

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



ITEM
11.2
(ID # 8004)

MEETING DATE:

Tuesday, September 25, 2018

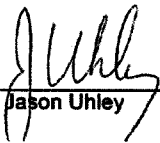
FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Amended and Restated Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District, the City of Banning and Banning Wilson 97, LLC, Montgomery Creek Channel – Sunview Drive Storm Drain (Tract No. 36939), Project No. 5-0-00051, District 5. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Amended and Restated Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District), the City of Banning (City) and Banning Wilson 97, LLC (Developer); and
2. Authorize the Chairman to execute the Agreement on behalf of the District; and
3. Direct the Clerk of the Board to return five (5) executed Amended and Restated Agreements to the District.

ACTION: Policy

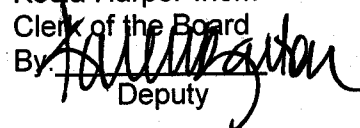

Jason Uhley

9/13/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Perez 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: September 25, 2018
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Developer is funding all construction and construction inspection costs (100%)			Budget Adjustment:	No
			For Fiscal Year:	18/19

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Amended and Restated Cooperative Agreement (Agreement) replaces the original agreement in its entirety and is necessary to 1) formalize the new Developer as the legal owner of record of certain real property located within Riverside County, 2) formalize the larger project area (Tract No. 36939 includes the original project area of Tract No. 30642 from the original agreement as well as APN 535-070-004 to the west of Tract No. 30642 to Sunset Avenue and north of the Montgomery Creek Channel), 3) change the ownership and maintenance of underground storm drain from District to City, 4) change the direction of the minor storm drain lateral, and 5) the transfer of necessary rights of way and to provide for District inspection and subsequent operation and maintenance of the referenced drainage facility.

Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the Montgomery Creek Channel. The City will assume ownership and responsibility for the operation and maintenance of the storm drain, lateral, bridge and the project's associated catch basins, inlets and connector pipes located within City rights of way.

County Counsel has approved the Agreement as to legal form, the Developer has executed the Agreement and the City will execute the Agreement concurrently.

Prev. Agn. Ref.: 11-1 of 02/27/07

Impact on Residents and Businesses

As noted above, construction of these drainage improvements is a requirement for the development of Tract No. 36939. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

Additional Fiscal Information

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

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of reconstructed channel will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

TIR:blm
P8/222540



Gregory V. Priamos, Director County Counsel 9/13/2018

AMENDED and RESTATED
COOPERATIVE AGREEMENT

Montgomery Creek Channel – Sunview Drive Storm Drain
Project No. 5-0-00051
Tract No. 36939

The Riverside County Flood Control and Water Conservation District, a body politic, hereinafter called "DISTRICT", the City of Banning, a municipal corporation, hereinafter called "CITY", and Banning Wilson 97, LLC, a Delaware limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. On February 27, 2007 [DISTRICT's Board Agenda Item No. 11-1], DISTRICT, CITY and Banning Tract 30642, LLC ("PRIOR DEVELOPER") entered into a Cooperative Agreement ("PRIOR AGREEMENT"), which set forth the terms and conditions by which certain flood control facilities, required as a condition of approval of Tract No. 30642 are to be constructed by PRIOR DEVELOPER and inspected, operated and maintained by DISTRICT and CITY. This Amended and Restated Cooperative Agreement ("AGREEMENT") replaces the PRIOR AGREEMENT in its entirety; and

B. DEVELOPER purchased a loan portfolio that included Tract No. 30642. In 2009 DEVELOPER foreclosed on the loan due to nonperformance. As a result, DEVELOPER is the legal owner of record of certain real property, located within Riverside County. DEVELOPER recently caused to be recorded Tract No. 36939 located in the City of Banning. As a condition of approval for Tract No. 36939, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER's planned development; and

C. The legal description of Tract No. 36939 is provided in Exhibit "A" attached hereto and made a part hereof. Tract No. 36939 includes the original project area of Tract No. 30642 from the PRIOR AGREEMENT as well as APN 535-070-004 to the west of Tract No. 30642 to Sunset Avenue and north of the Montgomery Creek Channel; and

D. DISTRICT, CITY and DEVELOPER now wish to amend and restate their respective understanding, roles and responsibilities pertaining to the PROJECT to the following:

(i) change the maintenance and ownership of underground storm drain system of approximately 790 lineal feet from DISTRICT to CITY, (ii) change the maintenance and ownership of minor storm drain lateral approximately 55 lineal feet from DISTRICT to CITY, (iii) change the direction of the minor storm drain lateral from basin to the end of cul-de-sac, lateral is now coming from basin to Montgomery Creek Channel and (iv) change the maintenance and ownership of 42" RCP storm drain approximately 101 lineal feet that goes from the southern portion of site into an existing CITY storm drain in Wilson Street from DISTRICT to CITY; and

E. The required flood control facilities, all as more particularly described on DISTRICT Drawing No. 5-0206, include:

1. Approximately 790 lineal feet of underground storm drain system, hereinafter called "STORM DRAIN", as shown in concept in red on Exhibit "B" attached hereto and made a part hereof. At its downstream terminus, STORM DRAIN connects to an existing CITY maintained underground metal pipe, which subsequently drains into DISTRICT's existing Montgomery Creek Channel (Project No. 5-0-0050); and
2. Approximately 55 lineal feet of a minor storm drain lateral, hereinafter called "LATERAL" as shown in concept in green on Exhibit "B", and

to be constructed within DISTRICT's existing Montgomery Creek Channel right of way; and

3. Widening of a portion of Wilson Street in the vicinity of DISTRICT's existing Montgomery Creek Channel requiring (i) the removal and reconstruction of approximately 55 lineal feet of DISTRICT's existing channel, hereinafter called "RECONSTRUCTED CHANNEL", as shown in orange on Exhibit "B", and (ii) construction of approximately 60 lineal feet of slab bridge, hereinafter called "BRIDGE", as shown in concept in blue on Exhibit "B"; and

F. Associated with the construction of STORM DRAIN are certain catch basins, inlets, laterals and connector pipes located within CITY held easements or rights of way, hereinafter called "APPURTENANCES"; and

G. STORM DRAIN, LATERAL, BRIDGE, and APPURTENANCES are hereinafter altogether called "CITY FACILITIES". - Together, RECONSTRUCTED CHANNEL and CITY FACILITIES are hereinafter called "PROJECT"; and

H. Upon the completion of PROJECT construction, DISTRICT will grant an easement to CITY for street and utility purposes, as shown in concept cross hatched in red on Exhibit "C" attached hereto and made a part hereof. The costs associated with the conveyance will be borne by DEVELOPER ; and

I. DEVELOPER and CITY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of RECONSTRUCTED CHANNEL. Therefore, DISTRICT must review and approve DEVELOPER's plans and specifications and subsequently inspect the construction of RECONSTRUCTED CHANNEL; and

J. DEVELOPER and DISTRICT desire CITY to accept ownership and responsibility for the operation and maintenance of CITY FACILITIES. Therefore, CITY must review and approve DEVELOPER's plans and specifications and subsequently inspect the construction of PROJECT as a prerequisite to accepting ownership and responsibility for CITY FACILITIES; and

K. DISTRICT is willing to (i) review and approve DEVELOPER's plans and specifications for PROJECT, (ii) inspect the construction of RECONSTRUCTED CHANNEL, (iii) grant an easement to CITY for street and utility purpose as shown in concept on Exhibit C and (iv) accept ownership and responsibility for the operation and maintenance of RECONSTRUCTED CHANNEL, provided DEVELOPER (i) complies with this Cooperative Agreement, (ii) pays DISTRICT the amounts specified herein to cover DISTRICT's plan review and construction inspection costs, (iii) constructs PROJECT in accordance with plans and specifications approved by DISTRICT and CITY, (iv) obtains all necessary permits, regulatory permits, licenses and rights of entry as set forth herein, (v) pays DISTRICT the costs associated with the conveyance of the easement as shown in concept on Exhibit C and (vi) accepts ownership and responsibility for the operation and maintenance of PROJECT following completion of PROJECT construction until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of RECONSTRUCTED CHANNEL and CITY accepts ownership and responsibility for the operation and maintenance of CITY FACILITIES; and

L. CITY is willing to (i) review and approve DEVELOPER's plans and specifications for PROJECT, (ii) inspect the construction of CITY FACILITIES, (iii) accept and hold faithful performance and payment bonds submitted by DEVELOPER for the construction and inspection of RECONSTRUCTED CHANNEL, (iv) grant DISTRICT the right to inspect,

operate and maintain RECONSTRUCTED CHANNEL within CITY rights of way, (v) convey to DISTRICT all rights of way necessary for the inspection, operation and maintenance of RECONSTRUCTED CHANNEL as set forth herein, and (vi) accept ownership and responsibility for the operation and maintenance of CITY FACILITIES, provided DEVELOPER (i) constructs PROJECT in accordance with plans and specifications approved by DISTRICT and CITY and (ii) accepts ownership and responsibility for the operation and maintenance of PROJECT following completion of PROJECT construction until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of RECONSTRUCTED CHANNEL and CITY accepts ownership and responsibility for the operation and maintenance of CITY FACILITIES;

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

SECTION I

DEVELOPER shall:

1. Prepare PROJECT plans and specifications, hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and submit to DISTRICT and CITY for their respective review and approval.
2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by DISTRICT to cover DISTRICT's costs associated with the review of IMPROVEMENT PLANS, review and approval of rights of way and conveyance documents and with the processing and administration of this Cooperative Agreement.
3. Deposit with DISTRICT (Attention: Business Office—Accounts Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT construction as set forth in Section I.8., the estimated cost of providing construction inspection for

RECONSTRUCTED CHANNEL, in an amount as determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any amendments thereto, based upon the bonded value of RECONSTRUCTED CHANNEL. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit with DISTRICT, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete inspection of RECONSTRUCTED CHANNEL, within thirty (30) days after receipt of billing from DISTRICT

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

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

6. Prior to commencing construction, furnish DISTRICT and CITY with copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such documents include but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and

Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

7. Provide CITY, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with faithful performance and payment bonds, each in the amount of one hundred percent (100%) of the estimated cost for construction of RECONSTRUCTED CHANNEL as determined by DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of DISTRICT and CITY. The bonds shall remain in full force and effect until RECONSTRUCTED CHANNEL is accepted by DISTRICT as complete; at which time the bond amount may be reduced to ten percent (10%) for a period of one (1) year to guarantee against any defective work, labor or materials.

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

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

10. Furnish DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., a construction schedule which shall show the order and dates in which DEVELOPER or DEVELOPER's contractor proposes to carry out the various parts of work, including estimated start and completion dates. As construction of

PROJECT progresses, DEVELOPER shall update said construction schedule as requested by DISTRICT.

11. Furnish DISTRICT and CITY with a set of final mylar PROJECT plans and assign their ownership to DISTRICT and CITY respectively prior to the start on any portion of PROJECT construction.

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

13. Comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for DEVELOPER, DISTRICT and CITY employees on the site.

14. Furnish DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with a confined space entry procedure specific to PROJECT. The procedure shall comply with requirements contained in 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 procedure shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and CITY's approval.

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

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

A. Workers' Compensation:

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

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER's performance of its obligations hereunder. Policy shall name DISTRICT, the County of Riverside and CITY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional

insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

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

D. Professional Liability:

DEVELOPER shall cause any architect or engineer retained by DEVELOPER in connection with the performance of DEVELOPER's obligation under this Agreement to maintain Professional Liability Insurance providing coverage for the

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

E. General Insurance Provisions – All Lines:

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County Risk Manager waives a requirement for a particular insurer

such waiver is only valid for that specific insurer and only for one policy term.

- ii. DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT or CITY, and at the election of the County Risk Manager, DEVELOPER's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- 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 the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments 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 thirty (30) 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) or its contractor's insurance carrier(s), to furnish a 30 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 receives, 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 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's 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 the County Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.
- vi. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- vii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT 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 or CITY, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT or CITY is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of RECONSTRUCTED CHANNEL or CITY FACILITIES due, either in whole or in part, to said breach of this Agreement.

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

17. 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 RECONSTRUCTED CHANNEL and CITY conduct a final inspection of PROJECT.

18. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation and maintenance of RECONSTRUCTED CHANNEL and CITY accepts ownership and responsibility for operation and maintenance of CITY FACILITIES. Further, it is mutually understood by the parties hereto that prior to DISTRICT and CITY acceptance of ownership and responsibility for the operation and maintenance of RECONSTRUCTED CHANNEL and CITY FACILITIES respectively, PROJECT shall be in a satisfactorily maintained condition as

determined by DISTRICT and CITY. If, subsequent to the inspection and in the discretion of DISTRICT and CITY, PROJECT is not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

19. Pay DISTRICT the cost associated with the conveyance of the easement granted to CITY as shown in concept on Exhibit C.

20. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of RECONSTRUCTED CHANNEL for ownership, operation and maintenance and CITY acceptance of CITY FACILITIES for ownership, operation and maintenance, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT with a redlined "Record Drawings" of IMPROVEMENT PLANS. After DISTRICT approval of the redlined "Record Drawings", DEVELOPER's engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office, after which the engineer shall review, stamp and sign the original IMPROVEMENT PLANS "RECORD DRAWINGS".

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

22. Pay, if suit is brought by a third party upon this Agreement or any bond guaranteeing the completion of PROJECT, all cost and reasonable expenses and fees, including DEVELOPER, DISTRICT and CITY's reasonable attorney's fees and acknowledge that, upon entry of judgement, all such cost, expenses and fees shall be computed as cost and included in any judgement rendered.

SECTION II

DISTRICT shall:

1. Review IMPROVEMENT PLANS and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT prior to the start of PROJECT construction.
2. Provide CITY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT's final approval.
3. Upon execution of this Cooperative Agreement, record or cause to be recorded, a copy of this Cooperative Agreement in the Official Records of the Riverside County Recorder.
4. Inspect construction of RECONSTRUCTED CHANNEL.
5. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS, the review and approval of right of way and conveyance documents, and the processing and administration of this Cooperative Agreement.
6. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of RECONSTRUCTED CHANNEL as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section I.3, exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of RECONSTRUCTED CHANNEL as being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete inspection of RECONSTRUCTED CHANNEL, within thirty (30) days after receipt of billing from DISTRICT.

7. Accept ownership and sole responsibility for the operation and maintenance of RECONSTRUCTED CHANNEL upon (i) DISTRICT inspection of RECONSTRUCTED CHANNEL in accordance with Section I.17., (ii) DISTRICT and CITY acceptance of PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "Record Drawings" of PROJECT plans, as set forth in Section I.20., (iv) CITY acceptance of CITY FACILITIES for ownership, operation and maintenance and (v) DISTRICT's sole determination that RECONSTRUCTED CHANNEL is in a satisfactorily maintained condition.

8. Provide CITY with a reproducible duplicate copy of "Record Drawings" of PROJECT plans upon DISTRICT acceptance of RECONSTRUCTED CHANNEL as being complete.

9. Upon the completion of construction, grant an easement to the CITY for street and utility purposes as shown in concept on Exhibit C.

SECTION III

CITY shall:

1. Review and approve IMPROVEMENT PLANS prior to the start of PROJECT construction.

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

3. Inspect construction of CITY FACILITIES.

4. Grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain RECONSTRUCTED CHANNEL within CITY rights of way as set forth herein.

5. Accept ownership and sole responsibility for the operation and maintenance of CITY FACILITIES upon DISTRICT acceptance of RECONSTRUCTED CHANNEL as being complete.

6. Accept easement as dedicated from DISTRICT for the ownership and sole responsibility for the operation and maintenance of BRIDGE.

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

SECTION IV

It is further mutually agreed:

1. All construction work involved with RECONSTRUCTED CHANNEL shall be inspected by DISTRICT 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 RECONSTRUCTED CHANNEL, 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 RECONSTRUCTED CHANNEL.

3. DISTRICT personnel may observe and inspect all work being done on BRIDGE but shall provide any comments to CITY personnel who shall be solely responsible for

all quality control communications with DEVELOPER's contractor(s) during the construction of BRIDGE.

4. DEVELOPER shall complete construction of RECONSTRUCTED CHANNEL within twelve (12) consecutive months after execution of this Cooperative Agreement and within ninety (90) consecutive calendar days after commencing work on RECONSTRUCTED CHANNEL. 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.

5. DISTRICT and CITY each pledge to cooperate in regard to the operation and maintenance of RECONSTRUCTED CHANNEL and CITY FACILITIES as set forth herein and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facilities.

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

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

approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act on DISTRICT's behalf on all RECONSTRUCTED CHANNEL construction and quality control matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000.00), DISTRICT shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER's initial inspection deposit within forty-five (45) days of DISTRICT's approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand dollars (\$10,000.00) shall be retained on account.

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

8. DEVELOPER shall indemnify and hold harmless DISTRICT, County of Riverside and CITY (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to

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

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

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

DEVELOPER's indemnification obligations shall be satisfied when DEVELOPER has provided to DISTRICT, County of Riverside and CITY the appropriate form of dismissal (or similar document) relieving DISTRICT, County of Riverside or CITY

from any liability for the claim, proceeding or action involved.

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

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

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

10. Any waiver by any party hereto of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach

of the same or of any other term hereof. Failure on the part of any party hereto to require exact, full and complete compliance with any terms of this Cooperative Agreement shall not be construed as in any manner changing the terms hereof, or estopping such party from enforcement hereof.

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

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501

CITY OF BANNING
Post Office Box 998
Banning, CA 92220-0908
Attn: Luis Cardenas

BANNING WILSON 97, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: Peter J. Pitassi

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

SECTION V

It is further mutually agreed:

1. This Cooperative Agreement is the result of negotiations between the parties hereto, and the advice and assistance of their respective counsel. The fact that this Cooperative Agreement was prepared as a matter of convenience by DISTRICT shall have no importance or

significance. Any uncertainty or ambiguity in this Cooperative Agreement shall not be construed against DISTRICT because DISTRICT prepared this Cooperative Agreement in its final form.

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

3. 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 Cooperative Agreement.

4. The individual(s) executing this Cooperative Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute this Cooperative Agreement, and have been authorized to do so by 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 this Cooperative Agreement.

5. This Cooperative 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, including but not limited to PRIOR AGREEMENT. This Cooperative 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

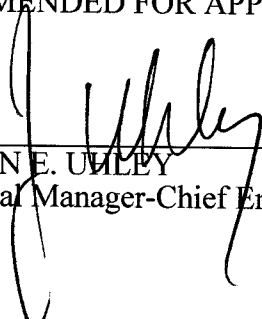
SEP 25 2018

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

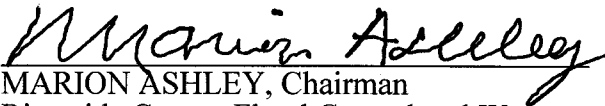
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By



JASON E. UMLEY
General Manager-Chief Engineer

By



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

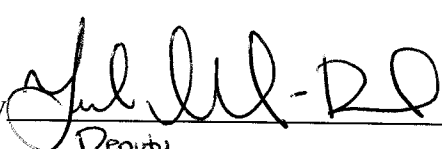
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

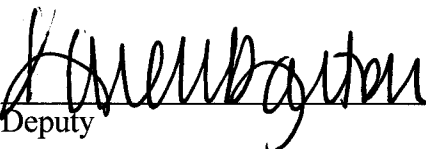
KECIA HARPER-IHEM
Clerk of the Board

By



Deputy

By



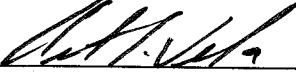
Deputy

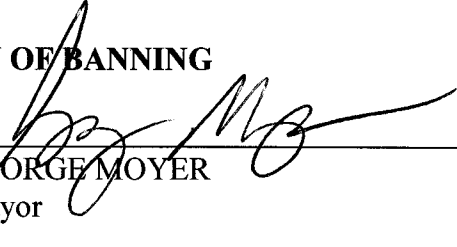
(SEAL)

Cooperative Agreement with City of Banning & Banning 97, LLC
Montgomery Creek Channel – Sunview Drive Storm Drain
Tract No. 36939
TRI:blm
09/07/18

RECOMMENDED FOR APPROVAL:


CITY OF BANNING

By 
ART VELA
Director, Public Works

By 
GEORGE MOYER
Mayor

APPROVED AS TO FORM:

ATTEST:

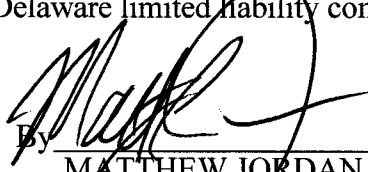
By 
KEVIN G. ENNIS
City Attorney

By 
SONJA DE LA FUENTE
Deputy City Clerk

(SEAL)

Cooperative Agreement: with City of Banning and Banning Wilson 97, LLC
Montgomery Creek Channel – Sunview Drive Storm Drain
Tract No. 36939
TRI:blm
09/07/18

BANNING WILSON 97, LLC
a Delaware limited liability company



By _____
MATTHEW JORDAN
Managing Member

(NOTARY)

Cooperative Agreement: with City of Banning and Banning Wilson 97, LLC
Montgomery Creek Channel – Sunview Drive Storm Drain
Tract No. 30642
TRI:blm
09/07/18

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

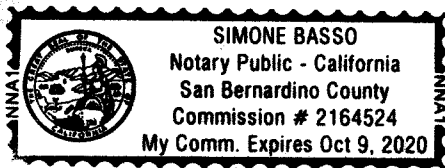
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Bernardino

On September 12, 2018 before me, Simone Basso, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Matthew A. Jordan
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

sociation

Stewart

Exhibit A

A portion of Parcel 5050-9A, RS 40 / 35 – 36, Records of the County of Riverside, State of California, more particularly described as follows:

Beginning at the southwest corner of Lot 14, Tract 30642, as recorded in book 415 of maps, pages 96 -101, records of said County: said point also lying 65' distant from the centerline of Wilson Avenue:

Thence S $89^{\circ}59'30''$ W, parallel to the centerline of Wilson Avenue, a distance of 73.45', to a point of lying on the east line of Parcel 5050-9B, RS 40 / 35-36, records of said County: said point also being a point of cusp with a circular curve, concave southwesterly and having a radius of 310.00': a radial bearing to said point bears N $51^{\circ}01'10''$ E:

Thence southeasterly along said east line through said curve a distance of 42.78' to a point lying 30.00' distant from the centerline of Wilson Avenue: a radial bearing to said point bears N $58^{\circ}55'32''$ E:

Thence N $89^{\circ}59'30''$ E, parallel to the centerline of Wilson Avenue, a distance of 69.88' to a point lying on the east line of said parcel 5050-9A: said point also lying 30' north of the centerline of Wilson Avenue:

Thence N $30^{\circ}50'31''$ E along the east line of said Parce 5050-9A a distance of 34.58' to the beginning of a tangent circular curve, concave southwesterly, and having a radius of 370.00':

Thence continuing along said east line, northwesterly along said curve through a central angle of $00^{\circ}57'47''$, a distance of 6.22' to the point of beginning: a radial bearing to said point bears N $58^{\circ}11'08''$ E.

AMENDED and RESTATED COOPERATIVE AGREEMENT

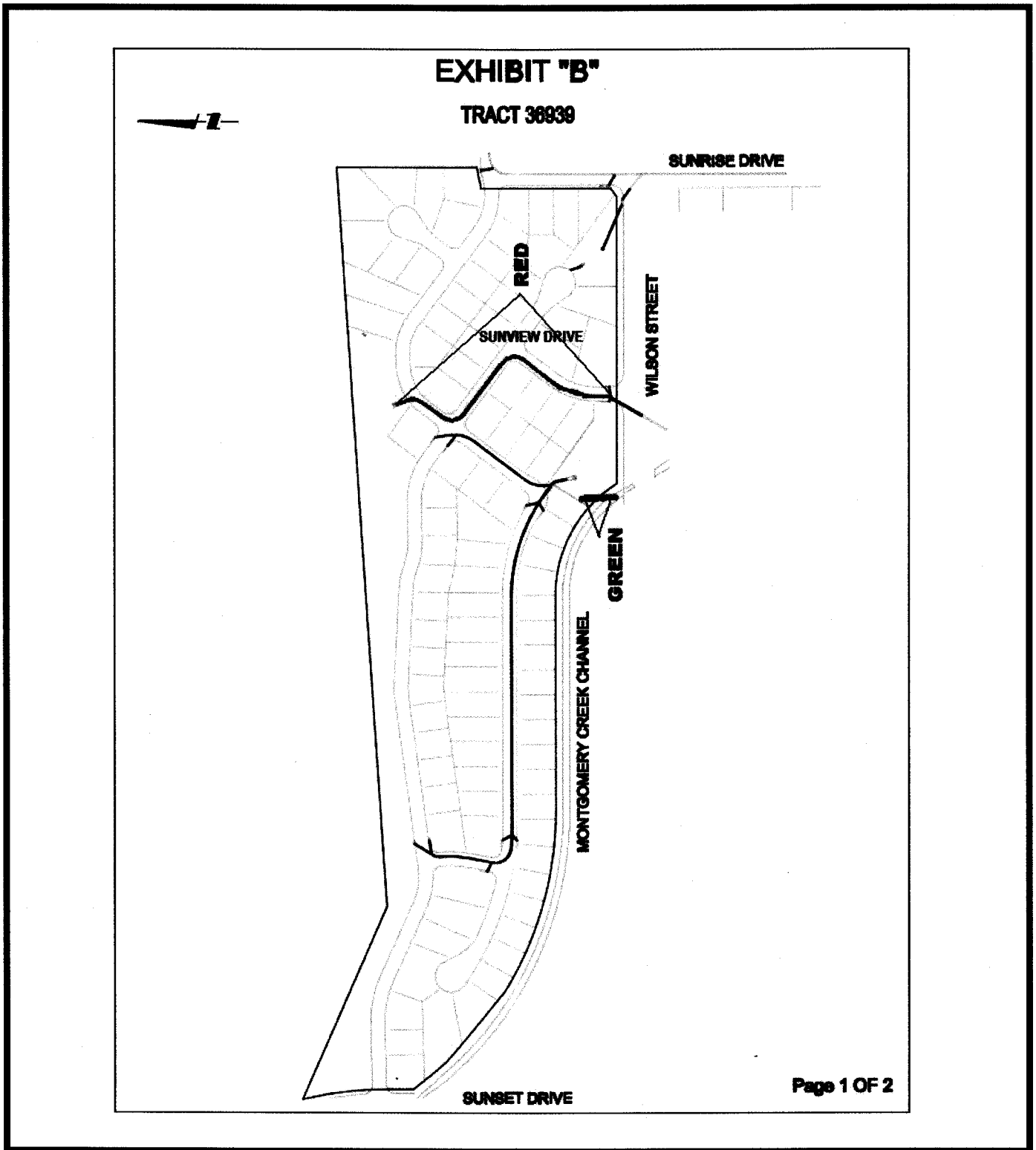
Montgomery Creek Channel - Sunview Drive Storm Drain

Project No. 5-0-00051

Tract No. 36939

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Exhibit B



AMENDED and RESTATED COOPERATIVE AGREEMENT

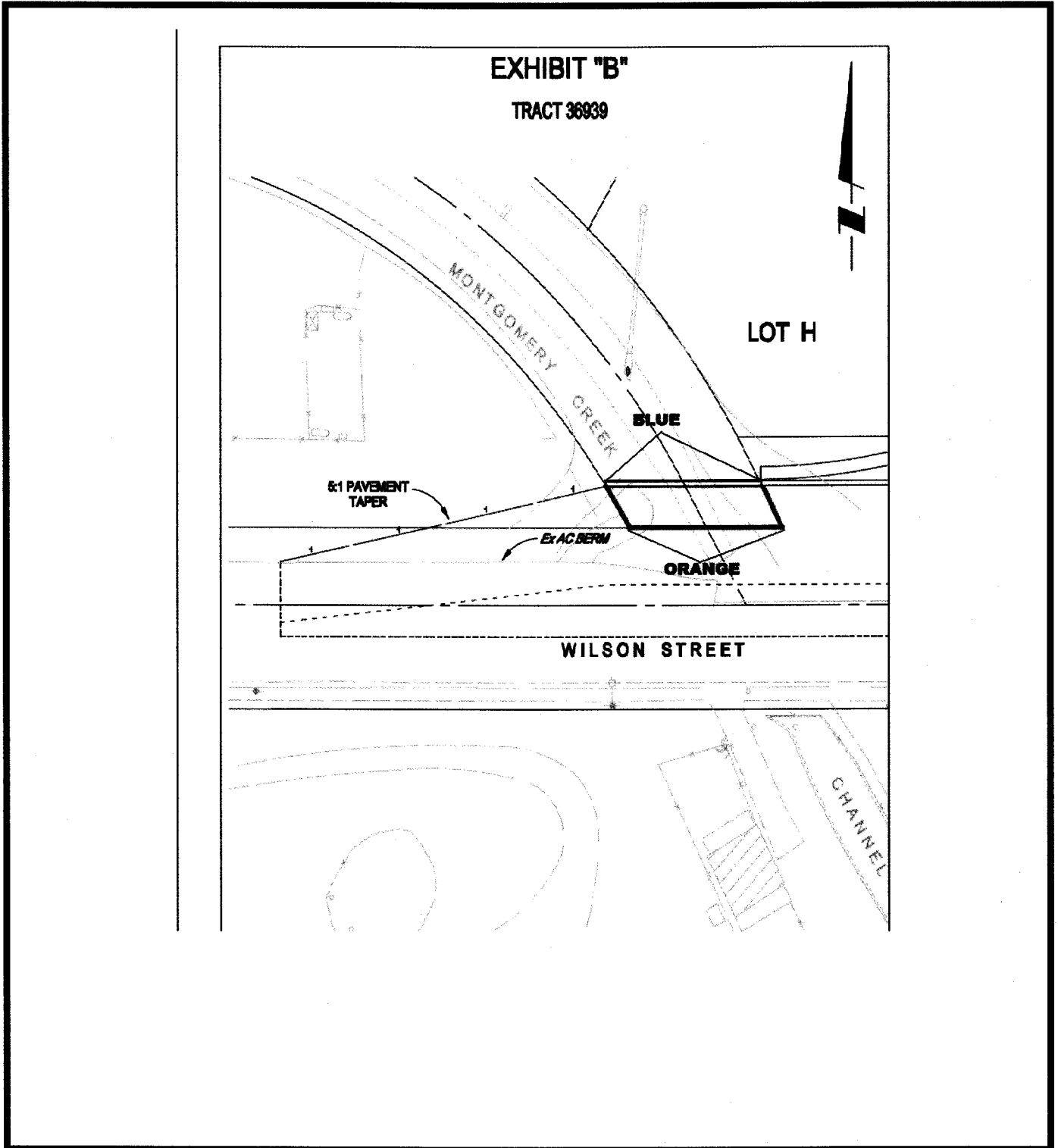
Montgomery Creek Channel- Sunview Storm Drain

Project No. 5-0-00051

Tract No. 36939

Page 1 of 2

Exhibit B



AMENDED and RESTATED COOPERATIVE AGREEMENT

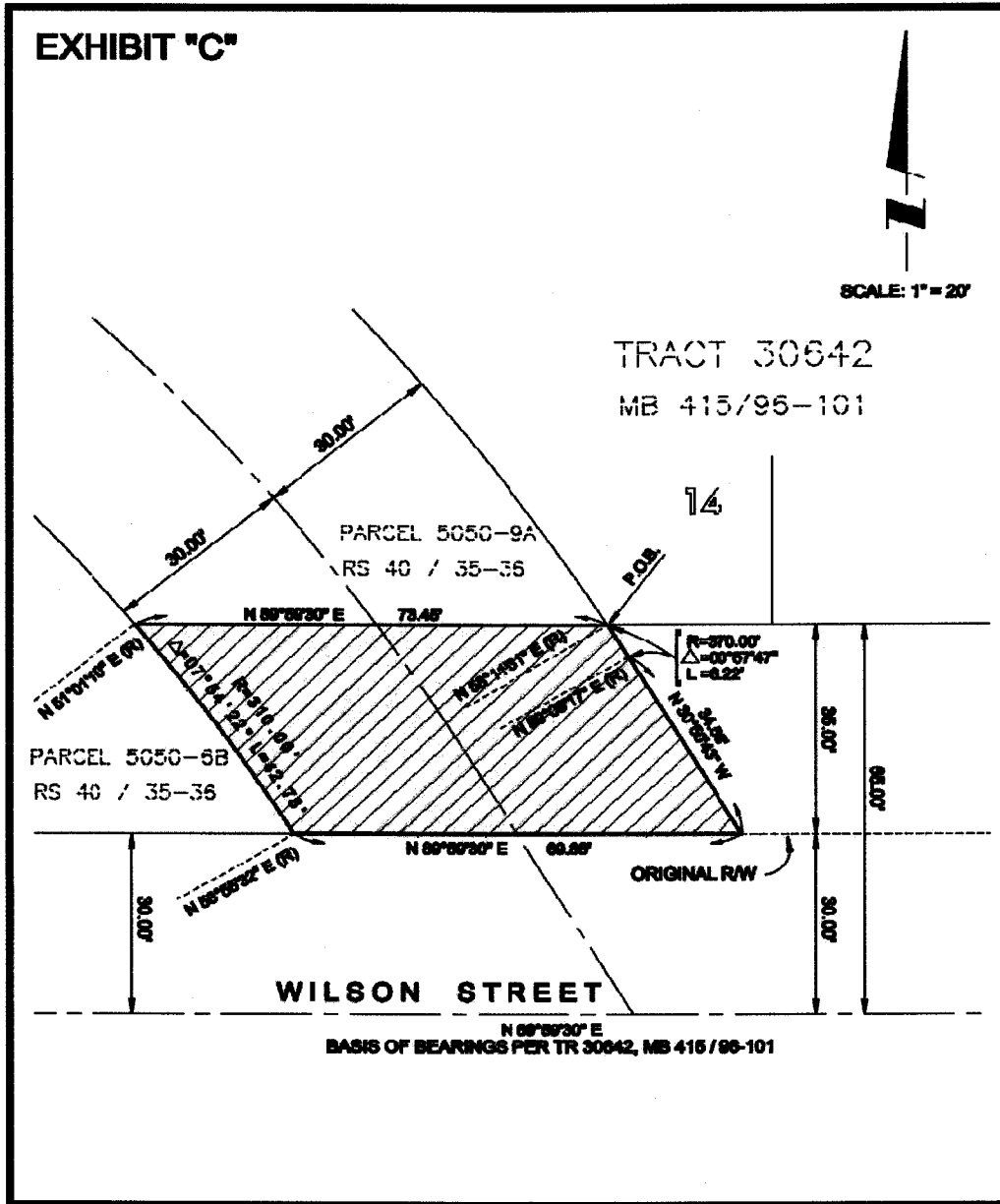
Montgomery Creek Channel- Sunview Storm Drain

Project No. 5-0-00051

Tract No. 36939

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Exhibit C



AMENDED and RESTATED COOPERATIVE AGREEMENT
Montgomery Creek Channel- Sunview Storm Drain
Project No. 5-0-00051
Tract No. 36939
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