

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



ITEM: 11.4
(ID # 11290)

MEETING DATE:

Tuesday, December 10, 2019

FROM: FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Assignment, Assumption and Amendment to Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District, the City of Palm Springs, RREF II – DC Cameron, LLC and Toll West Inc. doing business in California as Toll Brothers West Inc. for Palm Springs Master Drainage Plan Line 29, Stage 1 (Tract No. 33575), Project No. 6-0-00411, CEQA Exempt, District 4. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061 (b) (3);
2. Approve the Assignment, Assumption and Amendment to Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District), the City of Palm Springs (City), RREF II – DC Cameron, LLC (Assignor), and Toll West Inc. doing business in California as Toll Brothers West, Inc. (Assignee) ("Agreement");
3. Authorize the Chairwoman to execute the Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return five (5) executed Agreements to the District.

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

11/25/2019

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: December 10, 2019
xc: Flood

Kecia R. Harper
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: The Assignee 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 Assignment, Assumption and Amendment Agreement (Agreement) transfers the rights and responsibilities as established by the original cooperative agreement executed on September 13, 2016 (Board Agenda Item No. 11.2) from the RREF II – DC Cameron, LLC to Toll Brothers West, Inc. (Assignee). Once executed, the Assignee will assume responsibility for the construction of the 850 lineal foot underground drainage facility within the Palm Springs Master Drainage Plan, as originally required as a condition of development for Tract No. 33575. Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the mainline storm drain greater than 36 inches in diameter for the Palm Springs Master Drainage Plan Line 29, Stage 1 facility. The City will assume ownership and responsibility for the project's associated catch basins, inlets, connector pipes and laterals that are 36 inches or less in diameter located within City rights of way.

County Counsel has approved the Agreement as to legal form, and the City, Assignor and Assignee have executed the Agreement.

Environmental Findings

The Agreement transfers the rights and responsibilities established by the previous cooperative agreement to the Assignee. This transfer of rights and responsibilities will not result in physical changes to the environment. It can be seen with certainty that there is no possibility that the Agreement will have a significant effect on the environment. Therefore, pursuant to the California Environmental Quality Act (CEQA), the project was determined to be categorically exempt from CEQA under State CEQA Guidelines Section 15061(b)(3), "Common Sense" exemption.

Impact on Residents and Businesses

Assignee's planned development will benefit from the storm drain facilities that are to be constructed by the Assignee. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

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

Prev. Agn. Ref.: 11.2 of 09/13/16


Additional Fiscal Information

The Assignee is funding all construction and construction inspection costs. Future operations and maintenance costs associated with said mainline storm drain facility will accrue to the District.

ATTACHMENTS:

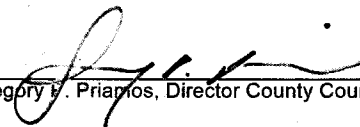
1. Vicinity Map
2. Assignment Assumption and Amendment Agreement

AMR:blm
P8/228104



Jason Farin, Senior Management Analyst

12/3/2019



Gregory E. Priamos, Director County Counsel

11/27/2019

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Palm Springs Master Drainage Plan Line 29, Stage 1

Project No. 6-0-00411

Tract No. 33575

This Assignment, Assumption and Amendment to Cooperative Agreement ("ASSIGNMENT") is made by and between (i) the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"); (ii) the City of Palm Springs, a municipal corporation of the State of California ("CITY"); (iii) RREF II – DC Cameron, LLC, a Delaware limited liability company ("ASSIGNOR"); and (iv) Toll West Inc. doing business in California as Toll Brothers West Inc., a Delaware limited liability company ("ASSIGNEE"), (together, the "Parties"). The Parties hereto agree as follows:

RECITALS

A. DISTRICT, CITY and ASSIGNOR have previously entered into that certain Agreement which was executed on September 13, 2016, (Board Agenda Item No. 11.2), and recorded as Document No. 2016-0435905 in the Official Records of the County of Riverside ("AGREEMENT"), setting forth the parties' respective rights and obligations concerning ASSIGNOR's proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract No. 33575 located in the City of Palm Springs, State of California (hereinafter, "PROPERTY"); and

B. Subsequent to the execution of said AGREEMENT, ASSIGNEE has acquired fee title to PROPERTY pursuant to a certain Grant Deed dated March 27, 2019, and plans to proceed in accordance with AGREEMENT; and

C. A true copy of AGREEMENT, has been provided to ASSIGNEE and said AGREEMENT describes the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract No. 33575 are to be designed and constructed by ASSIGNOR, and inspected and accepted for operation and maintenance by DISTRICT and CITY; and

D. AGREEMENT stipulates that ASSIGNOR may assign its rights and responsibilities as set forth therein subject to the written consent of the parties thereto; and

E. ASSIGNOR, ASSIGNEE, CITY, and DISTRICT intend that, by execution of this ASSIGNMENT, ASSIGNEE shall assume and agrees to perform all of ASSIGNOR's rights and obligations as stated in AGREEMENT; and

F. In addition, DISTRICT desires to make certain amendments to AGREEMENT.

NOW, THEREFORE, in consideration of the preceding Recitals and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

1. The above Recitals are true and correct.

2. For the benefit of CITY and DISTRICT, ASSIGNEE hereby agrees to be fully bound by the terms of AGREEMENT that are stated and imposed on ASSIGNOR in AGREEMENT.

3. AGREEMENT is hereby amended as follows:

I. The capitalized term DISTRICT DRAINAGE FACILITY, is amended in its entirety to read DISTRICT DRAINAGE FACILITIES.

II. RECITAL C is revised to read:

"The required flood control facility is identified in DISTRICT's Palm Springs Master Drainage Plans ("MDP") and shown on District Drawing No. 6-0413 consists of:

i. Approximately 850 lineal feet of 42-inch reinforced concrete pipe ("LINE 29 STAGE 1"), as shown in concept in yellow on Exhibit "B" attached hereto and made a part hereof;

ii. All safety devices requested by DISTRICT staff during the course of project construction, including but not limited to concrete pads, slope protection barriers, signage and fencing, ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and installed by DEVELOPER, and subject to DISTRICT's inspection and approval. LINE 29 STAGE 1 and

SAFETY DEVICES are hereinafter called "DISTRICT DRAINAGE FACILITIES". At its downstream terminus, DISTRICT DRAINAGE FACILITIES will drain to DISTRICT's Tahquitz Creek Channel. At its upstream terminus, DISTRICT DRAINAGE FACILITIES terminate with a concrete bulkhead for future extension; and

III. Section I.8 is revised to read:

"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."

IV. Section I.17 is revised to read:

"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 and COUNTY.

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 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 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 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, 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 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.

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.

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

- vii. 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."

- V. Section I.19 is revised to read:

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

4. DISTRICT and CITY consent to ASSIGNEE's assumption of AGREEMENT. In further clarification of the intent of the parties, ASSIGNEE specifically agrees with DISTRICT that access to or granting of real property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be satisfied by ASSIGNEE, and in regard to all financial obligations DISTRICT shall invoice ASSIGNEE for all charges incurred pursuant to AGREEMENT.

5. This ASSIGNMENT is to be construed in accordance with the laws of the State of California.

6. This ASSIGNMENT may be changed or modified only upon the written consent of the Parties hereto

7. Any and all notices sent or required to be sent to ASSIGNEE arising from either this ASSIGNMENT, or the obligations contained in 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	CITY OF PALM SPRINGS 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262 Attn: Rick Minjares
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RREF II – DC CAMERON, LLC c/o Woodbridge Pacific Group 27271 Las Ramblas, Suite 100 Mission Viejo, CA 92691 Attn: Steve Carroll	TOLL BROTHERS WEST INC. 1299 Celadon Street Palm Springs, CA 92262 Attn: Allen Janisch
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8. The individuals executing this ASSIGNMENT on behalf of ASSIGNEE hereby certify that they have the authority within their respective companies to enter into and execute this ASSIGNMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this ASSIGNMENT.

9. This ASSIGNMENT may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

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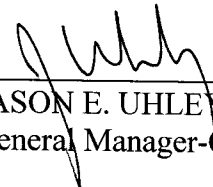
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IN WITNESS WHEREOF, the parties hereto have executed this ASSIGNMENT on

DEC 10 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

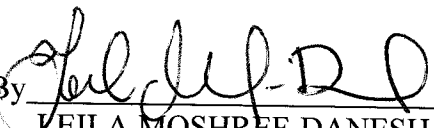
By 
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

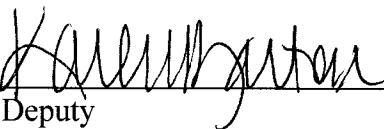
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By 
LEILA MOSHREF-DANESH
Deputy County Counsel

By 
Deputy

(SEAL)

Assignment, Assumption and Amendment to Cooperative Agreement: Tract No. 33575
Palm Springs Master Drainage Plan Line 29, Stage 1
Project No. 6-0-00411
Tract No. 33575
AMR:blm
09/03/19

CITY OF PALM SPRINGS

By [Signature]
DAVID H. READY, Esq., Ph.D.
City Manager

APPROVED AS TO FORM:

ATTEST:

By [Signature]
JEFFREY BALLINGER
City Attorney

By [Signature]
ANTHONY J. MEJIA
City Clerk

(SEAL)



Assignment, Assumption and Amendment to Cooperative Agreement: Tract No. 33575
Palm Springs Master Drainage Plan Line 29, Stage 1
Project No. 6-0-00411
Tract No. 33575
AMR:blm
09/03/19

APPROVED BY CITY COUNCIL
18417 1D 10-23-19

ASSIGNOR

RREF II-DC CAMERON, LLC

a Delaware limited liability company

By: RREF II-DC CAMERON JC MEMBER, LLC

a Delaware limited liability company, its Manager

By: 

TONY DEL GRIPPO

Director

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Assignment, Assumption and Amendment to Cooperative Agreement: Tract No. 33575
Palm Springs Master Drainage Plan Line 29, Stage 1
Project No. 6-0-00411
Tract No. 33575
AMR:blm
09/03/19

ACKNOWLEDGMENT

Wake County, North Carolina

I certify that the following person(s) Tony Del Grillo personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:
Assignment, Assumption and Amendment to Cooperative Agreement

Date: 9-17-19

Kristie Taylor
(Official Signature of Notary)

Kristie Taylor
(Notary's printed or typed name, Notary Public)

(Official Seal)

My commission expires: 4-22-23

KRISTIE TAYLOR
NOTARY PUBLIC
Wake County, North Carolina
My Commission Expires April 22, 2023

ASSIGNEE

TOLL BROTHERS WEST INC.

a Delaware corporation

By Allen J. Jamisch
ALLEN J. JAMISCH
Division Vice President

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Assignment, Assumption and Amendment to Cooperative Agreement: Tract No. 33575
Palm Springs Master Drainage Plan Line 29, Stage 1
Project No. 6-0-00411
Tract No. 33575
AMR:blm
09/03/19

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

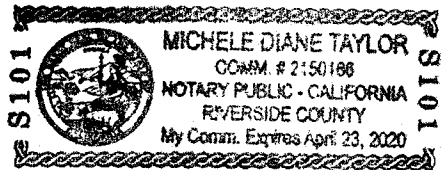
STATE OF CALIFORNIA,)
COUNTY OF Riverside)

On 9/9/2019 before me, Michele Diane Taylor, a Notary Public, personally appeared Allen Janisch, 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.

Michele Diane Taylor
Notary Public



1 rights of way, hereinafter called "APPURTENANCES". Together, DISTRICT DRAINAGE
2 FACILITY and APPURTENANCES are hereinafter called "PROJECT"; and

3 E. CITY and DEVELOPER desire DISTRICT to ultimately accept ownership
4 and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITY.
5 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications for
6 DISTRICT DRAINAGE FACILITY and subsequently inspect the construction of DISTRICT
7 DRAINAGE FACILITY; and

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

14 G. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
15 specifications for DISTRICT DRAINAGE FACILITY, (ii) inspect the construction of DISTRICT
16 DRAINAGE FACILITY, and (iii) accept ownership and responsibility for the operation and
17 maintenance of DISTRICT DRAINAGE FACILITY, provided that DEVELOPER (i) complies
18 with this Agreement, (ii) constructs PROJECT in accordance with DISTRICT and CITY
19 approved plans and specifications, (iii) obtains and conveys to DISTRICT and the necessary rights
20 of way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITY;
21 and (iv) accepts ownership and responsibility for the operation and maintenance of PROJECT
22 following completion of PROJECT construction until such time as DISTRICT accepts ownership
23 and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITY; and

25 H. CITY is willing to (i) review and approve PROJECT plans and
26 specifications, (ii) inspect the construction of PROJECT, (iii) accept and hold faithful
27 performance and payment bonds submitted by DEVELOPER for DISTRICT DRAINAGE
28

1 FACILITY, (iv) grant DISTRICT the right to inspect, operate and maintain portions of
2 DISTRICT DRAINAGE FACILITY located within CITY rights of way, (v) accept ownership
3 and responsibility for the operation and maintenance of APPURTENANCES, provided
4 PROJECT is constructed in accordance with plans and specifications approved by DISTRICT and
5 CITY.

6
7 NOW, THEREFORE, the parties hereto mutually agree as follows:

8 SECTION I

9 DEVELOPER shall:

10 1. Prepare PROJECT plans and specifications, hereinafter called
11 "IMPROVEMENT PLANS", including separate plans and specifications for DISTRICT
12 DRAINAGE FACILITY, in accordance with applicable DISTRICT and CITY standards, and
13 submit to DISTRICT and CITY for their respective review and approval.

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

20
21 3. Deposit with DISTRICT (Attention: Business Office - Accounts
22 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT
23 construction as set forth in Section I.8. herein, the estimated cost of providing construction
24 inspection for DISTRICT DRAINAGE FACILITY, in an amount as determined and approved by
25 DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including
26 any amendments thereto, based upon the bonded value of DISTRICT DRAINAGE FACILITY.
27
28

1 4. Secure, at its sole cost and expense, all necessary licenses, agreements,
2 permits, approvals, rights of way, rights of entry and temporary construction easements as may
3 be needed for the construction, inspection, operation and maintenance of PROJECT.
4 DEVELOPER shall furnish DISTRICT, at the time of providing written notice to DISTRICT of
5 the start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
6 recordation of the final map for Tract No. 33575 or any phase thereof, whichever occurs first,
7 with sufficient evidence of DEVELOPER having secured such necessary licenses, agreements,
8 permits, approvals, rights of way, rights of entry and temporary construction easements as
9 determined and approved by DISTRICT and CITY.
10

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

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

22 7. Provide CITY, at the time of providing written notice to DISTRICT of the
23 start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
24 recordation of the final map for Tract No. 33575 or any phase thereof, whichever occurs first,
25 with faithful performance and payment bonds, each in the amount of one hundred percent (100%)
26 of the estimated cost for construction of DISTRICT DRAINAGE FACILITY as determined by
27 DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of
28

1 DISTRICT and CITY. The bonds shall remain in full force and effect until DISTRICT
2 DRAINAGE FACILITY are accepted by DISTRICT and CITY as complete; at which time the
3 bond amount may be reduced to five percent (5%) for a period of one year to guarantee against
4 any defective work, labor or materials.

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

10 9. Obtain and provide DISTRICT (Attention: Right of Way Acquisition
11 Section), at the time of providing written notice to DISTRICT of the start of construction as set
12 forth in Section I.8., or not less than twenty (20) days prior to the recordation of the final map for
13 Tract No. 33575 or any phase thereof, whichever occurs first, with duly executed Irrevocable
14 Offer(s) of Dedication to the public for flood control and drainage purposes, including ingress
15 and egress, for the rights of way deemed necessary by DISTRICT for the construction, inspection,
16 operation and maintenance of DISTRICT DRAINAGE FACILITY. The Irrevocable Offer(s) of
17 Dedication shall be in a form approved by DISTRICT and shall be executed by all legal and
18 equitable owners of the property described in the offer(s).

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

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

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

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

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

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

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

9 A. Workers' Compensation:

10 If DEVELOPER has employees as defined by the State of California,
 11 DEVELOPER shall maintain statutory Workers' Compensation Insurance
 12 (Coverage A) as prescribed by the laws of the State of California. Policy shall
 13 include Employers' Liability (Coverage B) including Occupational Disease
 14 with limits not less than \$1,000,000 per person per accident. Policy shall be
 15 endorsed to waive subrogation in favor of DISTRICT and CITY, and, if
 16 applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.
 17

18 B. Commercial General Liability:

19 Commercial General Liability insurance coverage, including but not limited
 20 to, premises liability, unmodified contractual liability, products and
 21 completed operations liability, personal and advertising injury, and cross
 22 liability coverage, covering claims which may arise from or out of
 23 DEVELOPER'S performance of its obligations hereunder. Policy shall name
 24 the DISTRICT and CITY, its agencies, districts, special districts, and
 25 departments, their respective directors, officers, Board of Supervisors,
 26 employees, elected or appointed officials, agents or representatives as
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1 additional insureds. Policy's limit of liability shall not be less than \$2,000,000
2 per occurrence combined single limit. If such insurance contains a general
3 aggregate limit, it shall apply separately to this Agreement or be no less than
4 two (2) times the occurrence limit.

5
6 C. Vehicle Liability:

7 If DEVELOPER'S vehicles or mobile equipment are used in the performance
8 of the obligations under this Agreement, then DEVELOPER shall maintain
9 liability insurance for all owned, non-owned or hired vehicles so used in an
10 amount not less than \$1,000,000 per occurrence combined single limit. If
11 such insurance contains a general aggregate limit, it shall apply separately to
12 this Agreement or be no less than two (2) times the occurrence limit. Policy
13 shall name the DISTRICT and CITY, its agencies, districts, special districts,
14 and departments, their respective directors, officers, Board of Supervisors,
15 and employees, elected or appointed officials, agents or representatives as
16 additional insureds.
17

18 D. Professional Liability:

19 DEVELOPER shall maintain Professional Liability Insurance providing
20 coverage for DEVELOPER'S performance of work included within this
21 Agreement, with a limit of liability of not less than \$2,000,000 per occurrence
22 and \$4,000,000 annual aggregate. If DEVELOPER'S Professional Liability
23 Insurance is written on a claims made basis rather than an occurrence basis,
24 such insurance shall continue through the term of this Agreement and
25 DEVELOPER shall purchase at his sole expense either 1) an Extended
26 Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates
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1 Coverage from a new insurer with a retroactive date back to the date of, or
2 prior to, the inception of this Agreement; or 3) demonstrate through
3 Certificates of Insurance that DEVELOPER has maintained continuous
4 coverage with the same or original insurer. Coverage provided under items:
5 1), 2) or 3) will continue as long as the law allows.
6

7 **E. General Insurance Provisions – All Lines:**

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

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

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

17
18 vi. DEVELOPER shall pass down the insurance obligations contained
19 herein to all tiers of subcontractors working under this Agreement.

20
21 vii. The insurance requirements contained in this Agreement may be met
22 with a program(s) of self-insurance acceptable to DISTRICT.

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

26 Failure to maintain the insurance required by this paragraph shall be deemed
27 a material breach of this Agreement and shall authorize and constitute authority for DISTRICT,
28

1 at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to
2 perform its obligations hereunder, nor to accept responsibility for ownership, operation and
3 maintenance of DISTRICT DRAINAGE FACILITY due, either in whole or in part, to said breach
4 of this Agreement.

5
6 18. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole cost
7 and expense in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

8 19. Within two (2) weeks of completing PROJECT construction, provide
9 DISTRICT (Attention: Development Review Section) and CITY with written notice that
10 PROJECT construction is substantially complete and request that DISTRICT conduct a final
11 inspection of DISTRICT DRAINAGE FACILITY and CITY conduct a final inspection of
12 PROJECT.

13
14 20. Upon completion of PROJECT construction, and upon acceptance by CITY
15 of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance
16 of PROJECT, but prior to CITY acceptance of DISTRICT DRAINAGE FACILITY for
17 ownership, operation and maintenance, convey, or cause to be conveyed to CITY the flood control
18 easement(s) including ingress and egress, or grant deed(s) of fee title in a form approved by
19 DISTRICT, to the rights of way as shown in concept in black on Exhibit "C", attached hereto and
20 made a part hereof. The easement(s) or grant deed(s) shall be in a form approved by both
21 DISTRICT and CITY and shall be executed by all legal and equitable owners of the property
22 described in the easement(s) or grant deed(s).
23

24 21. At the time of recordation of the conveyance document(s) as set forth in
25 Section I.20., furnish DISTRICT with policies of title insurance, each in the amount of not less
26 than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
27 easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the estimated
28

1 value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT,
2 guaranteeing DISTRICT'S interest in said property as being free and clear of all liens,
3 encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except
4 those which, in the sole discretion of DISTRICT, are acceptable.

5
6 22. Accept ownership and sole responsibility for the operation and maintenance
7 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation
8 and maintenance of DISTRICT DRAINAGE FACILITY and CITY accepts ownership and
9 responsibility for the operation and maintenance of APPURTENANCES.

10 23. Accept all liability whatsoever associated with the ownership, operation and
11 maintenance of DISTRICT DRAINAGE FACILITY until such time as DISTRICT DRAINAGE
12 FACILITY are formally accepted by DISTRICT for ownership, operation and maintenance
13

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

18 25. Upon completion of PROJECT construction, but prior to DISTRICT
19 acceptance of DISTRICT DRAINAGE FACILITY for ownership, operation and maintenance,
20 provide or cause its civil engineer of record or construction civil engineer of record, duly
21 registered in the State of California, to provide DISTRICT with a redlined "record drawings" copy
22 of PROJECT plans. After DISTRICT approval of the redlined "record drawings",
23 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
24 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
25 stamp and sign the original PROJECT engineering plans "record drawings".
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1 amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE
2 FACILITY as being complete. If at any time the costs exceed the deposit or are anticipated by
3 DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed
4 reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE
5 FACILITY, within thirty (30) days after receipt of billing from DISTRICT.

6
7 8. Accept ownership and sole responsibility for the operation and maintenance
8 of DISTRICT DRAINAGE FACILITY upon (i) DISTRICT inspection of DISTRICT
9 DRAINAGE FACILITY in accordance with Section I.19., (ii) DISTRICT acceptance of
10 PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "record
11 drawings" of PROJECT plans, as set forth in Section I.25., (iv) recordation of all conveyance
12 documents described in Section I.21., (v) CITY acceptance of APPURTENANCES for
13 ownership, operation, and maintenance, and (vi) DISTRICT'S sole determination that DISTRICT
14 DRAINAGE FACILITY are in a satisfactorily maintained condition.

15
16 9. Provide CITY with a reproducible duplicate copy of "record drawings"
17 PROJECT plans upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITY as being
18 complete.

19 SECTION III

20 CITY shall:

21
22 1. Review and approve IMPROVEMENT PLANS prior to the start of
23 PROJECT construction.

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

27 3. Inspect PROJECT construction.
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1 construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT
2 PLANS.

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

7 3. DISTRICT acceptance of ownership and responsibility for the operation and
8 maintenance of DISTRICT DRAINAGE FACILITY shall be in a satisfactorily maintained
9 condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole
10 discretion of DISTRICT, DISTRICT DRAINAGE FACILITY are not in an acceptable condition,
11 corrections shall be made at sole expense of DEVELOPER.

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

19 5. If DEVELOPER fails to commence construction of PROJECT within eight
20 (8) months after execution of this Agreement, then DISTRICT reserves the right to withhold
21 issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at
22 the time DEVELOPER provides written notification to DISTRICT of the start of construction as
23 set forth in Section I.8. In the event of a change in the existing site conditions that materially
24 affects PROJECT function or DISTRICT'S ability to operate and maintain DISTRICT
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1 DRAINAGE FACILITY, DISTRICT may require DEVELOPER to modify IMPROVEMENT
2 PLANS as deemed necessary by DISTRICT. In the event of a change in the existing site
3 conditions that materially affects PROJECT function or CITY'S ability to operate and maintain
4 APPURTENANCES, CITY may require DEVELOPER to modify IMPROVEMENTS as deemed
5 necessary by CITY.
6

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

11 In the event DEVELOPER wishes to expedite issuance of a Notice to
12 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
13 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
14 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
15 approval. DISTRICT shall review the individual's qualifications and experience and, upon
16 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized
17 to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITY construction and quality
18 control matters. If DEVELOPER'S initial construction inspection deposit furnished pursuant to
19 Section I.3. exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up
20 to eighty percent (80%) of DEVELOPER'S initial inspection deposit within forty-five (45) days
21 of DISTRICT'S approval of DEPUTY INSPECTOR; however, a minimum balance of ten
22 thousand dollars (\$10,000) shall be retained on account.
23
24

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

11 8. DEVELOPER for itself, its successors and assigns hereby releases
12 DISTRICT and County of Riverside (including their agencies, districts, special districts and
13 departments, their respective directors, officer, Board of Supervisors, elected and appointed
14 officials, employees, agents and representatives) from any and all claims, demands, actions, or
15 suits of any kind arising out of any liability, known or unknown, present or future, including but
16 not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the
17 California Constitution, the Fifth Amendment of the United States Constitution, or any other law
18 or ordinance which seeks to impose any other liability or damage, whatsoever, for damage caused
19 by the discharge of drainage within or from PROJECT. Nothing contained herein shall constitute
20 a release by DEVELOPER of DISTRICT, its officers, agents and employees from any and all
21 claims, demands, actions or suits of any kind arising out of any liability, known or unknown,
22 present or future, for the negligent maintenance of DISTRICT DRAINAGE FACILITY, after the
23 acceptance of ownership, operation and maintenance of DISTRICT DRAINAGE FACILITY by
24 DISTRICT.
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1 9. DEVELOPER shall indemnify and hold harmless DISTRICT, County of
2 Riverside, and CITY (including their respective agencies, districts, special districts and
3 departments, their respective directors, officers, Board of Supervisors, elected and appointed
4 officials, employees, agents and representatives) from any liability, claim, damage, proceeding or
5 action, present or future, based upon, arising out of or in any way relating to DEVELOPER'S
6 (including its officers, employees, subcontractors and agents) actual or alleged acts or omissions
7 related to this Agreement, performance under this Agreement, or failure to comply with the
8 requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily
9 injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California
10 Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance
11 or regulation caused by the diversion of waters from the natural drainage patterns or the discharge
12 of drainage within or from PROJECT; or, (d) any other element of any kind or nature whatsoever.
13
14

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

22 With respect to any of DEVELOPER'S indemnification requirements,
23 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall
24 have the right to adjust, settle, or compromise any such claim, proceeding or action without the
25 prior consent of DISTRICT, County of Riverside and CITY; provided, however, that any such
26 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
27 DEVELOPER'S indemnification obligations to DISTRICT, County of Riverside, or CITY.
28

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

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

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

12 10. Any waiver by DISTRICT or by CITY of any breach of any one or more of
13 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
14 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
15 require exact, full and complete compliance with any terms of this Agreement shall not be
16 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
17 enforcement hereof.

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

20 RIVERSIDE COUNTY FLOOD CONTROL
21 AND WATER CONSERVATION DISTRICT
22 1995 Market Street
23 Riverside, CA 92501
24 Attn: Administration Services Section

CITY OF PALM SPRINGS
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: Rick Minjares

25 RREF II - DC CAMERON, LLC
26 1302 Camino Del Mar
27 Del Mar, CA 92014
28 Attn: Tim O'Grady

1 12. This Agreement is to be construed in accordance with the laws of the State
2 of California. If any provision of this Agreement is held by a court of competent jurisdiction to
3 be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force
4 without being impaired or invalidated in any way.
5

6 13. Any action at law or in equity brought by any of the parties hereto for the
7 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
8 competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive
9 all provisions of law providing for a change of venue in such proceedings to any other county.
10

11 14. This Agreement is the result of negotiations between the parties hereto, and
12 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
13 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
14 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
15 prepared this Agreement in its final form.
16

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

19 16. DEVELOPER shall not assign or otherwise transfer any of its rights, duties
20 or obligations hereunder to any person or entity without the written consent of the other parties
21 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER
22 expressly understands and agrees that it shall remain liable with respect to any and all of the
23 obligations and duties contained in this Agreement.
24

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

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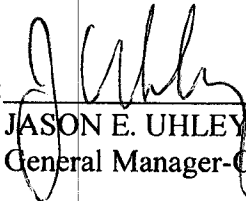
IN WITNESS WHEREOF, the parties hereto have executed this Cooperative

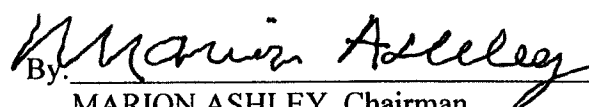
SEP 18 2016

Agreement on _____
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By: 
JASON E. UHLEY
General Manager-Chief Engineer


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

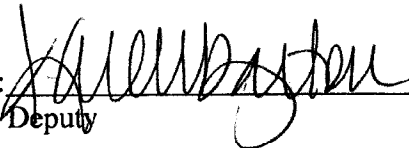
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

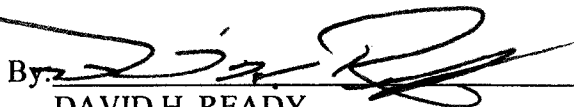
By: 
NEAL R. KIPNIS
Deputy County Counsel

By: 
Deputy

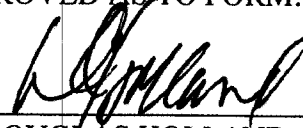
(SEAL)

Cooperative Agreement w/ City of Palm Springs and RREF-DC Cameron, LLC:
Palm Springs Master Drainage Plan Line 29, Stage 1 (Tract No. 33575)
Project No. 6-0-00411
06/28/2016
AMR:blm

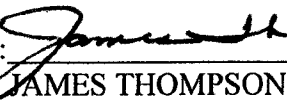
CITY OF PALM SPRINGS

By: 
DAVID H. READY
City Manager

APPROVED AS TO FORM:

By: 
DOUGLAS HOLLAND
City Attorney

ATTEST:

By: 
JAMES THOMPSON
City Clerk

(SEAL)

APPROVED BY CITY COUNCIL

7.6.16 20 AMR

Cooperative Agreement w/ City of Palm Springs and RREF-DC Cameron, LLC:
Palm Springs Master Drainage Plan Line 29, Stage 1 (Tract No. 33575)
Project No. 6-0-00411
06/28/2016
AMR:blm

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RREF II-DC CAMERON, LLC
a Delaware limited liability company

By: RREF II-DC CAMERON JC MEMBER, LLC
a Delaware limited liability company, its Manager

By: _____
ANTHONY SEIJAS
Vice President

Cooperative Agreement w/City of Palm Springs and RREF-DC Cameron, LLC:
Palm Springs Master Drainage Plan Line 29, Stage 1 (Tract No. 33575)
Project No. 6-0-00411
06/28/2016
AMR:blm

STATE OF FLORIDA

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 16th day of August, 2016,
by Anthony Seijas, vice President,
who produced N/A as identification.



M Shaffer
(Signature of Notary Public)

Michelle Shaffer
(Printed name of Notary Public)

My commission expires: July 5, 2019

Exhibit A

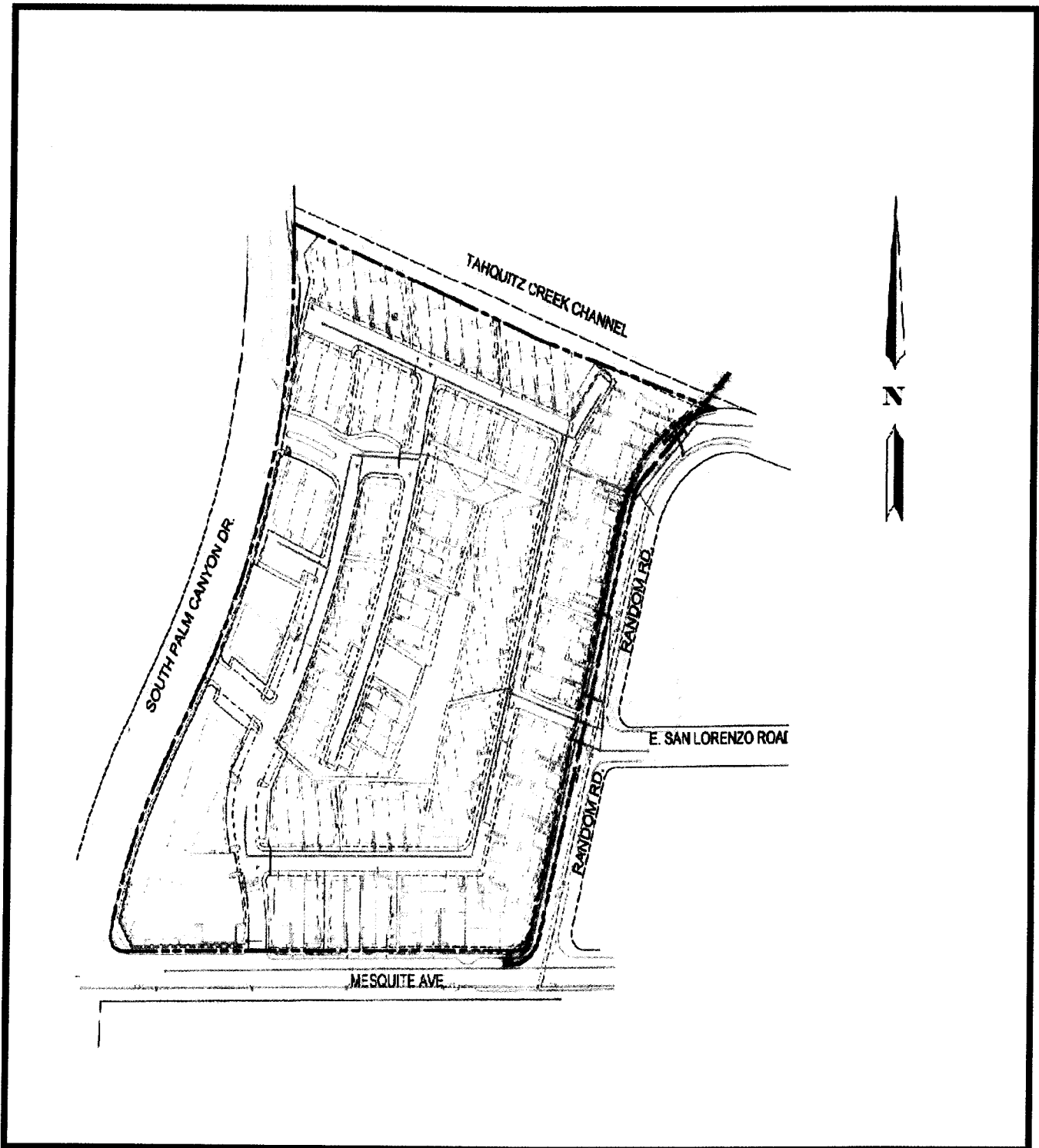
LEGAL DESCRIPTION

Real property in the City of Palm Springs, County of Riverside, State of California,
described as follows:

LOTS 1 THROUGH 4, INCLUSIVE, AND LOT A AS SHOWN ON TRACT MAP NO. 33575
FILED JULY 23, 2015 IN BOOK 446 OF MAPS AT PAGES 17-20 RIVERSIDE COUNTY
RECORDS.

APN: 508-630-001-9, 508-630-002-0 through 508-630-005-3

Exhibit B



COOPERATIVE AGREEMENT

Palm Springs MDP Line 29, Stage 1

TR 33575
Project No. 6-0-00411
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