

CITY OF WILDOMAR CITY COUNCIL

5:30 P.M. – SPECIAL MEETING

OCTOBER 16, 2012
Council Chambers
23873 Clinton Keith Road



Ben Benoit, Mayor
Timothy Walker, Mayor Pro Tem
Bob Cashman, Council Member
Bridgette Moore, Council Member
Marsha Swanson, Council Member

Frank Oviedo
City Manager

Thomas D. Jex
City Attorney

CALL TO ORDER – 5:30 P.M.

ROLL CALL

PUBLIC COMMENTS

1.0 GENERAL BUSINESS

- 1.1 **Oak Springs Ranch Storm Drain Maintenance Agreement**
RECOMMENDATION: Staff recommends that the City Council approve the storm drain maintenance agreement and authorize the Mayor to sign it.

ADJOURN THE CITY COUNCIL

If requested, the agenda and backup materials will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans With Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Any person that requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting, may request such modification, accommodation, aid or service by contacting the City Clerk either in person or by phone at 951/677-7751, no later than 10:00 a.m. on the day preceding the scheduled meeting.

I, Debbie A. Lee, Wildomar City Clerk, do certify that on October 12, 2012, by 5:00 p.m., a true and correct copy of this agenda was posted at the three designated posting locations:

Wildomar City Hall, 23873 Clinton Keith Road,
U.S. Post Office, 21392 Palomar Street,
Mission Trail Library, 34303 Mission Trail Blvd.

Debbie A. Lee, CMC
City Clerk

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #1.1
GENERAL BUSINESS
Meeting Date: October 16, 2012

TO: Mayor and City Council Members
FROM: Tim D'Zmura, Public Works Director
SUBJECT: Oak Springs Ranch Storm Drain Maintenance Agreement

STAFF REPORT

RECOMMENDATION:

Staff recommends that the City Council approve the storm drain maintenance agreement and authorize the Mayor to sign it.

DISCUSSION:

As required by the County of Riverside, the developer of the Oak Springs Ranch Project is required to construct certain storm drain improvements and structures to provide flood protection for the subject property as well as downstream properties. The attached agreement, prepared by the Riverside County Flood Control District, sets forth the specific maintenance responsibilities of the storm drain improvements for the District, the City and the developer. The agreement has been reviewed and approved as to form by the City Attorney and is ready for the City Council's approval.

Oak Springs Ranch needs to have the maintenance agreement approved by the City Council before they can obtain their permits from the County Flood Control District in order to complete their storm drain work. The timing is critical for a couple of reasons. One, we are now in the inclement weather season and it is very important the storm drains go in on the property before we get more rain. Two, we have an \$80 million project that may have to stop work if they are unable to obtain their permits in a timely manner. From an economic development standpoint it is important that we keep the City's largest construction project active.

There has not been a need to call a special meeting since the city moved to a once a month format. In this instance given the nature of the project's impact on our local economy, and the critical path needed to keep construction active, staff believed it was necessary to meet sooner rather than wait 30 days.

GLJ Partners (Developer) will have a representative at the meeting to answer any questions the City Council may have regarding the storm drains being installed and the agreement staff is recommending that the City Council authorize the Mayor to sign.

FISCAL IMPACT:

Minimal impact to City budget since Riverside County Flood Control District and the developer's created association will be responsible for most of the on going storm drain maintenance responsibilities.

Submitted by:
Tim D'Zmura
Public Works Director

Approved by:
Frank Oviedo
City Manager

ATTACHMENT:

Oak Springs Ranch Storm Drain Maintenance Agreement

COOPERATIVE AGREEMENT

Murrieta Valley – Oak Springs Ranch Storm Drain
(Project No. 7-0-00172)
(Tract No. 31736-1)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF WILDOMAR, hereinafter called "CITY", and OAK SPRINGS RANCH, LLC, a Delaware limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Tract No. 31736-1 in the city of Wildomar and as a condition for approval, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The required flood control facilities, as shown on DISTRICT Drawing No. 7-495, include construction of approximately 2,196 lineal feet of underground storm drain system and an associated outlet structure, hereinafter called "DISTRICT DRAINAGE FACILITIES", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof. At its downstream terminus, DISTRICT DRAINAGE FACILITIES drain into an existing open natural drainage course within proposed Lot 203 of Tract No. 31736-1; and

C. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of an upstream segment of the mainline storm drain, hereinafter called "APPURTENANCES", as shown in concept in green on Exhibit "A" attached hereto and made a part hereof, and a separate, large storm drain and associated diversion structure located within Tract No. 31736-1, hereinafter called "PRIVATE STORM DRAIN". Together, DISTRICT

1 DRAINAGE FACILITIES, APPURTENANCES and PRIVATE STORM DRAIN are
2 hereinafter called "PROJECT"; and

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

8
9 E. DEVELOPER and DISTRICT desire CITY to accept ownership and
10 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY
11 must review and approve DEVELOPER'S plans and specifications for PROJECT and
12 subsequently inspect the construction of APPURTENANCES; and

13 F. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
14 specifications for PROJECT, (ii) inspect the construction of DISTRICT DRAINAGE
15 FACILITIES, and (iii) accept ownership and responsibility for the operation and maintenance of
16 DISTRICT DRAINAGE FACILITIES, provided DEVELOPER (i) complies with this
17 Agreement, (ii) pays DISTRICT the amounts specified herein to cover DISTRICT'S plan review
18 and construction inspection costs, (iii) pays DISTRICT the amount specified herein to cover
19 DISTRICT'S estimated cost to operate and maintain DISTRICT DRAINAGE FACILITIES for
20 a period of ten (10) years commencing upon DISTRICT'S acceptance of DISTRICT
21 DRAINAGE FACILITIES as complete for ownership, operation and maintenance, (iv)
22 constructs PROJECT in accordance with plans and specifications approved by DISTRICT and
23 CITY, (v) obtains all necessary agreements, regulatory permits, licenses and rights of entry as
24 set forth herein, (vi) accepts ownership and responsibility for the operation and maintenance of
25 PROJECT following completion of PROJECT construction until such time as DISTRICT
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1 accepts ownership and responsibility for the operation and maintenance of DISTRICT
2 DRAINAGE FACILITIES and CITY accepts ownership and responsibility for the operation and
3 maintenance of APPURTENANCES, and (vii) obtains and conveys to DISTRICT the necessary
4 rights of way for the inspection, operation and maintenance of DISTRICT DRAINAGE
5 FACILITIES as set forth herein; and

6 G. CITY is willing to (i) review and approve plans and specifications prepared
7 by DEVELOPER for PROJECT, (ii) inspect the construction of APPURTENANCES, (iii)
8 accept and hold faithful performance and payment bonds submitted by DEVELOPER for
9 DISTRICT DRAINAGE FACILITIES, (iv) consent to the recordation and conveyance of
10 Irrevocable Offer(s) of Dedication furnished by DEVELOPER as provided herein, and (v)
11 accept ownership and responsibility for the operation and maintenance of APPURTENANCES,
12 provided PROJECT is constructed in accordance with plans and specifications approved by
13 DISTRICT and CITY.
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15 NOW, THEREFORE, the parties hereto mutually agree as follows:
16

17 SECTION I

18 DEVELOPER shall:

19 1. Prepare PROJECT plans and specifications, hereinafter called
20 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards,
21 and submit to DISTRICT and CITY for their review and approval.
22

23 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
24 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
25 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT
26 PLANS, review and approval of right of way and conveyance documents, and with the
27 processing and administration of this Agreement.
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1 3. Deposit with DISTRICT (Attention: Business Office – Accounts
2 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT
3 DRAINAGE FACILITIES construction as set forth in Section I.8. herein, the estimated cost of
4 providing construction inspection for DISTRICT DRAINAGE FACILITIES, in an amount as
5 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the
6 County of Riverside, including any amendments thereto, based upon the bonded value of
7 DISTRICT DRAINAGE FACILITIES.

8 4. Pay DISTRICT, at the time of providing written notice to DISTRICT of the
9 start of construction as set forth in Section I.8., the one-time cash sum of thirteen thousand two
10 hundred dollars (\$13,200), the amount agreed upon to cover DISTRICT'S estimated cost to
11 operate and maintain DISTRICT DRAINAGE FACILITIES for a period of ten (10) years (Zone
12 7 – Maintenance Trust Fund) commencing upon DISTRICT'S acceptance of DISTRICT
13 DRAINAGE FACILITIES as complete for ownership, operation and maintenance.

14 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
15 permits and rights of entry as may be needed for the construction, inspection, operation and
16 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPER shall furnish
17 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
18 set forth in Section I.8., with sufficient evidence of DEVELOPER having secured such
19 necessary licenses, agreements, permits and rights of entry, as determined and approved by
20 DISTRICT.

21 6. Furnish DISTRICT with copies of all permits, approvals or agreements
22 required by any Federal, State or local resource and/or regulatory agency for the construction,
23 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include
24 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional
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1 Water Quality Control Board, California State Department of Fish and Game, and State Water
2 Resources Control Board.

3 7. Provide CITY, at the time of providing written notice to DISTRICT of the
4 start of construction as set forth in Section I.8., with faithful performance and payment bonds,
5 each in the amount of one hundred percent (100%) of the estimated cost for construction of
6 DISTRICT DRAINAGE FACILITIES as determined by DISTRICT. The surety, amount and
7 form of the bonds shall be subject to the approval of DISTRICT and CITY. The bonds shall
8 remain in full force and effect until DISTRICT DRAINAGE FACILITIES are accepted by
9 DISTRICT as complete; at which time the bond amount may be reduced to ten percent (10%)
10 for a period of one (1) year to guarantee against any defective work, labor or materials.
11

12 8. Notify DISTRICT in writing (Attention: Administrative Services Section),
13 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE
14 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE
15 FACILITIES, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written
16 Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT
17 DRAINAGE FACILITIES.
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19 9. Grant DISTRICT, by execution of this Agreement, the right to enter upon
20 DEVELOPER'S property where necessary and convenient for the purpose of gaining access to,
21 and performing inspection service for, the construction of DISTRICT DRAINAGE
22 FACILITIES as set forth herein.
23

24 10. Obtain and provide DISTRICT, at the time of providing written notice to
25 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES as set forth in
26 Section I.8., with duly executed Irrevocable Offers(s) of Dedication to the public for flood
27 control and drainage purposes, including ingress and egress, for the rights of way deemed
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City Easements

*See Page 10
Part 7*

1 necessary by DISTRICT for the construction, inspection, operation and maintenance of
2 DISTRICT DRAINAGE FACILITIES, as shown in concept cross-hatched in blue and cross-
3 hatched in green on Exhibit "B" attached hereto and made a part hereof. The Irrevocable
4 Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be executed by all
5 legal and equitable owners of the property described in the offer(s).

6
7 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
8 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
9 thirty (30) days prior to date of submission of all the property described in the Irrevocable
10 Offer(s) of Dedication.

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

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18 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
19 the start of construction as set forth in Section I.8., a construction schedule which shall show the
20 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry on the
21 various parts of work, including estimated start and completion dates. As construction of
22 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPER shall update said construction
23 schedule as requested by DISTRICT.

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25 14. Furnish DISTRICT with final mylar PROJECT plans and assign their
26 ownership to DISTRICT at the time DISTRICT approves and signs said final mylar plans, and
27 prior to the start of DISTRICT DRAINAGE FACILITIES construction.

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

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

6 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
7 the start of construction as set forth in Section I.8., a confined space entry procedure specific to
8 DISTRICT DRAINAGE FACILITIES. The procedure shall comply with requirements
9 contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space
10 Operations, Section 5157, Permit Required Confined Space and District Confined Space
11 Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the
12 issuance of a Notice to Proceed.
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14 18. During the construction period of DISTRICT DRAINAGE FACILITIES,
15 provide Workers' Compensation Insurance in an amount required by law. A certificate of said
16 insurance policy shall be provided to DISTRICT and CITY at the time of providing written
17 notice pursuant to Section I.8.
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19 19. Commencing on the date notice is given pursuant to Section I.8. and
20 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for operation and
21 maintenance:

- 22 (a) Provide and maintain or cause its contractor(s) to provide and
23 maintain comprehensive liability insurance coverage which shall
24 protect DEVELOPER from claim for damages or personal injury,
25 including accidental and wrongful death, as well as from claims for
26 property damage which may arise from DEVELOPER'S construction
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1 of PROJECT or the performance of its obligations hereunder, whether
2 such construction or performance be by DEVELOPER, by any of its
3 contractors, subcontractors, or by anyone employed directly or
4 indirectly by any of them. Such insurance shall name DISTRICT, the
5 County of Riverside and CITY as additional insureds with respect to
6 this Agreement and the obligations of DEVELOPER hereunder. Such
7 insurance shall provide for limits of not less than two million dollars
8 (\$2,000,000) per occurrence.

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- 10 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),
11 who shall be authorized by the California Department of Insurance to
12 transact the business of insurance in the State of California, to furnish
13 DISTRICT and CITY at the time of providing written notice to
14 DISTRICT of the start of construction as set forth in Section I.8., with
15 certificate(s) of insurance and applicable policy endorsements
16 showing that such insurance is in full force and effect and that
17 DISTRICT, the County of Riverside and CITY are named as
18 additional insureds with respect to this Agreement and the obligations
19 of DEVELOPER hereunder. Further, said certificate(s) shall state
20 that the issuing company shall give DISTRICT and CITY sixty (60)
21 days written notice in the event of any cancellation, termination, non-
22 renewal or reduction in coverage of the policies evidenced by the
23 certificate(s). In the event of any such cancellation, termination, non-
24 renewal or reduction in coverage, DEVELOPER shall, forthwith,
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secure replacement insurance meeting the provisions of this paragraph.

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 proceed to perform the remaining work pursuant to Section IV.3.

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

21. Within two (2) weeks of completing PROJECT construction, provide DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES.

22. At the time of providing DISTRICT with written notice of completion as set forth in Section I.21., provide DISTRICT with "Knox box" keys or other similar means of permanent access through security gates or other devices installed by DEVELOPER to block unimpeded public access to location of DISTRICT DRAINAGE FACILITIES.

23. Upon completion of PROJECT construction, and upon acceptance by CITY of all street 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 DISTRICT flood control easement(s), including ingress and egress, in a form approved by DISTRICT, for (a) the rights of way as shown in concept cross-hatched in blue and cross-

1 hatched in green on Exhibit "B" attached hereto and made a part hereof and (b) a blanket right
2 of ingress and egress as shown in concept cross-hatched in red on Exhibit "B".

3 24. At the time of recordation of the conveyance document(s) as set forth in
4 Section I.23., furnish DISTRICT with policies of title insurance, each in the amount of not less
5 than fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
6 easement parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said
7 property as being free and clear of all liens, encumbrances, assessments, easements, taxes and
8 leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are
9 deemed acceptable.
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11 25. Accept ownership and sole responsibility for the operation and maintenance
12 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation
13 and maintenance of DISTRICT DRAINAGE FACILITIES and CITY accepts ownership and
14 responsibility for operation and maintenance of APPURTENANCES. Following such
15 acceptances by DISTRICT and CITY, DEVELOPER, its successors or assigns, shall retain
16 ownership and sole responsibility for the operation and maintenance of PRIVATE STORM
17 DRAIN.
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19 26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
20 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and
21 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all
22 such costs, expenses and fees shall be computed as costs and included in any judgment
23 rendered.
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25 27. Upon completion of construction of PROJECT, but prior to DISTRICT
26 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
27 DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered
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1 in the State of California, shall provide DISTRICT a redlined "RECORD DRAWING" of
2 PROJECT plans. After DISTRICT approval of the redlined RECORD DRAWING,
3 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
4 onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review,
5 stamp and sign the original mylars PROJECT plans "RECORD DRAWING".

6 28. Ensure that all work performed pursuant to this Agreement by
7 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and
8 regulations, including but not limited to all applicable provisions of the Labor Code, Business
9 and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs
10 associated with compliance with applicable laws and regulations.
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12 SECTION II

13 DISTRICT shall:

14 1. Review and approve IMPROVEMENT PLANS prior to the start of
15 DISTRICT DRAINAGE FACILITIES construction.

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

18 3. Upon execution of this Agreement, record or cause to be recorded, a copy
19 of this Agreement in the Official Records of the Riverside County Recorder.

20 4. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication
21 provided by DEVELOPER pursuant to Section I.10.

22 5. Inspect DISTRICT DRAINAGE FACILITIES construction.

23 6. Keep an accurate accounting of all DISTRICT costs associated with the
24 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
25 conveyance documents, and the processing and administration of this Agreement.
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1 3. Inspect construction of APPURTENANCES.

2 4. Consent, by execution of this Agreement, to the recording of any
3 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.

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

9
10 6. Accept ownership and sole responsibility for the operation and maintenance
11 of APPURTENANCES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES
12 as being complete.

13 7. Not grant any occupancy permits for any units within any portion of Tract
14 No. 31736-1, or any phase thereof, until construction of PROJECT is complete, unless
15 otherwise approved in writing by DISTRICT.

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17 SECTION IV

18 It is further mutually agreed:

19 1. All work involved with DISTRICT DRAINAGE FACILITIES shall be
20 inspected by DISTRICT and shall not be deemed complete until approved and accepted in
21 writing as complete by DISTRICT.

22 2. CITY and DEVELOPER'S personnel may observe and inspect all work
23 being done on DISTRICT DRAINAGE FACILITIES, but shall provide any comments to
24 DISTRICT personnel who shall be solely responsible for all quality control communications
25 with the DEVELOPER'S contractor(s) during the construction of DISTRICT DRAINAGE
26 FACILITIES.
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1 3. DEVELOPER shall complete construction of DISTRICT DRAINAGE
2 FACILITIES within twelve (12) consecutive months after execution of this Agreement and
3 within one hundred twenty (120) consecutive calendar days after commencing work on
4 DISTRICT DRAINAGE FACILITIES. It is expressly understood that since time is of the
5 essence in this Agreement, failure of DEVELOPER to perform the work within the agreed upon
6 time shall constitute authority for DISTRICT to perform the remaining work and require
7 DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In which case,
8 CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.
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10 4. DEVELOPER and DISTRICT knowingly and voluntarily, waive the
11 provisions of Government Code Section 65913.8, relating to fees and charges. Such waiver is
12 accomplished with the understanding that DISTRICT is voluntarily undertaking the obligation
13 to accept ownership and responsibility for the operation and maintenance of DISTRICT
14 DRAINAGE FACILITIES, and DEVELOPER is not required by DISTRICT to enter into this
15 Agreement. DEVELOPER shall not request DISTRICT to accept any portion or portions of
16 DISTRICT DRAINAGE FACILITIES or CITY to accept any portion or portions of
17 APPURTENANCES prior to the completion of PROJECT construction.
18

19 5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed
20 within twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in
21 Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the
22 issuance of a Notice to Proceed is subject to staff availability.
23

24 In the event DEVELOPER wishes to expedite issuance of a Notice to
25 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
26 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
27 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
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1 approval. DISTRICT shall review the individual's qualifications and experience and, upon
2 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be
3 authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES
4 construction and quality control matters. If DEVELOPER'S initial construction inspection
5 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000), DISTRICT
6 shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER'S initial inspection
7 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;
8 however, a minimum balance of ten thousand dollars (\$10,000) shall be retained on account.
9

10 6. DISTRICT DRAINAGE FACILITIES construction work shall be on a five
11 (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT
12 designated legal holidays, unless otherwise approved in writing by DISTRICT. If
13 DEVELOPER feel it is necessary to work more than the normal forty (40) hour work week or
14 on holidays, DEVELOPER shall make a written request for permission from DISTRICT to
15 work the additional hours. The request shall be submitted to DISTRICT at least seventy-two
16 (72) hours prior to the requested additional work hours and state the reasons for the overtime
17 and the specific time frames required. The decision of granting permission for overtime work
18 shall be made by DISTRICT at its sole discretion and shall be final. If permission is granted by
19 DISTRICT, DEVELOPER will be charged the cost incurred at the overtime rates for additional
20 inspection time required in connection with the overtime work in accordance with Ordinance
21 Nos. 671 and 749, including any amendments thereto, of the County of Riverside.
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23 7. DISTRICT acceptance of "Knox box" keys or other means of access
24 through DEVELOPER'S security gates or other devices as set forth in Section I.22. shall place
25 no liability upon DISTRICT in the event that such "Knox box" keys or other means of access
26 fails to function or be unavailable for any reason during an emergency situation and DISTRICT
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1 is forced to damage or remove any such security gates or other devices to gain access to
2 DISTRICT DRAINAGE FACILITIES. DEVELOPER shall be solely responsible for any and
3 all necessary repairs to such security gates or other devices and all related costs resulting from
4 any such emergency access by DISTRICT.

5 8. Prior to DISTRICT acceptance of ownership and responsibility for the
6 operation and maintenance of DISTRICT DRAINAGE FACILITIES, PROJECT shall be in a
7 satisfactorily maintained condition as solely determined by DISTRICT.

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

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

3 With respect to any of DEVELOPER'S indemnification requirements,
4 DEVELOPER shall, at its sole cost, have the right to use counsel of its own choice and shall
5 have the right to adjust, settle, or compromise any such claim, proceeding or action without the
6 prior consent of DISTRICT, County of Riverside and CITY; provided, however, that any such
7 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
8 DEVELOPER'S indemnification obligations to DISTRICT, County of Riverside or CITY.

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10 DEVELOPER'S indemnification obligations shall be satisfied when
11 DEVELOPER has provided to DISTRICT, County of Riverside and CITY the appropriate form
12 of dismissal relieving DISTRICT, County of Riverside or CITY from any liability for the claim,
13 proceeding or action involved.

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

17
18 In the event there is conflict between this section and California Civil Code
19 Section 2782, this section shall be interpreted to comply with Civil Code 2782. Such
20 interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT, County of
21 Riverside or CITY to the fullest extent allowed by law.

22 10. Any waiver by DISTRICT or by CITY of any breach of any one or more of
23 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
24 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
25 require exact, full and complete compliance with any terms of this Agreement shall not be
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1 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
2 enforcement hereof.

3 11. If any provision in this Agreement (with the exception of Section IV.4.) is
4 held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining
5 provisions will nevertheless continue in full force without being impaired or invalidated in any
6 way. Should it be held by a court of competent jurisdiction that any portion of Section IV.4. is
7 invalid, void, or unenforceable, the provisions of Government Code Section 65913.8(b) shall
8 apply. It shall, therefore, be determined that this fee is extended for a period of ten years,
9 commencing upon DISTRICT'S acceptance of DISTRICT DRAINAGE FACILITIES for
10 ownership, operation and maintenance.

12 12. DISTRICT and CITY each pledge to cooperate in regard to the operation
13 and maintenance of their respective facilities as set forth herein and to discharge their respective
14 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any
15 nuisance condition or undue maintenance impact upon the others' facilities.

17 13. This Agreement is to be construed in accordance with the laws of the State
18 of California.

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

21 RIVERSIDE COUNTY FLOOD CONTROL
22 AND WATER CONSERVATION DISTRICT
23 1995 Market Street
Riverside, CA 92501

CITY OF WILDOMAR
23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595
Attn: Director of Public Works

24 OAK SPRINGS RANCH, LLC
25 5780 Fleet Street, Suite 130
Carlsbad, CA 92008
Attn: E. Garth Erdossy

26 15. Any action at law or in equity brought by any of the parties hereto for the
27 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
28

1 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
2 waive all provisions of law providing for a change of venue in such proceedings to any other
3 county.

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

9
10 17. The rights and obligations of DEVELOPER shall inure to and be binding
11 upon all heirs, successors and assignees.

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

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

23
24 20. This Agreement is intended by the parties hereto as a final expression of
25 their understanding with respect to the subject matter hereof and as a complete and exclusive
26 statement of the terms and conditions thereof and supersedes any and all prior and
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1 contemporaneous agreements and understandings, oral or written, in connection therewith. This

2 Agreement may be changed or modified only upon the written consent of the parties hereto.

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

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By  _____
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement: TR 31736-1
KEC:blj
9/11/12

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CITY OF WILDOMAR

RECOMMENDED FOR APPROVAL:

By _____
TIM D'ZMURA, P.E.
Director of Public Works & City Engineer

By _____
BEN J. BENOIT
Mayor

APPROVED AS TO FORM:

ATTEST:
DEBBIE A. LEE

By _____
THOMAS D. JEX
City Attorney

By _____
City Clerk

(SEAL)

Cooperative Agreement: TR 31736-1
KEC:blj
9/11/2012

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OAK SPRINGS RANCH, LLC,
a Delaware limited liability company

By: GLJ OAK SPRINGS RANCH, LLC,
a Georgia limited liability company,
Its Managing Member

By: GLJ CORPORATION, INC.,
a Georgia corporation,
Its Manager

By _____
ERIC GARTH ERDOSSY
President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: TR 31736-1
KEC:bjp
9/11/2012

Exhibit A

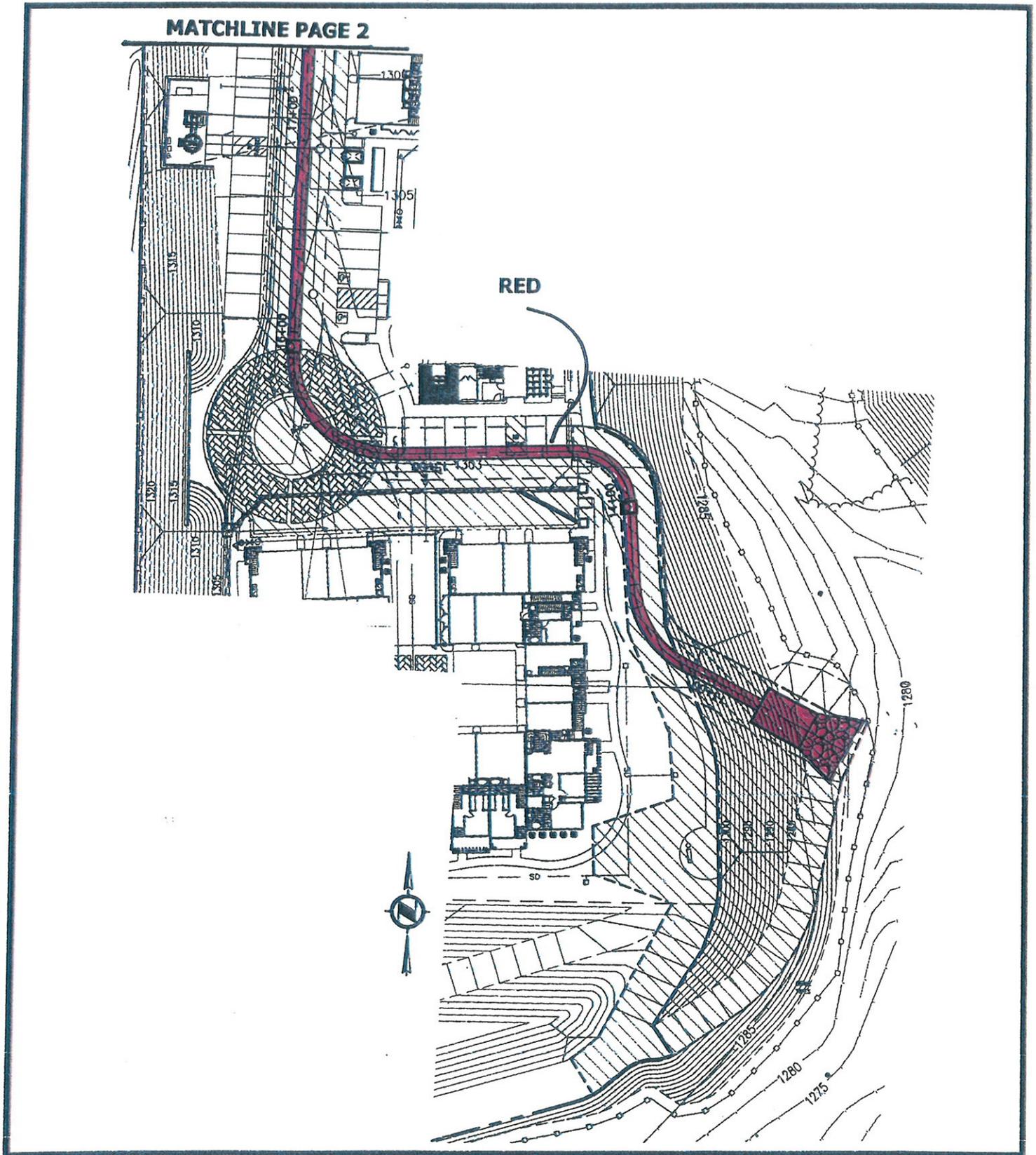
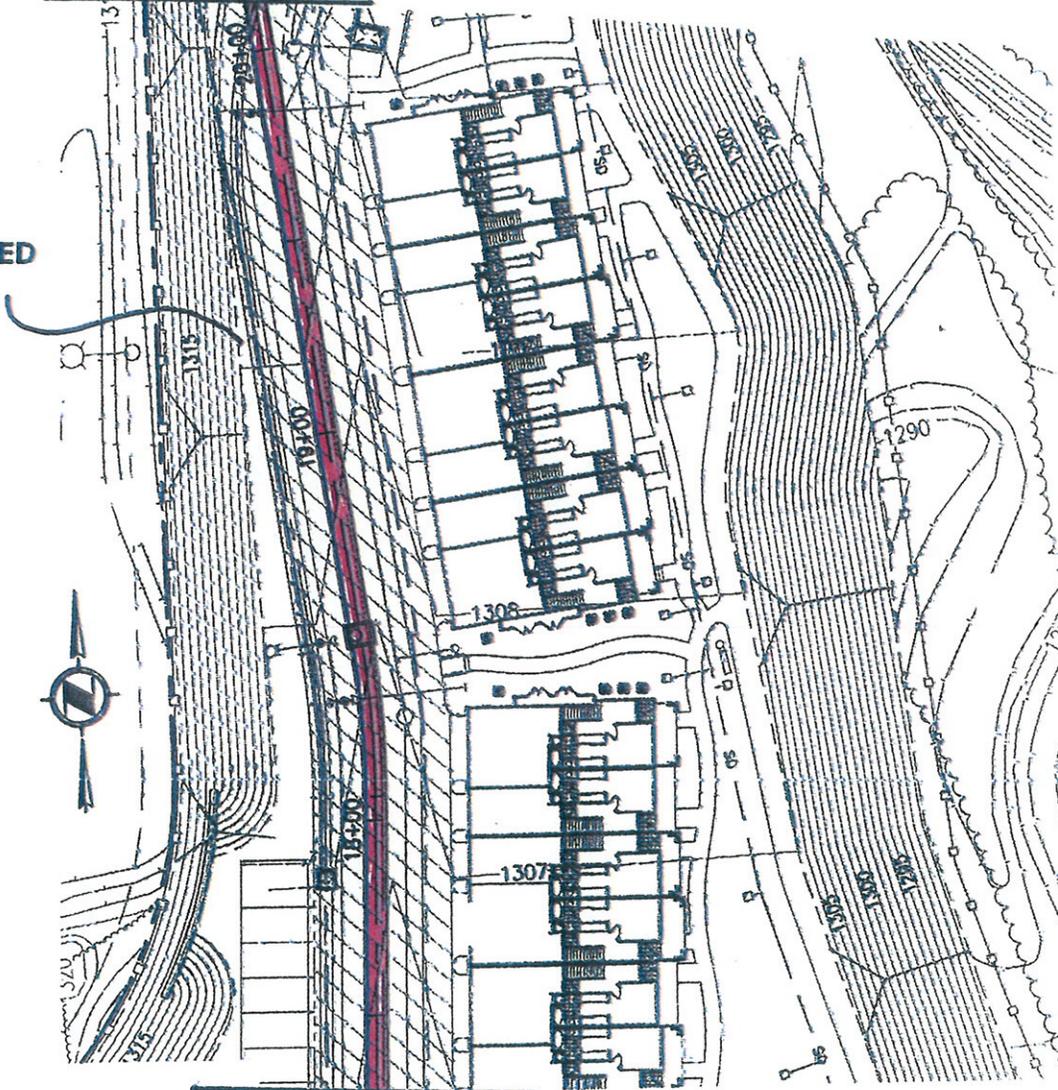


Exhibit A

MATCHLINE PAGE 3

RED



MATCHLINE PAGE 1

Exhibit A

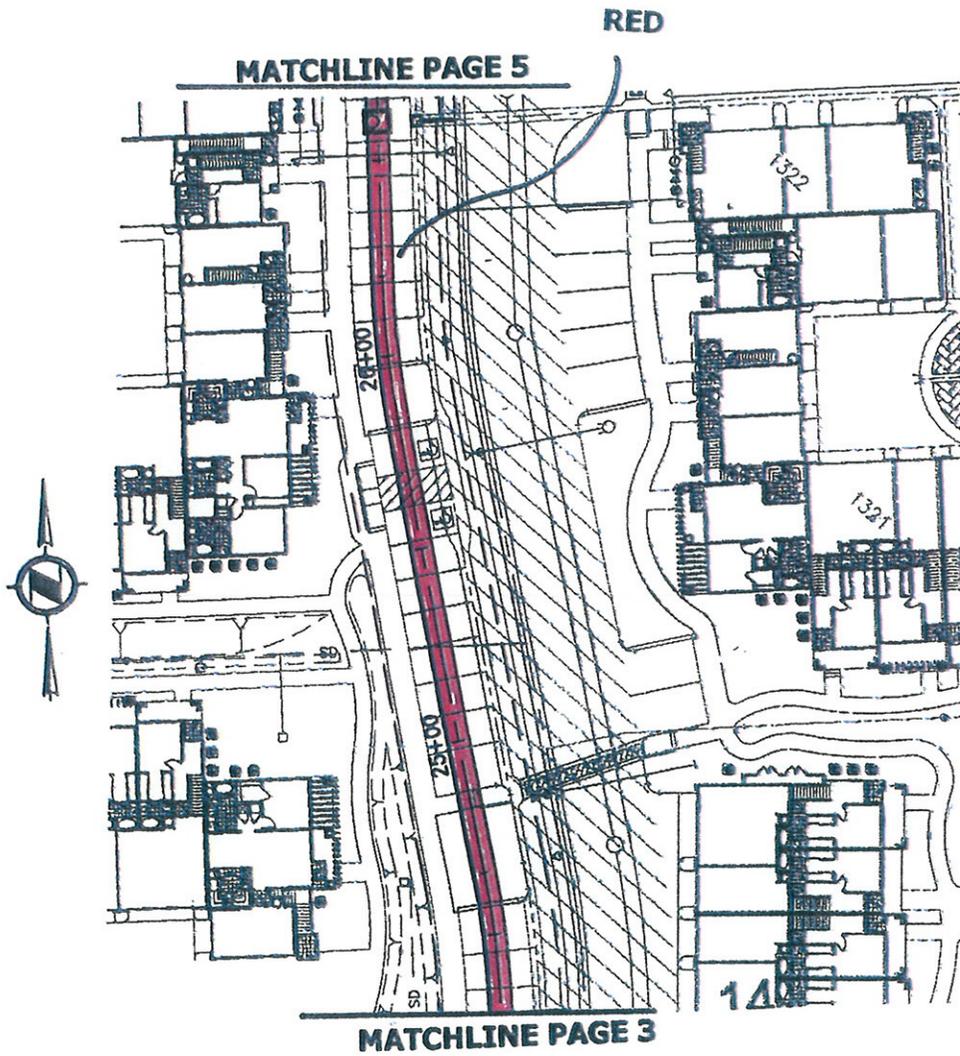


Exhibit A

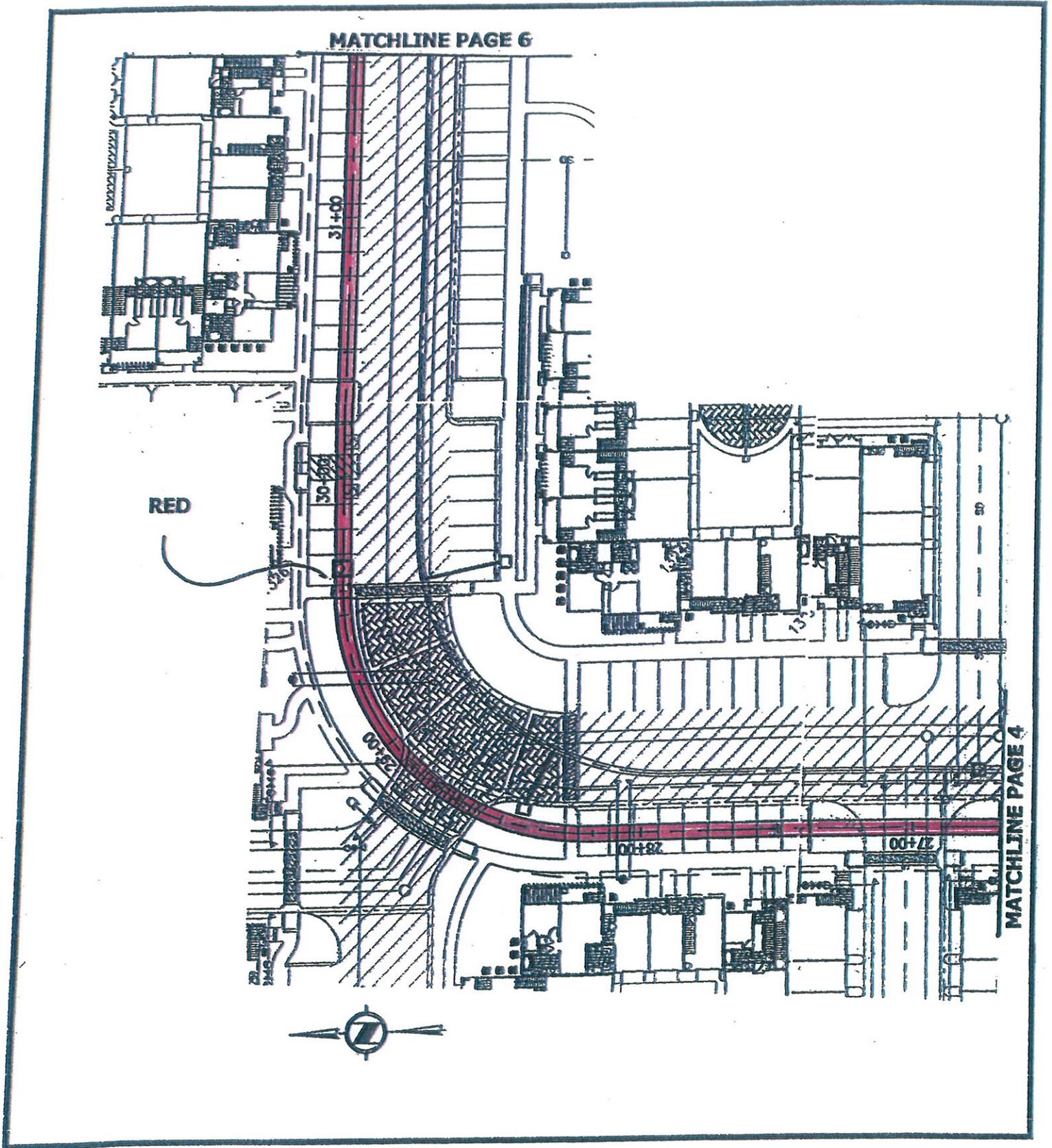


Exhibit A

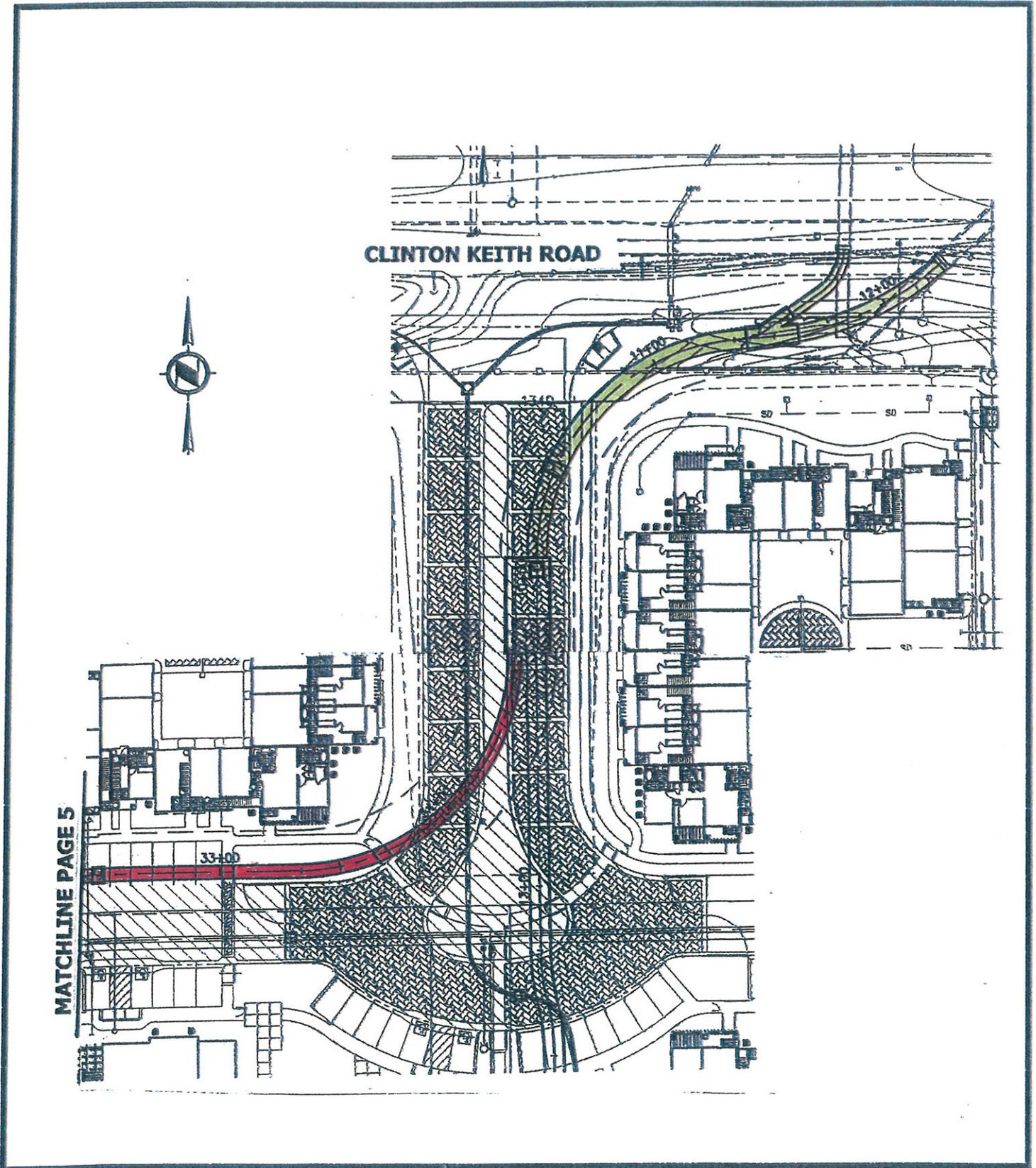


Exhibit B

