

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

625 B



FROM: General Manager-Chief Engineer SUBMITTAL DATE: July 15, 2003

SUBJECT: Sun City – Regent Lane Storm Drain, Stage 2
Project No. 4-0-0154, Tract No. 29072-2
Cooperative Agreement

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the County of Riverside and Barrington Heights, LLC, (Developer), which sets forth the terms and conditions by which certain flood control facilities, required as a condition for approval of Tract No. 29072-2, are to be constructed by Developer, and inspected, operated and maintained by the District and the County; and authorize the Chairman to execute the Agreement documents on behalf of the District.

JUSTIFICATION:

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the Sun City – Regent Lane Storm Drain, Stage 2 project associated with Tract No. 29072-2. Upon completion of the project, the District will assume ownership, operation and maintenance of the facilities except for those certain catch basins, connector pipes and laterals which are to be maintained by County.

This matter is also on the County's Board Agenda this same date and County Counsel has approved the Agreement as to legal form.

FINANCIAL:

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs will accrue to the District and the County.

WARREN D. WILLIAMS
General Manager-Chief Engineer

C.E.O. RECOMMENDATION

APPROVE

County Executive Officer Signature

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AGREEMENT

(Tract No. 29072-2)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF RIVERSIDE, hereinafter called "COUNTY" and BARRINGTON HEIGHTS, LLC, a California limited liability company, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Tract No. 29072-2 in western Riverside County 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 facility includes approximately 2,125 lineal feet of underground concrete pipe and segments of two laterals, hereinafter called "PROJECT", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

C. PROJECT connects to an existing underground storm drain, hereinafter called "STAGE 1", as shown in concept in blue on Exhibit "A", constructed and inspected pursuant to the provisions of a certain Cooperative Agreement between DISTRICT, COUNTY and DEVELOPER; and

D. STAGE 1 has not been accepted by DISTRICT for ownership, operation and maintenance pursuant to the terms and conditions of said separate Cooperative Agreement; and

E. DEVELOPER and COUNTY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of PROJECT. Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications and subsequently inspect the construction of PROJECT; and

F. DEVELOPER and DISTRICT desire COUNTY to accept ownership and responsibility for the operation and maintenance of PROJECT'S associated catch basins, connector pipes and laterals located within COUNTY rights of way, hereinafter called "APPURTENANCES". Therefore

1 COUNTY must review and approve DEVELOPER'S plans and specifications, and subsequently inspect
2 the construction of APPURTENANCES; and

3 G. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and
4 specifications for PROJECT and APPURTENANCES, (ii) inspect the construction of PROJECT, and (iii)
5 accept ownership and responsibility for the operation and maintenance of PROJECT, provided
6 DEVELOPER (i) complies with the provisions of this Agreement, (ii) pays DISTRICT the amounts
7 specified herein to cover DISTRICT'S costs for plan review and construction inspection costs for
8 PROJECT, (iii) constructs PROJECT and APPURTENANCES in accordance with plans and
9 specifications approved by DISTRICT and COUNTY, (iv) accepts ownership and responsibility for the
10 operation and maintenance of PROJECT and APPURTENANCES following completion of PROJECT
11 construction until such time as DISTRICT accepts ownership and responsibility for the operation and
12 maintenance of PROJECT and STAGE 1, and COUNTY accepts ownership and responsibility for the
13 operation and maintenance of APPURTENANCES, and (v) obtains all regulatory permits as set forth
14 herein; and

15 H. COUNTY is willing to (i) review and approve plans and specifications prepared by
16 DEVELOPER for PROJECT and APPURTENANCES, (ii) accept and hold faithful performance and
17 payment bonds submitted by DEVELOPER for PROJECT, (iii) grant DISTRICT the right to inspect,
18 operate and maintain PROJECT within COUNTY rights of way, and (v) accept ownership and
19 responsibility for the operation and maintenance of APPURTENANCES, provided PROJECT and
20 APPURTENANCES are constructed in accordance with plans and specifications approved by DISTRICT
21 and COUNTY.
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NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION I

DEVELOPER shall:

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

2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS and with the processing and administration of this Agreement.

3. Deposit with DISTRICT (Attention: Business Office – Accounts Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT construction as set forth in Section I.8. herein, the estimated cost of providing construction inspection for PROJECT, in an amount as determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749, including any amendments thereto, of the County of Riverside, based upon the bonded value of PROJECT facilities to be inspected, operated and maintained by DISTRICT.

4. Grant DISTRICT and COUNTY, by execution of this Agreement, the right to enter upon DEVELOPER'S property where necessary and convenient for the purpose of gaining access to and performing inspection service for the construction of PROJECT as set forth herein.

5. Secure, at its sole cost and expense, all necessary licenses, agreements, permits and rights of entry as may be needed for the construction, inspection, operation and maintenance of PROJECT. DEVELOPER shall furnish DISTRICT and COUNTY, at the time of providing written notice to DISTRICT of the start of construction as set forth in Section I.8. herein, or not less than twenty (20) days prior to recordation of the final map for Tract No. 29072-2 or any phase thereof, whichever occurs first, with sufficient evidence of DEVELOPER having secured such necessary licenses,

1 agreements, permits, approvals and rights of entry, as determined and approved by DISTRICT and
2 COUNTY.

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

8 7. Provide COUNTY, at the time of providing written notification to DISTRICT of
9 the start of construction as set forth in Section I.8. herein, or not less than twenty (20) days prior to
10 recordation of the final map for Tract No. 29072-2, or any phase thereof, with faithful performance and
11 payment bonds, each in the amount of 100% of the estimated cost for construction of PROJECT as
12 determined by DISTRICT. The surety, amount and form of the bonds shall be subject to the approval of
13 DISTRICT and COUNTY. The bonds shall remain in full force and effect until PROJECT is accepted by
14 DISTRICT as complete; at which time the bond amount may be reduced to 10% for a period of one year
15 to guarantee against any defective work, labor or materials.

16 8. Notify DISTRICT in writing (Attention: Mark H. Wills), at least twenty (20)
17 days prior to the start of construction of PROJECT. Construction shall not begin on PROJECT, for any
18 reason whatsoever, until after DISTRICT has issued to DEVELOPER a written Notice to Proceed
19 authorizing DEVELOPER to initiate construction.

20 9. Furnish DISTRICT, at the time of providing written notice to DISTRICT of the
21 start of construction as set forth in Section I.8. with a complete list of all contractors and subcontractors to
22 be performing work on PROJECT, including the corresponding license number and license classification
23 of each. At such time, DEVELOPER shall further identify in writing its designated superintendent for
24 PROJECT construction.

25 10. Furnish DISTRICT, at the time of providing written notice to DISTRICT of the
26 start of construction as set forth in Section I.8. a construction schedule which shall show the order and
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1 dates in which the DEVELOPER or DEVELOPER'S contractor proposes to carry on the various parts of
2 work, including estimated start and completion dates. As the construction progresses, DEVELOPER
3 shall update said construction schedule as requested by DISTRICT.

4 11. Furnish DISTRICT with the final mylar IMPROVEMENT PLANS and assign
5 their ownership to DISTRICT prior to the start of construction of PROJECT.

6 12. Comply with all Cal/OSHA safety regulations including regulations concerning
7 confined space and maintain a safe working environment for DEVELOPER and DISTRICT employees
8 on the site.

9 13. Furnish DISTRICT, at time of providing written notice to DISTRICT of the start
10 of construction as set forth in Section I.8. herein, a confined space procedure specific to PROJECT. The
11 procedure shall comply with requirements contained in California Code of Regulations, Title 8 Section
12 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space and DISTRICT
13 Confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT
14 prior to the issuance of a Notice to Proceed.

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

17 15. During the construction period of PROJECT, provide Workers' Compensation
18 Insurance in an amount required by law. A certificate of said insurance policy shall be provided to
19 DISTRICT and COUNTY at the time of providing written notice pursuant to Section I.8.

20 16. Commencing on the date notice is given pursuant to Section I.8. and continuing
21 until DISTRICT accepts PROJECT as complete for ownership, operation and 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 claims from damages for personal
25 injury, including accidental and wrongful death, as well as from
26 claims for property damage which may arise from DEVELOPER'S
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construction of PROJECT or the performance of its obligations hereunder, whether such construction or performance be by DEVELOPER, by any of its contractors, subcontractors, or by anyone employed directly or indirectly by any of them. Such insurance shall name DISTRICT and COUNTY as additional insureds with respect to this Agreement and the obligations of DEVELOPER hereunder. Such insurance shall provide for limits of not less than two million dollars (\$2,000,000) per occurrence.

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

1 Failure to maintain the insurance required by this paragraph shall be deemed a
2 material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole
3 discretion, to proceed to perform the remaining work pursuant to Section IV.3.

4 17. Construct, or cause to be constructed, PROJECT and APPURTENANCES at
5 DEVELOPER'S sole cost and expense in accordance with plans and specifications approved by
6 DISTRICT and COUNTY.

7 18. Accept ownership and sole responsibility for the operation and maintenance of
8 PROJECT and APPURTENANCES until such time as DISTRICT accepts ownership and responsibility
9 for operation and maintenance of PROJECT and STAGE 1, and COUNTY accepts ownership and
10 responsibility for APPURTENANCES. Further, it is mutually understood by the parties hereto that prior
11 to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of PROJECT
12 as set forth herein, PROJECT and APPURTENANCES shall be in a satisfactorily maintained condition as
13 solely determined by DISTRICT.

14 19. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
15 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable attorneys' fees,
16 and acknowledge that, upon entry of judgment, all such costs, expenses and fees shall be computed as
17 costs and included in any judgment rendered.

18 20. Upon completion of construction of PROJECT but prior to DISTRICT'S
19 acceptance of PROJECT for ownership, operation and maintenance, DEVELOPER'S civil engineer of
20 record or construction civil engineer of record, duly registered in the State of California, shall provide to
21 DISTRICT a redlined "as-built" copy of IMPROVEMENT PLANS. After DISTRICT approval of the
22 redlined "as-built" drawings, DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer
23 the redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer
24 shall review, stamp and sign PROJECT plans "AS-BUILT."
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SECTION II

DISTRICT shall:

1. Review and approve IMPROVEMENT PLANS prior to the start of PROJECT construction.
2. Provide COUNTY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT'S final approval.
3. Upon execution of this Agreement, record or cause to be recorded, a copy of this Agreement in the Official Records of the Riverside County Recorder.
4. Inspect the construction of PROJECT.
5. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS and in processing and administration of this Agreement.
6. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of PROJECT as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of PROJECT as being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete PROJECT, within thirty (30) days after receipt of billing from DISTRICT.
7. Accept ownership and responsibility for the operation and maintenance of PROJECT upon (i) DISTRICT acceptance of PROJECT construction as being complete, (ii) DISTRICT acceptance of STAGE 1 for operation and maintenance, and (iii) acceptance by COUNTY of all necessary rights of way as deemed necessary by DISTRICT and COUNTY for the operation and maintenance of PROJECT, STAGE 1 and APPURTENANCES.
8. Provide COUNTY with a reproducible duplicate copy of "as-built" IMPROVEMENT PLANS, upon DISTRICT acceptance of PROJECT as being complete.

1 COUNTY the penal sum of any and all bonds. In which case, COUNTY shall subsequently reimburse
2 DISTRICT for DISTRICT costs incurred.

3 4. PROJECT construction work shall be on a five (5) day, forty (40) hour work week
4 with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless otherwise approved
5 in writing by DISTRICT. If DEVELOPER feels it is necessary to work more than the normal forty (40)
6 hour work week or on holidays, DEVELOPER shall make a written request for permission from
7 DISTRICT to work the additional hours. The request shall be submitted to DISTRICT at least 72 hours
8 prior to the requested additional work hours and state the reasons for the overtime and the specific time
9 frames required. The decision of granting permission for overtime work shall be made by DISTRICT at
10 its sole discretion and shall be final. If permission is granted by DISTRICT, DEVELOPER will be
11 charged the cost incurred at the overtime rates for additional inspection time required in connection with
12 the overtime work in accordance with Ordinance Nos. 671 and 749, including any amendments thereto, of
13 the County of Riverside.

14 5. DEVELOPER shall not request DISTRICT or COUNTY to accept any portion of
15 PROJECT or APPURTENANCES for operation and maintenance until DISTRICT determines PROJECT
16 is complete in accordance with Section II.7. herein.

17 6. In the event that any claim or legal action is brought against DISTRICT or
18 COUNTY in connection with this Agreement because of the actual or alleged acts or omissions by
19 DEVELOPER, including but not limited to design, construction or failure of PROJECT, DEVELOPER
20 shall defend, indemnify and hold DISTRICT and COUNTY harmless therefrom, without cost to
21 DISTRICT or COUNTY. Upon DEVELOPER'S failure to do so, DISTRICT and COUNTY shall be
22 entitled to recover from DEVELOPER all of their cost and expenses, including, but not limited to,
23 reasonable attorneys' fees.

24 7. DEVELOPER shall defend, indemnify and hold DISTRICT and COUNTY, their
25 respective officers, agents, employees and independent contractors free and harmless from any claim or
26 legal action whatsoever, based or asserted, pursuant to Article I, Section 19 of the California Constitution,
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1 the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to
2 impose any other liability or damage caused by the diversion of the waters from the natural drainage
3 patterns, save and except claims and litigation arising through the negligence or willful misconduct of
4 DISTRICT or COUNTY, which claims shall be shared by the parties on a pro rata basis based on their
5 respective responsibilities. DEVELOPER shall defend DISTRICT and COUNTY without cost to
6 DISTRICT or COUNTY, and upon DEVELOPER'S failure to do so, DISTRICT and COUNTY shall be
7 entitled to recover from DEVELOPER all of their cost and expenditures, including, but not limited to,
8 reasonable attorneys' fees.

9 8. DEVELOPER for itself, its successors and assigns hereby releases DISTRICT and
10 COUNTY, their respective officers, agents, and employees from any and all claims, demands, actions, or
11 suits of any kind arising out of any liability, known or unknown, present or future, including, but not
12 limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California
13 Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which
14 seeks to impose any other liability or damage, whatsoever, for damage caused by the discharge of
15 drainage within or from PROJECT. Nothing contained herein shall constitute a release by DEVELOPER
16 of DISTRICT or COUNTY, their officers, agents and employees from any and all claims, demands,
17 actions or suits of any kind arising out of any liability, known or unknown, present or future, for the
18 negligent maintenance of PROJECT and APPURTENANCES, after the acceptance of PROJECT and
19 APPURTENANCES by DISTRICT and COUNTY.

20 9. Any waiver by DISTRICT or COUNTY of any breach of any one or more of the
21 terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the
22 same or of any other term hereof. Failure on the part of DISTRICT or COUNTY to require exact, full
23 and complete compliance with any terms of this Agreement shall not be construed as in any manner
24 changing the terms hereof, or estopping DISTRICT or COUNTY from enforcement hereof.
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1 agrees that it shall remain liable with respect to any and all of the obligations and duties contained in this
2 Agreement.

3 17. The individuals executing this Agreement on behalf of DEVELOPER hereby
4 certify that they have the authority within their respective companies to enter into and execute this
5 Agreement, and have been authorized to do so by any and all boards of directors, legal counsel, and or
6 any other board, committee or other entity within their respective companies which have the authority to
7 authorize or deny entering into this Agreement.

8 18. This Agreement is intended by the parties hereto as a final expression of their
9 understanding with respect to the subject matter hereof and as a complete and exclusive statement of the
10 terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and
11 understandings, oral or written, in connection therewith. This Agreement may be changed or modified
12 only upon the written consent of the parties hereto.

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