

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



ITEM
11.1
(ID # 9681)

MEETING DATE:
Tuesday, July 2, 2019

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Amended and Restated Cooperative Agreement Between the Riverside County Flood Control District, the County of Riverside and Forestar (USA) Real Estate Group, Inc. for Winchester Hills – Expedition Drive Storm Drain, Stage 1 and Winchester Hills – Windmill Farms Storm Drain, Stage 1 (Tract No. 31892), Project Nos. 4-0-00581 and 4-0-00582, Nothing Further is Required Under CEQA, 3rd District. [\$0] (Companion Item to MT Item 10152) (Continue to July 2, 2019)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that nothing further is required under the California Environmental Quality Act (CEQA) because all potentially significant effects have been considered by Resolution No. F2019-06, adopted on April 9, 2019 (Board Agenda Item No. 11.3) and the accompanying Notice of Determination;
2. Approve the Amended and Restated Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District), the County of Riverside (County) and Forestar (USA) Real Estate Group Inc. (Developer);
3. Authorize the Chairwoman to execute the Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return three (3) executed Cooperative Agreements to the District and one (1) executed Cooperative Agreement to the County.

ACTION:Policy

Handwritten signature of Jason Uhley.

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

6/12/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Hewitt and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Perez and Hewitt
Nays: None
Absent: Spiegel and Washington
Date: July 2, 2019
xc: Flood

Kecia Harper
Clerk of the Board
By: Deputy

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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: The Developer is funding all construction and construction inspection costs (100%)			Budget Adjustment: No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Amended and Restated Cooperative Agreement (Agreement) supersedes the Cooperative Agreement previously approved by the Board of Supervisors on September 26, 2006 (Agenda Item No. 11.6), setting forth the terms and conditions by which certain flood control facilities required as a condition of approval for Tract No. 31892 are to be constructed by Developer and inspected, operated and maintained by the District, County and Developer.

The Agreement is necessary to provide for District inspection and subsequent ownership, operation and maintenance of Winchester Hills - Expedition Drive Storm Drain, Stage 1 and Winchester Hills - Windmill Farms Storm Drain, Stage 1 facilities. The County will assume ownership and responsibility for the operation and maintenance of the project's associated catch basins, connector pipes, and storm drains that are thirty-six inches (36") or less in diameter that are located within County held rights of way. The Developer will retain ownership, operation and maintenance of the debris basins located within its rights of way.

County Counsel has approved the Agreement as to legal form, and the Developer has executed the Agreement. A companion item appears on the Riverside County Transportation Department's agenda this same date.

Environmental Findings

Resolution No. F2019-06, Considering an Environmental Impact Report (SCH#91082004) for the Winchester Hills Specific Plan No. 293, Making Responsible Agency Findings Pursuant to the Provisions of the California Environmental Quality Act (CEQA) and Issuing Certain Limited Approvals for Winchester Hills Specific Plan No. 293 Environmental Impact Report, and an accompanying Notice of Determination (NOD) was prepared by the District and adopted for Winchester Hills Specific Plan No. 293 by the Board of Supervisors on April 9, 2019 (Board Agenda Item No. 11.3). The impacts of processing Specific Plan No. 293, which includes Tract No. 31892, have been evaluated through the environmental review, and there will be no significant environmental impacts by the Winchester Hills infrastructure. The Cooperative Agreement is an action in furtherance of the project, and nothing further is required for CEQA

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compliance because this proposed action was adequately analyzed in the earlier adopted NOD by this Board.

Impact on Residents and Businesses

As noted above, construction of these drainage improvements is a requirement for the development of Tract Map No. 31892. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

Prev. Agn. Ref.: 11.3 of 04/09/19 [MT 9381]
11.6 of 09/26/06


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 Map
2. Amended and Restated Cooperative Agreement

AMR:rlp
P8/226045



Gregory V. Priamos, Director County Counsel 6/15/2019

AMENDED AND RESTATED COOPERATIVE AGREEMENT

Winchester Hills - Expedition Drive Storm Drain, Stage 1

Winchester Hills - Windmill Farms Storm Drain, Stage 1

Project Nos. 4-0-00581 and 4-0-00582

(Tract Map No. 31892)

This Cooperative Agreement ("Cooperative Agreement"), dated as of July 2, 2019, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the County of Riverside, a political subdivision of the State of California ("COUNTY"), and Forestar (USA) Real Estate Group Inc., a Delaware corporation ("DEVELOPER"), (together, the "Parties"). The Parties hereto agree as follows:

RECITALS

A. DISTRICT, COUNTY, Lennar Homes of California, Inc., BCS Winchester Hills 260 LLC, and TMC Menifee LLC, collectively "PREVIOUS DEVELOPERS", entered into that certain Cooperative September 26, 2006 [Board Agenda Item Nos. 3.62 and 11.6], and recorded as Document No. 2006 – 0858977 in the Official Records of the County of Riverside ("PREVIOUS AGREEMENT"), requiring PREVIOUS DEVELOPERS, as a condition of approval, to construct certain flood control and drainage facilities for Tract No. 31892 as defined in PREVIOUS AGREEMENT and in the legal description provided in Exhibit "A", attached hereto and made a part hereof; and

B. PREVIOUS DEVELOPERS have not constructed the flood control and drainage facilities required by PREVIOUS AGREEMENT; and

C. PREVIOUS DEVELOPERS tax-defaulted and Real Property was subject to the power of sale by the Tax Collector of Riverside County for the nonpayment of taxes, pursuant to provisions of law; and

D. BCS Winchester Hills 260 LLC, and TMC Menifee LLC have ceased operations of their respective businesses; and

E. Pursuant to a certain Grant Deed dated August 17, 2018, DEVELOPER has acquired fee title to the Real Property; and

F. DISTRICT, COUNTY and DEVELOPER now desire to enter into a Cooperative Agreement with the intent that this Agreement shall prevail over the terms of the previous Agreement dated September 26, 2006; and

G. DEVELOPER has submitted for approval Tract No. 31892 located in an unincorporated area of western Riverside County. As a condition of approval for Tract No. 31892, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER's planned development; and

H. 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 No. 4-0884, include construction of:

- (i) Approximately 3,087 lineal feet of underground storm drain system ("EXPEDITION DRIVE STORM DRAIN"), as shown in green on Exhibit B. At its downstream terminus, EXPEDITION DRIVE STORM DRAIN will connect to the proposed Salt Creek – Leon Lateral Storm Drain, Stage 1 facility, as shown on DISTRICT's Drawing No. 4-0895;
- (ii) Approximately 473 lineal feet of underground storm drain system ("WINDMILL FARMS STORM DRAIN"), as shown in red on Exhibit B. At its downstream terminus, WINDMILL FARMS STORM DRAIN will connect to the proposed Salt Creek – Fox Hollow Lateral Drive Storm Drain, Stage 1 facility; as shown on DISTRICT's Drawing No. 4-0895. Altogether,

EXPEDITION DRIVE STORM DRAIN and WINDMILL FARMS ROAD STORM DRAIN are hereinafter called "DISTRICT FACILITIES"; and

I. Associated with the construction of DISTRICT FACILITIES are the construction of certain catch basins, laterals and connector pipes located within COUNTY held easements or rights of way, hereinafter called "APPURTENANCES"; and

J. Also associated with the construction of DISTRICT FACILITIES are the construction of several debris basins ("DEVELOPER BASINS"). DEVELOPER BASINS are to be located within privately held easements or rights of way, and are to be initially owned and maintained by DEVELOPER and, subsequently, owned by the Home Owners' Association for Tract No. 31892 and maintained by the Home Owners' Association for Tract No. 31892 or via the anticipated formation of a maintenance Community Facilities District ("CFD"). DEVELOPER intends to enter into a separate agreements with either the County Services Area ("CSA") or the Valley-Wide Recreation and Park District ("VALLEY-WIDE") setting forth the maintenance responsibilities for DEVELOPER BASINS; and

K. Altogether, DISTRICT FACILITIES, APPURTENANCES and DEVELOPER BASINS are called "PROJECT"; and

L. DEVELOPER and COUNTY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES. Therefore, DISTRICT must review and approve DEVELOPER's plans and specifications for PROJECT and subsequently inspect the construction of DISTRICT FACILITIES; and

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

N. DISTRICT is willing to (i) review and approve DEVELOPER's plans and specifications for PROJECT, (ii) inspect the construction of DISTRICT FACILITIES, and (iii) assume ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, provided DEVELOPER (a) complies with this Agreement, (b) constructs PROJECT in accordance with DISTRICT and COUNTY approved plans and specifications, (c) obtains and conveys to DISTRICT all rights of way necessary for the inspection, operation and maintenance of DISTRICT FACILITIES as set forth herein, and (d) 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 DISTRICT FACILITIES and COUNTY accepts ownership and responsibility for operation and maintenance of APPURTENANCES; and

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

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

SECTION I

DEVELOPER shall:

1. Prepare PROJECT plans and specifications ("IMPROVEMENT PLANS"), in accordance with applicable DISTRICT and COUNTY standards, and submit to DISTRICT and COUNTY 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. herein, the estimated cost of providing construction inspection for DISTRICT FACILITIES, 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 DISTRICT FACILITIES. 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 DISTRICT FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.
4. Grant DISTRICT and COUNTY, 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 and rights of entry as may be needed for the construction, inspection, operation and

maintenance of DISTRICT FACILITIES. 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 and rights of entry, as determined and approved by DISTRICT.

6. Prior to commencing construction, furnish DISTRICT 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 DISTRICT FACILITIES. 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 COUNTY, 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 DISTRICT FACILITIES as determined by DISTRICT and of the APPURTENANCES as determined by the COUNTY. The surety, amount and form of the bonds, shall be subject to approval of DISTRICT and COUNTY. The bonds shall remain in full force and effect until the PROJECT is accepted by DISTRICT and COUNTY as complete; at which time the bond amount may be reduced to five percent (5%) 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. Obtain and provide DISTRICT (Attention: Right of Way Acquisition Section), at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final map for Tract No. 31892 or any phase thereof, whichever occurs first, with duly executed Irrevocable Offer(s) of Dedication to the public for flood control and drainage purposes, including ingress and egress, for the rights of way deemed necessary by DISTRICT for the construction, inspection, operation and maintenance of DISTRICT FACILITIES. The Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property described in the offer(s).

10. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of Dedication as set forth in Section I.9. with Preliminary Reports on Title dated not more than thirty (30) days prior to date of submission of all the property described in the Irrevocable Offer(s) of Dedication.

11. 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 DISTRICT FACILITIES, 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.

12. 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

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

13. Furnish DISTRICT with final mylar PROJECT plans and assign their ownership to DISTRICT prior to the start on any portion of PROJECT construction.

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

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

16. Furnish DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8., 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.

17. 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 harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's 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.

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 the DISTRICT and COUNTY, 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 the DISTRICT and COUNTY, 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 obligations 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 \$2,000,000 per occurrence and \$4,000,000 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 as long as the law allows.

E. Pollution and Asbestos Liability:

DEVELOPER or its construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering DEVELOPER's or its construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by DEVELOPER or its construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by DISTRICT and COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.

DEVELOPER or its construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state

that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the DISTRICT and COUNTY for review and approval. If DEVELOPER or its construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by DEVELOPER or its construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

In the event, DEVELOPER or its construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, DEVELOPER or its construction contractor(s) shall immediately stop work in the area affected and report the condition to DISTRICT and COUNTY in writing. The work in the affected area shall not thereafter be resumed except by written agreement of DISTRICT, COUNTY and DEVELOPER, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of DISTRICT, COUNTY and DEVELOPER.

DEVELOPER or its construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).

F. 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, 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 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 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 thirty (30) days written notice shall be given to DISTRICT 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 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 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 insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- v. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.
- vi. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- vii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.

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

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

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

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

20. Upon completion of PROJECT construction and upon acceptance by COUNTY of all rights of way deemed necessary by DISTRICT and COUNTY for the operation and maintenance of PROJECT but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT the flood control easement(s) or grant deed(s) of fee title where appropriate. The easement(s) or grant

deed(s) shall be in a form approved by both DISTRICT and COUNTY, to the rights of way as shown in concept cross-hatched in blue on Exhibit "C", and shall be executed by all legal and equitable owners of the property described in the easement(s) or grant deed(s).

21. At the time of recordation of the conveyance document(s) as set forth in Section I.20., furnish DISTRICT with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the estimated value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said property as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which, in the sole discretion of DISTRICT, are acceptable.

22. 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 DISTRICT FACILITIES and PROPOSED LEON ROAD STAGE 2, COUNTY accepts ownership and responsibility for operation and maintenance of APPURTENANCES, and the DEVELOPER or the Home Owners' Association for Tract No. 31892 accepts ownership and responsibility of DEVELOPER BASINS.

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

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

25. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of DISTRICT 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" copy of PROJECT 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 PROJECT engineering plans "record drawings".

26. 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.

SECTION II

DISTRICT shall:

1. Review IMPROVEMENT PLANS and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT prior to the start of PROJECT construction.
2. Provide COUNTY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT'S final approval.
3. Upon execution of this Cooperative Agreement, record or cause to be recorded, a copy of this Cooperative Agreement in the Official Records of the Riverside County Recorder.

4. Record, or cause to be recorded, the Irrevocable Offer(s) of Dedication provided by DEVELOPER pursuant to Section I.9.
5. Inspect DISTRICT FACILITIES construction.
6. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS, the review and approval of right of way and conveyance documents, and the processing and administration of this Cooperative Agreement.
7. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete.
8. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES from DEVELOPER upon (i) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.19., (ii) DISTRICT 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.25., (iv) COUNTY acceptance of APPURTENANCES for ownership, operation, and maintenance, and (v) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.
9. Provide COUNTY with a reproducible duplicate copy of "record drawings" PROJECT plans upon DISTRICT acceptance of DISTRICT FACILITIES as being complete.

SECTION III

COUNTY shall:

1. Review IMPROVEMENT PLANS and approve when COUNTY has determined that such plans meet County standards and are found acceptable to COUNTY prior to the start of PROJECT construction.
2. Accept COUNTY 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 PROJECT construction.
4. Consent, by execution of this Cooperative Agreement, to the recording of any Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Cooperative Agreement.
5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication as set forth herein, and any other outstanding offers of dedication necessary for the construction, inspection, operation and maintenance of DISTRICT FACILITIES, and convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT FACILITIES.
6. Grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain DISTRICT FACILITIES within COUNTY rights of way.
7. Accept ownership and sole responsibility for the operation and maintenance of APPURTENANCES upon DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance.

8. Not grant any occupancy permits for any units within any portion of Tract No. 31892, or any phase thereof, until construction of PROJECT is complete, unless otherwise approved in writing by DISTRICT.

9. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within COUNTY rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of DISTRICT FACILITIES 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 work involved with PROJECT shall be inspected by DISTRICT and COUNTY but shall not be deemed complete until DISTRICT and COUNTY mutually agree in writing that construction is completed in accordance with DISTRICT and COUNTY approved IMPROVEMENT PLANS.

2. COUNTY and DEVELOPER personnel may observe and inspect all work being done on DISTRICT FACILITIES, 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. DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES are not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

4. DEVELOPER shall complete construction of PROJECT within twelve (12) consecutive months after execution of this Cooperative 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 Cooperative 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 COUNTY the penal sum of any and all bonds. In which case, COUNTY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

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

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, upon approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act on DISTRICT's behalf on all DISTRICT FACILITIES construction and quality control matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000), 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) shall be retained on account.

7. PROJECT construction work 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 and COUNTY (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 and COUNTY (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 and COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER's indemnification obligations to DISTRICT or COUNTY.

DEVELOPER's indemnification obligations shall be satisfied when DEVELOPER has provided to DISTRICT and COUNTY the appropriate form of dismissal (or similar document) relieving DISTRICT or COUNTY 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 and COUNTY 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 the DEVELOPER from indemnifying DISTRICT or COUNTY to the fullest extent allowed by law.

9. DEVELOPER for itself, its successors and assigns hereby releases DISTRICT and COUNTY, their respective 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, 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 or COUNTY, 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 DISTRICT FACILITIES and APPURTENANCES, after the acceptance of DISTRICT FACILITIES and APPURTENANCES by DISTRICT and COUNTY, respectively.

10. Any waiver by DISTRICT or by COUNTY of any breach of any one or more of the terms of this Cooperative 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 DISTRICT or COUNTY 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 DISTRICT or COUNTY from enforcement hereof.

11. Any and all notices sent or required to be sent to the parties of this Cooperative 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
Attn: Contract Services Section

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

FORESTAR (USA) REAL ESTATE GROUP, INC.
14755 Preston Road, Suite 130
Dallas, TX 75254
Attn: Thomas Burlison

12. 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.

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.

14. 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 import 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.

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

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 Cooperative Agreement.

17. 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 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 Cooperative Agreement.

18. 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. This Cooperative Agreement may be changed or modified only upon the written consent of the parties hereto.

19. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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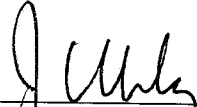
IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on

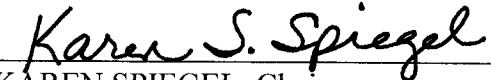
JUL 02 2019

(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

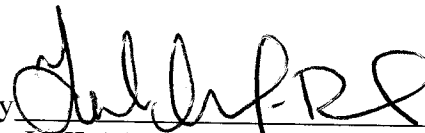
By 
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

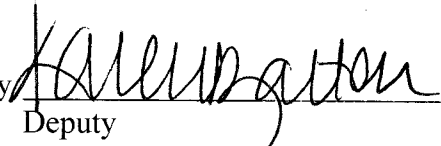
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By 
LEILA MOSHREF-DANESH
Deputy County Counsel


By 
Deputy

(SEAL)

Amended and Restated Cooperative Agreement:
Winchester Hills - Expedition Drive Storm Drain, Stage 1
Winchester Hills - Windmill Farms Storm Drain, Stage 1
Project Nos. 4-0-00581 and 4-0-00582
(Tract Map No. 31892)
AMR:blm
05/21/19

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
PATRICIA ROMO
Director of Transportation

By 
KEVIN JEFFRIES, Chairman
Board of Supervisors

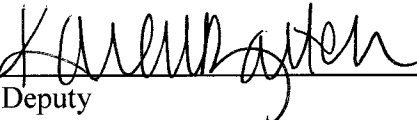
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

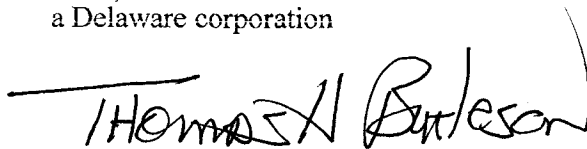
By 
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

By 
Deputy

(SEAL)

Amended and Restated Cooperative Agreement:
Winchester Hills - Expedition Drive Storm Drain, Stage 1
Winchester Hills - Windmill Farms Storm Drain, Stage 1
Project Nos. 4-0-00581 and 4-0-00582
(Tract Map No. 31892)
AMR:blm
05/23/19

**FORESTAR (USA) REAL ESTATE GROUP,
INC.,**
a Delaware corporation

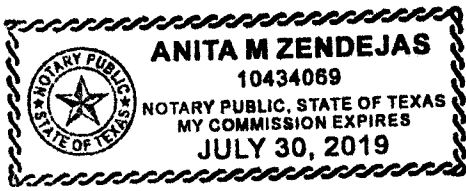


THOMAS H. BURLESON
Senior Vice President and President West Region

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

Amended and Restated Cooperative Agreement:
Winchester Hills - Expedition Drive Storm Drain, Stage 1
Winchester Hills - Windmill Farms Storm Drain, Stage 1
Project Nos. 4-0-00581 and 4-0-00582
(Tract Map No. 31892)
AMR:blm
05/23/19

THE STATE OF TEXAS §
COUNTY OF Harris §



This instrument was acknowledged before me on this 24th day of May, 2019, by Thomas H. Burlison, Senior Vice President of Forestar (USA) Real Estate Group Inc., a Delaware Corporation, on behalf of said entities.

A handwritten signature in black ink, appearing to be "Anita M Zendejas".

Exhibit A

LEGAL DESCRIPTION

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

PARCELS 1 AND 2 OF NOTICE OF LOT LINE ADJUSTMENT NO. 4890 RECORDED ON JUNE 28, 2005 AS INSTRUMENT NO. 2005-0509256 OF OFFICIAL RECORDS OF SAID COUNTY, BEING PORTIONS OF THE SOUTH HALF OF SECTION 31, TOWNSHIP 5 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN ON MAP IN BOOK 84, PAGE 27 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 461-170-006-1; 461-170-007-2

AMENDED AND RESTATED COOPERATIVE AGREEMENT

Winchester Hills - Expedition Drive Storm Drain, Stage 1

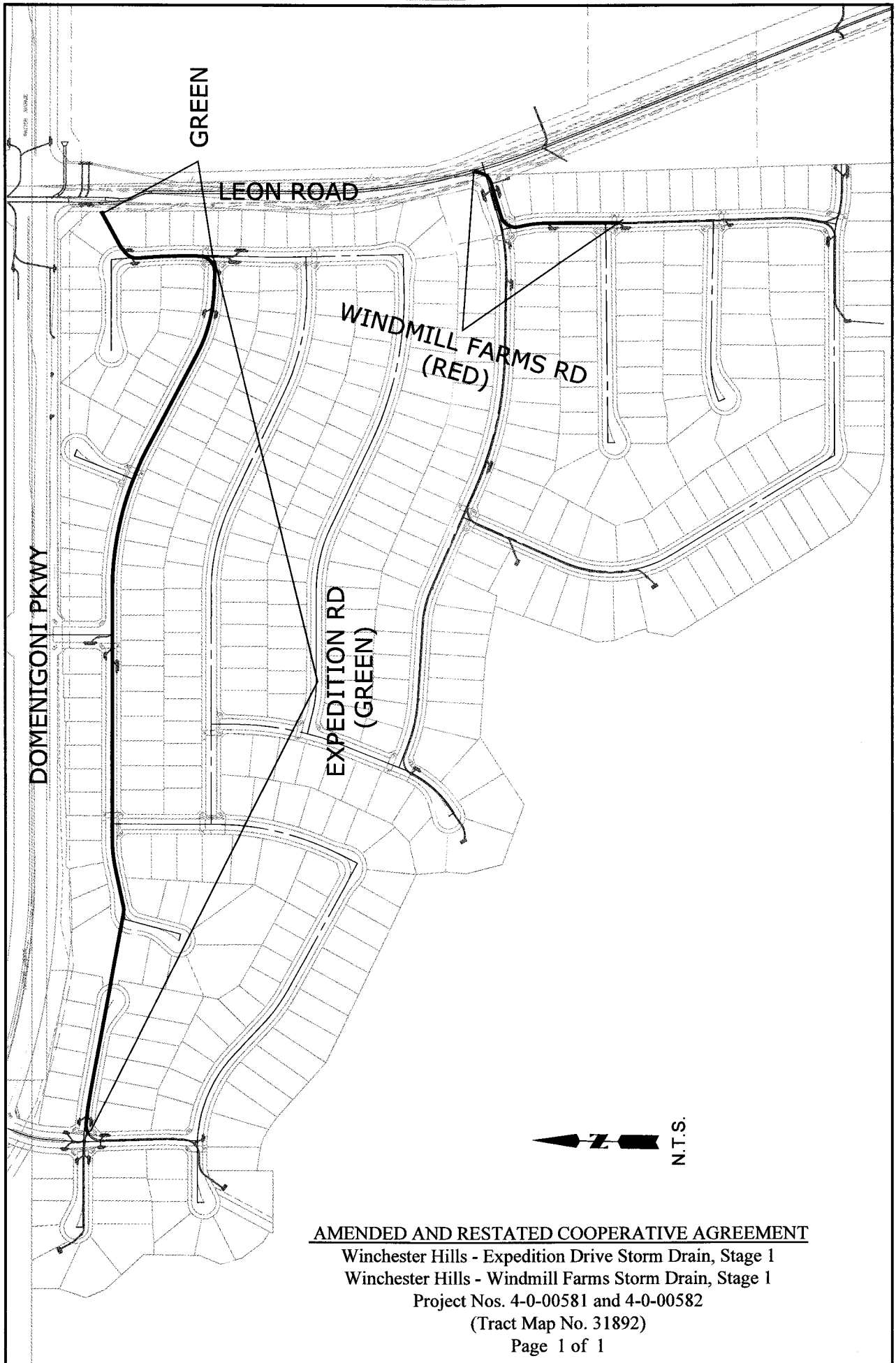
Winchester Hills - Windmill Farms Storm Drain, Stage 1

Project Nos. 4-0-00581 and 4-0-00582

(Tract Map No. 31892)

Page 1 of 1

Exhibit B



AMENDED AND RESTATED COOPERATIVE AGREEMENT

Winchester Hills - Expedition Drive Storm Drain, Stage 1

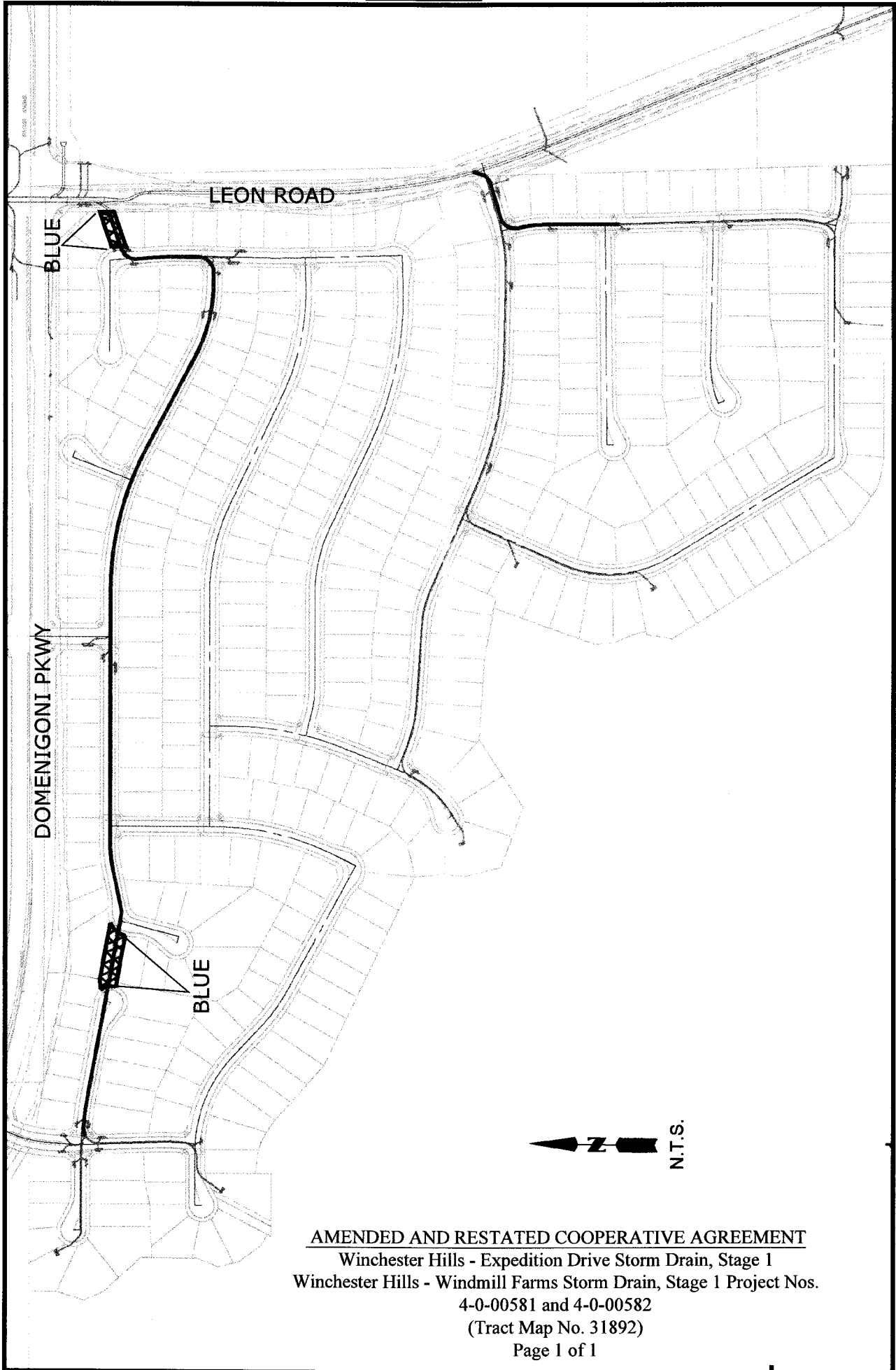
Winchester Hills - Windmill Farms Storm Drain, Stage 1

Project Nos. 4-0-00581 and 4-0-00582

(Tract Map No. 31892)

Page 1 of 1

Exhibit C



AMENDED AND RESTATED COOPERATIVE AGREEMENT
Winchester Hills - Expedition Drive Storm Drain, Stage 1
Winchester Hills - Windmill Farms Storm Drain, Stage 1 Project Nos.
4-0-00581 and 4-0-00582
(Tract Map No. 31892)
Page 1 of 1