

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



ITEM: 3.49
(ID # 11953)

MEETING DATE:
Tuesday, March 10, 2020

FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION:
Approval of the Cooperative Agreement Between the County of Riverside, Riverside County Flood Control and Water Conservation District, and Forestar (USA) Real Estate Group Inc. for the Warm Springs Valley – Koon Street Channel, Stage 1 (Tract No. 36687R1), Project No. 7-0-00229, District 3. [\$0] (Companion Item to MT Item No. 10903)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement by and between the County of Riverside (County), the Riverside County Flood Control and Water Conservation District (District), and Forestar (USA) Real Estate Group Inc. for the Warm Springs Valley – Koon Street Channel, Stage 1 (Tract No. 36687R1), Project No. 7-0-00229 (Developer) and authorize the Chairman of the Board to execute the same.


ACTION:Policy


Patricia Romo, Director of Transportation 2/20/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Hewitt 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: March 10, 2020
xc: Transp.

Kecia R. Harper
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Developer funded 100%. No General Funds will be used on this project.			Budget Adjustment: No	
			For Fiscal Year: 19/20-20/21	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

The Cooperative Agreement sets forth the terms and conditions by which certain flood control facilities required as a condition of approval for Tract No. 36687R1 are to be constructed by Developer and inspected, operated and maintained by the District, the County (acting through the County's Transportation Department) and the Developer.

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for the District construction inspection and subsequent operation and maintenance of the referenced flood control facilities.

Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of a the concrete flood control channels, joint use access road, and associated features, barriers, and fencing. The District will also assume responsibility for the removal of sediment and debris from the triple cell concrete culvert located under Solstice Street.

The Transportation Department will assume ownership and responsibility for the operation and maintenance of the associated lateral storm drains that are thirty-six inches (36") or less in diameter located within the road right of way. In addition, the Transportation Department will assume ownership and maintenance responsibility for the structural integrity of the triple cell concrete culvert located within Solstice Street.

The Developer will retain ownership and responsibility for the operation and maintenance of the common property line walls/fences, tubular steel fences, tubular steel gates and channel swale, which will be located within privately held easements or rights of way.

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

Impact on Residents and Businesses

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

Construction of these drainage improvements is a requirement for the development of Tract No. 36687R1. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

Additional Fiscal Information

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of District maintained flood control facilities will accrue to the District. Future operation and maintenance costs of the County maintained storm drain facilities located within the County right of way will accrue to the County Transportation Department.

ATTACHMENTS:

Vicinity Map
Cooperative Agreement



Jason Farin, Senior Management Analyst

3/4/2020



Gregory V. Priantos, Director County Counsel

2/26/2020

COOPERATIVE AGREEMENT

Warm Springs Valley – Koon Street Channel, Stage 1
Project No. 7-0-00229
Tract No. 36687R1

This Cooperative Agreement ("Agreement"), dated as of _____, 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") on behalf of its Transportation Department and Forestar (USA) Real Estate Group Inc., a Delaware corporation ("DEVELOPER"), which are collectively referred to herein as "Parties" and individually as "Party". The Parties hereto agree as follows:

RECITALS

- A. DEVELOPER is the legal owner of record of certain real property, including Tract No. 36687R1, located within the County of Riverside. The legal description of Tract No. 36687R1 is provided in Exhibit "A" attached hereto and made a part hereof; and
- B. DEVELOPER has submitted for approval Tract No. 36687R1 located in an unincorporated area of western Riverside County. As a condition of approval for Tract No. 36687R1, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER's planned development; and
- C. The required flood control facilities and drainage improvements, as shown on DISTRICT's Drawing No. 7-0551, include the construction of:
- i. Channel ("KOON ST STAGE 1"), as shown in concept in red on Exhibit "B", attached hereto and made a part hereof, which includes the following segments:
 - a. Approximately 116 lineal feet of concrete trapezoidal channel and the associated joint use access road; and

- b. Approximately 124 lineal feet of concrete rectangular channel, ladders, concrete wingwalls and rip-rap energy dissipater; and
- ii. Safety devices requested by DISTRICT, including but not limited to concrete pads, slope protection barriers, protective fencing around DISTRICT structures and signage ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and installed by DEVELOPER, and subject to DISTRICT's inspection and approval; and

D. Together, KOON ST STAGE 1 and SAFETY DEVICES are hereinafter called "DISTRICT FACILITIES"; and

E. Associated with the construction of DISTRICT FACILITIES is the construction of :

- (i) Lateral storm drains that are thirty-six inches (36") or less in diameter that are located within COUNTY-held easements or rights of way, hereinafter called "APPURTENANCES"; and
- (ii) A triple cell 4' x 5' reinforced concrete box culvert located within COUNTY-held easements or rights of way ("CULVERT"), as shown in concept in aqua on Exhibit "B".
With regard to the ownership, operation and maintenance of CULVERT, DISTRICT is willing to keep CULVERT free and clear of sediment and debris and COUNTY is willing to accept ownership and responsibility for the structural integrity and maintenance of CULVERT; and

(iii) Tubular steel gates, common property line walls/fences, tubular steel fences and channel swale located within DEVELOPER-held easements or rights of way, hereinafter called "DEVELOPER FACILITIES". DEVELOPER FACILITIES are to be initially owned and maintained by DEVELOPER, and subsequently owned and maintained by the Home Owners' Association for Tract No. 36687R1; and

F. Together, DISTRICT FACILITIES, APPURTENANCES, CULVERT and DEVELOPER FACILITIES are hereinafter called "PROJECT"; and

G. On or about October 30, 2019, DISTRICT and DEVELOPER entered into a Right of Entry and Inspection Agreement that authorized DEVELOPER to construct DISTRICT FACILITIES. Pursuant to the Right of Entry and Inspection Agreement, DEVELOPER has begun construction of the aforementioned facilities; and

H. DEVELOPER and COUNTY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES; and

I. DEVELOPER and DISTRICT desire COUNTY to (i) accept ownership and responsibility for the operation and maintenance of APPURTENANCES and (ii) accept ownership and responsibility for the structural integrity and maintenance of CULVERT; and

J. DISTRICT is willing to (i) accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES; and (ii) keep CULVERT free and clear of sediment and debris, 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 the operation and maintenance of APPURTENANCES and CULVERT as set forth herein; and

K. COUNTY is willing to (i) accept and hold faithful performance and payment bonds submitted by DEVELOPER for on behalf of DISTRICT for DISTRICT FACILITIES; (ii) grant DISTRICT the right to inspect, operate and maintain DISTRICT FACILITIES within COUNTY rights of way; (iii) accept ownership and responsibility for the operation and maintenance of APPURTENANCES; and (iv) accept ownership and responsibility for the structural integrity and maintenance of CULVERT, 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 Agreement.

3. Deposit with DISTRICT (Attention: Business Office – Accounts Receivable), any amendment to 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, 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. Pay DISTRICT, upon execution of this Agreement, the one-time cash sum of forty-nine thousand two hundred ninety-five dollars even (\$49,295), the amount agreed upon to cover DISTRICT's estimated cost to operate and maintain DISTRICT FACILITIES for a period of ten (10) years (Zone 7 – Maintenance Trust Fund), commencing upon DISTRICT's acceptance of DISTRICT FACILITIES as complete for ownership, operation and maintenance.

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 PROJECT. DEVELOPER shall furnish DISTRICT and COUNTY with sufficient evidence of DEVELOPER having secured such necessary licenses, agreements, permits and rights of entry as determined and approved by DISTRICT and COUNTY.

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

Board and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

7. Provide COUNTY 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 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 DISTRICT FACILITIES are 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. Obtain and provide DISTRICT (Attention: Real Estate Services Section) with duly executed Irrevocable Offers(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).

9. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of Dedication as set forth in Section I.8. 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.

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

11. 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.

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

13. Continue to provide DISTRICT 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 and Exhibit "C", attached hereto and made a part hereof. Failure to maintain the insurance required by this section 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.

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

15. 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 request that DISTRICT conduct a final inspection of DISTRICT FACILITIES and COUNTY conduct a final inspection of APPURTENANCES.

16. 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, as determined by DISTRICT. The easement(s) or grant deed(s) shall be in a form approved by DISTRICT, to the rights of way as shown in concept in purple diagonal hatching on Exhibit "D", and shall be executed by all legal and equitable owners of the property described in the easement(s) or grant deed(s).

17. At the time of recordation of the conveyance document(s) as set forth in Section I.16., 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.

18. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as (i) DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT FACILITIES, (ii) COUNTY accepts (a) ownership and responsibility for operation and maintenance of APPURTENANCES and (b) ownership and responsibility for the structural integrity and maintenance of CULVERT and (iii) the Home Owners' Association for Tract No. 36687R1 accepts ownership and responsibility for operation and maintenance of DEVELOPER FACILITIES.

19. 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.

20. Pay, if suit is brought upon this 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.

21. 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".

22. Ensure that all work performed pursuant to this 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 Agreement, record or cause to be recorded a copy of this 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.8.

5. Inspect construction of DISTRICT FACILITIES.

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 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 and provided the plan check account is sufficiently funded for post processing, 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 upon (i) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.15.; (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.21.; (iv) recordation of all conveyance documents

described in Section I.16.; (v) COUNTY acceptance of APPURTENANCES for ownership, operation and maintenance; (vi) COUNTY acceptance of ownership and responsibility for the structural integrity and maintenance of CULVERT and (vii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.

9. Accept sole responsibility for keeping CULVERT free and clear of sediment and debris upon DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance and COUNTY acceptance of ownership and responsibility for the structural integrity and maintenance of CULVERT.

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

SECTION III

COUNTY shall:

1. Review IMPROVEMENT PLANS and approve when TRANSPORTATION has determined that such plans meet TRANSPORTATION standards and are found acceptable to TRANSPORTATION prior to the start of PROJECT construction.

2. Continue to hold the accepted 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 Agreement, to the recording of any Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this 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. Upon DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, (i) accept ownership and sole responsibility for the operation and maintenance of APPURTENANCES and (ii) accept ownership and sole responsibility for the structural integrity and maintenance of CULVERT.

8. Release occupancy permits in accordance with the approved conditions of approval.

9. Upon DISTRICT and COUNTY 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 PROJECT, but shall provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DEVELOPER's contractor(s) during the construction of PROJECT.

3. 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. 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 Agreement and within one hundred twenty (120) consecutive calendar days after commencing work on PROJECT. It is expressly understood that since time is of the essence in this Agreement, failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for DISTRICT to perform the remaining work and require DEVELOPER's surety to pay to 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 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 provided written notification to DISTRICT of the start of construction. 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; however, DISTRICT's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to staff availability.

In the event DEVELOPER wishes to expedite issuance of a Notice to Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at DEVELOPER's sole cost and expense. DEVELOPER shall furnish appropriate documentation of the individual's credentials and experience to DISTRICT for review and, if appropriate, approval. DISTRICT shall review the individual's qualifications and experience and upon approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act on DISTRICT's behalf on all PROJECT 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 and COUNTY. 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 and COUNTY to work the additional hours. The request shall be submitted to DISTRICT and COUNTY 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 and COUNTY at their sole discretion and shall be final. If permission is

granted by DISTRICT and COUNTY, 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 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 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 COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or COUNTY from enforcement hereof.

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

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

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

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

To DEVELOPER: FORESTAR (USA) REAL ESTATE GROUP INC.
2221 E. Lamar Boulevard, Suite 790
Arlington, TX 76006
Attn: Thomas Burleson, Senior Vice President

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 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 Agreement is the result of negotiations between the Parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this 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 Agreement.

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

18. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and

contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the Parties hereto.

19. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

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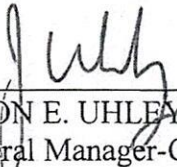
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on

(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

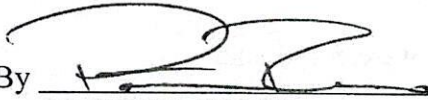
By _____
Deputy

(SEAL)

Cooperative Agreement
Warm Springs Valley – Koon Street Channel
Project No. 7-0-00229
Tract No. 36687R1
01/28/20
RKM:blm

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
PATRICIA ROMO
Director of Transportation

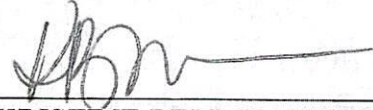
By _____
V. MANUEL PEREZ, Chairman
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By 
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

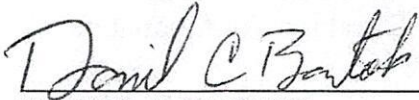
By _____
Deputy

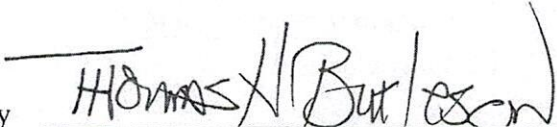
(SEAL)

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01/28/20
RKM:blm

**FORESTAR (USA) REAL ESTATE GROUP
INC.**

a Delaware corporation

By 
DANIEL C. BARTOK
Chief Executive Officer

By 
THOMAS H. BURLESON
Senior Vice President

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Cooperative Agreement
Warm Springs Valley – Koon Street Channel
Project No. 7-0-00229
Tract No. 36687R1
01/28/20
RKM:blm

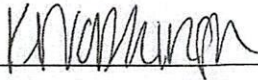
Acknowledgement Form

State of Texas

County of Tarrant

This instrument was acknowledged before me on January 30, 2020 by Daniel C. Bartok, Chief Executive Officer of Forestar (USA) Real Estate Group Inc., a Delaware corporation, on behalf of said corporation.





Kristin Worthington, Notary Public

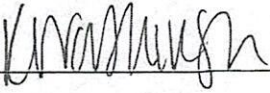
Acknowledgement Form

State of Texas

County of Tarrant

This instrument was acknowledged before me on January 30, 2020 by Thomas H. Burleson, Senior Vice President of Forestar (USA) Real Estate Group Inc., a Delaware corporation, on behalf of said corporation.





Kristin Worthington, Notary Public

Exhibit A

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Riverside, State of California, described as follows:

PARCEL 3 OF PARCEL MAP NO. 15,090, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP, RECORDED IN BOOK 93, PAGES 80, 81 AND 82 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 476-010-036-1

COOPERATIVE AGREEMENT

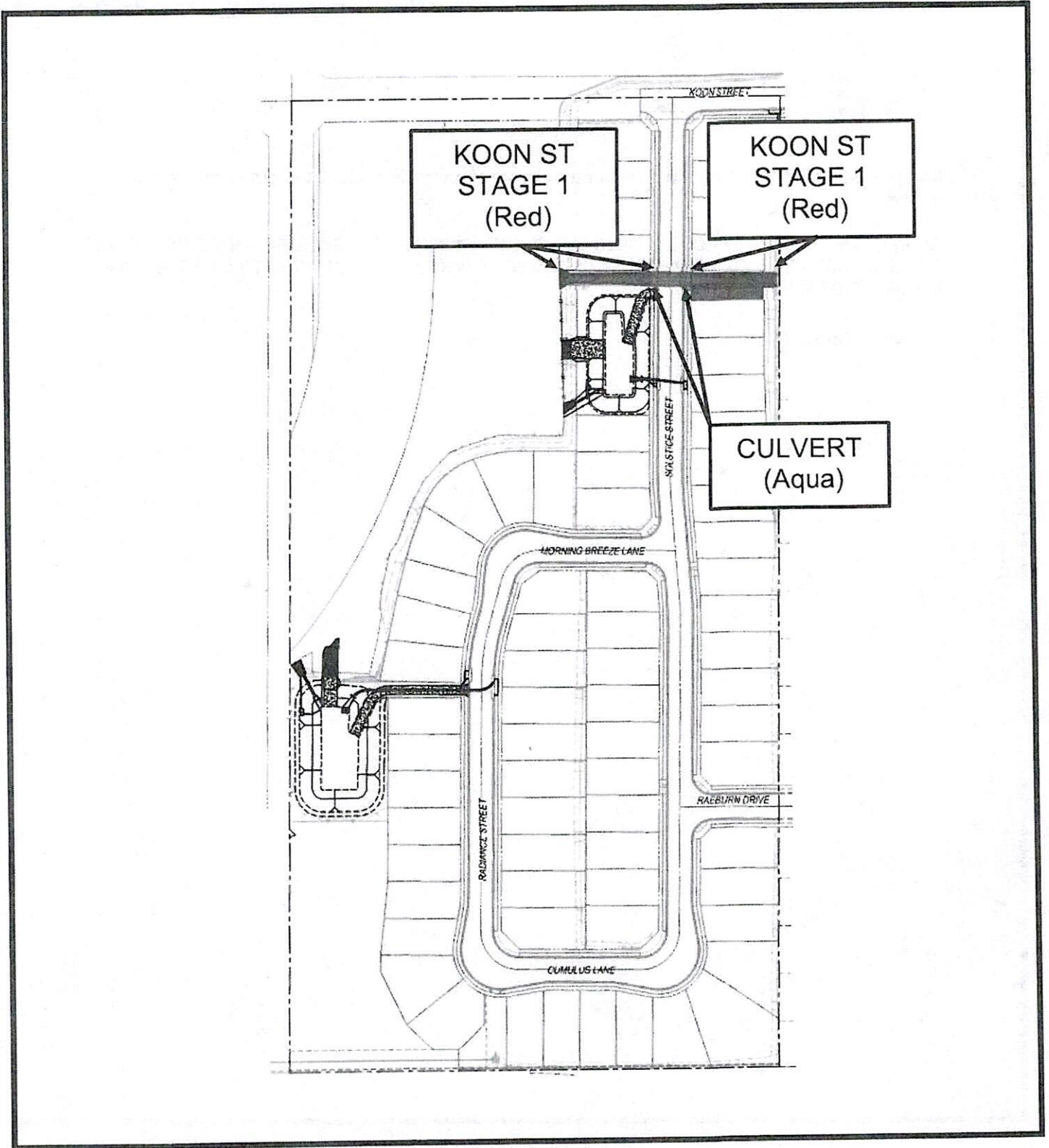
Warm Springs Valley – Koon Street Channel, Stage 1

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Exhibit B



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Exhibit C

DISTRICT's Required Insurance is as follows:

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 coverages during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, 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.

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 as Additional

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Insured. 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 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 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

COOPERATIVE AGREEMENT

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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 the 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 the DISTRICT. 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.

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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 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 the DISTRICT in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT 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

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it has been rendered harmless, by written agreement of the DISTRICT 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 DISTRICT Risk Manager. If the DISTRICT's 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. The 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 DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's 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

COOPERATIVE AGREEMENT

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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 DISTRICT 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 the 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.
- iv. 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,

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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.

- v. 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.
- vi. 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 DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.
- vii. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of contractors and subcontractors working under this Agreement.

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- viii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- ix. 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.

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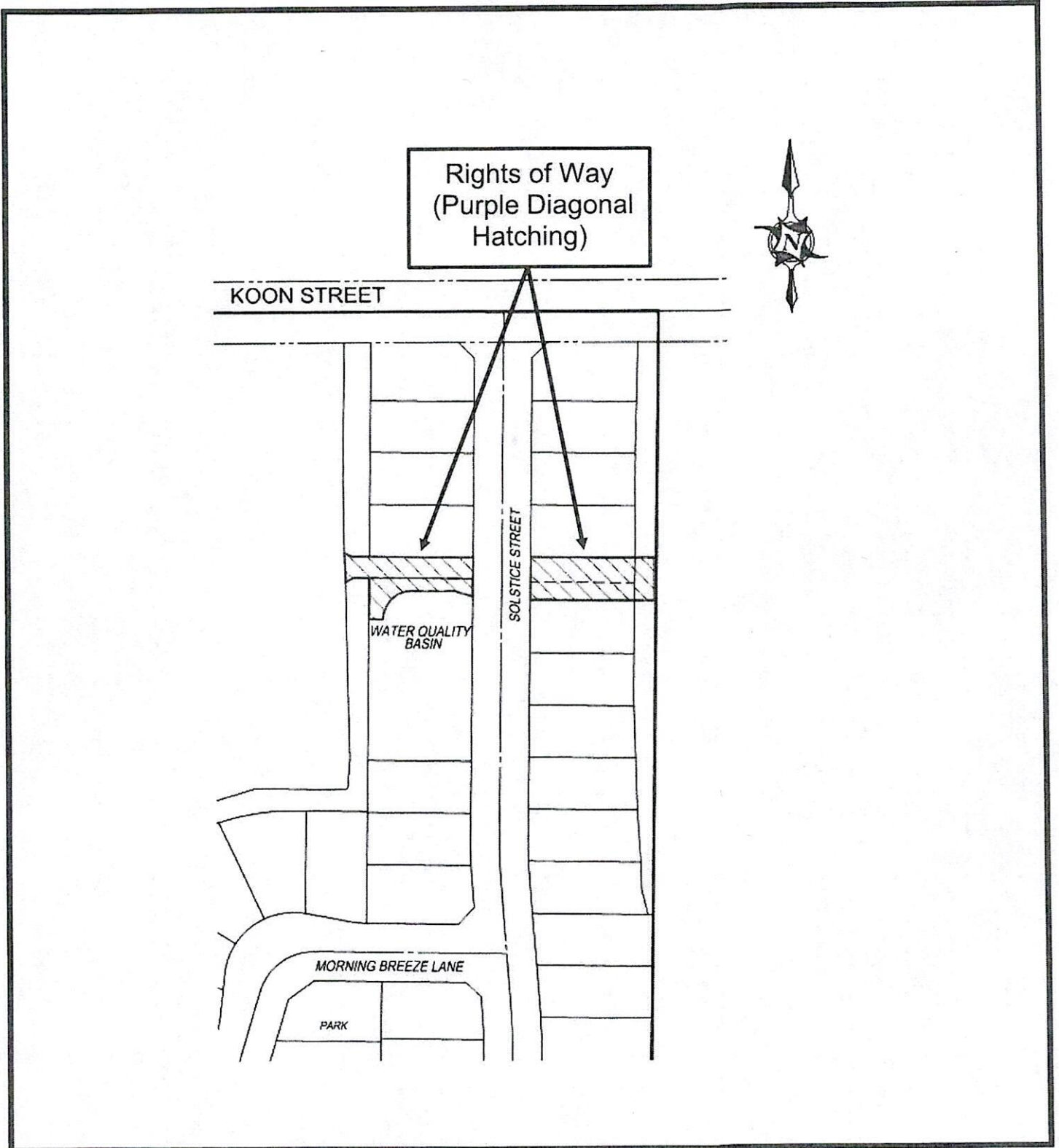
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Exhibit D



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