approve DEVELOPER's plans and specifications for PROJECT and  
17 subsequently inspect the construction of DISTRICT FACILITIES; and  
18

19 H. DEVELOPER and DISTRICT desire CITY to accept ownership and  
20 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY must  
21 review and approve DEVELOPER's plans and specifications for PROJECT and subsequently  
22 inspect and approve the construction of PROJECT; and

23 I. DISTRICT is willing to (i) review and approve DEVELOPER's plans and  
24 specifications for PROJECT, (ii) inspect the construction of DISTRICT FACILITIES, and (iii)  
25 accept ownership and responsibility for the operation and maintenance of DISTRICT  
26 FACILITIES, provided DEVELOPER (a) complies with this Agreement, (b) constructs  
27 PROJECT in accordance with DISTRICT and CITY approved plans and specifications, (c)  
28

1 obtains and conveys to DISTRICT all rights of way necessary for the inspection, operation and  
2 maintenance of DISTRICT FACILITIES as set forth herein, and (d) accepts ownership and  
3 responsibility for the operation and maintenance of PROJECT following completion of  
4 PROJECT construction until such time as DISTRICT accepts ownership and responsibility for  
5 the operation and maintenance of DISTRICT FACILITIES; and  
6

7 J. CITY is willing to (i) review and approve DEVELOPER's plans and  
8 specifications for PROJECT, (ii) inspect the construction of PROJECT, (iii) accept and hold  
9 faithful performance and payment bonds submitted by DEVELOPER for DISTRICT  
10 FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain DISTRICT  
11 FACILITIES within CITY rights of way subject to the terms of this Agreement, and (v) accept  
12 ownership and responsibility for the operation and maintenance of APPURTENANCES,  
13 provided DEVELOPER (a) complies with this Agreement, (b) constructs PROJECT in  
14 accordance with DISTRICT and CITY approved plans and specifications, (c) obtains and  
15 conveys to CITY all rights of way necessary for the inspection, operation and maintenance of  
16 APPURTENANCES as set forth herein, and (d) accepts ownership and responsibility for the  
17 operation and maintenance of PROJECT following completion of PROJECT construction until  
18 such time as DISTRICT accepts ownership and responsibility for the operation and maintenance  
19 of DISTRICT FACILITIES and CITY accepts ownership and responsibility for the operation  
20 and maintenance of APPURTENANCES.  
21

22  
23 NOW, THEREFORE, the parties hereto mutually agree as follows:

24 SECTION I

25 DEVELOPER shall:  
26  
27  
28

1           1. Prepare PROJECT plans and specifications, hereinafter called  
2 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and  
3 submit to DISTRICT and CITY for their review and approval.  
4

5           2. Continue to pay DISTRICT and CITY within thirty (30) days after receipt  
6 of periodic billings from DISTRICT and CITY, any and all such amounts as are deemed  
7 reasonably necessary by DISTRICT and CITY to cover DISTRICT's and CITY's costs associated  
8 with the review of IMPROVEMENT PLANS, review and approval of rights of way and  
9 conveyance documents and with the processing and administration of this Agreement.  
10

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

22           4. Deposit with CITY, at the time of providing written notice to DISTRICT  
23 and CITY of the start of PROJECT construction as set forth in Section I.8., the estimated cost of  
24 providing construction inspection for PROJECT, in an amount as determined and approved by  
25 CITY in accordance with CITY's municipal code and regulations. If at any time the costs exceed  
26 the deposit or are anticipated by CITY to exceed the deposit with CITY, DEVELOPER shall pay  
27  
28

1 such additional amount(s), as deemed reasonably necessary by CITY to complete inspection of  
2 PROJECT, within thirty (30) days after receipt of billing from CITY.

3           5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
4 permits and rights of entry as may be needed for the construction, inspection, operation and  
5 maintenance of PROJECT. DEVELOPER shall furnish DISTRICT and CITY, at the time of  
6 providing written notice to DISTRICT of the start of construction as set forth in Section I.8., or  
7 not less than twenty (20) days prior to recordation of the final map for Parcel Map No. 32269 or  
8 any phase thereof, whichever occurs first, with sufficient evidence of DEVELOPER having  
9 secured such necessary licenses, agreements, permits and rights of entry, as determined and  
10 approved by DISTRICT and CITY.  
11

12           6. Furnish DISTRICT and CITY with copies of all permits, approvals or  
13 agreements required by any federal, state or local resource and/or regulatory agency for the  
14 construction, operation and maintenance of PROJECT. Such documents include but are not  
15 limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality  
16 Control Board, California State Department of Fish and Wildlife, State Water Resources Control  
17 Board and Western Riverside County Regional Conservation Authority ("REGULATORY  
18 PERMITS").  
19

20           7. Provide CITY, at the time of providing written notice to DISTRICT of the  
21 start of construction as set forth in Section I.8., or not less than twenty (20) days prior to  
22 recordation of the final map for Parcel Map No. 32269 or any phase thereof, whichever occurs  
23 first, with faithful performance and payment bonds, each in the amount of one hundred percent  
24 (100%) of the estimated cost for construction of DISTRICT FACILITIES as determined by  
25 DISTRICT. The surety, amount and form of the bonds, shall be subject to approval of DISTRICT  
26 and CITY. The bonds shall remain in full force and effect until DISTRICT FACILITIES are  
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1 accepted by DISTRICT as complete; at which time the bond amount may be reduced to five  
2 percent (5%) for a period of one year to guarantee against any defective work, labor or materials.

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

9           9. Grant DISTRICT and CITY, by execution of this Agreement, the right to  
10 enter upon DEVELOPER'S property where necessary and convenient for the purpose of gaining  
11 access to and performing inspection service for the construction of PROJECT as set forth herein.  
12

13           10. Obtain and provide DISTRICT (Attention: Right of Way Acquisition  
14 Section), at the time of providing written notice to DISTRICT of the start of construction as set  
15 forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final map for  
16 Parcel Map No. 32269, with duly executed Irrevocable Offer(s) of Dedication to the public for  
17 flood control and drainage purposes, including ingress and egress, for the rights of way deemed  
18 necessary by DISTRICT for the construction, inspection, operation and maintenance of  
19 DISTRICT FACILITIES. The Irrevocable Offer(s) of Dedication shall be in a form approved  
20 by DISTRICT and shall be executed by all legal and equitable owners of the property described  
21 in the offer(s).  
22

23           11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of Dedication  
24 as set forth in Section I.10., with Preliminary Reports on Title dated not more than thirty (30)  
25 days prior to date of submission of all the property described in the Irrevocable Offer(s) of  
26 Dedication.  
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1           12. Furnish DISTRICT and CITY, at the time of providing written notice to  
2 DISTRICT and CITY of the start of construction as set forth in Section I.8., with a complete list  
3 of all contractors and subcontractors to be performing work on PROJECT, including the  
4 corresponding license number and license classification of each. At such time, DEVELOPER  
5 shall further identify in writing its designated superintendent for PROJECT construction.  
6

7           13. Furnish DISTRICT and CITY, at the time of providing written notice to  
8 DISTRICT and CITY of the start of construction as set forth in Section I.8., a construction  
9 schedule which shall show the order and dates in which DEVELOPER or DEVELOPER'S  
10 contractor proposes to carry out the various parts of work, including estimated start and  
11 completion dates. As construction of PROJECT progresses, DEVELOPER shall update said  
12 construction schedule as requested by DISTRICT and/or CITY.  
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14           14. Furnish DISTRICT with final mylar plans for DISTRICT FACILITIES, and  
15 assign their ownership to DISTRICT prior to the start on any portion of PROJECT construction.  
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17           15. Not permit any change to, or modification of, DISTRICT and CITY  
18 approved IMPROVEMENT PLANS without the prior written permission and consent of  
19 DISTRICT and CITY.  
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21           16. Comply with all Cal/OSHA safety regulations including, but not limited to,  
22 regulations concerning confined space and maintain a safe working environment for  
23 DEVELOPER, DISTRICT and CITY employees on the site.  
24

25           17. Furnish DISTRICT and CITY, at the time of providing written notice to  
26 DISTRICT of the start of construction as set forth in Section I.8., with a confined space entry  
27 procedure specific to PROJECT. The procedure shall comply with requirements contained in  
28 California Code of Regulations, Title 8 Section 5158, Other Confined Space Operations, Section  
5157, Permit Required Confined Space and District Confined Space Procedures, SOM-18. The

1 procedure shall be reviewed and approved by DISTRICT and CITY prior to the issuance of a  
2 Notice to Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and  
3 CITY's approval.

4  
5 18. DEVELOPER shall not commence operations until DISTRICT and CITY  
6 have been furnished with original certificate(s) of insurance and original certified copies of  
7 endorsements and if requested, certified original policies of insurance including all endorsements  
8 and any and all other attachments as required in this section.

9 Without limiting or diminishing DEVELOPER's obligation to indemnify or  
10 hold DISTRICT or CITY harmless, DEVELOPER shall procure and maintain or cause to be  
11 maintained, at its sole cost and expense, the following insurance coverages during the term of  
12 this Agreement:  
13

14 A. Workers' Compensation:

15 If DEVELOPER has employees as defined by the State of California,  
16 DEVELOPER shall maintain statutory Workers' Compensation  
17 Insurance (Coverage A) as prescribed by the laws of the State of  
18 California. Policy shall include Employers' Liability (Coverage B)  
19 including Occupational Disease with limits not less than \$1,000,000  
20 per person per accident. Policy shall be endorsed to waive subrogation  
21 in favor of DISTRICT, the County of Riverside ("COUNTY"), and  
22 CITY.  
23

24 B. Commercial General Liability:

25 Commercial General Liability insurance coverage, including but not  
26 limited to, premises liability, unmodified contractual liability,  
27 products and completed operations liability, personal and advertising  
28

1 injury and cross liability coverage, covering claims which may arise  
2 from or out of DEVELOPER's performance of its obligations  
3 hereunder. Additionally, Commercial General Liability insurance no  
4 less broad than ISO form CG 00 01. Policy shall name DISTRICT,  
5 COUNTY and CITY and their agencies, districts, special districts and  
6 departments, their respective directors, officers, Board of Supervisors,  
7 employees, elected or appointed officials, agents or representatives as  
8 additional insureds. Policy's limit of liability shall not be less than  
9 \$5,000,000 per occurrence combined single limit. If such insurance  
10 contains a general aggregate limit, it shall apply separately to this  
11 Agreement or be no less than two (2) times the occurrence limit.  
12 DISTRICT, COUNTY and CITY must be an additional insured for  
13 liability arising out of ongoing and completed operations by or on  
14 behalf of DEVELOPER. DISTRICT, COUNTY and CITY shall  
15 continue to be an additional insured for completed operations for two  
16 years after completion of the work. If DEVELOPER maintains higher  
17 limits than the specified minimum limits, DISTRICT, COUNTY and  
18 CITY requires and shall be entitled to coverage for the higher limits  
19 maintained by DEVELOPER.  
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23 C. Vehicle Liability:

24 If DEVELOPER's vehicles or mobile equipment are used in the  
25 performance of the obligations under this Agreement, then  
26 DEVELOPER shall maintain liability insurance for all owned, non-  
27 owned or hired vehicles so used in an amount not less than \$1,000,000  
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1 per occurrence combined single limit. If such insurance contains a  
2 general aggregate limit, it shall apply separately to this Agreement or  
3 be no less than two (2) times the occurrence limit. Policy shall name  
4 DISTRICT, COUNTY and CITY and their agencies, districts, special  
5 districts and departments, their respective directors, officers, Board of  
6 Supervisors, employees, elected or appointed officials, agents or  
7 representatives as additional insureds.  
8

9 D. Professional Liability:

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

5 E. General Insurance Provisions – All Lines:

- 6 i. Any insurance carrier providing insurance coverage hereunder  
7 shall be admitted to the State of California and have an A.M.  
8 BEST rating of not less than an A: VIII (A: 8) unless such  
9 requirements are waived, in writing, by the County Risk  
10 Manager and CITY. If the County Risk Manager and CITY  
11 waive a requirement for a particular insurer such waiver is only  
12 valid for that specific insurer and only for one policy term.  
13
- 14 ii. DEVELOPER must declare its insurance self-insured retention  
15 for each coverage required herein. If any such self-insured  
16 retention exceeds \$500,000 per occurrence each such retention  
17 shall have the prior written consent of the County Risk  
18 Manager and CITY before the commencement of operations  
19 under this Agreement. Upon notification of self-insured  
20 retention deemed unacceptable to DISTRICT or CITY and at  
21 the election of CITY or the County Risk Manager,  
22 DEVELOPER's carriers shall either: 1) reduce or eliminate  
23 such self-insured retention with respect to this Agreement with  
24 DISTRICT; or 2) procure a bond which guarantees payment of  
25 losses and related investigations, claims administration, and  
26 defense costs and expenses.  
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iii. DEVELOPER shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT and CITY with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by CITY or the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of sixty (60) days written notice shall be given to DISTRICT and CITY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies does not meet the minimum notice requirement found herein, DEVELOPER shall cause DEVELOPER's insurance carrier(s) to furnish a 60 day Notice of Cancellation Endorsement. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT and CITY receive, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing

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coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

iv. It is understood and agreed by the parties hereto that DEVELOPER's insurance shall be construed as primary insurance, and DISTRICT and CITY'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 and CITY reserve 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 CITY's or 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.

1                   vii.     The insurance requirements contained in this Agreement may  
2                                   be met with a program(s) of self-insurance acceptable to  
3                                   DISTRICT and CITY.

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

7  
8                   Failure to maintain the insurance required by this paragraph shall be deemed  
9                   a material breach of this Agreement and shall authorize and constitute authority for DISTRICT  
10                   and CITY, at their sole discretion, to provide written notice to DEVELOPER that either  
11                   DISTRICT or CITY are able to perform their obligations hereunder, nor to accept responsibility  
12                   for ownership, operation and maintenance of PROJECT due, either in whole or in part, to said  
13                   breach of this Agreement.

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15                   19.    Construct or cause to be constructed, PROJECT at DEVELOPER's sole cost  
16                   and expense in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

17                   20.    Within two (2) weeks of completing PROJECT construction, provide  
18                   DISTRICT (Attention: Construction Management Section) and CITY with written notice that  
19                   PROJECT construction is substantially complete and requesting that DISTRICT conduct a final  
20                   inspection of DISTRICT FACILITIES and CITY conduct a final inspection of PROJECT.

21                   21.    Upon completion of PROJECT construction, and upon acceptance by CITY  
22                   of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance  
23                   of PROJECT, but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership,  
24                   operation and maintenance, convey, or cause to be conveyed to DISTRICT the flood control  
25                   easement(s), including ingress and egress, for the rights of way, as shown in concept in grey on  
26                   Exhibit "C" attached hereto and made a part hereof.  
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1           22. At the time of recordation of the conveyance document(s) as set forth in  
2 Section I.21., furnish DISTRICT with policies of title insurance, each in the amount of not less  
3 than (i) fifty percent (50%) of the estimated fee value as determined by DISTRICT, for each  
4 easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the  
5 estimated value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT,  
6 guaranteeing DISTRICT's interest in said property as being free and clear of all liens,  
7 encumbrances, assessments, easements, taxes and leases (recorded or unrecorded) and except  
8 those which, in the sole discretion of DISTRICT, are acceptable..  
9

10           23. Accept ownership and sole responsibility for the operation and maintenance  
11 of PROJECT until such time as DISTRICT accepts ownership and responsibility for the  
12 operation and maintenance of DISTRICT FACILITIES and CITY accepts ownership and  
13 responsibility for the operation and maintenance of APPURTENANCES. Further, it is mutually  
14 understood by the parties hereto that prior to DISTRICT acceptance of ownership and  
15 responsibility for the operation and maintenance of DISTRICT FACILITIES, PROJECT shall  
16 be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to  
17 the inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES are not in an  
18 acceptable condition, corrections shall be made at sole expense of DEVELOPER. Similarly, it  
19 is mutually understood by the parties hereto that prior to CITY acceptance of ownership and  
20 responsibility for the operation and maintenance of APPURTENANCES, PROJECT shall be in  
21 a satisfactorily maintained condition as solely determined by CITY. If, subsequent to the  
22 inspection and in the sole discretion of CITY, APPURTENANCES are not in an acceptable  
23 condition, corrections shall be made at sole expense of DEVELOPER.  
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26           24. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
27 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable  
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1           3.    Upon execution of this Agreement, record or cause to be recorded, a copy  
2 of this Agreement in the Official Records of the Riverside County Recorder.

3           4.    Record or cause to be recorded, the Irrevocable Offer(s) of Dedication  
4 provided by DEVELOPER pursuant to Section I.10.

5           5.    Inspect construction of DISTRICT FACILITIES.

6           6.    Keep an accurate accounting of all DISTRICT costs associated with the  
7 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and  
8 conveyance documents, and the processing and administration of this Agreement.

9           7.    Keep an accurate accounting of all DISTRICT construction inspection costs,  
10 and within forty-five (45) days after DISTRICT acceptance of DISTRICT FACILITIES as being  
11 complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section  
12 I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within  
13 sixty (60) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete.

14           8.    Accept ownership and sole responsibility for the operation and maintenance  
15 of DISTRICT FACILITIES upon (i) DISTRICT inspection of DISTRICT FACILITIES in  
16 accordance with Section I.20., (ii) DISTRICT acceptance of PROJECT construction as being  
17 complete, (iii) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans,  
18 as set forth in Section I.25., (iv) recordation of all conveyance documents described in Section  
19 I.21., (v) CITY acceptance of all necessary street rights of way as deemed necessary by  
20 DISTRICT and CITY for the ownership, operation, and maintenance of DISTRICT FACILITIES  
21 and APPURTENANCES, (vi) CITY acceptance of APPURTENANCES for ownership,  
22 operation, and maintenance, and (vii) DISTRICT's sole determination that DISTRICT  
23 FACILITIES are in a satisfactorily maintained condition.



1 (iv) CITY acceptance of all necessary street rights of way as deemed necessary by DISTRICT  
2 and CITY for the ownership, operation, and maintenance of DISTRICT FACILITIES and  
3 APPURTENANCES, (v) DISTRICT acceptance of DISTRICT FACILITIES for ownership,  
4 operation, and maintenance, and (vi) CITY's sole determination that PROJECT is in a  
5 satisfactorily maintained condition.  
6

7 8. Not grant any occupancy permits for any units within any portion of Parcel  
8 Map No. 32269, or any phase thereof, until construction of PROJECT is complete, unless  
9 otherwise approved in writing by DISTRICT.

10 9. Notwithstanding any of the foregoing, prior to accepting ownership of  
11 APPURTENANCES, PROJECT shall be in a satisfactorily maintained condition as solely  
12 determined by CITY. If, subsequent to the inspection and, in the sole discretion of CITY,  
13 APPURTENANCES are not in an acceptable condition, corrections shall be made at sole expense  
14 of DEVELOPER.  
15

16 10. Upon DISTRICT and CITY acceptance of PROJECT construction as being  
17 complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers  
18 located within CITY rights of way which must be performed at such time(s) that the finished  
19 grade along and above the underground portions of DISTRICT FACILITIES are improved,  
20 repaired, replaced or changed. It being further understood and agreed that any such adjustments  
21 shall be performed at no cost to DISTRICT.  
22

#### 23 SECTION IV

24 It is further mutually agreed:

25 1. All work involved with PROJECT shall be inspected by DISTRICT and  
26 CITY, and shall not be deemed complete until DISTRICT and CITY mutually agree in writing  
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1 that construction is completed in accordance with DISTRICT and CITY approved  
2 IMPROVEMENT PLANS.

3           2. CITY and DEVELOPER personnel may observe and inspect all work being  
4 done on PROJECT, but shall provide any comments to DISTRICT personnel who shall be solely  
5 responsible for all quality control communications with DEVELOPER's contractor(s) during the  
6 construction of PROJECT.  
7

8           3. DEVELOPER shall complete construction of PROJECT within twelve (12)  
9 consecutive months after execution of this Agreement and within one hundred twenty (120)  
10 consecutive calendar days after commencing work on PROJECT. It is expressly understood that  
11 since time is of the essence in this Agreement, failure of DEVELOPER to perform the work  
12 within the agreed upon time shall constitute authority for DISTRICT to perform the remaining  
13 work and require DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In  
14 which case, CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.  
15

16           4. If DEVELOPER fails to commence construction of PROJECT within nine  
17 (9) months after execution of this Cooperative Agreement, then DISTRICT reserves the right to  
18 withhold issuance of the Notice to Proceed pending a review of the existing site conditions as  
19 they exist at the time DEVELOPER provides written notification to DISTRICT of the start of  
20 construction as set forth in Section I.8. In the event of a change in the existing site conditions  
21 that materially affects PROJECT function or DISTRICT's ability to operate and maintain  
22 DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT  
23 PLANS as deemed necessary by DISTRICT.  
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25           5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed  
26 within twenty (20) days of receipt of DEVELOPER's complete written notice, as set forth in  
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1 Section I.8.; however, DISTRICT's construction inspection staff is limited and, therefore, the  
2 issuance of a Notice to Proceed is subject to staff availability.

3 In the event DEVELOPER wishes to expedite issuance of a Notice to  
4 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
5 DEVELOPER's sole cost and expense. DEVELOPER shall furnish appropriate documentation  
6 of the individual's credentials and experience to DISTRICT for review and if appropriate,  
7 approval. DISTRICT shall review the individual's qualifications and experience and upon  
8 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be  
9 authorized to act on DISTRICT's behalf on all PROJECT construction and quality control  
10 matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section  
11 I.3., exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to  
12 eighty percent (80%) of DEVELOPER's initial inspection deposit within forty-five (45) days of  
13 DISTRICT's approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand  
14 dollars (\$10,000) shall be retained on account.

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

3           7. DEVELOPER shall indemnify and hold harmless DISTRICT, County of  
4 Riverside, and CITY (including their respective governing bodies, agencies, districts, special  
5 districts and departments, their respective directors, officers, Board of Supervisors, elected and  
6 appointed officials, employees, agents and representatives) from any liability, claim, damage,  
7 proceeding or action, present or future, based upon, arising out of or in any way relating to  
8 DEVELOPER's (including its officers, employees, subcontractors and agents) actual or alleged  
9 acts or omissions related to this Agreement, performance under this Agreement, or failure to  
10 comply with the requirements of this Agreement, including but not limited to: (a) property  
11 damage; (b) bodily injury or death; (c) liability or damage pursuant to Article I, Section 19 of the  
12 California Constitution, the Fifth Amendment of the United States Constitution or any other law,  
13 ordinance or regulation caused by the diversion of waters from the natural drainage patterns or  
14 the discharge of drainage within or from PROJECT; or, (d) any other element of any kind or  
15 nature whatsoever.

16           DEVELOPER shall defend, at its sole expense, including all costs and fees  
17 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
18 awards), DISTRICT and County of Riverside (including their respective governing bodies,  
19 agencies, districts, special districts, departments, their respective directors, officers, Board of  
20 Supervisors, elected and appointed officials, employees, agents and representatives) in any claim,  
21 proceeding or action for which indemnification is required.

22           With respect to any of DEVELOPER's indemnification requirements,  
23 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall  
24 have the right to adjust, settle, or compromise any such claim, proceeding or action without the  
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1 prior consent of DISTRICT and County of Riverside; provided, however, that any such  
2 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes  
3 DEVELOPER's indemnification obligations to DISTRICT or County of Riverside.

4 DEVELOPER's indemnification obligations shall be satisfied when  
5 DEVELOPER has provided to DISTRICT and County of Riverside the appropriate form of  
6 dismissal (or similar document) relieving DISTRICT or County of Riverside from any liability  
7 for the claim, proceeding or action involved.

8 DEVELOPER shall also defend, at its sole expense, including all costs and  
9 fees (including but not limited to attorney fees, cost of investigation, defense and settlements or  
10 awards), CITY (including its agencies, governing bodies, directors, officers, elected and  
11 appointed officials, employees, agents and representatives) in any claim proceeding or action for  
12 which indemnification is required. Failure by DEVELOPER to pay such attorneys' fees and costs  
13 may be treated as an abandonment of PROJECT and as a default of DEVELOPER's obligations  
14 under this Agreement.

15 DEVELOPER's indemnification obligations shall be satisfied when  
16 DEVELOPER has provided to CITY the appropriate form of dismissal (or similar document)  
17 relieving CITY from any liability for the claim, proceeding or action involved, and CITY  
18 determines that the form of dismissal is adequate in its sole and absolute discretion.  
19 Notwithstanding the foregoing, DEVELOPER shall enter into no settlement agreement or final  
20 resolution of any pending claim covered under this section, without the CITY's prior written  
21 approval.

22 The specified insurance limits required in this Agreement shall in no way  
23 limit or circumscribe DEVELOPER's obligations to indemnify and hold harmless DISTRICT,  
24 County of Riverside and CITY from third party claims.

1                   In the event there is conflict between this section and California Civil Code  
2 Section 2782, this section shall be interpreted to comply with California Civil Code Section 2782.  
3 Such interpretation shall not relieve DEVELOPER from indemnifying DISTRICT, County of  
4 Riverside or CITY to the fullest extent allowed by law.

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6                   9.     DEVELOPER for itself, its successors and assigns hereby releases  
7 DISTRICT, County of Riverside and CITY (including their agencies, districts, special districts  
8 and departments, their respective directors, officer, Board of Supervisors, elected and appointed  
9 officials, employees, agents and representatives) from any and all claims, demands, actions, or  
10 suits of any kind arising out of any liability, known or unknown, present or future, including but  
11 not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the  
12 California Constitution, the Fifth Amendment of the United States Constitution, or any other law  
13 or ordinance which seeks to impose any other liability or damage, whatsoever, for damage caused  
14 by the discharge of drainage within or from PROJECT. Nothing contained herein shall constitute  
15 a release by DEVELOPER of DISTRICT, or the County of Riverside, or their officers, agents  
16 and employees from any and all claims, demands, actions or suits of any kind arising out of any  
17 liability, known or unknown, present or future, for the negligent maintenance of DISTRICT  
18 FACILITIES, after the acceptance of ownership, operation and maintenance of DISTRICT  
19 FACILITIES by DISTRICT.  
20  
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22                   10.    Any waiver by DISTRICT or by CITY of any breach of any one or more of  
23 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
24 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
25 require exact, full and complete compliance with any terms of this Agreement shall not be  
26 construed as, in any manner, changing the terms hereof, or estopping DISTRICT or CITY from  
27 enforcement hereof.  
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1           11. This Agreement is to be construed in accordance with the laws of the State  
2 of California. If any provision in this Agreement is held by a court of competent jurisdiction to  
3 be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect  
4 without being impaired or invalidated in any way.

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

8 RIVERSIDE COUNTY FLOOD CONTROL  
9 AND WATER CONSERVATION DISTRICT  
10 1995 Market Street  
11 Riverside, CA 92501  
12 Attn: Contract Services Section

CITY OF MENIFEE  
29714 Haun Road  
Menifee, CA 92586  
Attn: Public Works Manager

13 SUTTER MITLAND O1 LLC  
14 3200 Park Center Drive, Suite 1000  
15 Costa Mesa, CA 92626  
16 Attn: David E. Bartlett

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

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

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

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

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

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

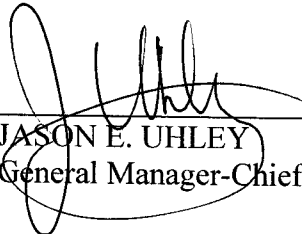
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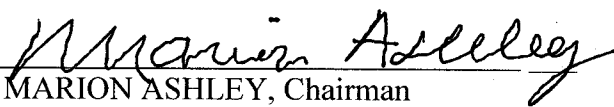
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on  
**FEB 27 2018**

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By   
JASON E. UHLEY  
General Manager-Chief Engineer

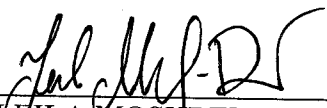
By   
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

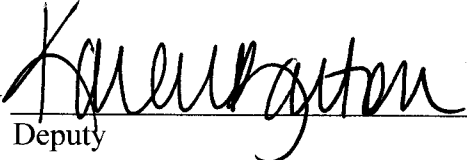
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By   
LEILA MOSHREF-DANESH  
Deputy County Counsel

By   
Deputy

(SEAL)

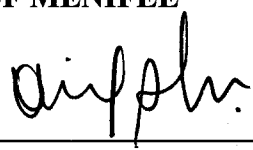
Cooperative Agreement for  
Salt Creek – Westward Circle Storm Drain, Stage 1  
Salt Creek – Whispering Way Storm Drain, Stage 1  
Salt Creek – Destry Drive Storm Drain, Stage 1  
Salt Creek – Audie West Storm Drain, Stage 1  
Salt Creek – Salt Creek Channel Line B, Stage 2  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380 and 4-0-00382  
Parcel Map No. 32269  
12/13/17  
AMR:blm

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RECOMMENDED FOR APPROVAL:

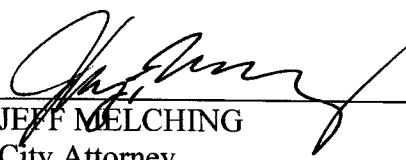
CITY OF MENIFEE

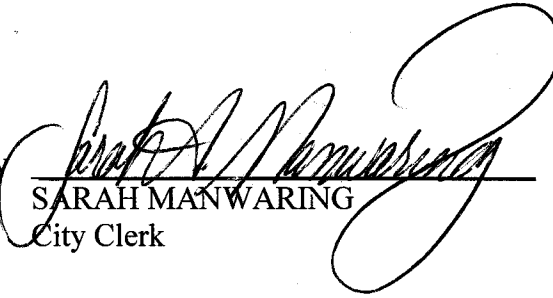
By   
JONATHAN SMITH  
Public Works Director

By   
Armando G. Villa  
City Manager

APPROVED AS TO FORM:

ATTEST:

By   
JEFF MELCHING  
City Attorney

By   
SARAH MANWARING  
City Clerk

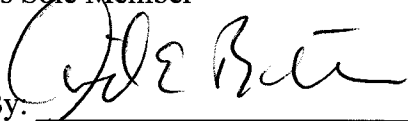
(SEAL)

Cooperative Agreement for  
Salt Creek – Westward Circle Storm Drain, Stage 1  
Salt Creek – Whispering Way Storm Drain, Stage 1  
Salt Creek – Destry Drive Storm Drain, Stage 1  
Salt Creek – Audie West Storm Drain, Stage 1  
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Parcel Map No. 32269  
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**SUTTER MITLAND 01 LLC**  
a Delaware limited liability company

By: Brookfield Southern California Land LLC  
a Delaware limited liability company  
its Sole Member

By: 

DAVID E. BARTLETT  
Vice President

By: 

RICHARD T. WHITNEY  
Chief Financial Officer

(ATTACH NOTARY WITH CAPACITY STATEMENT)

Cooperative Agreement for  
Salt Creek – Westward Circle Storm Drain, Stage 1  
Salt Creek – Whispering Way Storm Drain, Stage 1  
Salt Creek – Destry Drive Storm Drain, Stage 1  
Salt Creek – Audie West Storm Drain, Stage 1  
Salt Creek – Salt Creek Channel Line B, Stage 2  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380 and 4-0-00382  
Parcel Map No. 32269  
12/13/17  
AMR:blm





# EXHIBIT A

## LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MENIFEE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### PARCEL A:

PARCELS 1 THROUGH 13, INCLUSIVE OF PARCEL MAP 32269, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 221, PAGES 13 THROUGH 24, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM PARCELS 9 AND 12 HEREIN, THOSE PORTIONS INCLUDED WITHIN TRACT MAP NO.36485-1, ON FILE IN BOOK 451, PAGES 81 THROUGH 86, AND TRACT MAP NO. 31822-1 ON FILE IN BOOK 452, PAGES 32 THROUGH 38, ALL INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES AND ALL OTHER MINERALS WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM SAID PROPERTY, AS RESERVED BY HUNTINGTON BEACH COMPANY, A CALIFORNIA CORPORATION, IN THAT CERTAIN DOCUMENT RECORDED OCTOBER 29, 1990 AS DOCUMENT NO. 396657 OF OFFICIAL RECORDS.

### PARCEL B:

LOTS 1 THROUGH 73 AND LETTERED LOT(S) "A" THROUGH "I", ALL INCLUSIVE OF TRACT 36485-1, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 451, PAGES 81 THROUGH 86, ALL INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES AND ALL OTHER MINERALS WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM SAID PROPERTY, AS RESERVED BY HUNTINGTON BEACH COMPANY, A CALIFORNIA CORPORATION, IN THAT CERTAIN DOCUMENT RECORDED OCTOBER 29, 1990 AS DOCUMENT NO. 396657 OF OFFICIAL RECORDS.

### PARCEL C:

LOTS 1 THROUGH 70 AND LETTERED LOT(S) "A" THROUGH "F", ALL INCLUSIVE OF TRACT MAP NO. 31822-1, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 452, PAGES 32 THROUGH 38, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

## COOPERATIVE AGREEMENT

Salt Creek – Westward Circle Storm Drain, Stage 1

Salt Creek – Whispering Way Storm Drain, Stage 1

Salt Creek – Destry Drive Storm Drain, Stage 1

Salt Creek – Audie West Storm Drain, Stage 1

Salt Creek – Salt Creek Channel Line B, Stage 2

Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380 and 4-0-00382

Parcel Map No. 32269

Page 1 of 2

ALSO EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES AND ALL OTHER MINERALS WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM SAID PROPERTY, AS RESERVED BY HUNTINGTON BEACH COMPANY, A CALIFORNIA CORPORATION, IN THAT CERTAIN DOCUMENT RECORDED OCTOBER 29, 1990 AS DOCUMENT NO. 396657 OF OFFICIAL RECORDS.

APN(S): 341-200-011-0 (PORTION); 358-070-010-0 (PORTION)

**COOPERATIVE AGREEMENT**

Salt Creek – Westward Circle Storm Drain, Stage 1

Salt Creek – Whispering Way Storm Drain, Stage 1

Salt Creek – Destry Drive Storm Drain, Stage 1

Salt Creek – Audie West Storm Drain, Stage 1

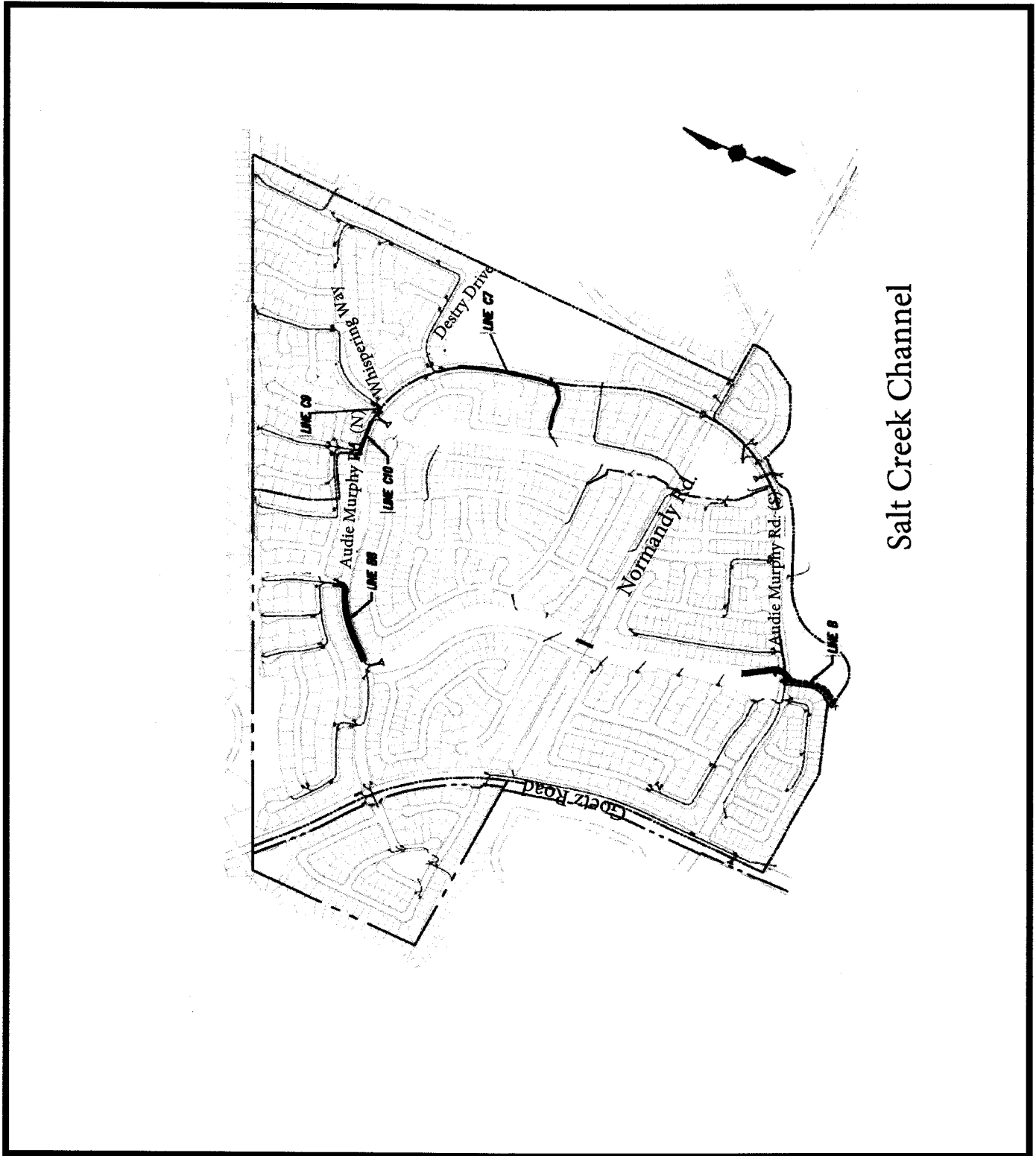
Salt Creek – Salt Creek Channel Line B, Stage 2

Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380 and 4-0-00382

Parcel Map No. 32269

Page 2 of 2

# Exhibit B



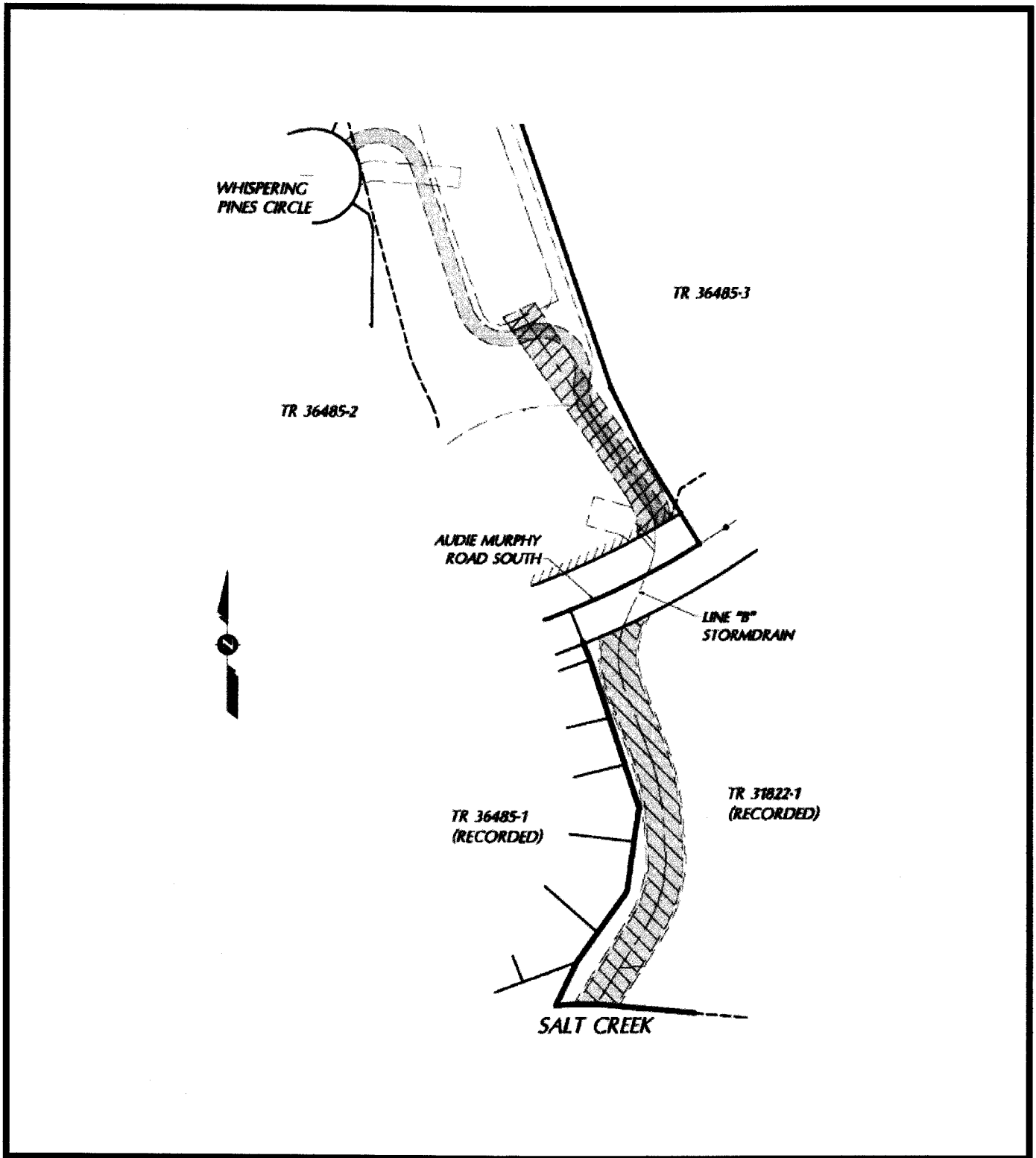
## COOPERATIVE AGREEMENT

Salt Creek – Westward Circle Storm Drain, Stage 1  
Salt Creek – Whispering Way Storm Drain, Stage 1  
Salt Creek – Destry Drive Storm Drain, Stage 1  
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Salt Creek – Salt Creek Channel Line B, Stage 2  
Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380 and  
4-0-00382

Parcel Map No. 32269

Page 1 of 1

# Exhibit C



## COOPERATIVE AGREEMENT

Salt Creek - Westward Circle Storm Drain, Stage 1

Salt Creek - Whispering Way Storm Drain, Stage 1

Salt Creek - Destry Drive Storm Drain, Stage 1

Salt Creek - Audie West Storm Drain, Stage 1

Salt Creek - Salt Creek Channel Line B, Stage 2

Project Nos. 4-0-00377, 4-0-00378, 4-0-00379, 4-0-00380 and 4-0-00382

Parcel Map No. 32269