

AMENDMENT NO. 2  
to COOPERATIVE AGREEMENT

Moreno MDP Line F, Stage 3

Moreno MDP Line D

Moreno MDP Line D-5

Moreno MDP Line D-6

Moreno – Line F Sinclair Street Storm Drain

(Project Nos. 4-0-00752, 4-0-00749, 4-0-00741, 4-0-00742, and 4-0-00743)

Encroachment Permit No. 3791 (Parcel Map No. 35629)

This Amendment No. 2 to Cooperative Agreement ("AMENDMENT No. 2"), dated as of \_\_\_\_\_, 2020, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Moreno Valley, a municipal corporation of the State of California ("CITY"), and HF Logistics-SKX T1, LLC, a Delaware limited liability company, HF Logistics-SKX T2, LLC, a Delaware limited liability company, and Highland Fairview Partners IV, a California general partnership (collectively, "DEVELOPERS") (together, the "Parties"). The Parties hereby agree as follows:

RECITALS

A. The legal description of Parcel Map No. 35629 ("the Real Property") is attached hereto and incorporated by reference as Exhibit "A"; and

B. Pursuant to the conditions of approval (COA) for Parcel Map No. 35629, DISTRICT, CITY, and HF Logistics-SKX T1, LLC, a Delaware limited liability company, HF Logistics-SKX T2, LLC, a Delaware limited liability company, Highland Fairview Partners I, a California general partnership, Highland Fairview Partners II, a California general partnership, Highland Fairview Partners III, a California general partnership, and Highland Fairview Partners IV, a California general partnership ("PREVIOUS DEVELOPERS"), entered into that certain Cooperative Agreement dated September 28, 2010 [DISTRICT's Board Agenda Item No. 11.2], and recorded as Document No. 2010-0527149 in the Official Records of the County of Riverside, hereinafter referred to as "ORIGINAL AGREEMENT", requiring PREVIOUS DEVELOPERS

to construct certain flood control and drainage facilities for Parcel Map No. 35629 as provided in ORIGINAL AGREEMENT; and

C. PREVIOUS DEVELOPERS have constructed the flood control facilities ("CONSTRUCTED FACILITIES"), pursuant to ORIGINAL AGREEMENT; and

D. On February 15, 2011 [DISTRICT's Board Agenda Item No. 11.2], and recorded as Document No. 2011-0117927 in the Official Records of the County of Riverside, PREVIOUS DEVELOPERS entered into that certain Amendment No. 1 to ORIGINAL AGREEMENT ("AMENDMENT No. 1"), to provide for a reduction in the surety amount held by CITY to guarantee the construction of CONSTRUCTED FACILITIES; and

E. Sometime in December 2012, Highland Fairview Partners I, a California general partnership, Highland Fairview Partners II, a California general partnership and Highland Fairview Partners III, a California general partnership, were acquired by Highland Fairview Partners IV, a California general partnership; and

F. Subsequent to DISTRICT's acceptance of CONSTRUCTED FACILITIES, the Parties hereto have mutually agreed to certain modifications to the design of CONSTRUCTED FACILITIES to include the construction of a new lateral to Moreno MDP Line D-6 ("LATERAL"), as shown in concept on Exhibit "B" attached hereto and made a part hereof, and the associated responsibilities for the operation and maintenance of same; and

G. ORIGINAL AGREEMENT together with AMENDMENT No. 1 are hereinafter collectively referred to as "AGREEMENT"; and

H. AGREEMENT specifies that it may be changed or modified subject to the written consent of the parties thereto.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree to amend AGREEMENT as

follows, effective upon approval of this AMENDMENT No. 2 by DISTRICT's Board of Supervisors:

1. The above RECITALS are true and correct.
2. Paragraph B in the RECITALS of AGREEMENT is amended to read:
 

"The required flood control facilities include construction of approximately 5,116 lineal feet of underground storm drain system ("STORM DRAINS") and lateral to Line D-6 ("LATERAL"), hereinafter called "DISTRICT DRAINAGE FACILITIES, also shown in concept on Exhibit "B"; and"
3. Last sentence in RECITALS 'C' of Agreement is hereby deleted.
4. RECITALS 'D' to RECITALS 'G' of AGREEMENT are re-lettered as RECITALS 'E' to RECITALS 'H' of AGREEMENT.
5. New RECITALS 'D' of AGREEMENT is added to read:
 

"Also associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of approximately 19 lineal feet of 24-inch reinforced concrete pipe, basin, guard shack and a conveyor bridge located within DEVELOPER held easements or rights of way ("DEVELOPER FACILITIES"), to be initially owned and maintained by DEVELOPER, and will be subsequently owned and maintained by the Property Owners' for Parcel Map No. 35629. Together, DISTRICT DRAINAGE FACILITIES, APPURTENANCES and DEVELOPER FACILITIES are hereinafter called "PROJECT"; and"
6. Section I.18 is amended to read:
 

"DEVELOPERS shall not commence operations until DISTRICT 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. Prior to DISTRICT issuing a Notice to Proceed to its construction contractor(s) to begin construction of PROJECT, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT and CITY. At minimum, the procured insurance coverages should adhere to DISTRICT's required insurance provided in EXHIBIT "C", attached hereto and made a part hereof. 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 DEVELOPERS that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT DRAINAGE FACILITIES due, either in whole or in part, to said breach of this Agreement."

7. Section I.19 is deleted in its entirety.
8. Section I.26 is amended to read:

"Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as (i) DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT DRAINAGE FACILITIES, (ii) CITY accepts ownership and responsibility for operation and maintenance of APPURTENANCES, and (iii) the Property Owners for Parcel Map No. 35629 accept ownership and responsibility for the operation and maintenance of DEVELOPER FACILITIES. Further, it is mutually understood by the parties hereto that prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES, PROJECT shall be in a satisfactorily maintained condition as solely determined by DISTRICT."

9. Section IV.7 is amended to read

"DEVELOPERS shall indemnify and hold harmless DISTRICT and CITY (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DEVELOPERS' (including its officers, employees, subcontractors and agents) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance or regulation caused by the diversion of waters from the natural drainage patterns or the discharge of drainage within or from PROJECT; or (d) any other element of any kind or nature whatsoever.

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

With respect to any of DEVELOPERS' indemnification requirements, DEVELOPERS shall, at its sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, compromise any such claim, proceeding or action without the prior consent of DISTRICT and CITY; provided, however, that any

such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPERS' indemnification obligations to DISTRICT or CITY.

DEVELOPERS' indemnification obligations shall be satisfied when DEVELOPERS have provided to DISTRICT and CITY the appropriate form of dismissal (or similar document) relieving DISTRICT or CITY from any liability for the claim, proceeding or action involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPERS' obligations to indemnify and hold harmless DISTRICT and CITY from third party claims.

In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with California Civil Code Section 2782. Such interpretation shall not relieve DEVELOPERS from indemnifying DISTRICT or CITY to the fullest extent allowed by law."

Except to the extent specifically deleted, added to, or amended herein, all of the terms, covenants, and conditions of said AGREEMENT executed on September 28, 2010 and AMENDMENT No. 1 dated February 15, 2011 shall remain in full force and effect between the parties hereto.

This AMENDMENT No. 2 may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT No. 2

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 SPEIGEL, Chairwoman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER  
Clerk of the Board

By \_\_\_\_\_  
LEILA MOSHREF-DANESH  
Deputy County Counsel

By \_\_\_\_\_  
Deputy

(SEAL)

Amendment No. 2 to Cooperative Agreement:  
Moreno MDP Line F, Stage 3  
Moreno MDP Line D  
Moreno MDP Line D-5  
Moreno MDP Line D-6  
Moreno – Line F Sinclair Street Storm Drain  
(Project Nos. 4-0-00752, 4-0-00749, 4-0-00741, 4-0-00742 and 4-0-00743)  
Encroachment Permit No. 3791 (Parcel Map No. 35629)  
09/17/2020  
AMR:blm

**CITY OF MORENO VALLEY**

By \_\_\_\_\_  
MICHAEL L. WOLFE  
Public Works Director/City Engineer

APPROVED AS TO FORM:

By \_\_\_\_\_  
STEVE QUINTANILLA  
Interim City Attorney

ATTEST:

By \_\_\_\_\_  
PAT JACQUEZ-NARES  
City Clerk

(SEAL)

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AMR:blm

**HF LOGISTICS-SKX T1, LLC**  
a Delaware limited liability company

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**HF LOGISTICS-SKX T2, LLC**  
a Delaware limited liability company

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**HIGHLAND FAIRVIEW PARTNERS IV**  
a California general partnership

By \_\_\_\_\_

IDDO BENZEEVI  
President

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

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09/17/2020  
AMR:blm

# Exhibit A

## LEGAL DESCRIPTION

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

PARCEL A:

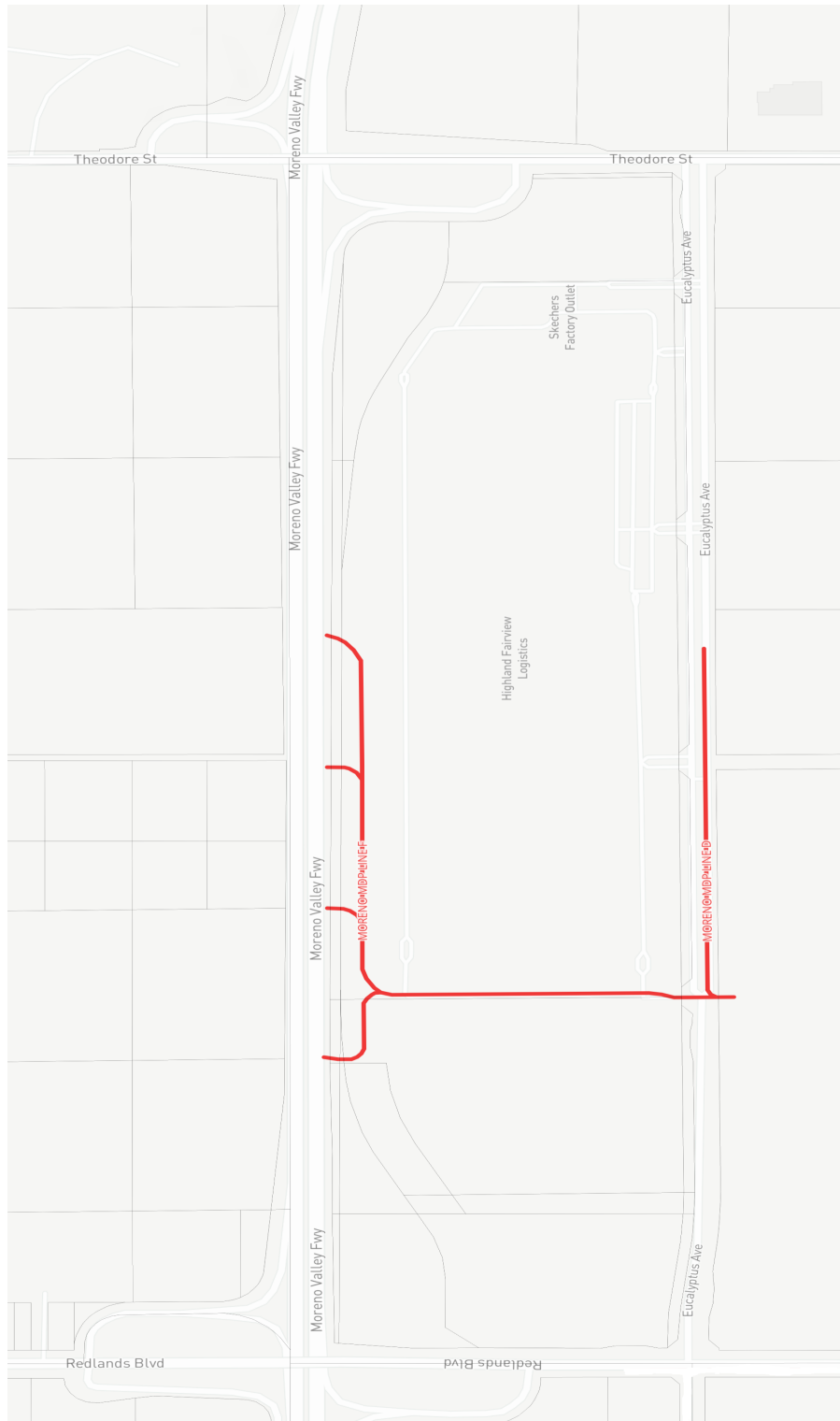
PARCELS 2 AND 3 OF PARCEL MAP NO. 35629, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AS PER MAP THEREOF RECORDED ON AUGUST 26, 2010 IN BOOK 231 PAGE 77-82 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL B:

PARCEL 1 OF PARCEL MAP NO. 35629, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER THE MAP THEREOF RECORDED ON AUGUST 26, 2010 IN BOOK 231, PAGES 77-82 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

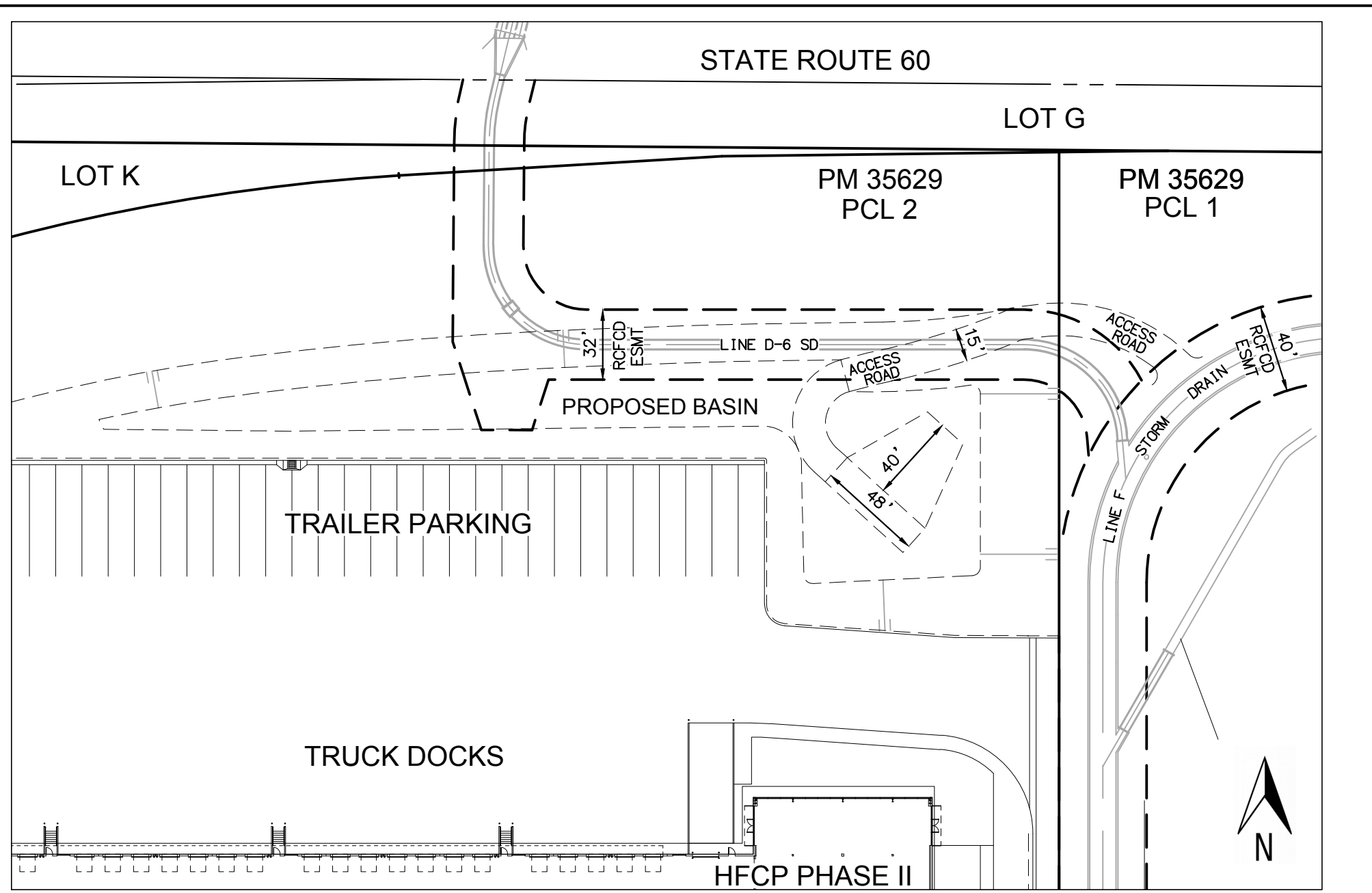
APN: 488-350-031 (Affects Portion of Parcel 2 of Parcel A);  
488-350-035 (Affects Portion of Parcel 2 of Parcel A);  
488-350-027 (Affects Portion of Parcel 3 of Parcel A);  
488-350-032 (Affects Portion of Parcel 3 of Parcel A);  
488-350-036 (Affects Portion of Parcel 3 of Parcel A); and  
488-350-041 (Affects Parcel B)

# Exhibit B



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Moreno MDP Line F, Stage 3, Moreno MDP Line D,  
Moreno MDP Line D-5, Moreno MDP Line D-6  
Moreno Line F Sinclair Street Storm Drain  
(Project Nos. 4-0-00752, 4-0-00749, 4-0-00741, 4-0-00742, and 4-0-00743)  
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**EXHIBIT B**

AMENDMENT NO. 2 to COOPERATIVE AGREEMENT

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# **EXHIBIT C**

DISTRICT's Required Insurance is as follows:

DEVELOPERS shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section.

Without limiting or diminishing DEVELOPERS' obligation to indemnify or hold DISTRICT harmless, DEVELOPERS 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 DEVELOPERS have employees as defined by the State of California, DEVELOPERS 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 DEVELOPERS' 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 DEVELOPERS' vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPERS 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.

D. Professional Liability:

DEVELOPERS shall cause any architect or engineer retained by DEVELOPERS in connection with the performance of DEVELOPERS' obligations under this Agreement to maintain Professional Liability Insurance

providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. DEVELOPERS 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.

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- b. The DEVELOPERS 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, DEVELOPERS' 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. DEVELOPERS 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

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modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPERS insurance carrier(s) policies does not meet the minimum notice requirement found herein, DEVELOPERS shall cause DEVELOPERS' 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 DEVELOPERS' 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

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which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPERS have become inadequate.

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

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