

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

510B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
May 20, 2014

SUBJECT: Approval of Joint Communities Facilities Agreement (Flood Control Improvements) for Community Facilities District No. 9 of Jurupa Unified School District (Tract No. 33461), District 2/District 2, [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Joint Community Facilities Agreement (Flood Control Improvements) by and among the District, Jurupa Unified School District and Lennar Homes of California, Inc.; and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

Summary

At the request of Lennar Homes of California, Inc. (the "Developer"), the Jurupa Unified School District (the "School District") has initiated proceedings to establish Community Facilities District No. 9 (the "CFD") to finance various public improvements.

Continued on Page 2

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WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	

SOURCE OF FUNDS: Jurupa Unified School District's CFD bonds or special tax collections supported by Mello-Roos special taxes approved by voters

Budget Adjustment: N/A
For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY:
Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
DATE 5/15/14
DALE A. GARDNER
Departmental Concurrence

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District: 2nd/2nd

Agenda Number:

11-3

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

FORM 11: Approval of Joint Communities Facilities Agreement (Flood Control Improvements) for
Community Facilities District No. 9 of Jurupa Unified School District (Tract No. 33461),
District 2/District 2, [\$0]

DATE: May 20, 2014

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The Joint Community Facilities Agreement (JCFA) sets forth the terms and conditions by which the CFD will reimburse the Developer for constructing certain public drainage improvements. The proposed drainage improvements are necessary to provide flood protection and drainage for Tract No. 33461 located within the city of Jurupa Valley. Before the School District can proceed with the establishment of the CFD, the Board of Supervisors must consider the JCFA and determine whether it consents to these improvements being financed through the CFD. The proposed CFD contains approximately 65 acres of land known as Rancho Del Sol that are to be developed with 203 single family residential lots. By entering into this JCFA, the District is assuming no liability with regard to the formation of the CFD, special tax collections, or the sale and issuance of any special tax bonds.

Upon completion of construction and the transfer of necessary rights of way, the District will accept the proposed drainage improvements for ownership, operation and maintenance.

The County Executive Office has participated in the negotiation and preparation of this JCFA and is recommending its approval. County Counsel has approved the JCFA as to legal form. The Developer has executed the JFCA (Flood Control Improvements).

Impact on Residents and Businesses

In exchange for paying a special tax, local residents will benefit from the flood control improvements that are financed and acquired by means of this JCFA.

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JOINT COMMUNITY FACILITIES AGREEMENT
(Flood Control Improvements)

by and among

JURUPA UNIFIED SCHOOL DISTRICT,

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

and

LENNAR HOMES OF CALIFORNIA, INC.,
a California corporation,

Dated as of _____

Relating to:
Community Facilities District No. 9
of Jurupa Unified School District

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JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this "Joint Community Facilities Agreement") is made and entered into as of _____, by and among Jurupa Unified School District, a school district organized and existing under the laws of the State of California (the "School District"), Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code (the "Flood Control District"), and Lennar Homes of California, Inc., a California corporation (the "Developer").

RECITALS

A. The Board of Education of the School District (the "Board of Education") is considering the initiation of proceedings to form a community facilities district that is to be identified as "Community Facilities District No. 9 of Jurupa Unified School District" (the "Community Facilities District") under the authority of the Mello-Roos Community Facilities Act of 1982 (the "Act") (commencing with Section 53311 of the California Government Code (the "Code")).

B. The Developer is the developer of 64.7 acres of land known as Rancho Del Sol located within the City of Jurupa Valley ("City") and as generally shown on Exhibit A, attached hereto, representing Tract No. 33461 (the "Tract"), that provides for the development of 203 proposed single family residential lots; the boundaries of the Community Facilities District are coterminous with the exterior boundaries of the Tract.

C. The Developer has requested and proposed that the Community Facilities District be formed for the purpose of providing the means of financing the acquisition and construction of certain public improvements, including but not limited to certain flood control and storm water drainage facilities (the "Flood Control Facilities") to be constructed by the Developer with the purchase price therefor to be paid from special tax collections of the Community Facilities District or the proceeds of bonds to be sold and issued by the Community Facilities District. The Flood Control Facilities are to be owned, maintained and operated by the Flood Control District upon the completion of the construction thereof by the Developer and the acceptance thereof by the Flood Control District. The Flood Control Facilities are generally described in Exhibit B attached hereto and incorporated herein by this reference. The Flood Control Facilities are also shown in concept in red on Exhibit B. In addition, the Community Facilities District will finance certain sewer and water facilities for the Jurupa Community Services District, as well as certain school facilities for the School District.

D. Section 53313.5 of the Code provides that a community facilities district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body of the community facilities district, before the resolution of formation to establish the community facilities district is adopted pursuant to Section 53325.1 of the Code, except that a community facilities district may finance the purchase of facilities completed after the adoption of a resolution of formation if the

facility is constructed as if it had been constructed under the direction and supervision, or under the authority of a local agency, in this instance being the Flood Control District.

E. Section 53314.9 of the Code provides that at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds or work in-kind from any source, including, but not limited to, private persons or entities, and may provide, by resolution, for the use of those funds or that work in-kind for any authorized purpose, under all of the following conditions: (a) the proposal to repay the funds or the value or cost of the work in-kind, whichever is less, is included in both the resolution of intention to establish the community facilities district adopted pursuant to Section 53321 of the Code and in the resolution to establish the community facilities district pursuant to Section 53325.1 of the Code, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any work in-kind accepted pursuant to Section 53314.9 of the Code shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of the local agency, in this instance, the Flood Control District.

F. Pursuant to the Act, the Board of Education, intends to consider a resolution of intention stating that it is the intention of the School District to cause the proposed Community Facilities District to be established, and if established and upon approval of this Joint Community Facilities Agreement by the School District, the Flood Control District, and the Developer, to reimburse the Developer all, or a portion, of the funds or value or cost of the work in-kind, whichever is less, without interest, provided all of the conditions of Section 53314.9 of the Code are satisfied and that such reimbursement shall only be from special tax collections or the proceeds of special tax bonds, if any are sold and issued by the proposed Community Facilities District.

G. The Act provides that the proposed Community Facilities District may finance the Flood Control Facilities only pursuant to a joint community facilities agreement adopted pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Code.

H. The School District, the Flood Control District, and the Developer desire to enter into this Joint Community Facilities Agreement, in conformance with the aforementioned Sections of the Code and prior to the adoption by the Board of Education of the resolution establishing the Community Facilities District. The provisions of this Joint Community Facilities Agreement are intended to apply only to the Flood Control Facilities, unless expressly stated otherwise.

I. Consistent with Section 53316.2 of the Code, the School District and the Flood Control District find that the approval of this Joint Community Facilities Agreement will be beneficial to the residents of their respective jurisdictions and to the owners of property within the Community Facilities District.

NOW, THEREFORE, for and in consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall have the meaning herein specified when used in this Joint Community Facilities Agreement:

"Acceptable Title" means title to land, or an easement therein, delivered free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether any such item is recorded or unrecorded, except those non-monetary items which are reasonably determined by the Flood Control District not to interfere with the intended use of such land or easement and therefore are not required to be cleared from title.

"Acceptance Date" means, with respect to any Flood Control Facility, the date that the Flood Control Facility is accepted by the Flood Control District into its maintained system.

"Act" means the Mello-Roos Community Facilities Act of 1982, constituting Section 53311 *et seq.* of the Code, as amended.

"Actual Cost" means, with respect to a Flood Control Facility, to the extent authorized by law, an amount equal to the sum of (a) the Developer's actual, reasonable cost of constructing such Flood Control Facility, including labor, material and equipment costs, (b) the Developer's actual reasonable cost of designing and preparing the Plans and Specifications for such Flood Control Facility, including engineering services provided in connection with designing and preparing such Plans and Specifications, (c) the Developer's actual, reasonable cost of environmental evaluations and any mitigation measures required by any governmental agency with jurisdiction with regard to such Flood Control Facility, or portions thereof, (d) the amount of any fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Flood Control Facility including but not limited to plan check and inspection fees by the Flood Control District, (e) the Developer's actual reasonable cost for professional services directly related to the construction of such Flood Control Facility, including engineering, legal, inspection, construction staking, materials testing and similar professional services, (f) the Developer's actual, reasonable cost for construction management, bid administration and contract administration services which shall not exceed 5% of construction costs, (g) the costs incurred by the Flood Control District acting as the Contract Administrator; (h) the Developer's actual reasonable cost of payment, performance or maintenance bonds and insurance (including any title insurance required pursuant to the "Cooperative Agreement") for such Flood Control Facility, (i) the actual, reasonable cost of easements or other real property or interest therein acquired from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Flood Control Facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Flood Control Facility in order to convey Acceptable Title thereto to the Flood Control District, all as specified in a Payment Request that is to be reviewed and approved by the Contract Administrator; provided, however, that (x) no item of cost relating to a Flood Control Facility shall be included in more than one category of

cost specified in clauses (a) through (i) of this definition, and (y) each item of cost shall include only amounts actually paid by the Developer to third parties and shall not include overhead or other internal expenses of the Developer, except that, if Developer employees perform construction management, bid administration or contract administration services with respect to a Flood Control Facility, the actual reasonable cost of the salaries and benefits paid by the Developer to such employees for performing such services may be included as an item of cost relating to such Flood Control Facility for the category of cost specified in clause (f) of this definition and subject to the 5% limitation specified in clause (f).

"Administrator" means the Assistant Superintendent of Business Services of the School District, or her/his designee.

"Board of Education" means the Board of Education of the School District.

"Board of Supervisors" means, respectively, the Board of Supervisors of the County and the Board of Supervisors of the Riverside County Flood Control and Water Conservation District.

"Bonds" means the bonds that the Community Facilities District may attempt to sell and issue in one or more series if the Proceedings are approved, a portion of the proceeds of which will be used to acquire the Flood Control Facilities.

"Business Day" means a day which is not a Saturday or Sunday or a day of the year on which the Flood Control District is not required or authorized to be closed.

"CEQA" means the California Environmental Quality Act (CEQA), constituting Section 21000 *et seq.* of the California Public Resources Code, as amended.

"City" means the City of Jurupa Valley, a political subdivision of the State, and its successors.

"Code" means the California Government Code.

"Community Facilities District" means "Community Facilities District No. 9 of Jurupa Unified School District," a community facilities district to be organized and existing under the Act.

"Construction Site" means the sites on which the Flood Control Facilities are to be constructed, including off site staging areas and material storage areas.

"Contract Administrator" means the Principal Engineer of the Flood Control District (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee.

"Cooperative Agreement" means the Cooperative Agreement by and among the City, the Flood Control District and the Developer further defining the parties' respective rights and responsibilities pertaining to the design, construction, inspection, ownership, and operation and maintenance of one or more of the Flood Control Facilities.

"County" means the County of Riverside, a political subdivision of the State, and its successors.

"Developer" means Lennar Homes of California, Inc, a California corporation, and its successors and assigns, acting as the master developer of infrastructure within the Community Facilities District, including but not limited to the Flood Control Facilities.

"Developer's Representative" means the person executing this Joint Community Facilities Agreement and the person or persons designated as such by the Developer in a certificate signed by the Developer and delivered to the School District, the Community Facilities District, and the Flood Control District, which certificate shall contain an original or specimen signature of each person so designated.

"Flood Control District" means the Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code.

"Flood Control Facility" or "Flood Control Facilities" means one or more of those certain flood control and storm water drainage facilities that are shown in concept in red and described in Exhibit B attached hereto that are to be owned, operated and maintained by the Flood Control District.

"Flood Control Facilities Account" means the account (however denominated) to be established pursuant to each Indenture to hold that portion of Bond proceeds or special taxes to be applied to pay the Purchase Price for each Flood Control Facility.

"Flood Engineer" means the General Manager-Chief Engineer of the Flood Control District (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee.

"General Prevailing Wage Rates" means those rates as determined by the Director of the Department of Industrial Relations of the State.

"Hazardous Material" means any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic substances, material or waste which is or becomes regulated by any local governmental authority, the State or the federal government and specifically includes, without limitation, any material or substance which is (i) designated as "hazardous substance" pursuant to Section 3111 of the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq. (33 U.S.C. Section 1321), (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq. (42 USC Section 6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., (iv) petroleum or petroleum products, (v) asbestos, (vi) hydrocarbons, or (vii) polychlorinated biphenyl (including PCB containing materials).

"Indenture" means each indenture, trust agreement, resolution, fiscal agent agreement or similar instrument, regardless of title, pursuant to which bonds, notes or other evidences of indebtedness of the Community Facilities District have been issued

and are outstanding, as originally executed or as the same may from time to time be supplemented or amended pursuant to the provisions thereof.

"Joint Community Facilities Agreement" means this Joint Community Facilities Agreement, dated as of _____, by and among the School District, the Flood Control District, and the Developer, as originally executed or as the same may be amended from time to time in accordance with its terms.

"Legislative Body" means the Board of Education, acting *ex officio* as the legislative body of the Community Facilities District.

"Mitigation Agreement" means the Mitigation Agreement or other similar agreement to be entered into by and between the School District and the Developer, as originally executed or as the same may be amended from time to time in accordance with its terms.

"Payment Request" means the document to be provided by the Developer to the Contract Administrator to substantiate the Purchase Price of one or more of the Flood Control Facilities, which shall be substantially in the form of Exhibit D attached hereto.

"Plans and Specifications" mean the plans and specifications for the Flood Control Facilities prepared or to be prepared at the direction of the Developer pursuant to Section 4.1 hereof.

"Proceedings" means those proceedings to be undertaken by the Board of Education to consider the formation of the Community Facilities District and the approval by said Board of Education and the qualified electors of the Community Facilities District of the authorization to levy special taxes therein pursuant to the Rate and Method and to incur bonded indebtedness to finance the construction and acquisition of certain public improvements and by the Legislative Body to sell and issue the Bonds.

"Purchase Price" means, subject to the provisions of Section 3.2 hereof, the Actual Cost of a Flood Control Facility as determined by the Contract Administrator.

"Rate and Method" means the rate and method of apportionment of special taxes authorized to be levied within the Community Facilities District pursuant to the Proceedings.

"School District" means the Jurupa Unified School District, a school district organized and existing under the laws of the State of California.

"Special Districts Administrator" means the County Executive Officer or his/her designee as specified in the written certificate required pursuant to Section 6.14, below.

"State" means the State of California.

ARTICLE II

CONDITIONS PRECEDENT

Section 2.1. Proceedings. The Developer has submitted to the School District a petition requesting that the Proceedings be initiated with regard to the formation of the Community Facilities District for the purpose of financing the acquisition or construction of certain public facilities, including the Flood Control Facilities, and to authorize the levy of special taxes within the Community Facilities District pursuant to the Rate and Method and the incurrence of bonded indebtedness to finance the construction and acquisition of said public facilities and for the Legislative Body to authorize the sale and issuance of the Bonds pursuant to the Act and the applicable Indenture.

Should the formation of the Community Facilities District be approved, the Legislative Body will cause to be sold and issued the Bonds in one or more series, pursuant to the terms of the Act, the applicable Indenture and the applicable sections of the Mitigation Agreement. A portion of the proceeds of the Bonds are intended to provide funds that will allow the Community Facilities District to finance all, or a portion, of the costs of constructing and acquiring the Flood Control Facilities. Should the Board of Education not be able to approve the formation of the Community Facilities District, the School District, the Flood Control District, and the Developer will not be bound by the terms of this Joint Community Facilities Agreement and it shall be considered null and void by the parties to it. The School District will notify all parties to this Joint Community Facilities Agreement within fifteen (15) calendar days of such event occurring.

The Developer acknowledges that the decision of the Board of Education to approve the formation of the Community Facilities District and of the Legislative Body to authorize the sale and issuance of the Bonds is an exercise of the legislative discretion of the Board of Education and Legislative Body, respectively, and the School District may not enter into a contract or obligate either the Board of Education or the Legislative Body to exercise its legislative discretion in a particular manner. This Joint Community Facilities Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the Board of Education to approve the formation of the Community Facilities District or the Legislative Body to authorize the sale and issuance of the Bonds.

Should the Developer elect to abandon the Proceedings, the Developer shall provide written notification of such election to the School District and the Flood Control District prior to the adoption by the Legislative Body of the resolution authorizing the sale and issuance of the Bonds.

The Board of Education and the Legislative Body shall have the jurisdiction to and shall be solely responsible for undertaking the Proceedings consistent with the provisions of the Act, each Indenture and the Mitigation Agreement.

Section 2.2. [Intentionally Blank].

Section 2.3. Amendment of this Agreement. All of the Flood Control Facilities to be financed by the Community Facilities District are identified in Exhibit B, and are described with the specificity consistent with development plans that have been submitted to and approved by the Flood Control District. Any further refinement of the descriptions of the Flood Control Facilities are to be addressed in the Cooperative Agreement for the Tract and do not require further amendment to this Joint Community Facilities Agreement. Other than the modifications described in the previous sentence, should there be additional amendments deemed necessary by the Flood Control District to be made to this Joint Community Facilities Agreement, said amendments shall be made pursuant to Section 6.4. hereof, and such amendments shall be made prior to the authorization by the Legislative Body to sell and issue Bonds, the proceeds of which will be used to finance all or a portion of the costs of constructing and acquiring the Flood Control Facilities.

Section 2.4. Fee Deposit with County for Preparation and Implementation of this Joint Community Facilities Agreement. The Developer shall cause to be deposited with the County Executive Officer, or his/her designee (the "Special Districts Administrator") an aggregate amount of \$4,000, to be held in a trust account to cover all costs incurred in drafting, preparing and implementing this Joint Community Facilities Agreement. The Special Districts Administrator will prepare an accounting of the costs incurred and provide an accounting to the Developer. If the amount deposited is insufficient to cover such costs, the Developer will cause an additional amount to be deposited with the Special Districts Administrator within 30 (thirty) calendar days of being provided a written request for the additional funds. The amounts deposited with the Special Districts Administrator that have not been used will be returned to the Developer as directed by the Administrator. Any amount deposited which is used or to be used by the Special Districts Administrator for the drafting, preparing and implementing this Joint Community Facilities Agreement shall be reimbursable to the Developer from the proceeds of the Bonds.

ARTICLE III

ACQUISITION OF THE FLOOD CONTROL FACILITIES

Section 3.1. Acquisition of the Flood Control Facilities. The Developer hereby agrees to transfer to the Flood Control District each of the Flood Control Facilities and the Community Facilities District hereby agrees to pay the Purchase Price thereof, subject to the terms and conditions hereof and any Mitigation Agreement. Acceptable Title to any parcels on which any Flood Control Facility is constructed and for which title is not presently held by the Flood Control District as well as the Flood Control Facility financed pursuant hereto shall be transferred to the Flood Control District as of the Acceptance Date; provided, however, that notwithstanding any such transfer, the Developer shall be solely responsible for the operation and maintenance of any Flood Control Facility until the Acceptance Date of said Flood Control Facility consistent with the terms of this Joint Community Facilities Agreement and the Cooperative Agreement.

The Purchase Price of each Flood Control Facility is to be paid solely from the amounts in any Flood Control Facilities Account established by the Indenture, and the Community Facilities District shall not be obligated to pay the Purchase Price of any Flood Control Facility except from the amounts held in a Flood Control Facilities Account. Neither the School District, the Community Facilities District nor the Flood Control District makes any warranty, either expressed or implied, that the amounts held in the Flood Control Facilities Account available for the payment of the Purchase Price of a Flood Control Facility will be sufficient for such purpose.

It is understood by the Developer that the net principal amount of the Bonds that will be deposited in a Flood Control Facilities Account, pursuant to the terms of the Mitigation Agreement and the Indenture, and any investment earnings thereon, may not be sufficient to pay the full amount of the Purchase Price of any Flood Control Facility at the time a Payment Request is approved by the Contract Administrator. If the amounts deposited in the applicable Flood Control Facilities Account and any investment earnings thereon, at the time Payment Request is approved by the Flood Engineer and submitted to the Administrator for payment, are not sufficient to pay the Purchase Price for the Flood Control Facility or Facilities identified therein, the timing of the payment of the Purchase Price therefor and the proportionate amount of the Purchase Price to be paid will be determined consistent with the terms of the Mitigation Agreement.

Notwithstanding any other provision of this Joint Community Facilities Agreement, the fact that there may not be sufficient funds available in the Flood Control Facilities Account to pay the Purchase Price for one or more Flood Control Facilities will not relieve the Developer from its obligation consistent with the conditions of approval for the Tract to construct the Flood Control Facilities.

Failure of the Developer to comply with the terms of Articles III and IV of this Joint Community Facilities Agreement and the Cooperative Agreement may result in the Flood Control Facilities that the Developer is responsible to construct not being accepted into the Flood Control District's maintained system in which case the Developer shall not

receive reimbursement for any costs it incurs in the design, engineering and construction of said Flood Control Facilities.

Section 3.2. Determination of the Purchase Price. The determination of the Purchase Price shall be made consistent with the provisions of this Section 3.2.

In order for the Contract Administrator to be able to determine the Purchase Price for a completed Flood Control Facility, the Developer shall deliver to both the Administrator and the Contract Administrator:

- (a) A Payment Request for said Flood Control Facility, together with all attachments and exhibits to be included therewith; and
- (b) A written statement from the Flood Engineer stating that the Flood Control District is willing to accept ownership of the Flood Control Facility as constructed and to include it as part of its maintained system as of the Acceptance Date; and
- (c) A copy of the Notice of Completion for said Flood Control Facility that will be filed in accordance with Section 3093 of the California Civil Code, if applicable. Final lien releases addressed to the Flood Control District, the School District and the Community Facilities District must be received by the Contract Administrator prior to the Flood Engineer executing the Payment Request which determines the Purchase Price for said Flood Control Facility and authorizes payment.

Once the Contract Administrator has been provided with a complete Payment Request and all other documents as required by it to determine the Purchase Price, the Flood Engineer will sign the Payment Request, identifying the Flood Control Facility and specifying the Purchase Price, and forward said document to the Administrator for payment consistent with the terms of the Mitigation Agreement.

At all times, the construction of the Flood Control Facilities is made with the expectation that the Purchase Price for any such Flood Control Facilities is to be paid by the School District (but solely from the proceeds of the Bonds issued by the Community Facilities District or special tax collection consistent with the terms of the Mitigation Agreement), and that the conveyance of such Flood Control Facilities to the Flood Control District prior to receipt of the Purchase Price, or any portion thereof, for such Flood Control Facilities shall not be construed as a dedication, gift, or a waiver of the payment of the Purchase Price for such Flood Control Facilities.

ARTICLE IV

CONSTRUCTION OF THE FLOOD CONTROL FACILITIES

Section 4.1. Preparation and Approval of Plans and Specifications. To the extent that the Developer has not already done so, it shall cause Plans and Specifications to be prepared for the Flood Control Facilities. The Developer shall obtain the written approval of the Plans and Specification from the Flood Engineer. Prior to the Flood Engineer's approval of the Plans and Specifications for said Flood Control Facilities associated with the Tract, the Developer shall enter into a Cooperative Agreement with the Flood Control District and the City regarding the Flood Control Facilities that it elects or is conditioned to construct in order to develop the Tract. The Developer shall provide a copy of all such Plans and Specifications to the Flood Engineer and the City. Once the Plans and Specifications have been approved, no changes are to be made thereto without prior written consent of the Flood Engineer and the Contract Administrator.

Section 4.2. Duty of Developer to Construct. The Developer shall construct or cause to be constructed the Flood Control Facilities in accordance with the Plans and Specifications approved by the Flood Engineer. The Developer shall perform all of its obligations hereunder and the Cooperative Agreement and shall conduct all operations with respect to the construction of the Flood Control Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. Notwithstanding the foregoing, nothing set forth in this Joint Community Facilities Agreement shall be construed (i) to require the Developer to perform any work requiring a contractor's license, nor shall the Developer be deemed to be performing construction services pursuant to this Joint Community Facilities Agreement or (ii) require the Developer to cause the Plans and Specifications to be prepared for the Flood Control Facilities at a specific time or in a manner other than as required by the approved conditions for the development of its property.

Section 4.3. Bid and Construction Requirements.

(a) In order to ensure that a Flood Control Facility that is to be acquired with the proceeds of the Bonds or special taxes will be constructed as if it had been constructed under the direction and supervision, or under the authority of, a public agency, so that it may be acquired pursuant to Sections 53313.5 and 53314.9 of the Code, the Developer shall comply with all of the requirements set forth in the Public Contract Code regarding the notice of bidding and award of contract for a public works project by a public agency such as the Flood Control District.

(b) Prior to awarding a construction contract for any Flood Control Facilities, the Developer shall submit a bid packet to the Flood Engineer for review and approval of the technical specifications. The contract for construction of any Flood Control Facility is to be awarded to the responsible bidder submitting the lowest responsive bid after

notice inviting sealed bids. Sealed bids are to be publicly solicited consistent with the applicable provisions of the Public Contract Code dealing with the bidding of public works projects constructed by the Flood Control District. Public notice is to be given consistent with the Public Contract Code as to the date, time and place where bids will be opened. The Flood Control District is to be provided with copies of all bids received, formatted consistent with Exhibit E, attached hereto, and provided with a declaration, in a form satisfactory to the Contract Administrator, as to solicitation of bids, the bid opening and award of bid.

(c) The Developer shall require, and the Plans and Specifications, bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on a Flood Control Facility, as required by the California Labor Code, to pay not less than General Prevailing Wage Rates to all workers employed in the execution of the contract, to post a copy of the General Prevailing Wage Rates at the job-site in a conspicuous place available to all employees and applicants for employment, and to otherwise comply with applicable provisions of the California Labor Code, the Code and the California Public Contract Code relating to General Prevailing Wage Rates as required by the specifications approved by the Flood Engineer. The Contract Administrator will provide the Developer with copies of tables setting forth the General Prevailing Wage Rates, and the Developer hereby acknowledges receipt thereof.

(d) The Developer shall require each principal contractor to provide proof of insurance coverage to the Flood Control District satisfying the requirements of Section 4.7 hereof throughout the term of the construction of the Flood Control Facilities. Rather than requiring its principal contractors to provide such insurance, the Developer may elect to provide the same for the benefit of its principal contractors.

(e) Each principal contractor engaged to perform work on the Flood Control Facilities shall be required to furnish (i) labor and material payment bonds, and (ii) contract performance bonds, each in an amount equal to 100% of the contract price naming the Developer, the Community Facilities District, and the Flood Control District as obligees and with an admitted surety complying with the provisions of Section 995.660 of the California Code of Civil Procedure. All such bonds shall be in a form as shown in Exhibit C. The bonds tendered pursuant to this sub-section are to be accepted and held by the Flood Engineer or City. Rather than requiring its contractors to provide such bonds, the Developer may elect to provide the same for the benefit of its principal contractors.

(f) The Developer shall comply, and shall cause each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such individual or entity is engaged to perform work on the Flood Control Facilities, to comply, with such other requirements relating to the construction of the Flood Control Facilities as the Flood Control District or the Contract Administrator may impose by written notification delivered to the Developer, to the extent legally required as a result of changes in applicable federal, State or County laws, rules or procedures.

(g) The Developer shall require, and the Plans and Specifications and bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on the Flood Control Facilities, to submit certified weekly payroll records or other proof of payment of General Prevailing Wage Rates to the Developer and to furnish certified payroll records or such other proof of payment of General Prevailing Wage Rates to the Contract Administrator promptly upon request.

(h) All change orders shall be reviewed and, if appropriate, approved by the Flood Engineer for the purpose of ensuring that they comply with the Flood Control District's engineering standards and for the work represented by the change order to be eligible for consideration in determining the Purchase Price. Copies of the approved change orders are to be provided to the Contract Administrator.

(i) The Developer shall provide proof to the Contract Administrator at such intervals and in such form as the Contract Administrator may require that the foregoing requirements have been satisfied as to all of the Flood Control Facilities.

Section 4.4. Notice of Intent to Commence Construction; Notice to Proceed.

The Developer is to provide to the Contract Administrator a copy of each "Notice of Intent" to commence construction, as prepared by the Developer consistent with the terms of the Cooperative Agreement, and a copy of each "Notice to Proceed" as issued by the Flood Control District pursuant to the terms of the Cooperative Agreement.

Section 4.5. Inspection; Completion of Construction.

The Flood Control District shall have primary responsibility for inspecting the construction of any Flood Control Facility to ensure that the work of construction is accomplished in accordance with the Flood Control District's approved Plans and Specifications. The Flood Control District's personnel shall have access to the Construction Site at all reasonable times for the purpose of accomplishing such inspections. Upon completion of construction of said Flood Control Facility, the Developer shall notify the Flood Control District in writing that it considers the construction of said Flood Control Facility to be completed in accordance with the Flood Control District's approved Plans and Specifications and, upon receipt of said written notice, the Flood Control District's personnel shall perform a final inspection of said Flood Control Facility.

Upon finding that construction of said Flood Control Facility is completed in conformance with the Flood Control District's approved Plans and Specifications, the Flood Control District shall provide written confirmation to the Developer and the Contract Administrator that the construction of said Flood Control Facility has been satisfactorily completed and that the Developer may proceed with the recording of a Notice of Completion with respect to such construction pursuant to Section 3093 of the California Civil Code.

The Developer shall furnish to the Flood Control District and the Contract Administrator a duplicate copy of each such recorded Notice of Completion showing thereon the date of filing with the County Recorder. Any actual costs reasonably

incurred by the Flood Control District in inspecting and approving the construction of the Flood Control Facility not previously paid by said Developer shall be reimbursed from the Flood Control Facilities Account.

Construction of a Flood Control Facility shall be on a five (5) day, forty (40) hour workweek with no work on Saturday, Sunday or days designated by the Flood Control District and the County as legal holidays, unless otherwise approved by the Flood Control District. If the Developer feels it is necessary to work more than a normal forty (40) hour workweek or on holidays, the Developer shall make a written request for permission from the Flood Engineer to work the additional hours. The request shall be submitted to the Flood Engineer at least 72 hours prior to the request date for additional work hours and state the reasons for the overtime and the specific time frames required. The decision granting permission for overtime work shall be made by the Flood Engineer at its sole discretion and shall be final. If permission is granted, the 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 those rules established by the Flood Control District, including any amendments thereto.

Section 4.6. Maintenance of a Flood Control Facility. The Developer shall maintain any Flood Control Facility in a good, safe and functional condition until the Acceptance Date of said Flood Control Facility. Prior to the Acceptance Date, said Developer shall be solely responsible for maintaining said Flood Control Facility so that it is, at all times, fully functional and operating, and shall perform such maintenance on said Flood Control Facility as necessary to safeguard public health and safety or as the Flood Engineer reasonably determines to be necessary.

Section 4.7. Insurance Requirements. Without limiting or diminishing the Developer's obligation to indemnify or hold the Flood Control District, the County, the School District, the City, and the Community Facilities District harmless pursuant to Section 5.4 hereof, the Developer shall procure and maintain or cause to be procured and maintained, at its sole cost and expense the following insurance coverages, or alternate coverages acceptable to the County's Risk Manager, during the term of this Joint Community Facilities Agreement:

(a) *Commercial General Liability:* Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations, explosion, collapse, use of cranes, and other heavy equipment and underground hazards, personal and advertising injury covering claims which may arise from or out of the Developer's performance of its obligations hereunder. The policy shall name by endorsement the Flood Control District, the County, the City, the School District and the Community Facilities District, their respective directors, officers, Board of Supervisors, Board of Education, Legislative Body, elected officials, employees, agents or representatives as "Additional Insureds." 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 Joint

Community Facilities Agreement or be no less than two (2) times the occurrence limit.

(b) *Vehicle Liability:* Vehicle liability insurance for all owned, non-owned or hired vehicles 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 Joint Community Facilities Agreement or be no less than two (2) times the occurrence limit. Policy shall name by endorsement the Flood Control District, the County, the City, the School District, and the Community Facilities District, their respective directors, officers, Board of Supervisors, Legislative Body, elected officials, employees, agents or representatives as "Additional Insureds."

(c) *Workers' Compensation Insurance:* Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupation Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the Flood Control District, the County, the City, the School District, the Community Facilities District, and if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

General Insurance Provisions - all lines:

(i) 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 County's Risk Manager.

(ii) The Developer's insurance carrier(s) 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 County's Risk Manager before the commencement of operations under this Joint Community Facilities Agreement. Upon notification of self-insured retention deemed unacceptable to the Flood Control District, and at the election of the County's Risk Manager, the Developer's carriers shall either: (i) reduce or eliminate such self-insured retention as respects this Joint Community Facilities Agreement with the Flood Control District, or (ii) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

(iii) The Developer shall cause its insurance carrier(s) to furnish the Flood Control District with (i) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and (ii) if requested to do so verbally or in writing by the County's Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect.

(iv) Further, said certificate(s) and endorsements to policies of insurance shall contain the covenant of the insurance carrier(s) that it shall provide no

less than sixty (60) days written notice be given to the Flood Control District, the County, the City, the Community Facilities District, and the School District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Joint Community Facilities Agreement shall terminate forthwith, unless the Flood Control District, the County, the City, the Community Facilities District, and the School District receive, prior to the effective date of the material modification or cancellation, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

(v) The Developer shall not commence construction of the Flood Control Facilities until the Flood Control District has been furnished either original certificate(s) of insurance and certified original copies of endorsement, policies of insurance including all endorsements and any and all other attachments as required in this Section, or other evidence of coverage acceptable to County's Risk Manager.

(vi) It is understood and agreed by the parties hereto and the Developer's insurance company(s) that the certificate(s) of insurance and policies shall so covenant and shall be construed as primary insurance, and the Flood Control District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

(vii) The Developer may pass down to its principal contractors the insurance obligations contained herein and will require its principal contractors to name on their insurance policies by endorsement the Flood Control District, the County, the City, the School District, and the Community Facilities District, their respective directors, officers, Board of Supervisors, Board of Education, Legislative Body, elected officials, employees, agents or representatives as "Additional Insureds." Copies of such certificates and endorsements shall be provided to the Flood Control District.

Section 4.8. Ownership of Facilities. Notwithstanding the fact that some or all of the Flood Control Facilities may be constructed within dedicated street rights of way or on property which is owned by or has been or will be dedicated to the Flood Control District or the City, a Flood Control Facility shall be and remain the property of the Developer until Acceptable Title to parcels not owned by the Flood Control District or the City with respect to such Flood Control Facility is conveyed to the Flood Control District or the City, as appropriate, as provided herein, and such Flood Control Facility has been formally accepted by the Flood Control District for ownership, operation and maintenance. Ownership of said parcels by the Developer or other third parties shall likewise not be affected by any agreement that the Developer may have entered into or may enter into with the City pursuant to the provisions of the Subdivision Map Act, Section 66410 *et seq.* of the Code, and the provisions of this Section shall control.

Section 4.9. Improvement Security; Warranties. Notwithstanding any other provisions of this Joint Community Facilities Agreement, the Developer shall be required

to secure the construction and completion of construction of any Flood Control Facility that is to be acquired with the proceeds of Bonds as required by Sections 66499 through 66499.10 of the Code.

As of the Acceptance Date, the performance bond provided by the principal contractor of the Developer pursuant to Section 4.3.(e), above, shall be reduced to an amount equal to ten percent (10%) of the original amount thereof and shall serve as a warranty bond to guarantee that the Flood Control Facility will be free from defects due to faulty workmanship or materials for a period of twelve (12) months from the Acceptance Date, or the principal contractor of the Developer may elect to provide a new warranty bond or cash in an equivalent amount.

As of the Acceptance Date, the Developer shall assign to Flood Control District all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to the Flood Control Facilities.

ARTICLE V

REPRESENTATIONS, WARRANTIES, COVENANTS, INDEMNIFICATION

Section 5.1. Representations, Warranties and Covenants of the Developer.

The Developer, as the owner of the property encompassed within the proposed boundaries of the Community Facilities District, makes the following representations, warranties and covenants for the benefit of the Flood Control District, the School District, and the Community Facilities District, when formed, as of the date hereof:

(a) Organization. The Developer represents and warrants that it is a California corporation duly organized and validly existing under the laws of the State of California, is in good standing under the laws of the State of California, is qualified to do business in the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) Authority. The Developer represents and warrants that it has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all action necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the Developer.

(c) Binding Obligation. The Developer represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the Developer and is enforceable against Developer in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) Completion of Facilities. The Developer covenants that it will use its commercially reasonable and diligent efforts to do all things that may be lawfully required of it in order to cause the Flood Control Facilities the construction of which have been made a condition for the development of the Tract to be completed in accordance with this Joint Community Facilities Agreement.

(e) Compliance with Laws. The Developer covenants that, while the Flood Control Facilities are owned by the Developer or required pursuant to this Joint Community Facilities Agreement to be maintained by it, the Developer will not commit, suffer or permit any of its agents, employees or contractors to commit any act to be done in, upon or to the Flood Control Facilities in violation in any material respect of any law, ordinance, rule, regulation or order of any governmental entity or any covenant, condition or restriction now or hereafter affecting the Flood Control Facilities.

(f) Hazardous Materials. The Developer represents and warrants that neither the Developer, nor its principal contractors or any subcontractor, agent or employee thereof will use, generate, manufacture, procure, store, release, discharge or dispose of any Hazardous Material on, under or about the Construction Site or the Flood Control Facilities or transport any Hazardous Material to or from the Construction Site or the Flood Control Facilities in violation of any federal, state or local law, ordinance, regulation, rule, decision or policy statement regulating Hazardous Material.

(g) Permits. The Developer covenants that it will pursue in a commercially reasonable manner all governmental or other permits or licenses required to proceed with the construction of the Flood Control Facilities and that it will pay all fees relating thereto. The Developer represents and warrants that to the best of the Developer's knowledge, as of the date hereof, there is no material legal impediment to the Developer's proceeding with and completing the construction of the Flood Control Facilities or to the development of the Construction Site as contemplated by the Developer, except for government or other permits to be obtained.

(h) Payment Requests. The Developer represents and warrants that (i) it will not request payment from the Community Facilities District under this Joint Community Facilities Agreement for the acquisition of any improvements that are not part of a Flood Control Facility, (ii) it will diligently follow all procedures set forth in this Joint Community Facilities Agreement and (iii) it will provide to the Contract Administrator all information required by the Contract Administrator to complete a Payment Request.

(i) Financial Records. Until the Purchase Price of all Flood Control Facilities to be financed by the Community Facilities District is finally determined, the Developer covenants to maintain proper books of record and account for the Flood Control Facilities and all costs related thereto. The Developer covenants that such accounting books will be maintained in accordance with generally accepted accounting principles, and will be available for inspection by the Community Facilities District, the School District, the Flood Control District and their respective agents, at any reasonable time during regular business hours on two (2) Business Days' prior written notice, subject to mutually acceptable arrangements regarding the confidentiality of proprietary data.

(j) Developer's Responsibilities. The Developer accepts responsibility for and shall be responsible for identification and compliance with all applicable laws pertaining to constructing and installing the Flood Control Facilities and the contract or contracts pertaining thereto, including the laws that would apply to the Flood Control District if they were constructing such Flood Control Facilities itself. Notwithstanding the requirements of this Joint Community Facilities Agreement the School District, the Community Facilities District and the Flood Control District make no representation as to the applicability or inapplicability of any laws regarding contracts, including contracts related to the construction and

installation of the Flood Control Facilities, and especially the matters of competitive bidding and payment of prevailing wages. The School District, Community Facilities District or the Flood Control District may, in its sole discretion, supply guidance to the Developer with respect to laws governing the construction of a Flood Control Facility if requested to do so by the Developer. Whether or not any or all of them have done so, the Developer will neither seek to hold nor hold them liable for any consequences of any failure by the Developer to correctly determine applicability of any such requirements to any contract it enters into, irrespective of whether the School District, the Community Facilities District or the Flood Control District, as the case may be, knew or should have known about applicability of any such requirement.

Section 5.2. Representations, Warranties and Covenants of the School District. The School District makes the following representations, warranties and covenants for the benefit of the Flood Control District, the Developer, and the Community Facilities District, when formed, as of the date hereof:

(a) Authority. The School District represents and warrants that the School District has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all actions necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the School District.

(b) Binding Obligation. The School District represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the School District and is enforceable against the School District in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Payment Requests. The School District represents and warrants that the School District will, in a timely manner, process all completed and approved Payment Requests submitted to it by the Flood Engineer and follow all procedures applicable to it as set forth in this Joint Community Facilities Agreement and the Mitigation Agreement.

(d) Financial Records. The School District covenants to maintain, or cause to be maintained, books of record and account for the proceeds of the Bonds, levy and collection of special taxes and the payment of principal of and interest on the Bonds in accordance with the requirements of the Indenture and the Act. The School District covenants that such accounting books will be maintained in accordance with generally accepted accounting principles applicable to governmental entities, and will be available for inspection by the Developer and its agents at any reasonable time during regular business hours on two (2) Business Days' prior written notice.

Section 5.3. Representations, Warranties and Covenants of the Flood Control District. The Flood Control District makes the following representations, warranties and covenants for the benefit of the School District, the Community Facilities District, when formed, and the Developer as of the date hereof:

(a) Authority. The Flood Control District represents and warrants that the Flood Control District has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all actions necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the Flood Control District.

(b) Binding Obligation. The Flood Control District represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the Flood Control District and is enforceable against the Flood Control District in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Completion of Flood Control Facilities. The Flood Control District covenants that it will use its reasonable and diligent efforts to take expeditiously all actions that may be lawfully required of it in processing and approving Plans and Specifications in accordance with this Joint Community Facilities Agreement.

Section 5.4. The Developer Indemnification. The Developer, with regard to its respective responsibilities under this Joint Community Facilities Agreement, agrees to protect, indemnify, defend and hold the School District, the Community Facilities District, when formed, the Flood Control District, the County, the City, and their respective directors, officers, Board of Supervisors, Board of Education, Legislative Body, elected officials, employees, representatives and agents (the "Indemnified Parties"), and each of them, harmless from and against any and all claims, liabilities, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees, and court costs which the Indemnified Parties, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, or any combination thereof, as a result of, or by reason of, or arising out of, or in consequence of (a) the approval of this Joint Community Facilities Agreement, (b) the acquisition, construction, or installation of the Flood Control Facilities, (c) the design, construction, or failure of the Flood Control Facilities or an assertion, 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 seek to impose any other liability or damage whatsoever, from the diversion of the waters from their natural drainage patterns, or from the discharge of drainage from the Flood Control Facilities, (d) the untruth or inaccuracy of any representation or warranty made by the Developer in this Joint Community Facilities Agreement or in any certifications delivered by the Developer hereunder, or (e) any act or omission of the Developer or any of its contractors, subcontractors, or their respective officers, employees or agents, in connection with the

Flood Control Facilities or its responsibilities or obligations under this Joint Community Facilities Agreement. If the Developer fails to do so, the Indemnified Parties, or each of them, shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorneys' fees or court costs, to and recover the same from the Developer.

No indemnification is required to be paid by the Developer for any claim, loss or expense (a) as a result of, or by reason of, or arising out of, or in consequence of the willful misconduct or sole or active negligence of the Indemnified Parties or (b) as a result of, or by reason of, or arising out of, or in consequence of the use or operation of a Flood Control Facility after the Acceptance Date of the Flood Control Facility, unless such claim, loss or expense results from the defective or improper design, acquisition, construction or installation of such Flood Control Facility by the Developer or its contractors, subcontractors, or respective officers, employees or agents.

The provisions of this Section shall survive the termination of this Joint Community Facilities Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Developer as Independent Contractor. In performing under this Joint Community Facilities Agreement, it is mutually understood that the Developer is acting as an independent contractor, and not as an agent of the School District, the Community Facilities District, or the Flood Control District. Neither the School District nor the Flood Control District shall have any responsibility for payment to any contractor, subcontractor or supplier of the Developer. The Community Facilities District shall not have any responsibility for payment to any contractor, subcontractor or supplier of the Developer unless such entity or individual is specifically listed as a payee on the Payment Request submitted by said Developer pursuant to this Joint Community Facilities Agreement in which case the Community Facilities District shall be responsible for making such payment only if such Payment Request is approved pursuant to the provisions of this Joint Community Facilities Agreement and the Mitigation Agreement and only from funds available in the applicable Flood Control Facilities Account.

Section 6.2. Other Agreements. Nothing contained herein shall be construed as affecting the School District's, the Flood Control District's, or the Developer's respective duty to perform their respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Tract, which obligations are and shall remain independent of the Developer's rights and obligations, the School District's rights and obligations, and the Flood Control District's rights and obligations, under this Joint Community Facilities Agreement; provided, however, that the Developer shall use its commercially reasonable and diligent efforts to perform each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the acquisition, construction and installation of the Flood Control Facilities.

Section 6.3. Binding on Successors and Assigns. Neither this Joint Community Facilities Agreement nor the duties and obligations of the Developer hereunder may be assigned to any person or legal entity, or an affiliate of the Developer, that has taken title to the property that is the subject to this Joint Community Facilities Agreement, without the written consent of the Community Facilities District, the School District, and the Flood Control District, which consent shall not be unreasonably withheld or delayed. Neither this Joint Community Facilities Agreement nor the duties and obligations of the Flood Control District, the School District or the Community Facilities District hereunder may be assigned to any person or legal entity, without the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the parties hereto.

Section 6.4. Amendments. This Joint Community Facilities Agreement can only be amended by an instrument in writing executed and delivered by the School District, the Flood Control District, and the Developer or successor thereto, except no amendment is required due to the transfer of any or all of the Tract's to a merchant

builder, a purchaser of single family residential unit, a multifamily family complex or the end user of a non-residential parcel.

Section 6.5. Waivers. No waiver of, or consent with respect to, any provision of this Joint Community Facilities Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 6.6. No Third Party Beneficiaries. Other than the Community Facilities District when formed, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Joint Community Facilities Agreement (either expressed or implied) is intended to confer upon any person or entity, other than the School District, the Flood Control District, and the Developer (and its respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Joint Community Facilities Agreement.

Section 6.7. Notices. Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

Flood Control District: Riverside County Flood Control and
Water Conservation District
Attn: Administrative Services Section
1995 Market Street
Riverside, California 92501
Telephone: (951) 955-1200
Fax: (951) 788-9965

With a copy to: County of Riverside
County Executive Office
Attn: Special Districts Administrator
4080 Lemon Street, 4th Floor
Riverside, California 92501
Telephone: (951) 955-1100
Facsimile: (951) 955-1105

School District: Jurupa Unified School District
Attn: Paula Ford, Assistant Superintendent of
Business Services
4850 Pedley Road
Jurupa Valley, California 92509
Telephone: (951) 360-4157
Fax: (951) 360-4163

Developer:

Lennar Homes of California, Inc.
980 Montecito Dr., Suite 302
Corona, California 92879
Attention: Randy Schroeder
Telephone: (951) 817-3663
Fax: (951) 817-3689

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram or telecopier, upon the sender's receipt of a document confirming satisfactory transmission, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 6.8. Jurisdiction and Venue. Each of the Community Facilities District, the School District, the Flood Control District, and the Developer (a) agrees that any suit action or other legal proceeding arising out of or relating to this Joint Community Facilities Agreement shall be brought in state or local court in the County of Riverside or in the Courts of the United States of America in the district in which said County is located, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the Community Facilities District, the School District, the Flood Control District and the Developer agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 6.9. Attorneys' Fees. If any action is instituted to interpret or enforce any of the provisions of this Joint Community Facilities Agreement, the party prevailing in such action shall be entitled to recover from the other parties thereto reasonable attorney's fees and costs of such suit (including both prejudgment and postjudgment fees and costs) as determined by the court as part of the judgment.

Section 6.10. Governing Law. This Joint Community Facilities Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 6.11. Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 6.12. Counterparts. This Joint Community Facilities Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 6.13. Interpretation. The parties to this Joint Community Facilities Agreement and their counsel have reviewed and revised this Joint Community Facilities Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be employed in the interpretation of this Joint Community Facilities Agreement.

Section 6.14. Designation of Party's Representative. Each party is to prepare a certificate designating the person or persons that are to serve as the liaison between the Flood Control District, the School District, the Community Facilities District, and the Contract Administrator regarding design, engineering and construction of the Flood Control Facilities. The certificates are to contain an original and specimen signature of each designated person. The certificates are to be provided to the Flood Control District and the Community Facilities District at the time the Bonds are issued.

Section 6.15. Nature of Agreement; Allocation of Special Taxes. This Joint Community Facilities Agreement shall constitute a joint community facilities agreement entered into pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Code. The entire amount of the proceeds of the special taxes levied pursuant to the Rate and Method shall be allocated and distributed to the Community Facilities District.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Joint Community Facilities Agreement as of the day and year first hereinabove written.

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

RECOMMENDED FOR APPROVAL:

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:

PAMELA J. WALLS
County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: 
DALE A. GARDNER
Deputy County Counsel

By: _____
Deputy

(SEAL)

[Signatures continued on next page.]

JURUPA UNIFIED SCHOOL DISTRICT

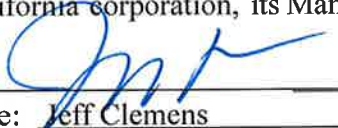
By: _____
President of the Board of Education

ATTEST:

By: _____
Clerk of the Board of Education

(SEAL)

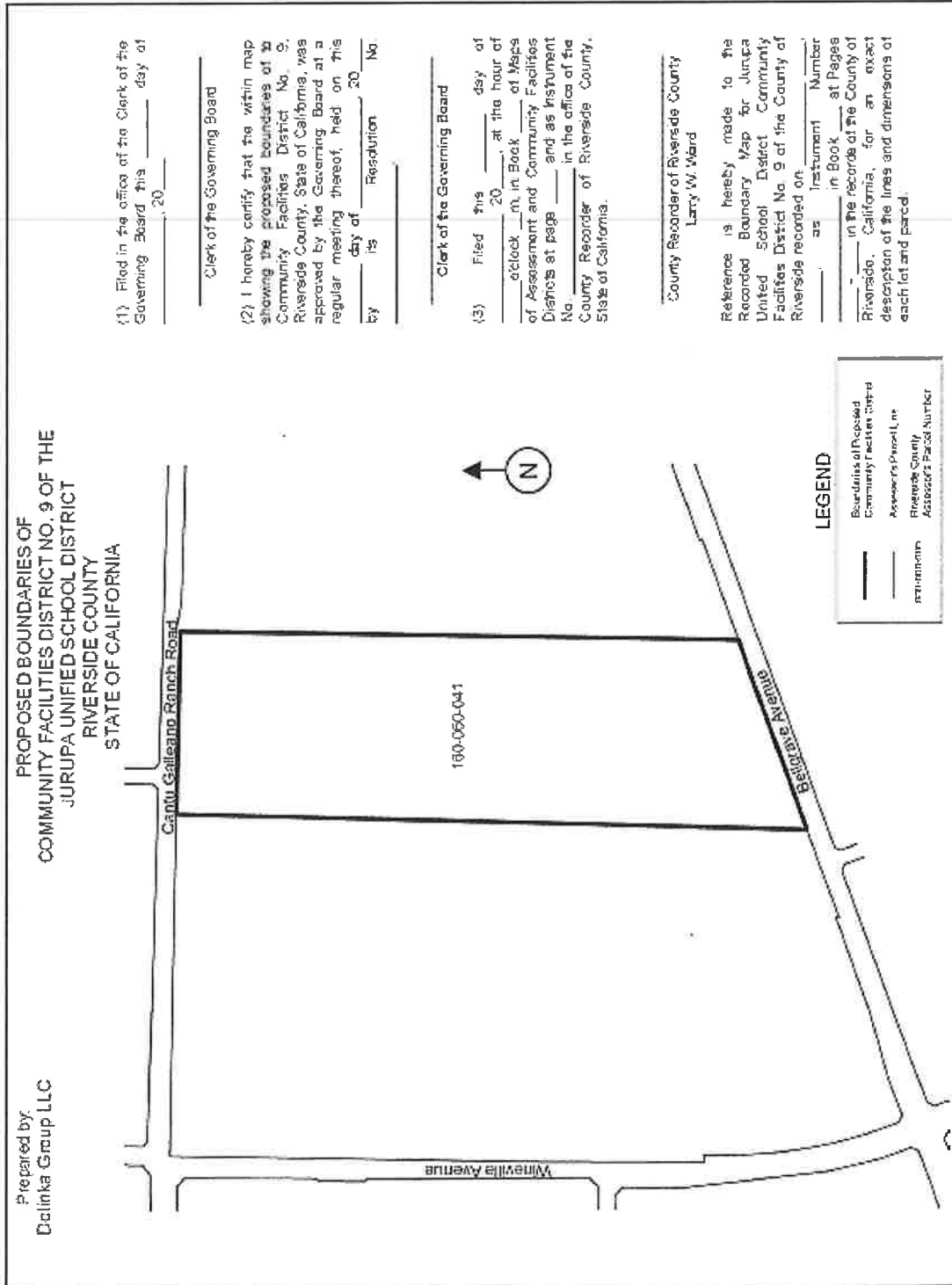
LENNAR HOMES OF CALIFORNIA, INC.,
a California corporation, its Managing Member

By: 
Name: Jeff Clemens
Title: Vice President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

EXHIBIT A

Proposed Boundary Map of Community Facilities District No. 9 of Jurupa Unified School District



**EXHIBIT B
FLOOD CONTROL FACILITIES**

**Community Facilities District No. 9
of Jurupa Unified School District
Tract No. 33461**

Flood Control Facility	Description (Stationing is approximate and subject to change)
Facility No. 1: Day Creek LATERAL E-1 Stage 2	Approximately 1,312 L.F. of 48" RCP from Sta. 11+00.00 to 24+12.17 with 4 manholes, and approximately 174 L.F. of 42" RCP from Sta. 24+14.51 to 25+88.79 with 1 junction structure and 1 inlet structure.
Facility No. 2: Day Creek – Avenidas Del Ranchos Storm Drain Stage 1	Approximately 503 L.F. of 42" RCP from Sta. 10+07.96 to 15+11.20 with 4 manholes and 1 outlet structure.

**DAY CREEK-LATERAL E-1 STAGE 2 &
DAY CREEK-AVENIDAS DEL RANCHOS STORM DRAIN STAGE 1
TRACT 33461**



FACILITY NO. 2: DAY CREEK-
AVENIDAS DEL RANCHOS STORM DRAIN STAGE 1

SCHOOL SITE
PARK SITE

TRACT 31768

BELLEGRAVE AVE.

FACILITY NO. 1 DAY CREEK-
LATERAL E-1 STAGE 2

EXISTING LAT E-1A PER
RCFCD DWG NO. 1-639



LEGEND

— EXISTING STORM DRAIN— MAINTAINED BY RCFCD&WCD

ALBERT A. WEBB
ENGINEERING CONSULTANTS
3788 MCCRAY STREET
RIVERSIDE, CA 92506
PH (951) 606-1070
FAX (951) 606-1072

A.C. 2012-C178
SHEET
1

EXHIBIT C
PAYMENT BOND

(Public Work - Civil Code Section 3247 et seq.)

The makers of this Bond are _____ as Principal and Original Contractor and _____, a corporation, authorized to issue Surety Bonds in California, as Surety, and this Bond is issued in conjunction with that certain public works contract dated as of _____, 201_, between Principal, _____, as owner, for _____ dollars (\$ _____) the total amount payable. THE AMOUNT OF THIS BOND IS 100% OF SAID SUM. Said contract is for public work of those certain Flood Control Facilities as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Jurupa Unified School District, a school district organized and existing under the laws of the State of California, Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code, and Lennar Homes of California, Inc., a California corporation," dated as of _____, 201_.

The beneficiaries of this Bond are as is stated in 3248 of the Civil Code and the requirements and conditions of this Bond are as is set forth in Sections 3248, 3249, 3250 and 3252 of said Code. Without notice, Surety consents to extension of time for performance, change in requirements, amount of compensation, or prepayment under said Contract.

Signed and Sealed this _____ Day of _____ 201_

(Firm Name - Principal)

(Business Address)

By: _____
(Signature - Attach Notary's Acknowledgment)

(Title)

Affix Seal
if
Corporation

(Corporation Name - Surety)

(Business Address)

By: _____
(Signature - Attached Notary's Acknowledgment)

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

Affix
Corporate
Seal

PERFORMANCE BOND

The makers of this Bond, _____ as Principal, and _____ as Surety, are held and firmly bound unto _____, hereinafter called the Owner, in the sum of _____ Dollars (\$ _____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the Principal entered into a certain contract, hereto attached, with the Owner, dated as of _____, 201_ for those certain Flood Control Facilities as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Jurupa Unified School District, a school district organized and existing under the laws of the State of California, Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code, and Lennar Homes of California, Inc., a California corporation," dated as of _____, 201_.

Now therefore, if the Principal shall well and truly perform and fulfill all the undertakings covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extension thereof that may be granted by the Owner, with or without notice to the Surety, and during the file of any guarantee required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may thereafter be made, then this obligation to be void, otherwise to remain in full force and virtue. Without notice, Surety consents to extension of time for performance, change in requirements, change in compensation or prepayment under said Contract.

Signed and Sealed this _____ Day of _____, 201_

(Firm Name - Principal)

(Business Address)

By: _____
(Signature - Attach Notary's Acknowledgment)

(Title)

Affix Seal
if Corporation

(Corporation Name - Surety)

(Business Address)

By: _____
(Signature - Attach Notary's Acknowledgment)

Affix
Corporate
Seal

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

EXHIBIT D

FORM OF PAYMENT REQUEST

Community Facilities District No. 9 of Jurupa Unified School District Tract No. 33461

Lennar Homes of California, Inc., a California corporation, hereby requests payment of the Purchase Price for the Flood Control Facility described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Joint Communities Facilities Agreement, dated as of _____, 201_ (the "Joint Community Facilities Agreement"), by and among Jurupa Unified School District, a school district organized and existing under the laws of the State of California (the "School District"), Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code (the "Flood Control District"), and Lennar Homes of California, Inc., a California corporation (the "Developer"). In connection with this Payment Request, the undersigned hereby represents and warrants to the Contract Administrator as follows:

1. The undersigned has been authorized by the Developer and is qualified to execute this request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. The Developer has submitted or submits herewith to the Contract Administrator and Flood Engineer as-built drawings or similar Plans and Specifications for the Flood Control Facility for which payment is requested, and such drawings or plans and specifications, as applicable, are true, correct and complete.

3. The Flood Control Facility has been constructed in accordance with the Flood Control District approved Plans and Specifications therefor, and in accordance with all applicable Flood Control District standards and the requirements of the Joint Community Facilities Agreement, and the as-built drawings or similar Plans and Specifications referenced in paragraph 2 above.

4. There has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than material men's or mechanics' liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.

5. The representations and warranties of the Developer set forth in Section 5.1 of the Joint Community Facilities Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.

6. The true and correct Actual Cost of the Facility is set forth in Attachment A.

7. Attached hereto are invoices, receipts, worksheets, certified payroll, and other evidence of costs, which are in sufficient detail to allow the Contract Administrator to verify in the Actual Cost of each Facility for which payment is requested.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

Date: _____

Developer

By: _____
Authorized Representative

**ATTACHMENT A
PAYMENT REQUEST - ACTUAL COSTS**

Developer is to complete Columns 1 through 7

Jurupa Unified School District CFD No. 9 / Tract Number 33461

Facility Description: _____

1 Bid Item No.	2 Bid Item Description	3 Unit of Measure	4 Unit Price	5 Original Contract Quantity	6 Quantity Invoiced	7 Amount Invoiced	8 Quantity Calculated By Flood District	9 Amount Calculated By Flood District	10 Difference	11 Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	0.00
2			0.00	0	0	0.00	0	0.00	0.00	0.00
3			0.00	0	0	0.00	0	0.00	0.00	0.00
4			0.00	0	0	0.00	0	0.00	0.00	0.00
5			0.00	0	0	0.00	0	0.00	0.00	0.00
6			0.00	0	0	0.00	0	0.00	0.00	0.00
7			0.00	0	0	0.00	0	0.00	0.00	0.00
8			0.00	0	0	0.00	0	0.00	0.00	0.00
9			0.00	0	0	0.00	0	0.00	0.00	0.00
10			0.00	0	0	0.00	0	0.00	0.00	0.00
11			0.00	0	0	0.00	0	0.00	0.00	0.00
12			0.00	0	0	0.00	0	0.00	0.00	0.00
13			0.00	0	0	0.00	0	0.00	0.00	0.00
14			0.00	0	0	0.00	0	0.00	0.00	0.00
15			0.00	0	0	0.00	0	0.00	0.00	0.00
16			0.00	0	0	0.00	0	0.00	0.00	0.00
17			0.00	0	0	0.00	0	0.00	0.00	0.00
18			0.00	0	0	0.00	0	0.00	0.00	0.00
19			0.00	0	0	0.00	0	0.00	0.00	0.00
20			0.00	0	0	0.00	0	0.00	0.00	0.00

Total: 0.00

Amount Requested: _____

APPROVAL BY THE FLOOD ENGINEER
Jurupa Unified School District CFD No. 9
Tract No. 33461

The Contract Administrator confirms that the Flood Control Facility, as described in Attachment A-1 entitled Payment Request-Actual Costs, has been constructed in accordance with the Plans and Specifications therefor. The Actual Cost of the Flood Control Facility as described in Attachment A-1 has been reviewed, verified and approved by the Contract Administrator. The Purchase Price for said Flood Control Facility is established at \$_____. Payment of the Purchase Price for the Flood Control Facility is hereby approved.

Date: _____

FLOOD ENGINEER

By: _____

**ATTACHMENT A-1
PAYMENT REQUEST - ACTUAL COSTS**

Contract Administrator to complete Columns 8 through 11

Jurupa Unified School District CFD No. 9/Tract Number 33461
Facility Description: _____

1	2	3	4	5	6	7	8	9	10	11
Bid Item No.	Bid Item Description	Unit of Measure	Unit Price	Original Contract Quantity	Quantity Invoiced	Amount Invoiced	Quantity Calculated By Flood District	Amount Calculated By Flood District	Difference	Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	
2			0.00	0	0	0.00	0	0.00	0.00	
3			0.00	0	0	0.00	0	0.00	0.00	
4			0.00	0	0	0.00	0	0.00	0.00	
5			0.00	0	0	0.00	0	0.00	0.00	
6			0.00	0	0	0.00	0	0.00	0.00	
7			0.00	0	0	0.00	0	0.00	0.00	
8			0.00	0	0	0.00	0	0.00	0.00	
9			0.00	0	0	0.00	0	0.00	0.00	
10			0.00	0	0	0.00	0	0.00	0.00	
11			0.00	0	0	0.00	0	0.00	0.00	
12			0.00	0	0	0.00	0	0.00	0.00	
13			0.00	0	0	0.00	0	0.00	0.00	
14			0.00	0	0	0.00	0	0.00	0.00	
15			0.00	0	0	0.00	0	0.00	0.00	
16			0.00	0	0	0.00	0	0.00	0.00	
17			0.00	0	0	0.00	0	0.00	0.00	
18			0.00	0	0	0.00	0	0.00	0.00	
19			0.00	0	0	0.00	0	0.00	0.00	
20			0.00	0	0	0.00	0	0.00	0.00	
						Total:		0.00	0.00	0.00
						Amount Requested:		_____		_____