

COOPERATIVE AGREEMENT
West End Moreno MDP Line LL, Stage 2
Project No. 4-0-00783
Miscellaneous No. 198 (MS198)
Parcel Map No. 37902

This Cooperative Agreement ("Agreement"), dated as of _____, is entered into by and between, the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("DISTRICT"), the City of Riverside, a municipal corporation of the State of California ("CITY") and FB215, LLC, a California limited liability company ("DEVELOPER"). DISTRICT, CITY and DEVELOPER are 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 city of Riverside. The legal description of Parcel Map No. 37902 is provided in Exhibit "A" attached hereto and made a part hereof; and

B. DEVELOPER has submitted for approval MS198 related to the property, which is located in the incorporated area in the city of Riverside. As a condition of approval for MS198, 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 MS198 are shown on DISTRICT's Drawing No. 4-1153 and shown in concept on Exhibit "B", attached hereto and made a part hereof, and include the construction of the following:

- (i). West End Moreno MDP Line LL, Stage 2 ("LINE LL, STAGE 2") consists of (a) 50 lineal feet of portland cement concrete transition structure, (b) approximately 308 lineal feet of 5'W x 4'H precast reinforced concrete box with (c) approximately 123 lineal feet of

open concrete lined rectangular channel which includes an associated outlet structure, riprap, headwall, cut-off wall, and maintenance access road on Parcel A, as shown in blue in Exhibit "C", attached hereto and made a part hereof. At the downstream terminus, LINE LL, STAGE 2 will drain into an existing culvert maintained by Caltrans; at the upstream terminus, LINE LL, STAGE 2 will connect to DISTRICT's existing facility West Moreno MDP Line LL, Stage 1 ("EXISTING FACILITY") as shown on District Drawing No. 4-1153;

- (ii). 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, gates and fencing ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and installed by DEVELOPER's contractor and subject to DISTRICT's inspection and approval; and

D. Together, LINE LL, STAGE 2 and SAFETY DEVICES are hereinafter called "DISTRICT FACILITIES"; and

E. Associated with the construction of DISTRICT FACILITIES includes the construction of a certain access road on Parcel 1, as shown in red in Exhibit "C", located within Parcel Map No. 37902 boundary within DEVELOPER's held rights of way or easements, hereinafter called "DEVELOPER FACILITIES". DEVELOPER FACILITIES are to be initially owned and maintained by DEVELOPER and subsequently owned and maintained by the property owners for Parcel Map No. 37902; and

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

G. DEVELOPER and CITY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES. Therefore, DISTRICT must review and approve DEVELOPER's plans and specifications for DISTRICT FACILITIES; and

H. DISTRICT is willing to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES provided DEVELOPER performs all of the following (i) complies with this Agreement, (ii) prepares PROJECT plans in accordance with DISTRICT and CITY approved plans and specifications and this Agreement, (iii) constructs PROJECT in accordance with DISTRICT and CITY approved plans and specifications and this Agreement, (iv) obtains and conveys to DISTRICT and CITY the necessary rights of way for the inspection, operation and maintenance of DISTRICT FACILITIES and (v) accepts ownership and responsibility for the operation and maintenance of PROJECT following completion of PROJECT construction until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES; and

I. 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 FACILITIES, (iii) grant DISTRICT the right to inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way and (iv) convey to DISTRICT the necessary rights of way for the inspection, operation and maintenance of DISTRICT FACILITIES, provided PROJECT is constructed in accordance with plans and specifications approved by DISTRICT and CITY; and

J. In conjunction with DISTRICT FACILITIES, DISTRICT acquired certain easement rights for inundation and incidental purposes, referenced as DISTRICT Parcel Numbers 4783-1, 4783-2 and 4783-2T, hereinafter called ("DISTRICT EASEMENTS"), as shown on

Exhibit "D", attached hereto and made apart hereof, and as recorded in the Official Records of Riverside County as Instrument No. 2018-0136846; and

K. DISTRICT will (i) allow DEVELOPER to enter upon DISTRICT EASEMENTS for the purpose of performing inspection services and construction of DISTRICT FACILITIES and (ii) vacate its associated DISTRICT EASEMENTS, after DISTRICT's determination of DISTRICT FACILITIES construction as being complete.

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

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 Parcel Map No. 37902 or any phase thereof, whichever occurs first, provide CITY with faithful performance and payment bonds in accordance with CITY's municipal code, including any amendments thereto, for the estimated cost for construction of DISTRICT FACILITIES as determined by DISTRICT. 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 FACILITIES are accepted by DISTRICT for operation and maintenance, at which time the bond amount may be reduced to ten percent (10%) for a period of one (1) year to guarantee against any defective work labor or materials. 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 VIII 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 providing construction inspection for DISTRICT FACILITIES in an amount as determined and approved by DISTRICT in accordance with County of Riverside Ordinance Nos. 671 and 749, including any amendments thereto, based upon the bonded value of DISTRICT 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.

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 DISTRICT's required insurance provided in Exhibit "E", attached hereto and made a part hereof. DEVELOPER shall not commence construction 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 FACILITIES due, either in whole or in part, to said breach of this Agreement.

10. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, or not less than twenty (20) calendar days prior to recordation of the final map for Parcel Map No. 37902 or any phase thereof, whichever occurs first, furnish DISTRICT (Attention: Developer Rights of Way Services Section) and CITY with sufficient evidence of DEVELOPER securing the 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's and CITY's approval of IMPROVEMENT PLANS and prior to the start on any portion of PROJECT construction, obtain and provide DISTRICT (Attention: Developer Rights of Way Services 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 FACILITIES. The Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property described in the offer(s).

12. Upon submitting the Irrevocable Offer(s) of Dedication as set forth in Section I.11., furnish DISTRICT (Attention: Developer Rights of Way Services Section) with Preliminary Reports on Title dated not more than thirty (30) calendar days prior to date of submission of all the property 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 plans of PROJECT and assign their ownership to DISTRICT and CITY, respectively.

14. After receiving DISTRICT's plan check and administrative clearance for PROJECT construction as set forth in Sections I.1 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, concrete mix designs for DISTRICT's review and approval. Construction shall not begin on any element of PROJECT, for any reason whatsoever, until DISTRICT and CITY have 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, 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 CITY 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 DISTRICT conduct a final inspection of DISTRICT 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 FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT the flood control easement(s), including ingress and egress, in a form approved by DISTRICT, to the rights of way as shown in concept in cross-hatched on Exhibit "F", 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 parcel(s) as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which in the sole discretion of DISTRICT are acceptable.

22. Prior to completion of PROJECT construction, deposit with DISTRICT (Attention: Business Office – Accounts Receivable), and notify Developer Rights of Way Services Section, for the vacation of DISTRICT EASEMENTS, in an amount as determined and approved by DISTRICT.

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 property owners accept 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 PROJECT until such time as DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT FACILITIES. DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and in the sole discretion of DISTRICT, DISTRICT FACILITIES is 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. Upon completion of PROJECT construction but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT (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."

25. 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.

26. 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 of Intent to start of construction of PROJECT 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. Reserve the right to withhold issuance of the Notice to Proceed pursuant to Section IV.4.

7. By execution of this Agreement, allow DEVELOPER to enter upon DISTRICT EASEMENTS for the purpose of performing inspection services and construction of DISTRICT FACILITIES as set forth herein.

8. Inspect construction of DISTRICT FACILITIES.

9. Keep an accurate accounting and submit periodic invoices to DEVELOPER of all DISTRICT 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.

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

11. Upon (i) DISTRICT acceptance of PROJECT construction as being complete and (ii) DISTRICT receipt of stamped and signed "record drawing" of IMPROVEMENT PLAN as set forth in Section I.24., provide DEVELOPER with a reproducible duplicate copy of "record drawings" of IMPROVEMENT PLANS.

12. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to any

inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES are not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

13. Upon completion of PROJECT construction, and upon acceptance by CITY of all rights of way deemed necessary by DISTRICT for the operation and maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation, and maintenance, convey, or cause to be conveyed by CITY to DISTRICT the flood control easement(s) including ingress and egress, in a form approved by DISTRICT.

14. Upon determination of DISTRICT FACILITIES construction as being complete, at DEVELOPER's sole cost and expense, vacate its associated DISTRICT EASEMENTS.

15. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES upon (i) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.19., (ii) DISTRICT acceptance of PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans as set forth in Section I.24., (iv) recordation of all conveyance documents described in Section I.20., (v) receipt of all required policies of title insurance described in Section I.21., (vi) DISTRICT FACILITIES fully functioning as a flood control drainage system as solely determined by DISTRICT and (vii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.

16. Upon both of the following: DISTRICT acceptance of DISTRICT FACILITIES and DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT PLANS as set forth in Section I.24., provide CITY with (i) a reproducible duplicate copy of "record drawings" of constructed DISTRICT FACILITIES, (ii) a written notice that PROJECT is complete and (iii) request CITY to release bonds held for DISTRICT 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.

2. Accept CITY and DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER, which meet the requirements of CITY municipal code or ordinances, including any amendments thereto, as set forth in Section I.4., for the estimated cost for construction of DISTRICT FACILITIES as determined by DISTRICT, and hold said bonds as provided in this Agreement. The bonds shall list CITY as obligee and be subject to the approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT FACILITIES are accepted by DISTRICT for operation and maintenance, at which time the bond amount may be reduced to ten percent (10%) for a period of one (1) year to guarantee against any defective work, labor or materials. 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 VIII 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 that the PROJECT is complete, as set forth in Section II.16.

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

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

5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication as set forth herein and any other outstanding offers of dedication necessary for the construction, inspection, operation and maintenance of DISTRICT FACILITIES and convey sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and maintain DISTRICT FACILITIES.

6. Upon completion of PROJECT construction but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT the flood control easement(s), including ingress and egress to the rights of way as shown in concept in "cross-hatched" on Exhibit "F".

7. Release occupancy permits in accordance with the approved conditions of approval for MS198.

8. 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 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 FACILITIES unless and until DEVELOPER performs all obligations under this Agreement.

2. All construction work involved with PROJECT shall be inspected by DEVELOPER and DISTRICT but shall not be deemed complete until DISTRICT agrees in

writing that construction of PROJECT 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 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 or DISTRICT's ability to operate and maintain DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT.

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 the remaining work on 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 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 Parcel Map No. 37902 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 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 or CITY 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 CITY municipal codes or ordinances, 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 DISTRICT, the County of Riverside, and CITY (including each of their respective Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, 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 respective officers, employees, subcontractors, agents or representatives (individually and collectively hereinafter referred to as "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 or compromise any such action or claim only with the prior consent of DISTRICT, the County of Riverside or 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.

10. DEVELOPER's and DEVELOPER's construction contractor(s) indemnification obligation hereunder shall be satisfied when DEVELOPER or DEVELOPER's construction contractor(s) has provided to DISTRICT, the County of Riverside and CITY the appropriate form of dismissal relieving DISTRICT, the County of Riverside or CITY from any liability for the action or claim 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 Indemnitees 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 respective 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, County of Riverside, or CITY (including each of their respective 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, for the negligent maintenance of PROJECT by DEVELOPER after the acceptance of PROJECT by DISTRICT and CITY, 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 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: Contracts Services Section

To CITY: CITY OF RIVERSIDE
3900 Main Street
Riverside, CA 92501
Attn: Public Works Director

To DEVELOPER: FB215, LLC
2552 Walnut Avenue, Suite 110
Tustin, CA 92780
Attn: Darrell Butler

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 Parcel Map No. 37902, 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 Parcel Map No. 37902 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations in this Agreement to the new owner(s) of Parcel Map No. 37902.

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) that 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

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By _____
JASON E. UHLEY
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By _____
RYAN YABKO
Deputy County Counsel

By _____
Deputy

(SEAL)

[Signed in Counterpart]

Cooperative Agreement:
West End Moreno MDP Line LL, Stage 2
Project No. 4-0-00783
Case No. MS 198
MER:blj
2/10/25

RECOMMENDED FOR APPROVAL:

CITY OF RIVERSIDE

By _____
GILBERT HERNANDEZ
Public Works Director

By _____
MIKE FUTRELL
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
JACK LIU
Interim City Attorney

By _____
DONESIA GAUSE, MMC
City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: *Susan Wilson*
ASSISTANT CITY ATTORNEY

Cooperative Agreement:
West End Moreno MDP Line LL, Stage 2
Project No. 4-0-00783
Case No. MS 198
MER:blj
2/10/25

FB215, LLC,
a California limited liability company

By: TFC Investors, L.P., a California limited
partnership, Its Member

By: TFC Management, LLC, a California limited liability
company, Its General Partner

By _____
JAMES L. FULLMER
Manager

By: The DAB Trust dated December 8, 2011

By _____
DARRELL A. BUTLER
Trustee

(ATTACH NOTARY WITH CAPACITY STATEMENT)

Cooperative Agreement:
West End Moreno MDP Line LL, Stage 2
Project No. 4-0-00783
Case No. MS 198
MER:blj
2/10/25

LEGAL DESCRIPTION

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

PARCELS 1, 2, 3 AND "A" AS SHOWN ON PARCEL MAP NO. 37902 IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA RECORDED OCTOBER 26, 2022, IN [BOOK 255, PAGES 40 THROUGH 44](#), INCLUSIVE OF PARCEL MAPS.

APN: 263-370-022, 263-370-003, 263-370-021, 263-370-019, 263-370-023, 263-370-014, 263-370-020, 263-370-015, 263-370-013, 263-370-018, 263-370-012 AND 263-370-017

EXHIBIT B

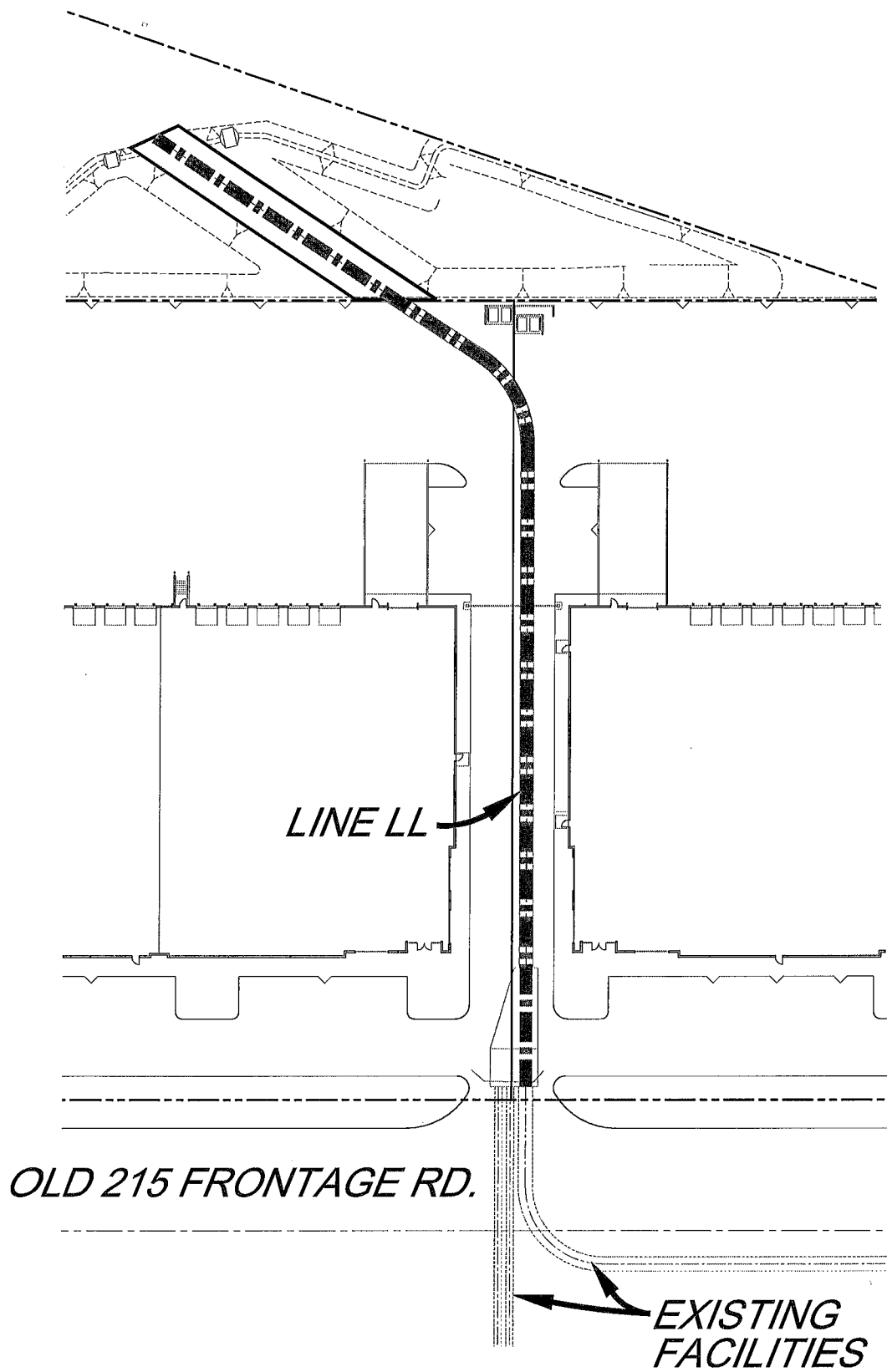
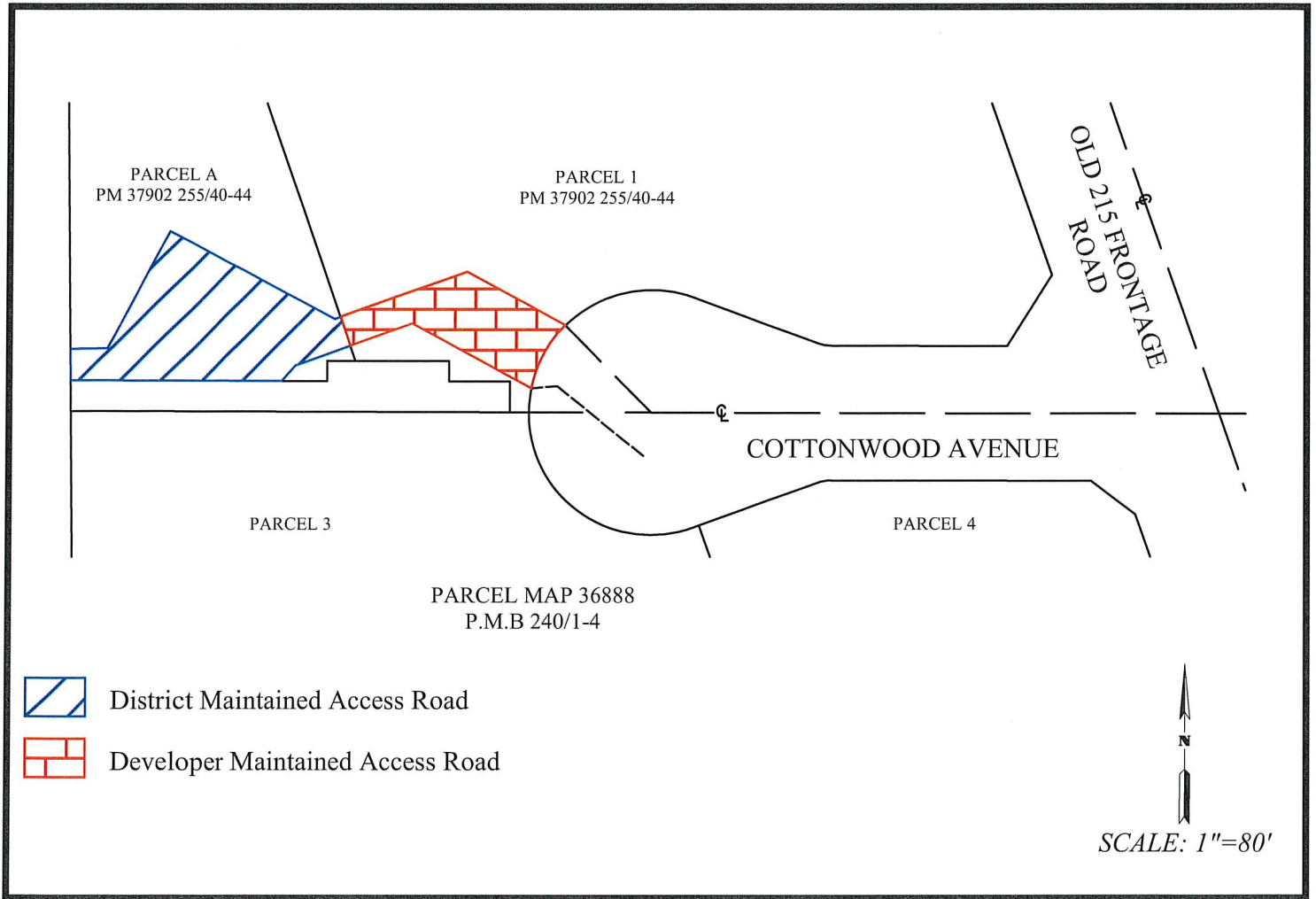


EXHIBIT C



COOPERATIVE AGREEMENT

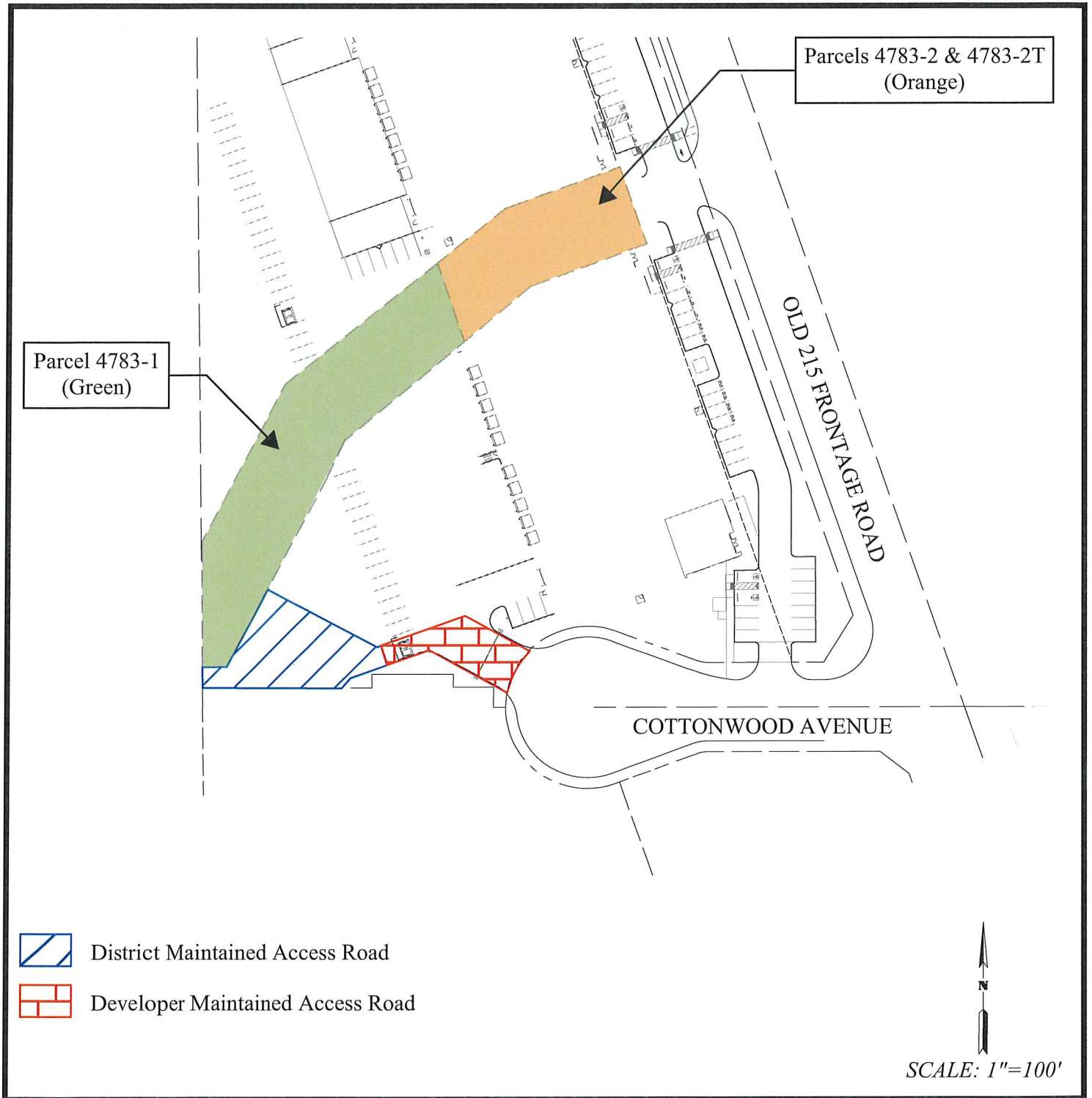
MS 198

Drawing 4-1153

West End Moreno MDP Line LL, Stage 2

Project Number 4-0-00783

EXHIBIT D



COOPERATIVE AGREEMENT
MS 198
Drawing 4-1153
West End Moreno MDP Line LL, Stage 2
Project Number 4-0-00783

Exhibit E

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) and CITY 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 and CITY 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.

C. Vehicle Liability:

If DEVELOPER's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT and CITY as Additional Insureds.

Exhibit E

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.

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

Exhibit E

related investigations, claims administration, and defense costs and expenses.

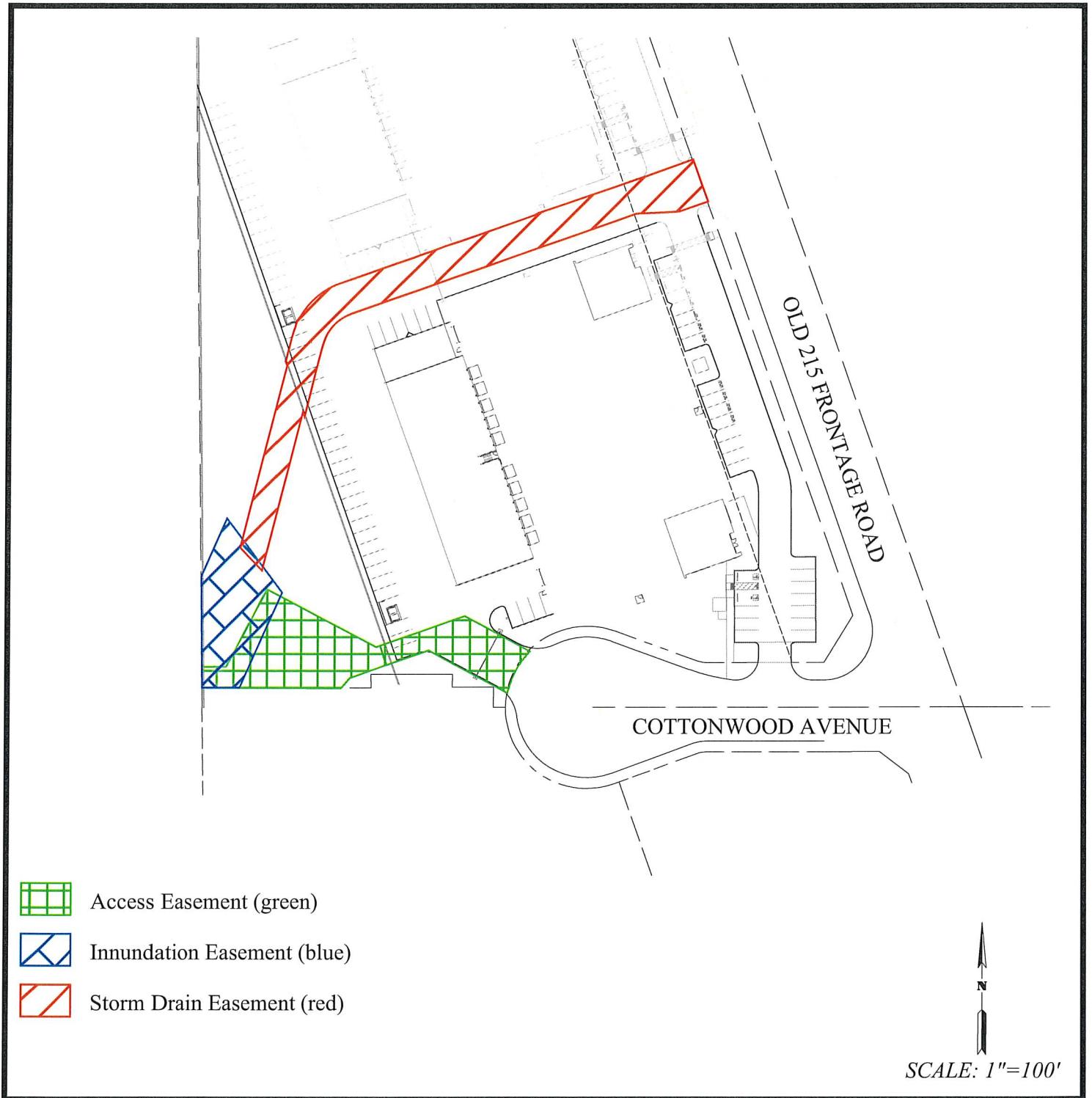
- c. DEVELOPER shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally 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,

Exhibit E

etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.

- 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 and CITY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

EXHIBIT F



COOPERATIVE AGREEMENT
MS 198
Drawing 4-1153
West End Moreno MDP Line LL, Stage 2
Project Number 4-0-00783