

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



ITEM: 11.3
(ID # 21250)

MEETING DATE:
Tuesday, March 28, 2023

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District, the City of Banning and Tri Pointe Homes IE-SD, Inc. for Banning MDP Line I-1 – Smith Creek Lateral, Stage 1, Banning MDP Line I-1 – Smith Creek Lateral, Stage 3 and Banning MDP Smith Creek Lateral Basin, Stage 1 (Tract Map No. 37446), Project Nos. 5-0-00094 and 5-0-00095, CEQA Exempt pursuant to State CEQA Guidelines Section 15061(b)(3), District 5. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that execution of the Cooperative Agreement is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), the “Common Sense” exemption;

Continued on Page 2

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 2/22/2023

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: March 28, 2023
xc: Flood

Kimberly A. Rector
Clerk of the Board

By:
Deputy

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OF SUPERVISORS
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RECOMMENDED MOTION: That the Board of Supervisors:

2. Approve the Agreement between the Riverside County Flood Control and Water Conservation District ("District"), the City of Banning ("City") and Tri Pointe Homes IE-SD, Inc. ("Developer");
3. Authorize the General Manager-Chief Engineer or designee to take all necessary steps to implement the Agreement, including, but not limited to, negotiating, approving and executing any non-substantive amendments and any assignment and assumption associated with change of ownership of the property, subject to approval as to form by County Counsel;
4. Authorize the Chair of the District's Board of Supervisors to execute the Agreement documents on behalf of the District; and
5. Direct the Clerk of the Board to return four (4) executed Agreements to the District.

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

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Agreement sets forth the terms and conditions by which certain flood control facilities required as a condition of approval for Tract Map No. 37446 are to be constructed by the Developer and inspected, operated and maintained by the District, City and Developer.

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection and subsequent operation and maintenance of Banning MDP Line I-1 – Smith Creek Lateral, Stage 1, Banning MDP Line I-1 – Smith Creek Lateral, Stage 3 and Banning MDP Smith Creek Lateral Basin, Stage 1 and its associated 18-inch and 30-inch reinforced concrete pipes, riprap outlet structures, stilling basin, spillway, access ramp, v-ditch facilities and safety devices.

Upon completion of construction, the Developer will assume ownership, operation and maintenance of the flood control facilities until the District assumes ownership, operation and maintenance in accordance the terms and conditions as set forth in the Agreement. The City will assume ownership and responsibility for the operation and maintenance of the project's associated catch basins, curbs and gutters, connector pipes, inlets and laterals that are 36

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inches or less in diameter located within City rights of way. The Developer will also retain ownership, operation and maintenance of the interim sediment basin, inlet, orifice plates and a 30-inch corrugated metal pipe located within its rights of way.

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

Environmental Findings

The Agreement is exempt from CEQA pursuant to the State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), which provides, "The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA". The Agreement does not authorize actual physical development of the underlining property to any extent whatsoever. The Agreement merely establishes the terms and conditions under which the District will accept future operation and maintenance (O&M) responsibilities of the facilities identified in the Agreement if and when they are constructed. Such development, if it occurs at all, is subject to separate CEQA review by the lead agency with land use authority over the development prior to construction. As such, execution of this agreement is a separate and distinct project under CEQA from the development of the site therefore it can be seen with certainty that there is no possibility that executing this Agreement will have a significant effect on the environment.

Impact on Residents and Businesses

As noted above, construction of these drainage improvements is a requirement for the development of Tract Map No. 37446. 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 the District maintained storm drain facilities will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

AMR:blm
P8/249227

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



Jason Farin, Principal Management Analyst 3/21/2023



Aaron Gettis, Deputy County Counsel 3/16/2023

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
Banning MDP Smith Creek Lateral Basin, Stage 1
Project Nos. 5-0-00094 and 5-0-00095
Tract Map No. 37446

This Cooperative Agreement ("Agreement"), dated as of March 28, 2023

is entered into by and between, the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Banning, a municipal corporation of the State of California ("CITY") and Tri Pointe Homes IE-SD, Inc., a California corporation ("DEVELOPER"). DISTRICT, CITY, and DEVELOPER individually referred to herein as "Party" and collectively referred to herein as "Parties". The Parties hereto hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the County of Riverside. The legal description of Tract Map No. 37446 is provided in Exhibit "A" attached hereto and made a part hereof; and

B. DEVELOPER has submitted for approval Tract Map No. 37446 related to the property, which is located in the city of Banning. As a condition of approval for Tract Map No. 37446, 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 related to Tract Map No. 37446 are identified in DISTRICT's Banning Master Drainage Plan ("MDP"), as shown on DISTRICT's Drawing No. 5-0244, and as shown in concept on Exhibit "B", attached hereto and made a part hereof and includes the construction of:

- i. Banning MDP Line I-1 - Smith Creek Lateral, Stage 1 ("LINE I-1 STAGE 1"), which is comprised of approximately 850 lineal feet of concrete

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State Office Building, Room 4105, 111
10 E. Washington Street, Chicago, IL 60601

CLERK & COPY

WHEN DOCUMENTS ARE NOT EXECUTED RETURN

- rectangular/trapezoidal channel, transition structures, and riprap outlet structure and access road as shown in concept in "blue" in Exhibit "B". At the downstream terminus, LINE I-1 STAGE 1 will drain to the proposed debris and detention basin. At the upstream terminus, LINE I-1 STAGE 1 terminates with a cut-off wall for future extension;
- ii. Banning MDP Line I-1 - Smith Creek Lateral, Stage 3 ("LINE I-1 STAGE 3"), which is comprised of approximately 180 lineal feet of concrete rectangular/trapezoidal channel, transition structures, and riprap as shown in concept in "green" in Exhibit "B". At the downstream terminus, LINE I-1 STAGE 3 will drain to the proposed debris and detention basin. At the upstream terminus, LINE I-1 STAGE 3 will drain to the CITY's existing rip rap ditch;
 - iii. Banning MDP Smith Creek Lateral Basin, Stage 1 ("DETENTION BASIN"), which is comprised of approximately 5.5 acres of basin, as shown in concept in "grey" on Exhibit "B", approximately 148 lineal feet of 18-inch reinforced concrete pipe with watertight joints, approximately 230 lineal feet of 30-inch reinforced concrete pipe, as shown in concept in "solid black" on Exhibit "B", including its associated riprap outlet structures, stilling basin, spillway, access ramp, and v-ditch; and
 - iv. All safety devices requested by DISTRICT staff during the course of project construction and during any final field inspections, including but not limited to concrete pads, slope protection barriers, signage and fencing ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and

installed by DEVELOPER's contractor, and subject to DISTRICT's inspection and approval.

D. Together, LINE I-1 STAGE 1, LINE I-1 STAGE 3, DETENTION BASIN and SAFETY DEVICES are hereinafter called "DISTRICT DRAINAGE FACILITIES"; and

E. All Parties recognize and acknowledge that DISTRICT DRAINAGE FACILITIES will not become a fully functioning flood control drainage system until such time as the reach at the downstream terminus for the proposed construction of the Banning MDP Line I-1-Smith Creek Lateral, Stage 4 flood facility, is constructed in conjunction with the proposed with development of Atwell Phase 3B. Banning MDP Line I-1-Smith Creek Lateral, Stage 4 is hereinafter called "PROPOSED LINE I-1 STAGE 4"; and

F. PROPOSED LINE I-1 STAGE 4 is to be constructed pursuant to a separate Cooperative Agreement between the DISTRICT, CITY and any new property owner(s). Said Cooperative Agreement is hereinafter called the "LINE I-1 STAGE 4 AGREEMENT". DISTRICT will not accept DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance until the PROPOSED LINE I-1 STAGE 4, is completed pursuant to the LINE I-1 STAGE 4 AGREEMENT and accepted for ownership, operation and maintenance by DISTRICT; and

G. Associated with the construction of DISTRICT DRAINAGE FACILITIES, the required facilities include the construction of certain inlets, connector pipes, curbs and gutters, catch basins, and various lateral storm drains that are thirty-six inches (36") or less in diameter within CITY right of way ("CITY FACILITIES"); and

H. Associated with the construction of DISTRICT DRAINAGE FACILITIES and CITY FACILITIES includes the construction of approximately 100 lineal feet of 30-inch corrugated metal pipe, interim sediment basin, inlet, orifice plates, slopes, v-ditches, tubular

fencings, and concrete spillway ("DEVELOPER FACILITIES"). DEVELOPER FACILITIES are to be initially owned, operated, and maintained by DEVELOPER and subsequently owned and maintained by the Homeowners' Association ("HOA") for Tract Map No. 37446. In the event DEVELOPER does not transfer ownership, operation and maintenance to the HOA or DEVELOPER dissolves before the transfer to the HOA, maintenance of DEVELOPER FACILITIES will become the responsibility of CITY. In the event maintenance of DEVELOPER FACILITIES becomes the responsibility of CITY, CITY may form a Community Facilities District to help fund the maintenance of DEVELOPER FACILITIES identified on DISTRICT's Drawing No. 5-0244. DEVELOPER intends to enter into a separate License Agreement ("LICENSE AGREEMENT") with DISTRICT setting forth the particular provisions under which DEVELOPER will operate and maintain certain drainage ditches, slopes, etc. adjacent to DISTRICT DRAINAGE FACILITIES and within DISTRICT's right of way; and

I. Together, DISTRICT DRAINAGE FACILITIES, CITY FACILITIES and DEVELOPER FACILITIES are hereinafter called "PROJECT"; and

J. DEVELOPER and CITY desire DISTRICT to ultimately accept ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES; and

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

L. DISTRICT is willing to ultimately accept ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, provided DEVELOPER does all of the following: (a) complies with this Agreement, (b) prepares PROJECT plans in accordance with DISTRICT and CITY approved plans and specifications and this Agreement, (c) constructs PROJECT in accordance with DISTRICT and CITY approved

plans and specifications and this Agreement, (d) obtains and conveys to DISTRICT and CITY the necessary rights of way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES and CITY FACILITIES, and (e) 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 DRAINAGE FACILITIES and CITY accepts ownership and responsibility for the operation and maintenance of CITY FACILITIES; and

M. CITY is willing to (i) review and approve, in conjunction with DISTRICT, DEVELOPER's plans and specifications for PROJECT, (ii) accept and hold faithful performance and payment bonds submitted by DEVELOPER on behalf of DISTRICT for DISTRICT DRAINAGE FACILITIES; (iii) grant DISTRICT the right to inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way, (iv) inspect the construction of PROJECT, (v) convey to DISTRICT the necessary rights of way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and (vi) accept ownership and responsibility for the operation and maintenance of CITY FACILITIES, provided PROJECT is constructed in accordance with plans and specifications approved by DISTRICT and CITY; and

N. DEVELOPER shall assume ownership, operation, and maintenance responsibilities of DISTRICT DRAINAGE FACILITIES on an interim basis as set forth herein, with the recognition and understanding that the actual acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance responsibilities by DISTRICT is entirely dependent on all contingencies being met in accordance with Section I.24 of this Agreement.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I

DEVELOPER shall:

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

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

3. By execution of this Agreement, grant DISTRICT and CITY, the right to enter upon DEVELOPER's property where necessary and convenient for the purpose of gaining access to and performing inspection services for the construction of PROJECT as set forth herein.

4. Upon execution of this Agreement or not less than twenty (20) calendar days prior to recordation of the final map for Tract Map No. 37446 as set forth in Section II.4, or any phase thereof, whichever occurs first, provide CITY with faithful performance and payment bonds in accordance with the CITY's municipal code ordinance, including any amendments thereto, for the estimated cost of construction of (i) DISTRICT DRAINAGE FACILITIES as determined by DISTRICT and (ii) of CITY FACILITIES as determined by CITY. The surety,

amount and form of the bonds, shall list CITY as an obligee and shall be subject to approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as complete and CITY FACILITIES are accepted by CITY as complete. Both bonds shall be subscribed by an Admitted Surety Insurer, which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, DEVELOPER shall furnish a new bond within ten (10) calendar days after receiving notice from CITY.

5. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, deposit with DISTRICT (Attention: Business Office – Accounts Receivable), and notify Contract Services Section, the estimated cost of DISTRICT providing construction inspection for DISTRICT DRAINAGE FACILITIES and CITY FACILITIES, in an amount as determined and approved by DISTRICT in accordance with the County of Riverside Ordinance Nos. 671 and 749, including any amendments thereto, based upon the bonded value of DISTRICT DRAINAGE FACILITIES and CITY FACILITIES.

6. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section), with a complete list of all contractors and subcontractors to be performing work on PROJECT, including the corresponding license number and license classification of each. At such time, DEVELOPER shall further identify in writing its designated superintendent for PROJECT construction.

7. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section), with a construction schedule which shall show the order and dates in which DEVELOPER or DEVELOPER's contractor proposes to carry out the various parts of work, including estimated start and completion dates. As

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

8. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section), with a confined space entry procedure specific to PROJECT. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space and District Confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and CITY's approval.

9. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT (Attention: Contract Services Section) and CITY. At minimum, the procured insurance coverages should adhere to the DISTRICT's required insurance provided in Exhibit "C", attached hereto and made a part hereof. DEVELOPER shall not commence operations until DISTRICT (Attention: Contract Services Section) and CITY have 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. 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 DRAINAGE FACILITIES, either in whole or in part, for said breach of this Agreement.

10. Upon DISTRICT and CITY approval of IMPROVEMENT PLANS, or not less than twenty (20) calendar days prior to recordation of the final map for Tract Map No. 37446 or any phase thereof, whichever occurs first, furnish DISTRICT (Attention: Plan Check Section) and CITY with sufficient evidence of DEVELOPER securing such necessary licenses, agreements, permits, approvals, rights of way, rights of entry, and temporary construction easements, as may be needed for the construction, inspection, operation and maintenance of PROJECT as determined and approved by DISTRICT and CITY.

11. Upon DISTRICT and CITY approval of IMPROVEMENT PLANS and prior to the start on any portion of PROJECT construction, obtain and provide DISTRICT (Attention: Plan Check 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 DRAINAGE 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(ies) described in the Irrevocable Offer(s).

12. Upon submitting the Irrevocable Offer(s) of Dedication as set forth in Section I.11., furnish DISTRICT (Attention: Plan Check Section), with Preliminary Title Reports dated not more than thirty (30) calendar days prior to date of submission of all the property(ies) described in the Irrevocable Offer(s) of Dedication.

13. Prior to the start on any portion of PROJECT construction, furnish DISTRICT (Attention: Plan Check Section) and CITY each with a set of final mylar PROJECT plans and assign their ownership to DISTRICT and CITY, respectively.

14. After receiving DISTRICT's plan check, right of way and administrative clearance for PROJECT as set forth in Sections I.4 through I.13., notify DISTRICT (Attention:

Construction Management Section) and CITY with twenty (20) calendar days written notice of intent to start of construction of PROJECT, and include PROJECT's geotechnical firm, concrete lab/test firm, D-Load test forms, trench shoring/false work calculations and concrete mix designs for DISTRICT's review and approval. 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. DISTRICT reserves the right to withhold issuance of the Notice to Proceed in accordance with Section IV.4.

15. Prior to commencing construction, and at its sole cost and expense, obtain and furnish DISTRICT (Attention: Plan Check Section) and CITY with copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such documents include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

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

17. 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.

18. Upon receipt of DISTRICT's written Notice to Proceed, construct or cause to be constructed, PROJECT at DEVELOPER's sole cost and expense, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

19. 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 request that (i) DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES, and (ii) CITY conduct a final inspection of CITY FACILITIES.

20. Upon completion of PROJECT construction, and upon acceptance by CITY of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation, and maintenance, convey, or cause to be conveyed to CITY the flood control easement(s) including ingress and egress, in a form approved by DISTRICT, to the rights of way as shown in concept on Exhibit "D", attached hereto and made a part hereof. The easement(s) or grant deed(s) shall be in a form approved by both DISTRICT and CITY and shall be executed by all legal and equitable owners of the property(ies) described in the easement(s) or grant deed(s).

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

22. Prior to conveying the rights of way deemed necessary by DISTRICT and CITY, grant unobstructed access easement(s) to the DISTRICT and CITY, including ingress and

gress, for the rights of way across the DETENTION BASIN. In the event of any modifications needed for utilities or appurtenant works that would potentially obstruct the DISTRICT's and CITY's access, provide DISTRICT and CITY with five (5) days written notice of its inability to enter upon property temporarily or permanently, and provide an alternate access point for the DISTRICT's and CITY's operation and maintenance of its referenced facilities.

23. Upon completion of PROJECT construction, accept ownership, sole responsibility and all liability whatsoever for the ownership, operation and maintenance of DEVELOPER FACILITIES until such time as the HOA for Tract Map No. 37446 accepts ownership and responsibility for the operation and maintenance of DEVELOPER FACILITIES. Additionally, DEVELOPER shall accept ownership, sole responsibility and all liability whatsoever for the operation and maintenance of DISTRICT DRAINAGE FACILITIES until such time as DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT DRAINAGE FACILITIES in accordance with Recital N and Section I.24 of this Agreement, and (ii) CITY accepts ownership and responsibility for operation and maintenance of CITY FACILITIES. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITIES are not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER. DEVELOPER shall continue to be responsible to own, operate and maintain DEVELOPER FACILITIES.

24. Accept sole ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES until such time as; (i) the construction of PROPOSED LINE I-1 STAGE 4 is complete and constructed in accordance with plans and specifications approved by DISTRICT pursuant to the LINE I-1 STAGE 4 AGREEMENT; (ii) DISTRICT's sole determination that PROPOSED LINE I-1 STAGE 4 is in a satisfactorily maintained condition; (iii) PROPOSED LINE I-1 STAGE 4 is fully functioning as a flood control

drainage system as solely determined by DISTRICT; (iv) DISTRICT accepts ownership and responsibility for the operation and maintenance of PROPOSED LINE I-1 STAGE 4, (v) DISTRICT DRAINAGE FACILITIES are constructed in accordance with plans and specifications approved by DISTRICT and this Agreement; (vi) DISTRICT's sole determination that DISTRICT DRAINAGE FACILITIES are in a satisfactorily maintained condition, (vii) DISTRICT DRAINAGE FACILITIES are fully functioning as a flood control drainage system as solely determined by the DISTRICT.

25. Upon completion of PROJECT construction but prior to DISTRICT acceptance of DISTRICT DRAINAGE 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 (Attention: Construction Management Section) with (i) soil compaction report(s) - stamped and wet signed by the geotechnical engineer, (ii) concrete testing report(s) - stamped and wet signed by the civil engineer of record and (iii) a redlined "record drawings" copy of IMPROVEMENT PLANS. After DISTRICT approval of the redlined "record drawings", DEVELOPER's engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office; after which, the engineer shall review, stamp and sign the original IMPROVEMENT PLANS as "record drawings".

26. Prior to acceptance of DISTRICT DRAINAGE FACILITIES, obtain the necessary permits, approvals or agreements as may be required by any federal, state or local resource and/or regulatory agency for the continuing operation and maintenance of the DISTRICT FACILITIES ("ONGOING REGULATORY PERMITS"). Upon completion of construction, DISTRICT DRAINAGE FACILITIES may be considered jurisdictional or may otherwise require regulatory approvals and therefore may require ONGOING REGULATORY PERMITS in order

to be maintained. ONGOING REGULATORY PERMITS 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. The DISTRICT will not accept DISTRICT DRAINAGE FACILITIES until all required regulatory permits have been issued and transferred to the DISTRICT.

27. 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.

28. 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.

SECTION II

DISTRICT shall:

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

2. Provide CITY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT's final approval.

3. Upon execution of this 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.11.

5. Endeavor to issue DEVELOPER a Notice to Proceed within twenty (20) calendar days of receipt of DEVELOPER's complete written notice as set forth in Section I.14.; however, DISTRICT's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to staff availability

6. Reserves the right to withhold issuance of the Notice to Proceed pursuant to Section IV.4.

7. Inspect construction of DISTRICT DRAINAGE FACILITIES.

8. Keep an accurate accounting and submit periodic invoices to DEVELOPER of all DISTRICT costs associated (i) with the review and approval of IMPROVEMENT PLANS, (ii) the review and approval of right of way and conveyance documents, and (iii) the processing and administration of this Agreement.

9. Keep an accurate accounting of all DISTRICT construction inspection costs and within forty-five (45) calendar days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit as set forth in Section I.5. exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) calendar days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete.

10. Upon (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "record drawing" of DISTRICT DRAINAGE FACILITIES plans as set forth in Section I.25, provide DEVELOPER with a reproducible duplicate copy of "record drawings" of IMPROVEMENT PLANS.

11. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon; (i) DISTRICT inspection of DISTRICT DRAINAGE FACILITIES in accordance with Section I.19., (ii) DISTRICT acceptance of PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT PLANS, as set forth in Section I.25., (iv) recordation of all conveyance documents described in Section I.20., and (v) all contingencies being met in accordance with Section I.24 of this Agreement.

12. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITIES is not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

13. Upon both of the following: (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "record drawing" of DISTRICT DRAINAGE FACILITIES plans as set forth in Section I.25., provide CITY with (i) a reproducible duplicate copy of "record drawings" of constructed DISTRICT DRAINAGE FACILITIES, (ii) a written notice that PROJECT is complete, and (iii) request CITY to release bonds held for DISTRICT DRAINAGE FACILITIES and CITY FACILITIES.

SECTION III

CITY shall:

1. Review IMPROVEMENT PLANS and approve when CITY has determined that such plans meet CITY standards and are found acceptable to CITY prior to the start of PROJECT construction. CITY shall not request any modifications on the IMPROVEMENT PLANS without prior DISTRICT approval.

2. Accept CITY and DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER, in accordance with the CITY's municipal code or ordinance,

including any amendments thereto, for the estimated cost for construction of DISTRICT DRAINAGE FACILITIES as determined by DISTRICT and of CITY FACILITIES as determined by CITY. The surety, amount and form of the bonds, shall list CITY as an obligee and shall be subject to approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as complete and CITY FACILITIES are accepted by the CITY as complete. Both bonds shall be subscribed by an Admitted Surety Insurer, which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, DEVELOPER shall furnish a new bond within ten (10) calendar days after receiving notice from CITY. CITY shall not release said bonds until DISTRICT provides CITY with a reproducible duplicate copy of "record drawings" and written notification as set forth in Section II.13.

3. Request DEVELOPER to update the construction schedule, as deemed necessary.

4. By execution of this Agreement, grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way.

5. By execution of this Agreement, consent to the recording of any Irrevocable Offer(s) of Dedication furnished by DEVELOPER.

6. 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 DRAINAGE FACILITIES, and convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES.

7. Inspect PROJECT construction.
8. Keep an accurate accounting and submit periodic invoices to DEVELOPER of all CITY costs associated with (i) the review and approval of IMPROVEMENT PLANS, (ii) the review and approval of right of way and conveyance documents, and (iii) the processing and administration of this Agreement.
9. Keep an accurate accounting of all CITY construction inspection costs and within forty-five (45) calendar days after CITY acceptance of CITY FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit as set forth in Section I.5. exceeds such inspection costs, CITY shall reimburse DEVELOPER the excess amount within sixty (60) calendar days after CITY acceptance of CITY FACILITIES as being complete.
10. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT the flood control easement(s) including ingress and egress, to the rights of way as shown on Exhibit "D".
11. Accept ownership and sole responsibility for the operation and maintenance of CITY FACILITIES upon (i) CITY's final inspection of CITY FACILITIES, and (ii) CITY's sole determination that CITY FACILITIES are in a satisfactorily maintained condition.
12. Upon DISTRICT and CITY acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of DISTRICT DRAINAGE FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed by CITY at no cost to DISTRICT.

SECTION IV

It is further mutually agreed:

1. DISTRICT may withhold acceptance for ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES unless and until DEVELOPER performs all obligations under this Agreement. CITY may withhold acceptance for ownership and sole responsibility for the operation and maintenance of CITY FACILITIES unless and until DEVELOPER performs all obligations under this Agreement.

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

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

4. If DEVELOPER fails to commence construction of PROJECT within twenty-four (24) consecutive months after execution of this Agreement, then DISTRICT reserves the right to withhold issuance of the Notice to Proceed after this period of time pending a review of the existing site conditions as they exist at the time DEVELOPER provides written notification to DISTRICT of the start of construction as set forth in Section I.14. In the event of a change in the existing site conditions that materially affects PROJECT function, DISTRICT's ability to operate and maintain DISTRICT DRAINAGE FACILITIES, or CITY's ability to operate and maintain CITY FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT and CITY.

5. DEVELOPER shall complete construction of PROJECT within twelve (12) months after commencement of construction of PROJECT, unless CITY and DISTRICT agree to extend the time to complete construction. Failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for (i) DISTRICT to terminate the Agreement and (ii) CITY to perform, or cause to perform, the remaining work on the PROJECT and require DEVELOPER's surety to pay to CITY the penal sum of any and all bonds. Should CITY perform the remaining work on the PROJECT under this section, DEVELOPER grants to CITY and CITY's officers, deputies, employees, agents, representatives, contractors and other designees the irrevocable permission to enter upon the Tract Map No. 37446 to complete construction and remaining work on PROJECT. This right of entry shall terminate when such construction and remaining work is complete. CITY shall subsequently reimburse DISTRICT from the funds paid by DEVELOPER's surety for any DISTRICT costs incurred.

6. 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 DISTRICT DRAINAGE FACILITIES construction and quality control matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section I.5. 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) calendar 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 CITY. If DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or on DISTRICT or CITY designated legal holidays, DEVELOPER shall make a written request for permission from DISTRICT and CITY to work the additional hours. The request shall be submitted to DISTRICT and CITY 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 CITY at their sole discretion and shall be final. If permission is granted by DISTRICT and CITY, 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 County of Riverside Ordinance Nos. 671 and 749, including any amendments thereto.

8. DEVELOPER shall indemnify, defend, and hold harmless, and require DEVELOPER's construction contractor(s) to indemnify, defend and hold harmless, the DISTRICT, the County of Riverside, CITY (including each of their respective Agencies, Districts, Special Districts and Departments and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, contractors, agents and representatives) (individually and collectively hereinafter referred to as "Indemnitees") from any liability, action, claim or damage whatsoever, based or asserted upon any acts, omissions, or services of DEVELOPER and/or DEVELOPER's construction contractor(s) (including their officers, employees, subcontractors, agents or representatives) (collectively "Indemnitors") arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. DEVELOPER or DEVELOPER's

construction contractor(s) shall defend, at its sole expense, the Indemnitees, including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such alleged acts or omissions. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of the Agreement.

9. With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of its own choice and may adjust, settle, compromise any such claim only with prior consent of DISTRICT, the County of Riverside and CITY. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe DEVELOPER's indemnification obligations to Indemnitees as set forth herein. No settlement on behalf of CITY that would impose construction, maintenance or other obligations on CITY beyond those described in this Agreement shall be effective unless, and until, the settlement agreement is agreed to in writing by the City Manager on behalf of CITY.

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

11. The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPER or DEVELOPER's construction contractor(s) obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

12. 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 or DEVELOPER's construction contractor(s) from indemnifying Indemnitees to the fullest extent allowed by law.

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

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

15. 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 CITY: CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220
Attn: Kevin Sin

To DEVELOPER: TRI POINTE HOMES IE-SD., INC.
1250 Corona Pointe Court, Ste. 600
Corona, CA 92879
Attn: Michael Heishman

16. 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.

17. 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.

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

19. The provisions of this Agreement are solely for the benefit of the Parties, and not for the benefit of any third party. Accordingly, no third party shall have any right or action based on the provisions of this Agreement.

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

21. No Party shall assign this Agreement without the written consent of all other Parties. Any attempt to delegate or assign any interest herein without written consent of all other Parties shall be deemed void and of no effect.

22. In the event DEVELOPER sells Tract Map No. 37446, DEVELOPER shall notify DISTRICT and CITY of any such transfer or assignment in writing no later than thirty (30) calendar days from the date of the sale. DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties in this Agreement until DISTRICT, CITY, DEVELOPER and the new owner(s) of Tract Map No. 37446 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations hereunder to the new owner(s) of Tract Map No. 37446.

23. 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.

24. 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.

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

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

3/28/23

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By J. Uhley
JASON E. UHLEY
General Manager-Chief Engineer

By Karen S. Spiegel
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

COUNTY COUNSEL

KIMBERLY RECTOR
Clerk of the Board

By Sarah K. Moore
SARAH K. MOORE
Deputy County Counsel

By Kimberly Rector
Deputy

(SEAL)

[Signed in Counterpart]

Cooperative Agreement:

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

AMR:rlp

12/28/22

1911

Am. ...
Kearney

1911



1911

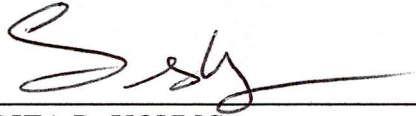
RECOMMENDED FOR APPROVAL:

CITY OF BANNING

By  _____
ALBERTO SANCHEZ
Mayor

APPROVED AS TO FORM:

ATTEST:

By  _____
SERITA R. YOUNG
City Attorney

By  _____
CAROLINE PATTON
Deputy City Clerk



(SEAL)

Cooperative Agreement:
Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
Banning MDP Smith Creek Lateral Basin, Stage 1
Project Nos. 5-0-00094 and 5-0-00095
Tract Map No. 37446
AMR:rlp
12/28/22

THE UNIVERSITY OF THE SOUTH PACIFIC
SCHOOL OF DISTANCE EDUCATION
SUVA, FIJI



DEPARTMENT OF EDUCATION
SUVA, FIJI

THE UNIVERSITY OF THE SOUTH PACIFIC
SCHOOL OF DISTANCE EDUCATION
SUVA, FIJI

TRI POINTE HOMES IE-SD, INC.,
a California corporation

By 
MICHAEL C. TAYLOR
Division President – Inland Empire

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Cooperative Agreement:

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

AMR:rlp

12/28/22

ACKNOWLEDGMENT

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 January 9, 2023 before me, Loretta Saginario-Ballou, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature Loretta Saginario-Ballou (Seal)

EXHIBIT A

LEGAL DESCRIPTION

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

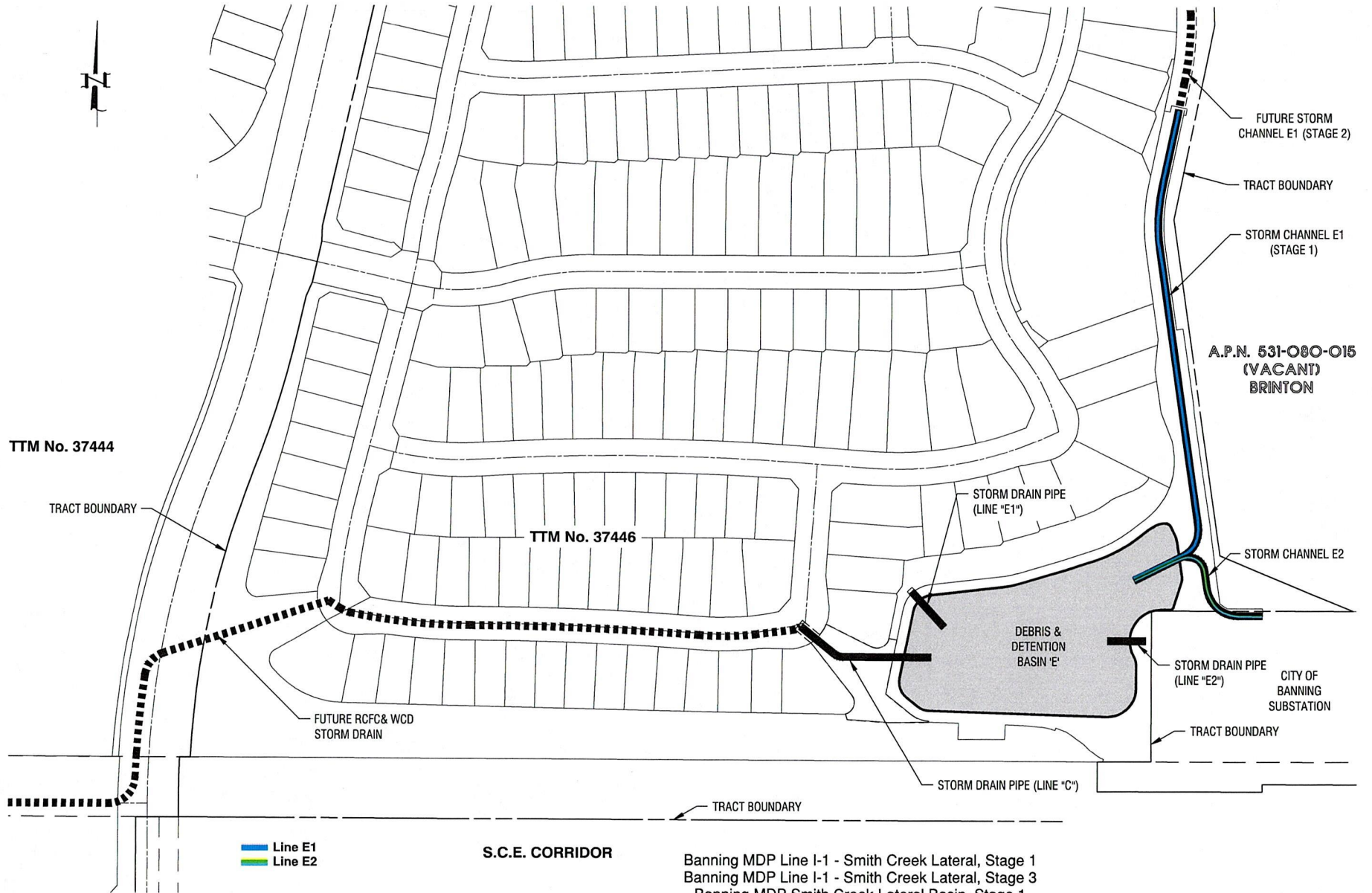
LOTS 17 THROUGH 19, 21 THROUGH 23, 40 THROUGH 42, 46 AND LETTERED LOTS D, F, Q AND S OF TRACT NO. 35967, AS SHOWN BY MAP ON FILE IN [BOOK 474, PAGES 1 THROUGH 14](#) OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 408-580-031 THROUGH 408-580-036
408-580-040 THROUGH 408-580-042
408-580-045 THROUGH 408-580-047
408-580-049 THROUGH 408-580-052
408-580-061

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
Banning MDP Smith Creek Lateral Basin, Stage 1
Project Nos. 5-0-00094 and 5-0-00095
Tract Map No. 37446

EXHIBIT B



Line E1
Line E2

S.C.E. CORRIDOR

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
Banning MDP Smith Creek Lateral Basin, Stage 1
Project Nos. 5-0-00094 and 5-0-00095
Tract Map No. 37446

EXHIBIT C

DISTRICT's Insurance Requirements 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 coverage's 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 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.

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

Page 1 of 5

C. Vehicle Liability:

If DEVELOPER's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT 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 \$1,000,000 per occurrence and \$2,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

Page 2 of 5

- E. General Insurance Provisions – All Lines:
- a. 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.
 - b. 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 related investigations, claims administration, and defense costs and expenses.
 - c. 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.

- d. 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.
- e. 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.
- f. 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

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

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required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.

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

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

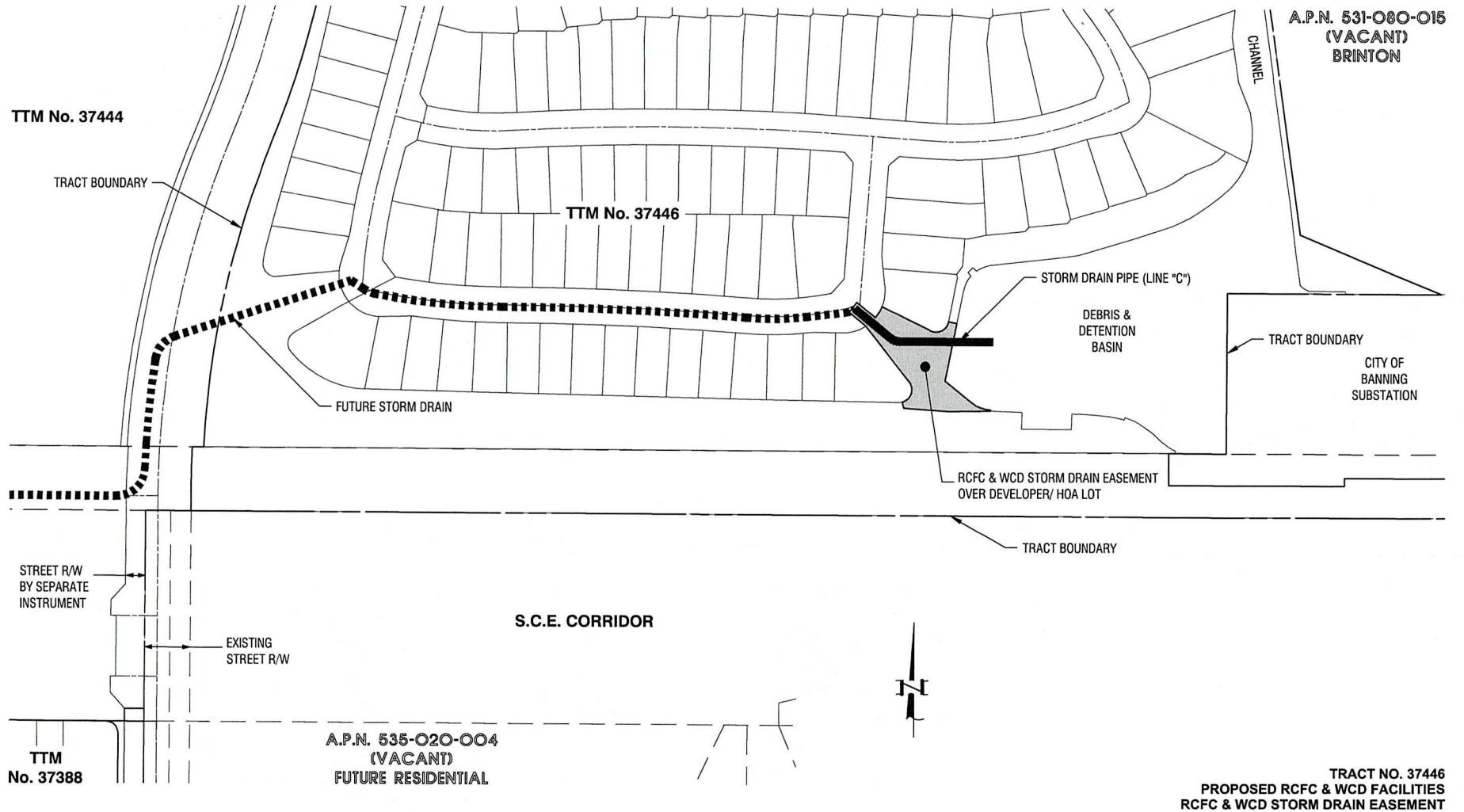
Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

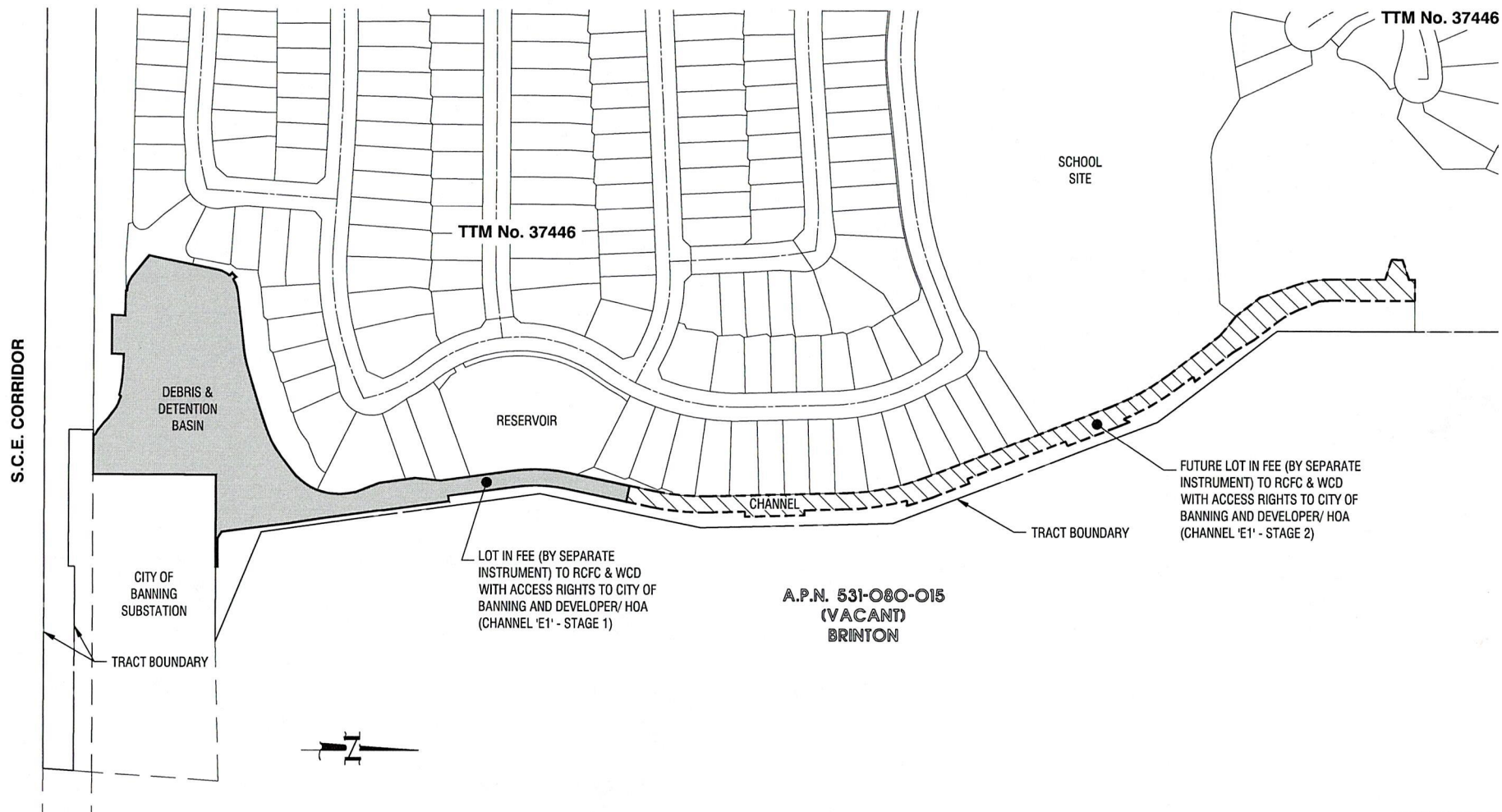
Page 5 of 5

EXHIBIT D



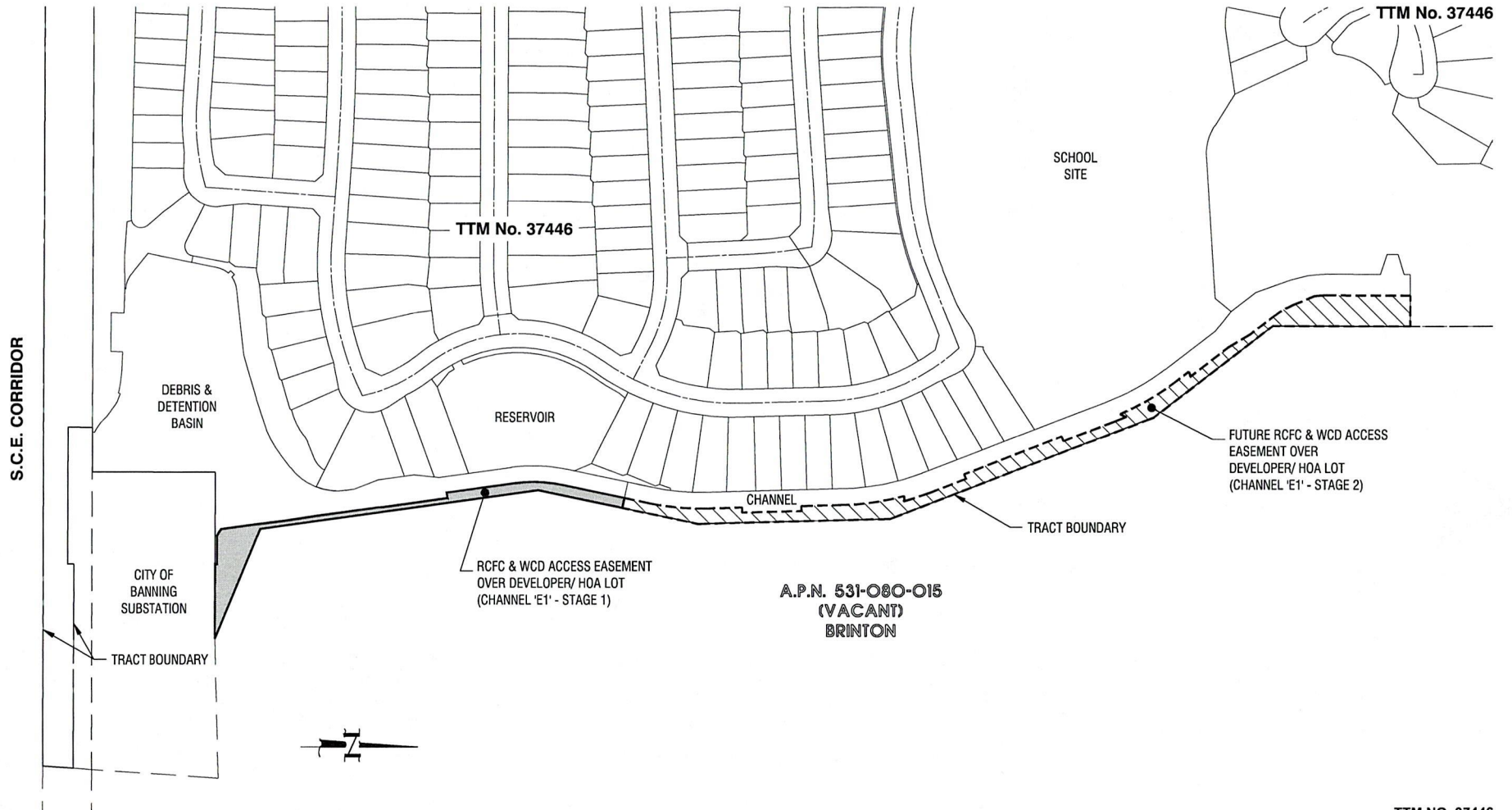
TRACT NO. 37446
 PROPOSED RCFC & WCD FACILITIES
 RCFC & WCD STORM DRAIN EASEMENT

EXHIBIT D



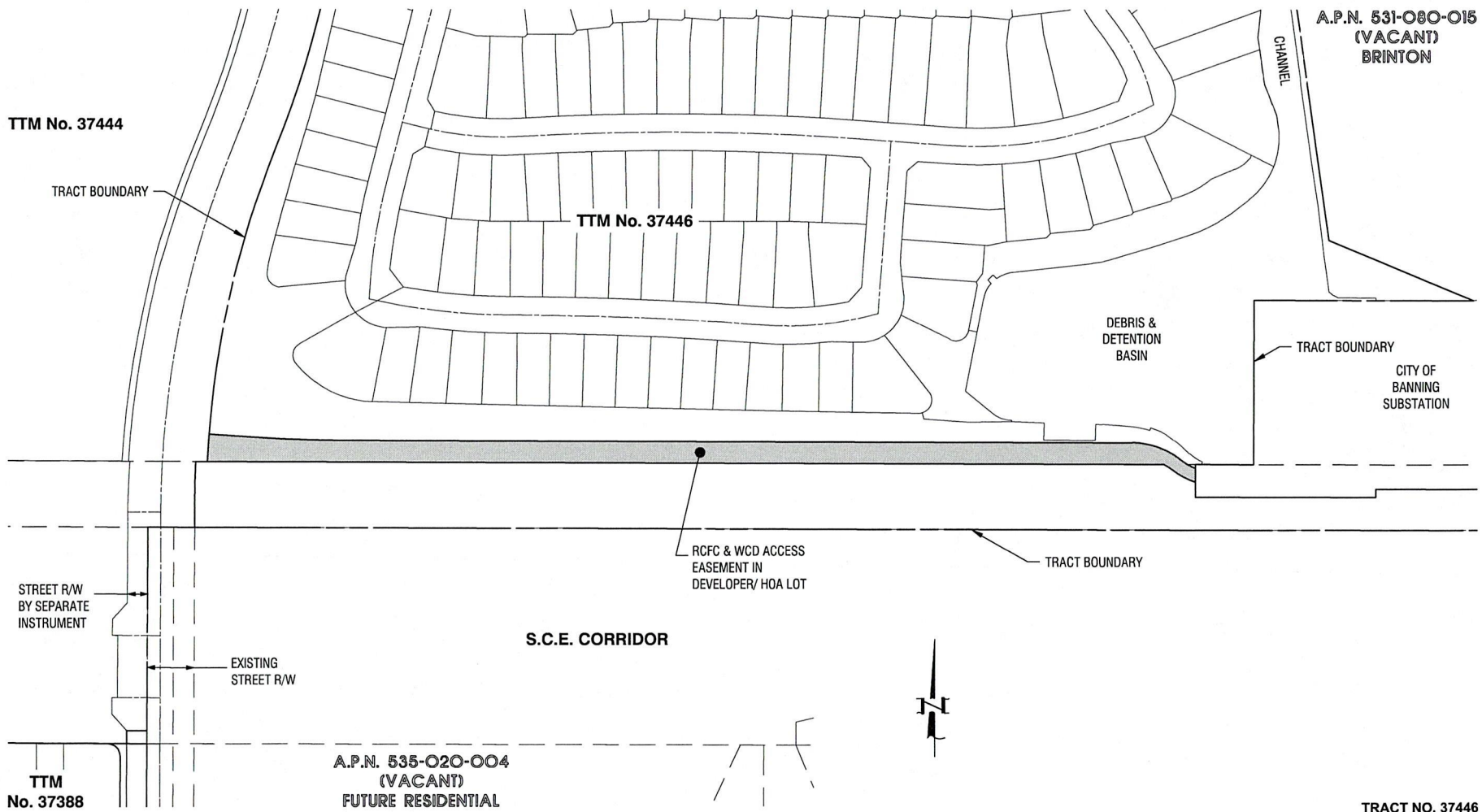
TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD FEE LOT FOR BASIN/ CHANNEL

EXHIBIT D



TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD ACCESS EASEMENT

EXHIBIT D



TRACT NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD ACCESS EASEMENT (DEVELOPER/ HOA LOT)

EXHIBIT D

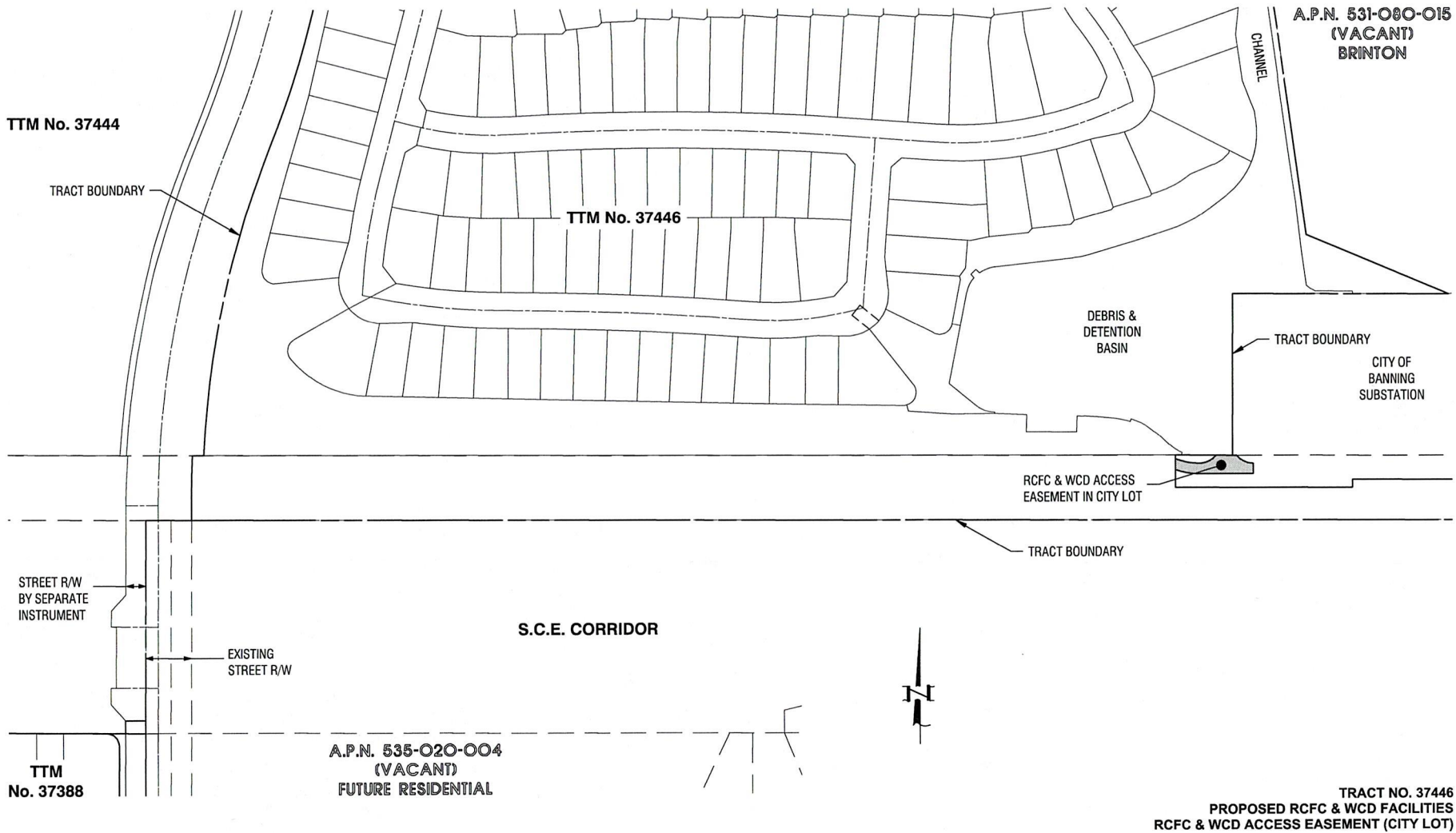
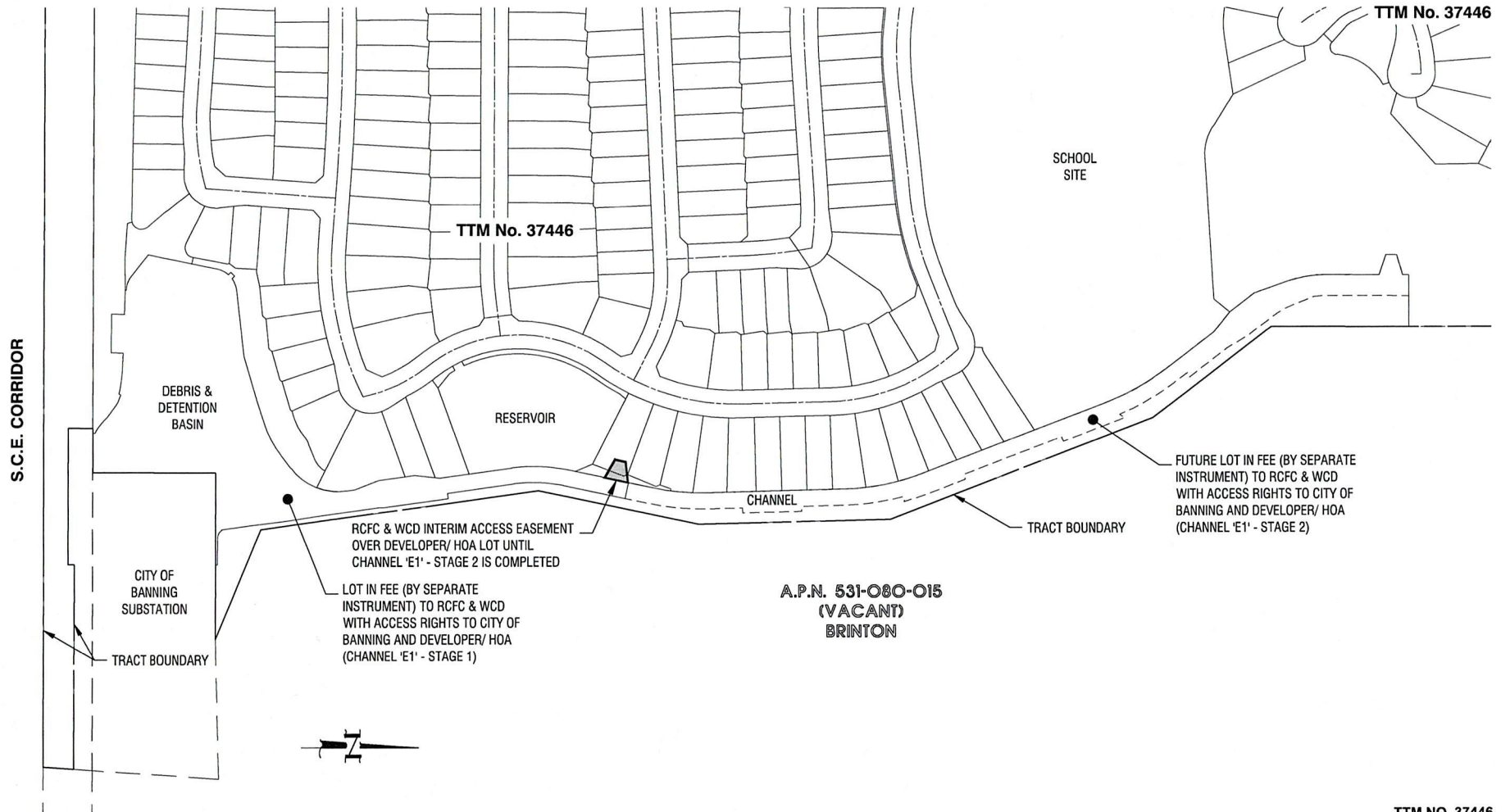


EXHIBIT D



TTM No. 37446

TTM No. 37446

SCHOOL SITE

DEBRIS & DETENTION BASIN

RESERVOIR

CHANNEL

TRACT BOUNDARY

FUTURE LOT IN FEE (BY SEPARATE INSTRUMENT) TO RCFC & WCD WITH ACCESS RIGHTS TO CITY OF BANNING AND DEVELOPER/ HOA (CHANNEL 'E1' - STAGE 2)

RCFC & WCD INTERIM ACCESS EASEMENT OVER DEVELOPER/ HOA LOT UNTIL CHANNEL 'E1' - STAGE 2 IS COMPLETED

LOT IN FEE (BY SEPARATE INSTRUMENT) TO RCFC & WCD WITH ACCESS RIGHTS TO CITY OF BANNING AND DEVELOPER/ HOA (CHANNEL 'E1' - STAGE 1)

A.P.N. 531-080-015
(VACANT)
BRINTON

CITY OF BANNING SUBSTATION

TRACT BOUNDARY

TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD INTERIM ACCESS EASEMENT

EXHIBIT D

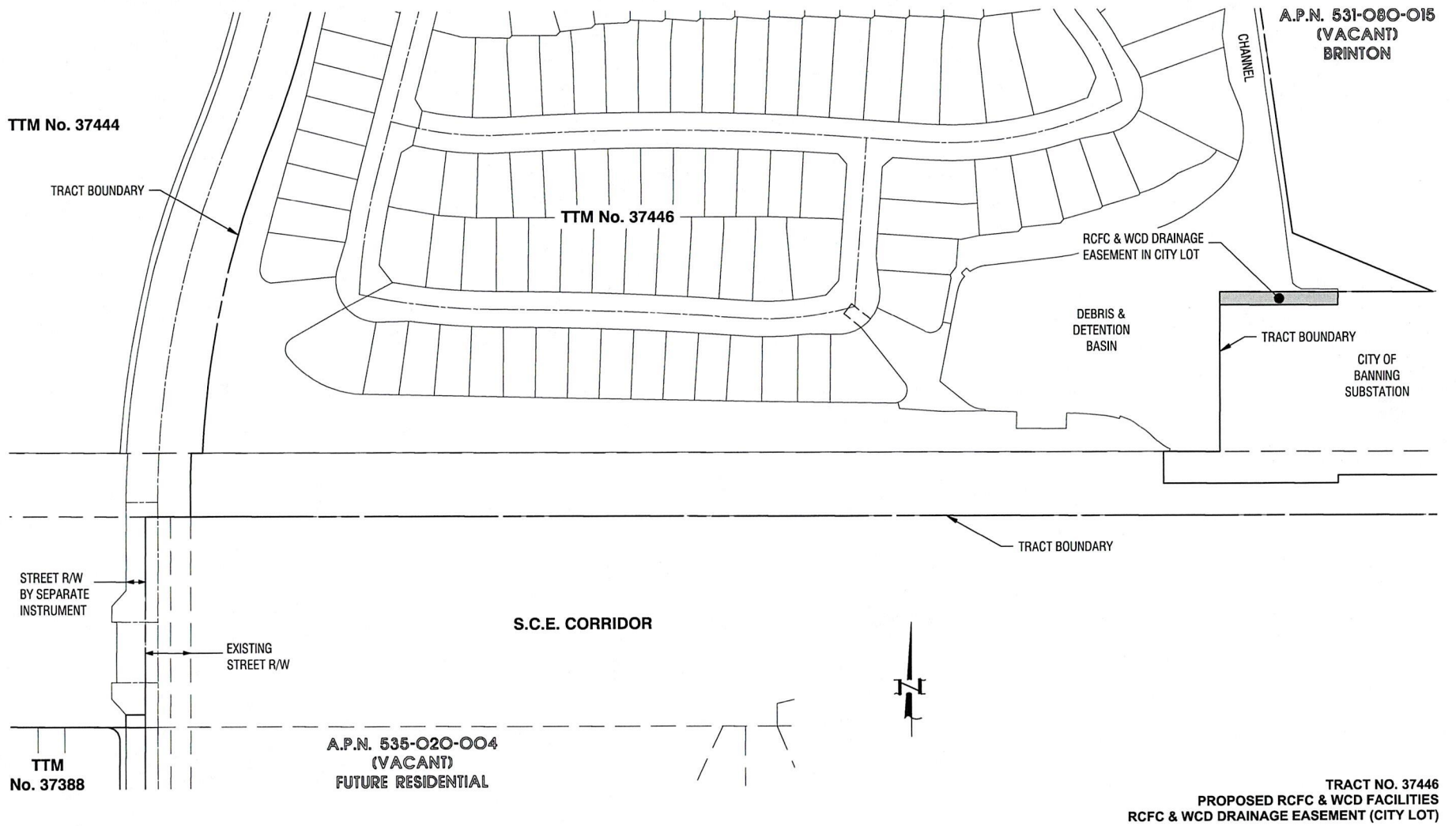
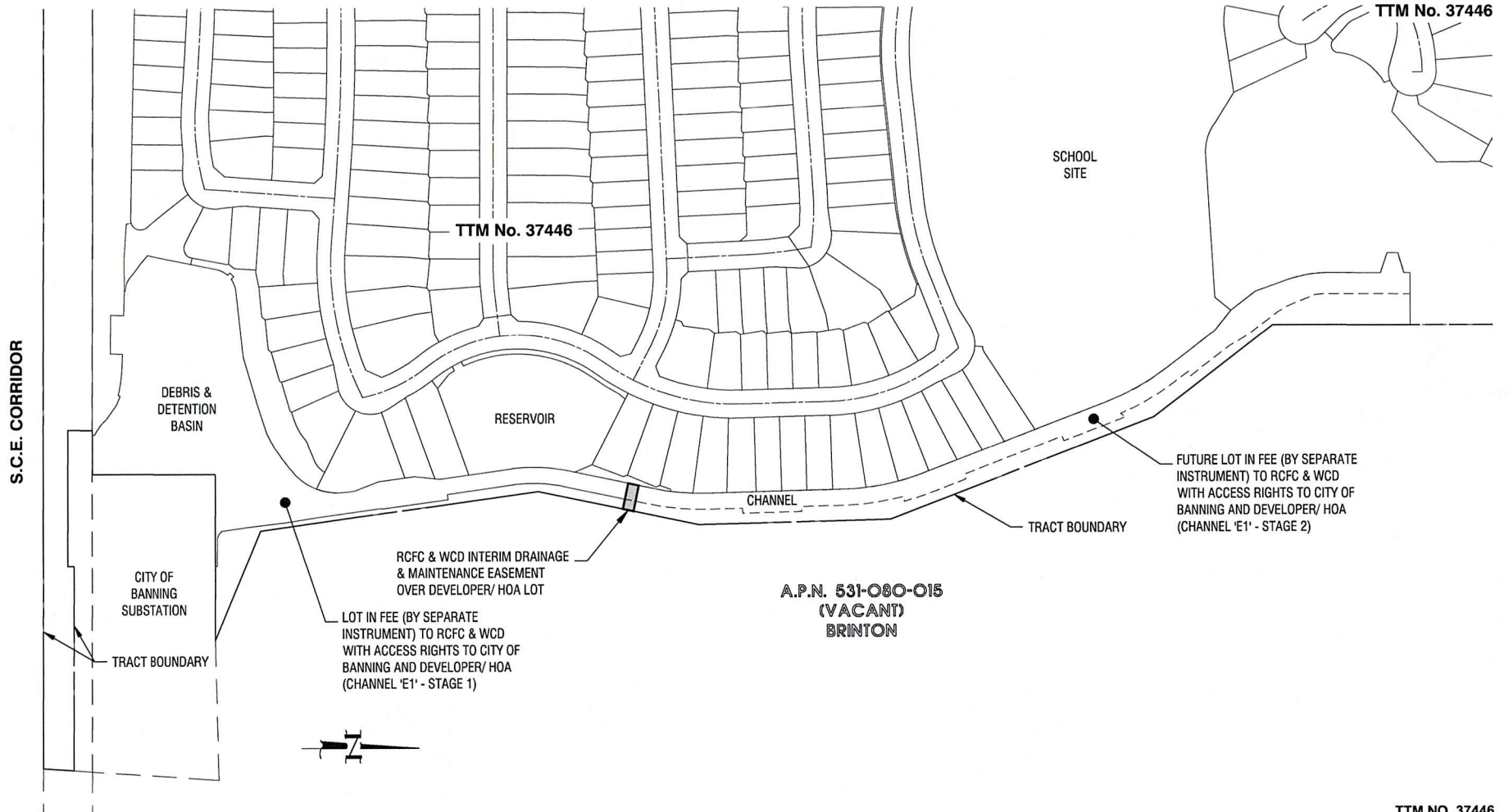


EXHIBIT D



TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD INTERIM DRAINAGE & MAINTENANCE EASEMENT

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
Banning MDP Smith Creek Lateral Basin, Stage 1
Project Nos. 5-0-00094 and 5-0-00095
Tract Map No. 37446

This Cooperative Agreement ("Agreement"), dated as of March 28, 2023

is entered into by and between, the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Banning, a municipal corporation of the State of California ("CITY") and Tri Pointe Homes IE-SD, Inc., a California corporation ("DEVELOPER"). DISTRICT, CITY, and DEVELOPER individually referred to herein as "Party" and collectively referred to herein as "Parties". The Parties hereto hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the County of Riverside. The legal description of Tract Map No. 37446 is provided in Exhibit "A" attached hereto and made a part hereof; and

B. DEVELOPER has submitted for approval Tract Map No. 37446 related to the property, which is located in the city of Banning. As a condition of approval for Tract Map No. 37446, 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 related to Tract Map No. 37446 are identified in DISTRICT's Banning Master Drainage Plan ("MDP"), as shown on DISTRICT's Drawing No. 5-0244, and as shown in concept on Exhibit "B", attached hereto and made a part hereof and includes the construction of:

- i. Banning MDP Line I-1 - Smith Creek Lateral, Stage 1 ("LINE I-1 STAGE 1"), which is comprised of approximately 850 lineal feet of concrete

MAR 28 2023 11.3

rectangular/trapezoidal channel, transition structures, and riprap outlet structure and access road as shown in concept in "blue" in Exhibit "B". At the downstream terminus, LINE I-1 STAGE 1 will drain to the proposed debris and detention basin. At the upstream terminus, LINE I-1 STAGE 1 terminates with a cut-off wall for future extension;

- ii. Banning MDP Line I-1 - Smith Creek Lateral, Stage 3 ("LINE I-1 STAGE 3"), which is comprised of approximately 180 lineal feet of concrete rectangular/trapezoidal channel, transition structures, and riprap as shown in concept in "green" in Exhibit "B". At the downstream terminus, LINE I-1 STAGE 3 will drain to the proposed debris and detention basin. At the upstream terminus, LINE I-1 STAGE 3 will drain to the CITY's existing rip rap ditch;
- iii. Banning MDP Smith Creek Lateral Basin, Stage 1 ("DETENTION BASIN"), which is comprised of approximately 5.5 acres of basin, as shown in concept in "grey" on Exhibit "B", approximately 148 lineal feet of 18-inch reinforced concrete pipe with watertight joints, approximately 230 lineal feet of 30-inch reinforced concrete pipe, as shown in concept in "solid black" on Exhibit "B", including its associated riprap outlet structures, stilling basin, spillway, access ramp, and v-ditch; and
- iv. All safety devices requested by DISTRICT staff during the course of project construction and during any final field inspections, including but not limited to concrete pads, slope protection barriers, signage and fencing ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and

installed by DEVELOPER's contractor, and subject to DISTRICT's inspection and approval.

D. Together, LINE I-1 STAGE 1, LINE I-1 STAGE 3, DETENTION BASIN and SAFETY DEVICES are hereinafter called "DISTRICT DRAINAGE FACILITIES"; and

E. All Parties recognize and acknowledge that DISTRICT DRAINAGE FACILITIES will not become a fully functioning flood control drainage system until such time as the reach at the downstream terminus for the proposed construction of the Banning MDP Line I-1-Smith Creek Lateral, Stage 4 flood facility, is constructed in conjunction with the proposed with development of Atwell Phase 3B. Banning MDP Line I-1-Smith Creek Lateral, Stage 4 is hereinafter called "PROPOSED LINE I-1 STAGE 4"; and

F. PROPOSED LINE I-1 STAGE 4 is to be constructed pursuant to a separate Cooperative Agreement between the DISTRICT, CITY and any new property owner(s). Said Cooperative Agreement is hereinafter called the "LINE I-1 STAGE 4 AGREEMENT". DISTRICT will not accept DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance until the PROPOSED LINE I-1 STAGE 4, is completed pursuant to the LINE I-1 STAGE 4 AGREEMENT and accepted for ownership, operation and maintenance by DISTRICT; and

G. Associated with the construction of DISTRICT DRAINAGE FACILITIES, the required facilities include the construction of certain inlets, connector pipes, curbs and gutters, catch basins, and various lateral storm drains that are thirty-six inches (36") or less in diameter within CITY right of way ("CITY FACILITIES"); and

H. Associated with the construction of DISTRICT DRAINAGE FACILITIES and CITY FACILITIES includes the construction of approximately 100 lineal feet of 30-inch corrugated metal pipe, interim sediment basin, inlet, orifice plates, slopes, v-ditches, tubular

fencings, and concrete spillway ("DEVELOPER FACILITIES"). DEVELOPER FACILITIES are to be initially owned, operated, and maintained by DEVELOPER and subsequently owned and maintained by the Homeowners' Association ("HOA") for Tract Map No. 37446. In the event DEVELOPER does not transfer ownership, operation and maintenance to the HOA or DEVELOPER dissolves before the transfer to the HOA, maintenance of DEVELOPER FACILITIES will become the responsibility of CITY. In the event maintenance of DEVELOPER FACILITIES becomes the responsibility of CITY, CITY may form a Community Facilities District to help fund the maintenance of DEVELOPER FACILITIES identified on DISTRICT's Drawing No. 5-0244. DEVELOPER intends to enter into a separate License Agreement ("LICENSE AGREEMENT") with DISTRICT setting forth the particular provisions under which DEVELOPER will operate and maintain certain drainage ditches, slopes, etc. adjacent to DISTRICT DRAINAGE FACILITIES and within DISTRICT's right of way; and

I. Together, DISTRICT DRAINAGE FACILITIES, CITY FACILITIES and DEVELOPER FACILITIES are hereinafter called "PROJECT"; and

J. DEVELOPER and CITY desire DISTRICT to ultimately accept ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES; and

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

L. DISTRICT is willing to ultimately accept ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, provided DEVELOPER does all of the following: (a) complies with this Agreement, (b) prepares PROJECT plans in accordance with DISTRICT and CITY approved plans and specifications and this Agreement, (c) constructs PROJECT in accordance with DISTRICT and CITY approved

plans and specifications and this Agreement, (d) obtains and conveys to DISTRICT and CITY the necessary rights of way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES and CITY FACILITIES, and (e) 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 DRAINAGE FACILITIES and CITY accepts ownership and responsibility for the operation and maintenance of CITY FACILITIES; and

M. CITY is willing to (i) review and approve, in conjunction with DISTRICT, DEVELOPER's plans and specifications for PROJECT, (ii) accept and hold faithful performance and payment bonds submitted by DEVELOPER on behalf of DISTRICT for DISTRICT DRAINAGE FACILITIES; (iii) grant DISTRICT the right to inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way, (iv) inspect the construction of PROJECT, (v) convey to DISTRICT the necessary rights of way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and (vi) accept ownership and responsibility for the operation and maintenance of CITY FACILITIES, provided PROJECT is constructed in accordance with plans and specifications approved by DISTRICT and CITY; and

N. DEVELOPER shall assume ownership, operation, and maintenance responsibilities of DISTRICT DRAINAGE FACILITIES on an interim basis as set forth herein, with the recognition and understanding that the actual acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance responsibilities by DISTRICT is entirely dependent on all contingencies being met in accordance with Section I.24 of this Agreement.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I

DEVELOPER shall:

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

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

3. By execution of this Agreement, grant DISTRICT and CITY, the right to enter upon DEVELOPER's property where necessary and convenient for the purpose of gaining access to and performing inspection services for the construction of PROJECT as set forth herein.

4. Upon execution of this Agreement or not less than twenty (20) calendar days prior to recordation of the final map for Tract Map No. 37446 as set forth in Section II.4, or any phase thereof, whichever occurs first, provide CITY with faithful performance and payment bonds in accordance with the CITY's municipal code ordinance, including any amendments thereto, for the estimated cost of construction of (i) DISTRICT DRAINAGE FACILITIES as determined by DISTRICT and (ii) of CITY FACILITIES as determined by CITY. The surety,

amount and form of the bonds, shall list CITY as an obligee and shall be subject to approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as complete and CITY FACILITIES are accepted by CITY as complete. Both bonds shall be subscribed by an Admitted Surety Insurer, which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, DEVELOPER shall furnish a new bond within ten (10) calendar days after receiving notice from CITY.

5. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, deposit with DISTRICT (Attention: Business Office – Accounts Receivable), and notify Contract Services Section, the estimated cost of DISTRICT providing construction inspection for DISTRICT DRAINAGE FACILITIES and CITY FACILITIES, in an amount as determined and approved by DISTRICT in accordance with the County of Riverside Ordinance Nos. 671 and 749, including any amendments thereto, based upon the bonded value of DISTRICT DRAINAGE FACILITIES and CITY FACILITIES.

6. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section), with a complete list of all contractors and subcontractors to be performing work on PROJECT, including the corresponding license number and license classification of each. At such time, DEVELOPER shall further identify in writing its designated superintendent for PROJECT construction.

7. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section), with a construction schedule which shall show the order and dates in which DEVELOPER or DEVELOPER's contractor proposes to carry out the various parts of work, including estimated start and completion dates. As

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

8. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section), with a confined space entry procedure specific to PROJECT. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space and District Confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and CITY's approval.

9. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT (Attention: Contract Services Section) and CITY. At minimum, the procured insurance coverages should adhere to the DISTRICT's required insurance provided in Exhibit "C", attached hereto and made a part hereof. DEVELOPER shall not commence operations until DISTRICT (Attention: Contract Services Section) and CITY have 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. 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 DRAINAGE FACILITIES, either in whole or in part, for said breach of this Agreement.

10. Upon DISTRICT and CITY approval of IMPROVEMENT PLANS, or not less than twenty (20) calendar days prior to recordation of the final map for Tract Map No. 37446 or any phase thereof, whichever occurs first, furnish DISTRICT (Attention: Plan Check Section) and CITY with sufficient evidence of DEVELOPER securing such necessary licenses, agreements, permits, approvals, rights of way, rights of entry, and temporary construction easements, as may be needed for the construction, inspection, operation and maintenance of PROJECT as determined and approved by DISTRICT and CITY.

11. Upon DISTRICT and CITY approval of IMPROVEMENT PLANS and prior to the start on any portion of PROJECT construction, obtain and provide DISTRICT (Attention: Plan Check Section), with duly executed Irrevocable Offer(s) of Dedication to the public for flood control and drainage purposes, including ingress and egress, for the rights of way deemed necessary by DISTRICT for the construction, inspection, operation and maintenance of DISTRICT DRAINAGE 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(ies) described in the Irrevocable Offer(s).

12. Upon submitting the Irrevocable Offer(s) of Dedication as set forth in Section I.11., furnish DISTRICT (Attention: Plan Check Section), with Preliminary Title Reports dated not more than thirty (30) calendar days prior to date of submission of all the property(ies) described in the Irrevocable Offer(s) of Dedication.

13. Prior to the start on any portion of PROJECT construction, furnish DISTRICT (Attention: Plan Check Section) and CITY each with a set of final mylar PROJECT plans and assign their ownership to DISTRICT and CITY, respectively.

14. After receiving DISTRICT's plan check, right of way and administrative clearance for PROJECT as set forth in Sections I.4 through I.13., notify DISTRICT (Attention:

Construction Management Section) and CITY with twenty (20) calendar days written notice of intent to start of construction of PROJECT, and include PROJECT's geotechnical firm, concrete lab/test firm, D-Load test forms, trench shoring/false work calculations and concrete mix designs for DISTRICT's review and approval. 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. DISTRICT reserves the right to withhold issuance of the Notice to Proceed in accordance with Section IV.4.

15. Prior to commencing construction, and at its sole cost and expense, obtain and furnish DISTRICT (Attention: Plan Check Section) and CITY with copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such documents include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

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

17. 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.

18. Upon receipt of DISTRICT's written Notice to Proceed, construct or cause to be constructed, PROJECT at DEVELOPER's sole cost and expense, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

19. 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 request that (i) DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES, and (ii) CITY conduct a final inspection of CITY FACILITIES.

20. Upon completion of PROJECT construction, and upon acceptance by CITY of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation, and maintenance, convey, or cause to be conveyed to CITY the flood control easement(s) including ingress and egress, in a form approved by DISTRICT, to the rights of way as shown in concept on Exhibit "D", attached hereto and made a part hereof. The easement(s) or grant deed(s) shall be in a form approved by both DISTRICT and CITY and shall be executed by all legal and equitable owners of the property(ies) described in the easement(s) or grant deed(s).

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

22. Prior to conveying the rights of way deemed necessary by DISTRICT and CITY, grant unobstructed access easement(s) to the DISTRICT and CITY, including ingress and

egress, for the rights of way across the DETENTION BASIN. In the event of any modifications needed for utilities or appurtenant works that would potentially obstruct the DISTRICT's and CITY's access, provide DISTRICT and CITY with five (5) days written notice of its inability to enter upon property temporarily or permanently, and provide an alternate access point for the DISTRICT's and CITY's operation and maintenance of its referenced facilities.

23. Upon completion of PROJECT construction, accept ownership, sole responsibility and all liability whatsoever for the ownership, operation and maintenance of DEVELOPER FACILITIES until such time as the HOA for Tract Map No. 37446 accepts ownership and responsibility for the operation and maintenance of DEVELOPER FACILITIES. Additionally, DEVELOPER shall accept ownership, sole responsibility and all liability whatsoever for the operation and maintenance of DISTRICT DRAINAGE FACILITIES until such time as DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT DRAINAGE FACILITIES in accordance with Recital N and Section I.24 of this Agreement, and (ii) CITY accepts ownership and responsibility for operation and maintenance of CITY FACILITIES. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITIES are not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER. DEVELOPER shall continue to be responsible to own, operate and maintain DEVELOPER FACILITIES.

24. Accept sole ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES until such time as; (i) the construction of PROPOSED LINE I-1 STAGE 4 is complete and constructed in accordance with plans and specifications approved by DISTRICT pursuant to the LINE I-1 STAGE 4 AGREEMENT; (ii) DISTRICT's sole determination that PROPOSED LINE I-1 STAGE 4 is in a satisfactorily maintained condition; (iii) PROPOSED LINE I-1 STAGE 4 is fully functioning as a flood control

drainage system as solely determined by DISTRICT; (iv) DISTRICT accepts ownership and responsibility for the operation and maintenance of PROPOSED LINE I-1 STAGE 4, (v) DISTRICT DRAINAGE FACILITIES are constructed in accordance with plans and specifications approved by DISTRICT and this Agreement; (vi) DISTRICT's sole determination that DISTRICT DRAINAGE FACILITIES are in a satisfactorily maintained condition, (vii) DISTRICT DRAINAGE FACILITIES are fully functioning as a flood control drainage system as solely determined by the DISTRICT.

25. Upon completion of PROJECT construction but prior to DISTRICT acceptance of DISTRICT DRAINAGE 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 (Attention: Construction Management Section) with (i) soil compaction report(s) - stamped and wet signed by the geotechnical engineer, (ii) concrete testing report(s) - stamped and wet signed by the civil engineer of record and (iii) a redlined "record drawings" copy of IMPROVEMENT PLANS. After DISTRICT approval of the redlined "record drawings", DEVELOPER's engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office; after which, the engineer shall review, stamp and sign the original IMPROVEMENT PLANS as "record drawings".

26. Prior to acceptance of DISTRICT DRAINAGE FACILITIES, obtain the necessary permits, approvals or agreements as may be required by any federal, state or local resource and/or regulatory agency for the continuing operation and maintenance of the DISTRICT FACILITIES ("ONGOING REGULATORY PERMITS"). Upon completion of construction, DISTRICT DRAINAGE FACILITIES may be considered jurisdictional or may otherwise require regulatory approvals and therefore may require ONGOING REGULATORY PERMITS in order

to be maintained. ONGOING REGULATORY PERMITS 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. The DISTRICT will not accept DISTRICT DRAINAGE FACILITIES until all required regulatory permits have been issued and transferred to the DISTRICT.

27. 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.

28. 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.

SECTION II

DISTRICT shall:

1. Review IMPROVEMENT PLANS and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT prior to the start of PROJECT construction.
2. Provide CITY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT's final approval.
3. Upon execution of this 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.11.

5. Endeavor to issue DEVELOPER a Notice to Proceed within twenty (20) calendar days of receipt of DEVELOPER's complete written notice as set forth in Section I.14.; however, DISTRICT's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to staff availability

6. Reserves the right to withhold issuance of the Notice to Proceed pursuant to Section IV.4.

7. Inspect construction of DISTRICT DRAINAGE FACILITIES.

8. Keep an accurate accounting and submit periodic invoices to DEVELOPER of all DISTRICT costs associated (i) with the review and approval of IMPROVEMENT PLANS, (ii) the review and approval of right of way and conveyance documents, and (iii) the processing and administration of this Agreement.

9. Keep an accurate accounting of all DISTRICT construction inspection costs and within forty-five (45) calendar days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit as set forth in Section I.5. exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) calendar days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete.

10. Upon (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "record drawing" of DISTRICT DRAINAGE FACILITIES plans as set forth in Section I.25, provide DEVELOPER with a reproducible duplicate copy of "record drawings" of IMPROVEMENT PLANS.

11. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon; (i) DISTRICT inspection of DISTRICT DRAINAGE FACILITIES in accordance with Section I.19., (ii) DISTRICT acceptance of PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT PLANS, as set forth in Section I.25., (iv) recordation of all conveyance documents described in Section I.20., and (v) all contingencies being met in accordance with Section I.24 of this Agreement.

12. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT DRAINAGE FACILITIES is not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

13. Upon both of the following: (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "record drawing" of DISTRICT DRAINAGE FACILITIES plans as set forth in Section I.25., provide CITY with (i) a reproducible duplicate copy of "record drawings" of constructed DISTRICT DRAINAGE FACILITIES, (ii) a written notice that PROJECT is complete, and (iii) request CITY to release bonds held for DISTRICT DRAINAGE FACILITIES and CITY FACILITIES.

SECTION III

CITY shall:

1. Review IMPROVEMENT PLANS and approve when CITY has determined that such plans meet CITY standards and are found acceptable to CITY prior to the start of PROJECT construction. CITY shall not request any modifications on the IMPROVEMENT PLANS without prior DISTRICT approval.

2. Accept CITY and DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER, in accordance with the CITY's municipal code or ordinance,

including any amendments thereto, for the estimated cost for construction of DISTRICT DRAINAGE FACILITIES as determined by DISTRICT and of CITY FACILITIES as determined by CITY. The surety, amount and form of the bonds, shall list CITY as an obligee and shall be subject to approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as complete and CITY FACILITIES are accepted by the CITY as complete. Both bonds shall be subscribed by an Admitted Surety Insurer, which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, DEVELOPER shall furnish a new bond within ten (10) calendar days after receiving notice from CITY. CITY shall not release said bonds until DISTRICT provides CITY with a reproducible duplicate copy of "record drawings" and written notification as set forth in Section II.13.

3. Request DEVELOPER to update the construction schedule, as deemed necessary.

4. By execution of this Agreement, grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way.

5. By execution of this Agreement, consent to the recording of any Irrevocable Offer(s) of Dedication furnished by DEVELOPER.

6. 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 DRAINAGE FACILITIES, and convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES.

7. Inspect PROJECT construction.
8. Keep an accurate accounting and submit periodic invoices to DEVELOPER of all CITY costs associated with (i) the review and approval of IMPROVEMENT PLANS, (ii) the review and approval of right of way and conveyance documents, and (iii) the processing and administration of this Agreement.
9. Keep an accurate accounting of all CITY construction inspection costs and within forty-five (45) calendar days after CITY acceptance of CITY FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit as set forth in Section I.5. exceeds such inspection costs, CITY shall reimburse DEVELOPER the excess amount within sixty (60) calendar days after CITY acceptance of CITY FACILITIES as being complete.
10. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT the flood control easement(s) including ingress and egress, to the rights of way as shown on Exhibit "D".
11. Accept ownership and sole responsibility for the operation and maintenance of CITY FACILITIES upon (i) CITY's final inspection of CITY FACILITIES, and (ii) CITY's sole determination that CITY FACILITIES are in a satisfactorily maintained condition.
12. Upon DISTRICT and CITY acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of DISTRICT DRAINAGE FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed by CITY at no cost to DISTRICT.

SECTION IV

It is further mutually agreed:

1. DISTRICT may withhold acceptance for ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES unless and until DEVELOPER performs all obligations under this Agreement. CITY may withhold acceptance for ownership and sole responsibility for the operation and maintenance of CITY FACILITIES unless and until DEVELOPER performs all obligations under this Agreement.

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

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

4. If DEVELOPER fails to commence construction of PROJECT within twenty-four (24) consecutive months after execution of this Agreement, then DISTRICT reserves the right to withhold issuance of the Notice to Proceed after this period of time pending a review of the existing site conditions as they exist at the time DEVELOPER provides written notification to DISTRICT of the start of construction as set forth in Section I.14. In the event of a change in the existing site conditions that materially affects PROJECT function, DISTRICT's ability to operate and maintain DISTRICT DRAINAGE FACILITIES, or CITY's ability to operate and maintain CITY FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT and CITY.

5. DEVELOPER shall complete construction of PROJECT within twelve (12) months after commencement of construction of PROJECT, unless CITY and DISTRICT agree to extend the time to complete construction. Failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for (i) DISTRICT to terminate the Agreement and (ii) CITY to perform, or cause to perform, the remaining work on the PROJECT and require DEVELOPER's surety to pay to CITY the penal sum of any and all bonds. Should CITY perform the remaining work on the PROJECT under this section, DEVELOPER grants to CITY and CITY's officers, deputies, employees, agents, representatives, contractors and other designees the irrevocable permission to enter upon the Tract Map No. 37446 to complete construction and remaining work on PROJECT. This right of entry shall terminate when such construction and remaining work is complete. CITY shall subsequently reimburse DISTRICT from the funds paid by DEVELOPER's surety for any DISTRICT costs incurred.

6. 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 DISTRICT DRAINAGE FACILITIES construction and quality control matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section I.5. 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) calendar 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 CITY. If DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or on DISTRICT or CITY designated legal holidays, DEVELOPER shall make a written request for permission from DISTRICT and CITY to work the additional hours. The request shall be submitted to DISTRICT and CITY 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 CITY at their sole discretion and shall be final. If permission is granted by DISTRICT and CITY, 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 County of Riverside Ordinance Nos. 671 and 749, including any amendments thereto.

8. DEVELOPER shall indemnify, defend, and hold harmless, and require DEVELOPER's construction contractor(s) to indemnify, defend and hold harmless, the DISTRICT, the County of Riverside, CITY (including each of their respective Agencies, Districts, Special Districts and Departments and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, contractors, agents and representatives) (individually and collectively hereinafter referred to as "Indemnitees") from any liability, action, claim or damage whatsoever, based or asserted upon any acts, omissions, or services of DEVELOPER and/or DEVELOPER's construction contractor(s) (including their officers, employees, subcontractors, agents or representatives) (collectively "Indemnitors") arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. DEVELOPER or DEVELOPER's

construction contractor(s) shall defend, at its sole expense, the Indemnitees, including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such alleged acts or omissions. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of the Agreement.

9. With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of its own choice and may adjust, settle, compromise any such claim only with prior consent of DISTRICT, the County of Riverside and CITY. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe DEVELOPER's indemnification obligations to Indemnitees as set forth herein. No settlement on behalf of CITY that would impose construction, maintenance or other obligations on CITY beyond those described in this Agreement shall be effective unless, and until, the settlement agreement is agreed to in writing by the City Manager on behalf of CITY.

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

11. The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPER or DEVELOPER's construction contractor(s) obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

12. 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 or DEVELOPER's construction contractor(s) from indemnifying Indemnitees to the fullest extent allowed by law.

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

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

15. 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 CITY: CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220
Attn: Kevin Sin

To DEVELOPER: TRI POINTE HOMES IE-SD., INC.
1250 Corona Pointe Court, Ste. 600
Corona, CA 92879
Attn: Michael Heishman

16. 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.

17. 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.

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

19. The provisions of this Agreement are solely for the benefit of the Parties, and not for the benefit of any third party. Accordingly, no third party shall have any right or action based on the provisions of this Agreement.

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

21. No Party shall assign this Agreement without the written consent of all other Parties. Any attempt to delegate or assign any interest herein without written consent of all other Parties shall be deemed void and of no effect.

22. In the event DEVELOPER sells Tract Map No. 37446, DEVELOPER shall notify DISTRICT and CITY of any such transfer or assignment in writing no later than thirty (30) calendar days from the date of the sale. DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties in this Agreement until DISTRICT, CITY, DEVELOPER and the new owner(s) of Tract Map No. 37446 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations hereunder to the new owner(s) of Tract Map No. 37446.

23. 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.

24. 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.

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

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

3/28/23
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By J. Uhley
JASON E. UHLEY
General Manager-Chief Engineer

By Karen S. Spiegel
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

COUNTY COUNSEL

KIMBERLY RECTOR
Clerk of the Board

By Sarah K. Moore
SARAH K. MOORE
Deputy County Counsel

By Kimberly Rector
Deputy

(SEAL)

[Signed in Counterpart]

Cooperative Agreement:
Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
Banning MDP Smith Creek Lateral Basin, Stage 1
Project Nos. 5-0-00094 and 5-0-00095
Tract Map No. 37446
AMR:rlp
12/28/22

MAR 28 2023 11.3

RECOMMENDED FOR APPROVAL:

CITY OF BANNING

By _____
KYLE PINGREE
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
KEVIN G. ENNIS
City Attorney

By _____
MARIE CALDERON
City Clerk

(SEAL)

Cooperative Agreement:

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1


Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

AMR:rlp

12/28/22

TRI POINTE HOMES IE-SD, INC.,
a California corporation

By 
MICHAEL C. TAYLOR
Division President – Inland Empire

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Cooperative Agreement:

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

AMR:rlp

12/28/22

ACKNOWLEDGMENT

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.

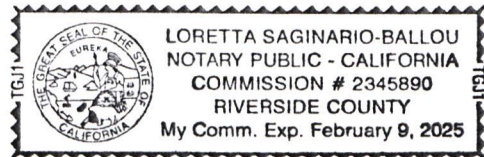
State of California
County of Riverside

On January 9, 2023 before me, Loretta Saginario-Ballou, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature Loretta Saginario Ballou (Seal)

EXHIBIT A

LEGAL DESCRIPTION

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

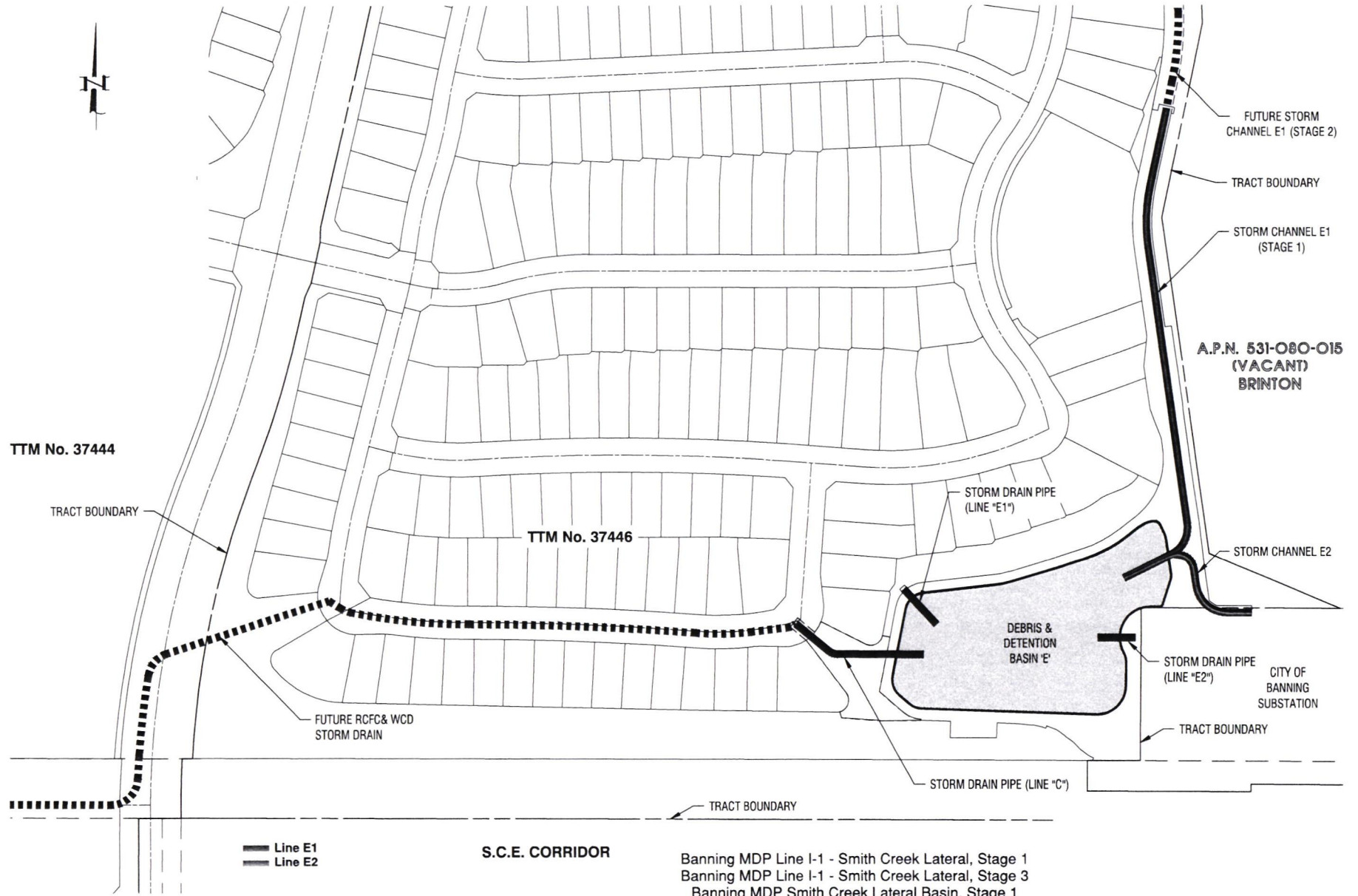
LOTS 17 THROUGH 19, 21 THROUGH 23, 40 THROUGH 42, 46 AND LETTERED LOTS D, F, Q AND S OF TRACT NO. 35967, AS SHOWN BY MAP ON FILE IN BOOK 474, PAGES 1 THROUGH 14 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 408-580-031 THROUGH 408-580-036
408-580-040 THROUGH 408-580-042
408-580-045 THROUGH 408-580-047
408-580-049 THROUGH 408-580-052
408-580-061

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
Banning MDP Smith Creek Lateral Basin, Stage 1
Project Nos. 5-0-00094 and 5-0-00095
Tract Map No. 37446

EXHIBIT B



Banning MDP Line I-1 - Smith Creek Lateral, Stage 1
 Banning MDP Line I-1 - Smith Creek Lateral, Stage 3
 Banning MDP Smith Creek Lateral Basin, Stage 1
 Project Nos. 5-0-00094 and 5-0-00095
 Tract Map No. 37446

EXHIBIT C

DISTRICT's Insurance Requirements 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 coverage's 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 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.

COOPERATIVE AGREEMENT

Banning MDP Line 1-1 - Smith Creek Lateral, Stage 1

Banning MDP Line 1-1 - Smith Creek Lateral, Stage 3

Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

Page 1 of 5

C. Vehicle Liability:

If DEVELOPER's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT 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 \$1,000,000 per occurrence and \$2,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

COOPERATIVE AGREEMENT

E. General Insurance Provisions – All Lines:

- a. 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.
- b. 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 related investigations, claims administration, and defense costs and expenses.
- c. 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

COOPERATIVE AGREEMENT

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.

- d. 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.
- e. 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.
- f. 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

COOPERATIVE AGREEMENT

required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.

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

COOPERATIVE AGREEMENT

Banning MDP Line I-1 - Smith Creek Lateral, Stage 1

Banning MDP Line I-1 - Smith Creek Lateral, Stage 3

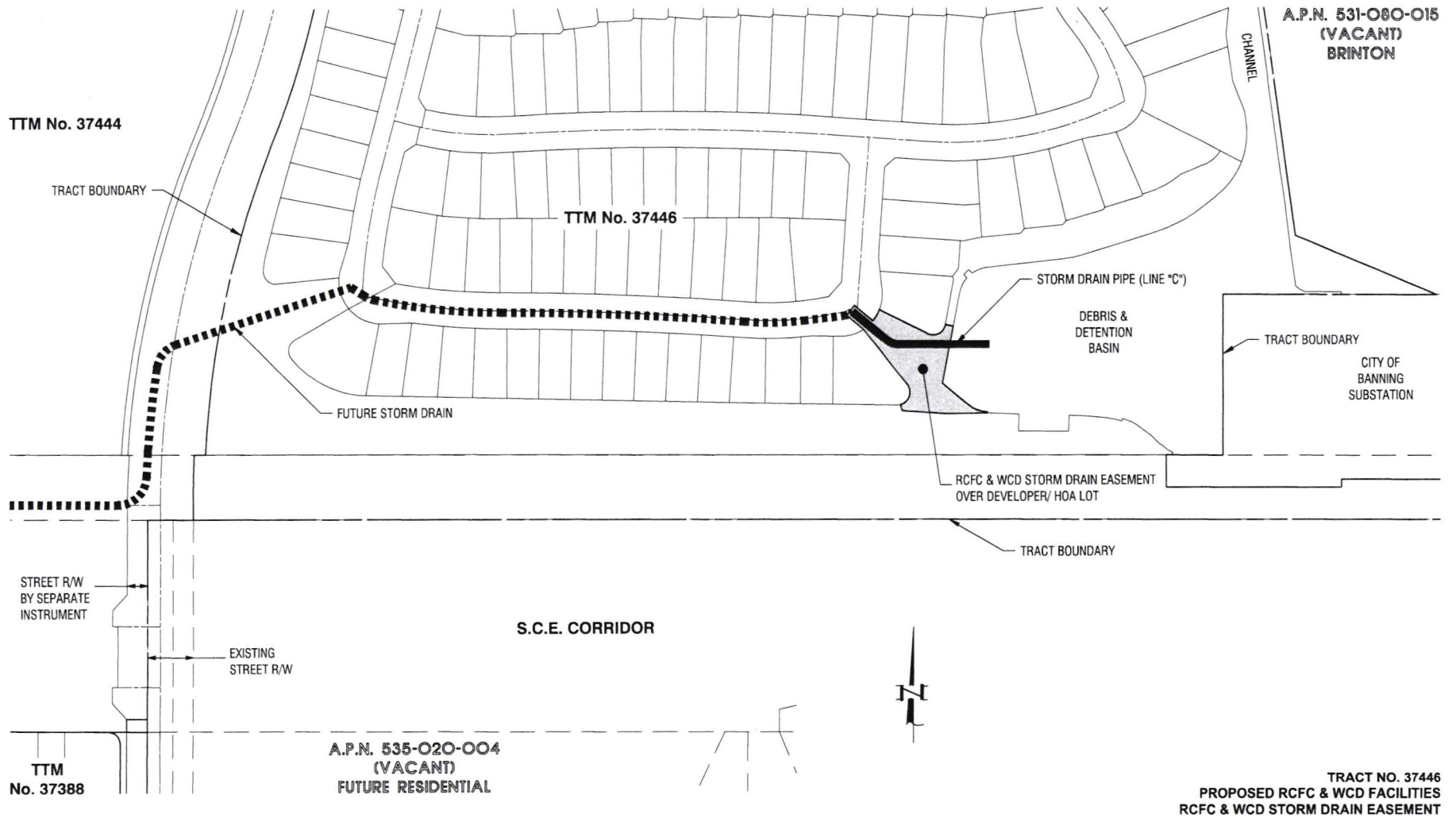
Banning MDP Smith Creek Lateral Basin, Stage 1

Project Nos. 5-0-00094 and 5-0-00095

Tract Map No. 37446

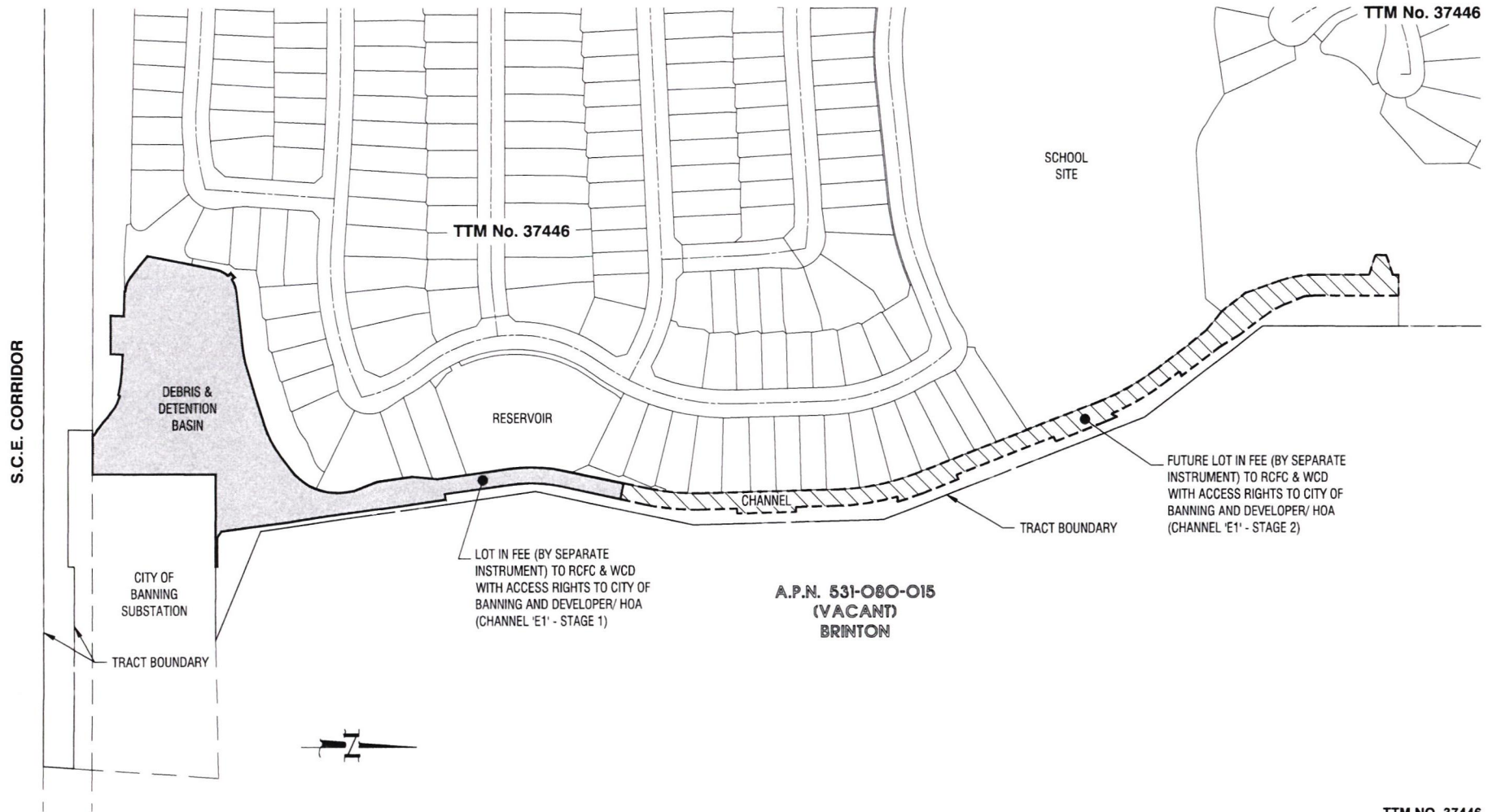
Page 5 of 5

EXHIBIT D



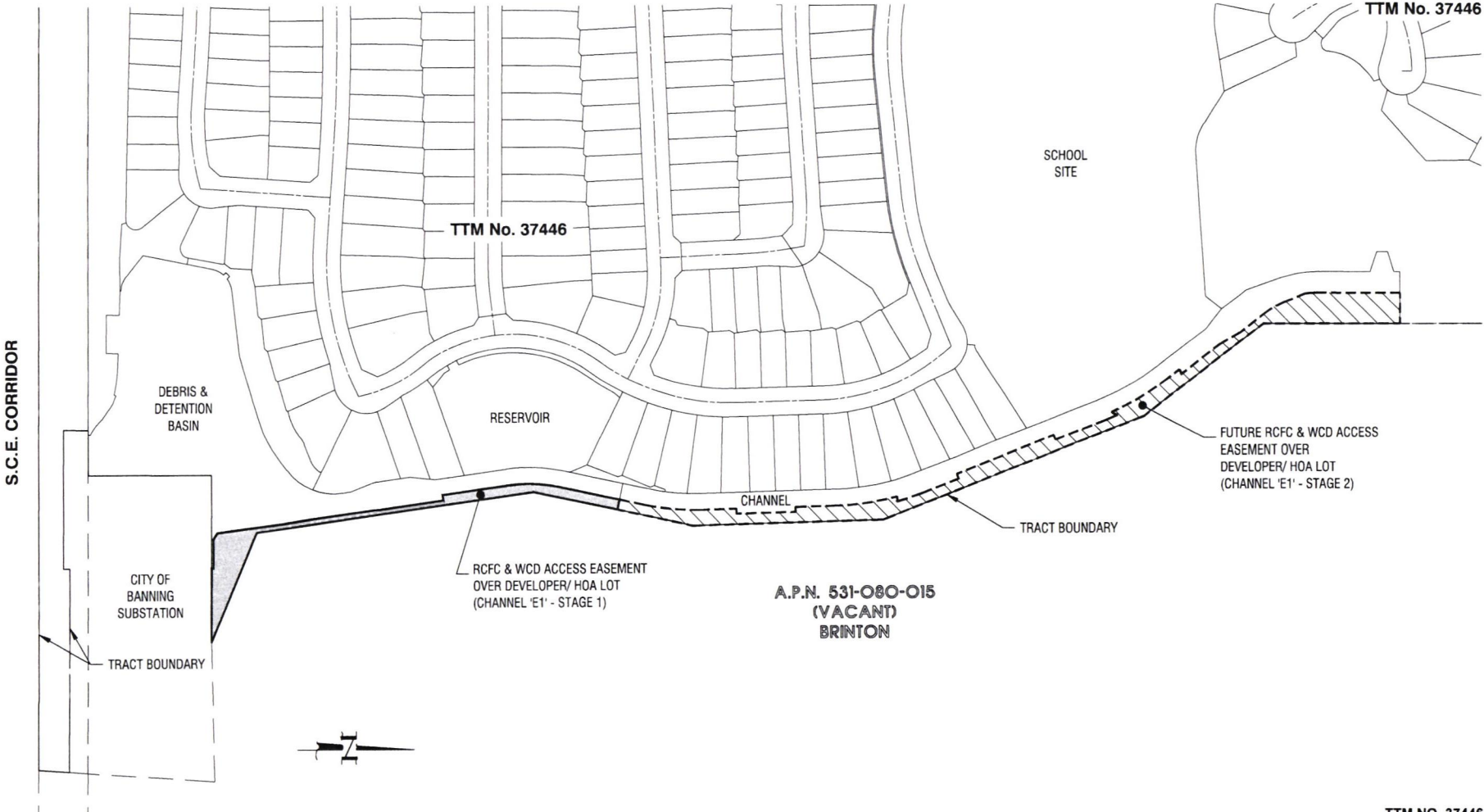
TRACT NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD STORM DRAIN EASEMENT

EXHIBIT D



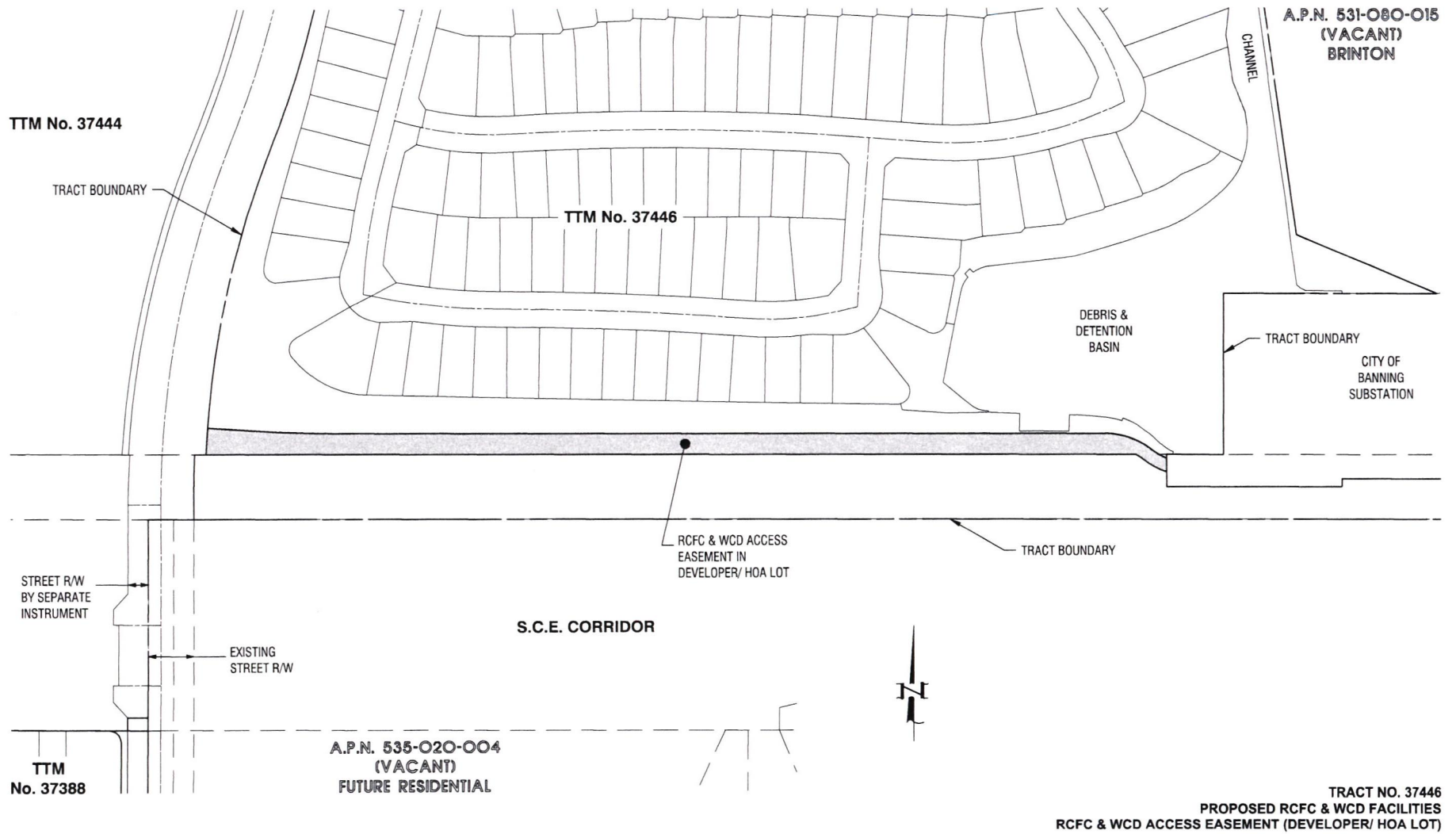
TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD FEE LOT FOR BASIN/ CHANNEL

EXHIBIT D



TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD ACCESS EASEMENT

EXHIBIT D



TTM No. 37444

TRACT BOUNDARY

TTM No. 37446

A.P.N. 531-080-015
(VACANT)
BRINTON

CHANNEL

DEBRIS &
DETENTION
BASIN

TRACT BOUNDARY

CITY OF
BANNING
SUBSTATION

RCFC & WCD ACCESS
EASEMENT IN
DEVELOPER/ HOA LOT

TRACT BOUNDARY

STREET R/W
BY SEPARATE
INSTRUMENT

EXISTING
STREET R/W

S.C.E. CORRIDOR



TTM
No. 37388

A.P.N. 535-020-004
(VACANT)
FUTURE RESIDENTIAL

TRACT NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD ACCESS EASEMENT (DEVELOPER/ HOA LOT)

EXHIBIT D

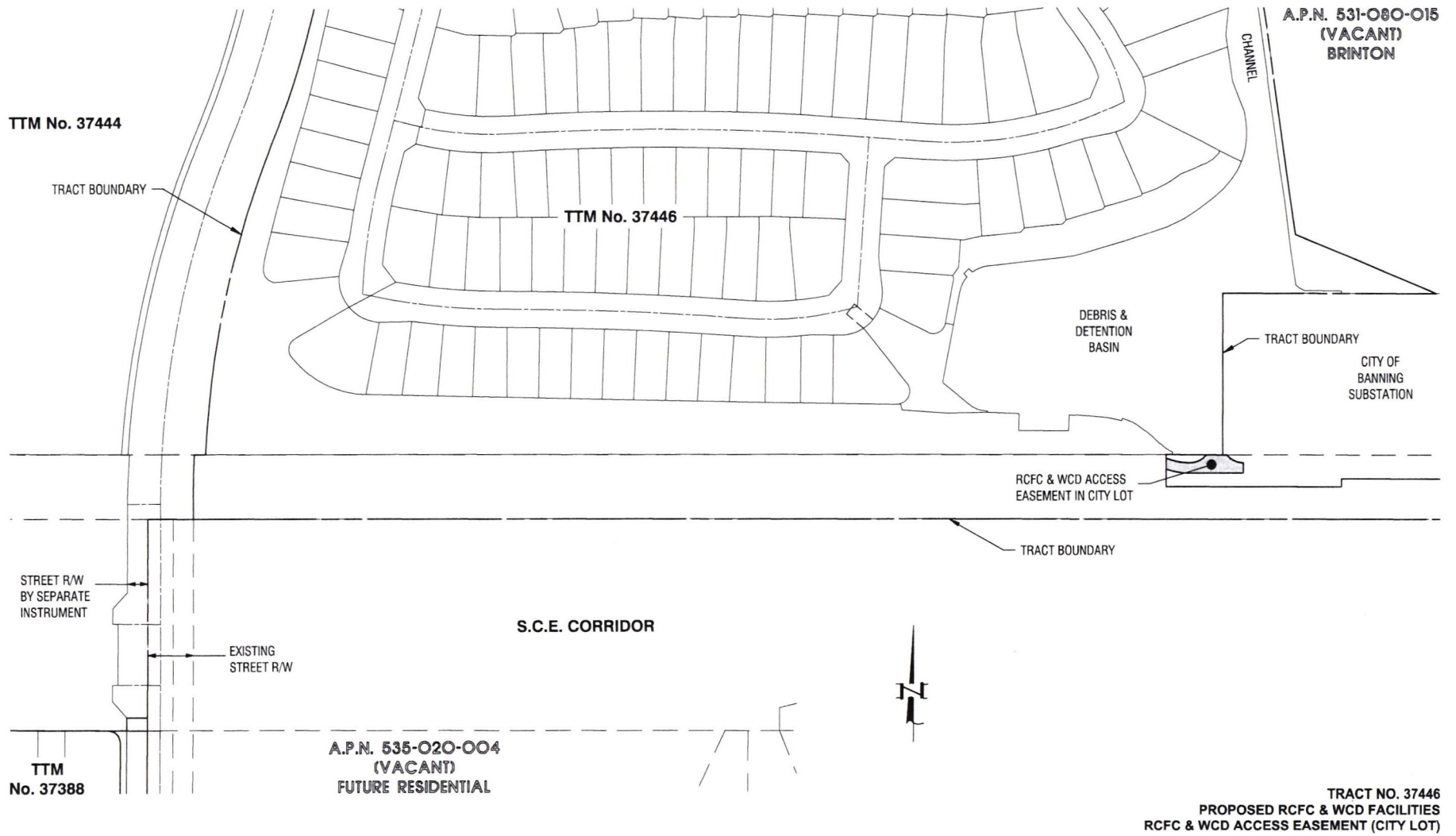
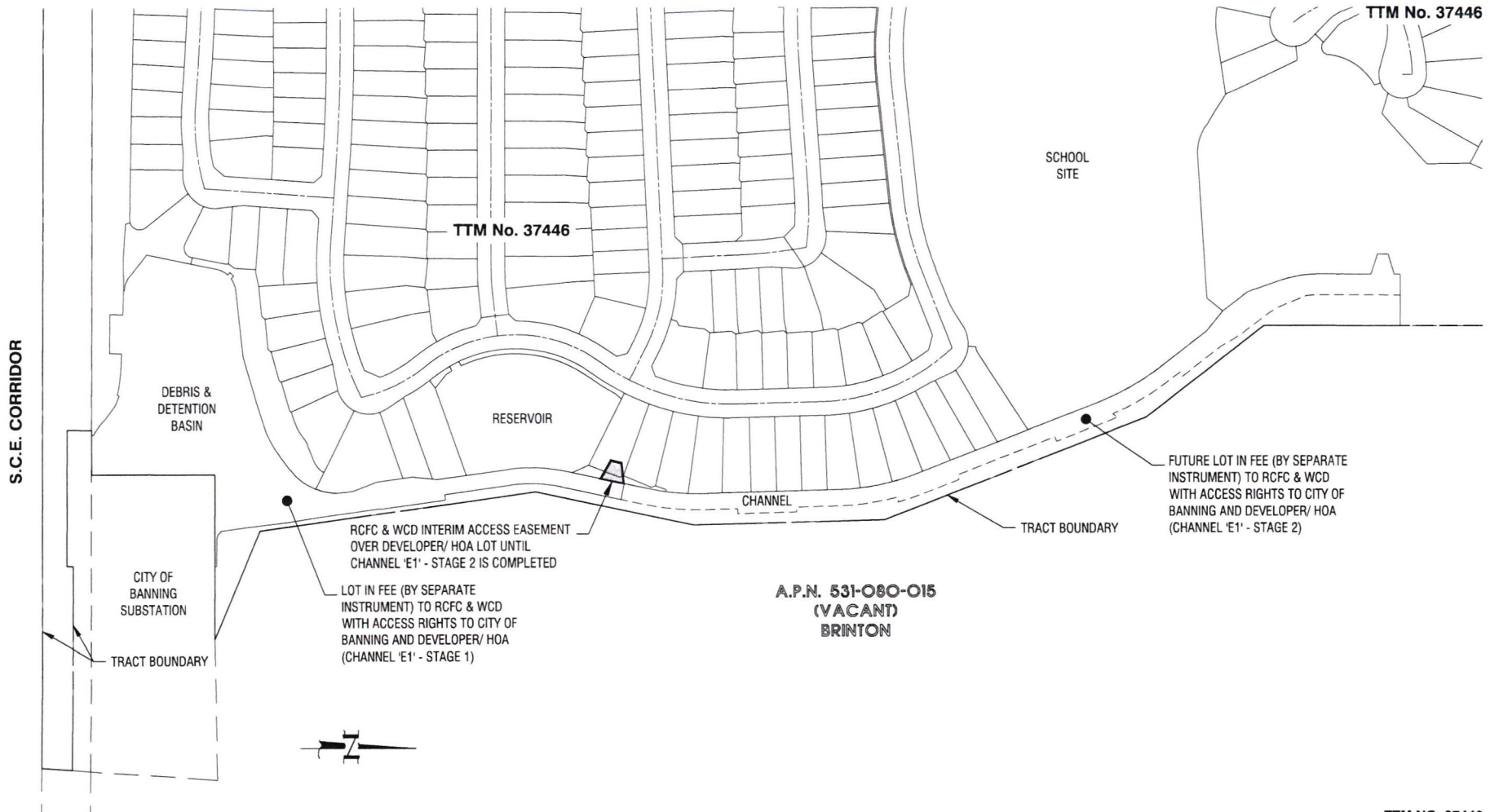
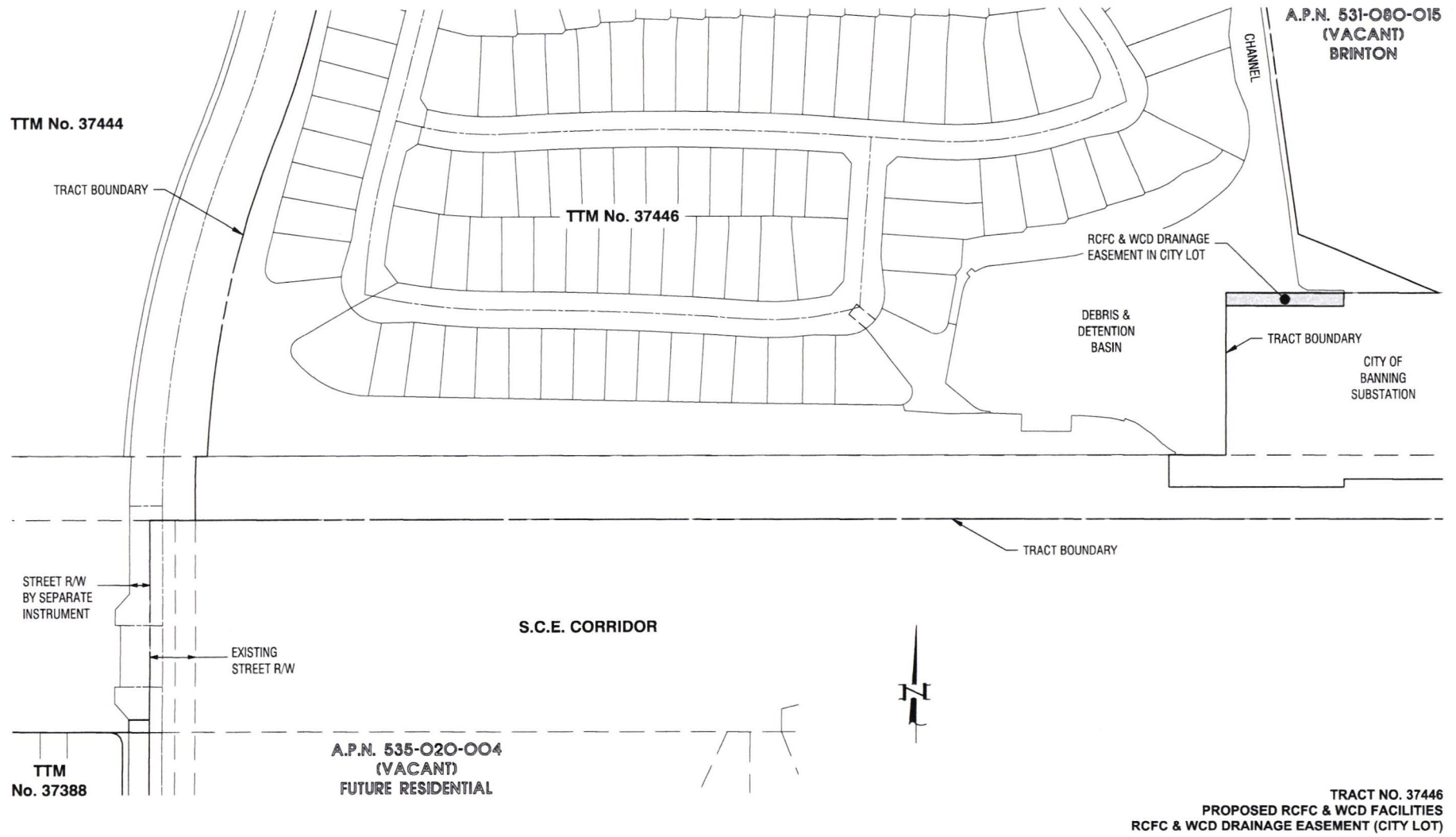


EXHIBIT D



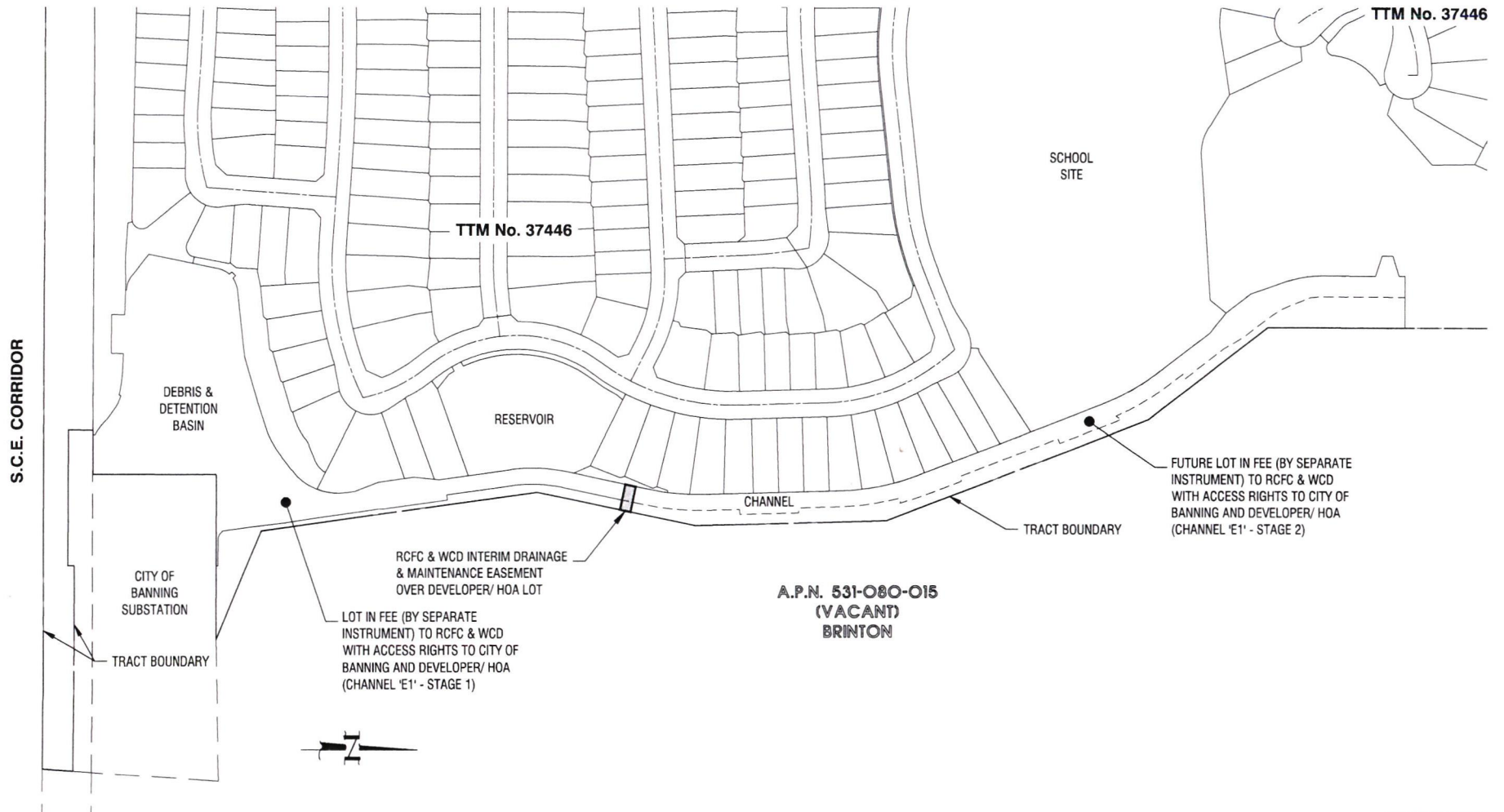
TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD INTERIM ACCESS EASEMENT

EXHIBIT D



TRACT NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD DRAINAGE EASEMENT (CITY LOT)

EXHIBIT D



TTM NO. 37446
PROPOSED RCFC & WCD FACILITIES
RCFC & WCD INTERIM DRAINAGE & MAINTENANCE EASEMENT