

405



**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FORM APPROVED COUNTY COUNSEL  
BY: GREGORY P. PRIAMOS DATE 1/4/16

**FROM:** TLMA – Transportation Department

**SUBMITTAL DATE:**  
December 2, 2015

**SUBJECT:** Joint Community Facilities Agreement by and among the Eastern Municipal Water District, Riverside County Flood Control and Water Conservation District, the County of Riverside, and LS Terracina, LLC, Relating to Community Facilities District No. 2013-64. 3<sup>rd</sup> District; [\$0]

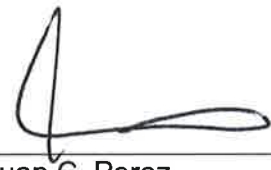
**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the subject Joint Community Facilities Agreement (JCFA) by and among the Eastern Municipal Water District (EMWD), Riverside County Flood Control and Water Conservation District (Flood Control District), the County of Riverside (County), and LS Terracina, LLC (Developer); and
2. Authorize the Chairman of the Board to execute the same.

Departmental Concurrence



Patricia Romo  
Assistant Director of Transportation



Juan C. Perez  
Director of Transportation and Land Management

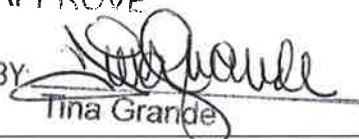
FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** N/A

**Budget Adjustment:** No

**For Fiscal Year:** N/A

**C.E.O. RECOMMENDATION:**

APPROVE  
BY:   
Tina Grande

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

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

Prev. Agn. Ref.: | District: 3 | Agenda Number:

3-28

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**  
**FORM 11:** Joint Community Facilities Agreement by and among the Eastern Municipal Water District, Riverside County Flood Control and Water Conservation District, the County of Riverside, and LS Terracina, LLC, Relating to Community Facilities District No. 2013-64. 3<sup>rd</sup> District; [\$0]

**DATE:** December 2, 2015

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary**

LS Terracina, LLC, a Delaware limited liability company (Developer), petitioned the Eastern Municipal Water District to form the Community Facilities District (CFD) No. 2013-64, which is located in the unincorporated south Temecula area of the County. The proposed boundaries of the CFD are the same as the boundaries of the Developer's approved Tract Map Nos. 31597 and 32627, allowing for the construction of approximately 318 single-family detached residential units.

The proposed Community Facilities District would provide the means for financing the construction of certain County drainage facilities and Flood Control District facilities through the sale and issuance of special tax bonds. The proposed County drainage facilities and Flood Control District facilities are to be owned, operated and maintained, respectively, by the County and the Flood Control District upon the completion of construction by the Developer and the acceptance by the County and the Flood Control District, respectively.

By entering into the JCFA, neither the County nor the Flood Control District is assuming any liability with regard to the formation of the CFD or the sale and issuance of any special tax bonds. The County Executive Office, the Riverside County Transportation Department, and the Flood Control District have participated in the negotiation and preparation of the JCFA and recommend that it be approved.

County Counsel has approved the JCFA as to legal form.

**Impact on Residents and Businesses**

Construction of the proposed flood control and drainage facilities is needed to protect future home owners from flooding risk. Properties within the CFD No. 2013-64 will be able to advance their development plans once this critical infrastructure is in place.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

The flood control and drainage facilities constructed under this Joint Community Facilities Agreement will be funded by the proceeds from the sale of special tax bonds issued by Eastern Municipal Water District Community Facilities District No. 2013-64.

**ATTACHMENTS:**

Vicinity/Boundary Map

Joint Community Facilities Agreement

0 500 1,000 2,000 Feet

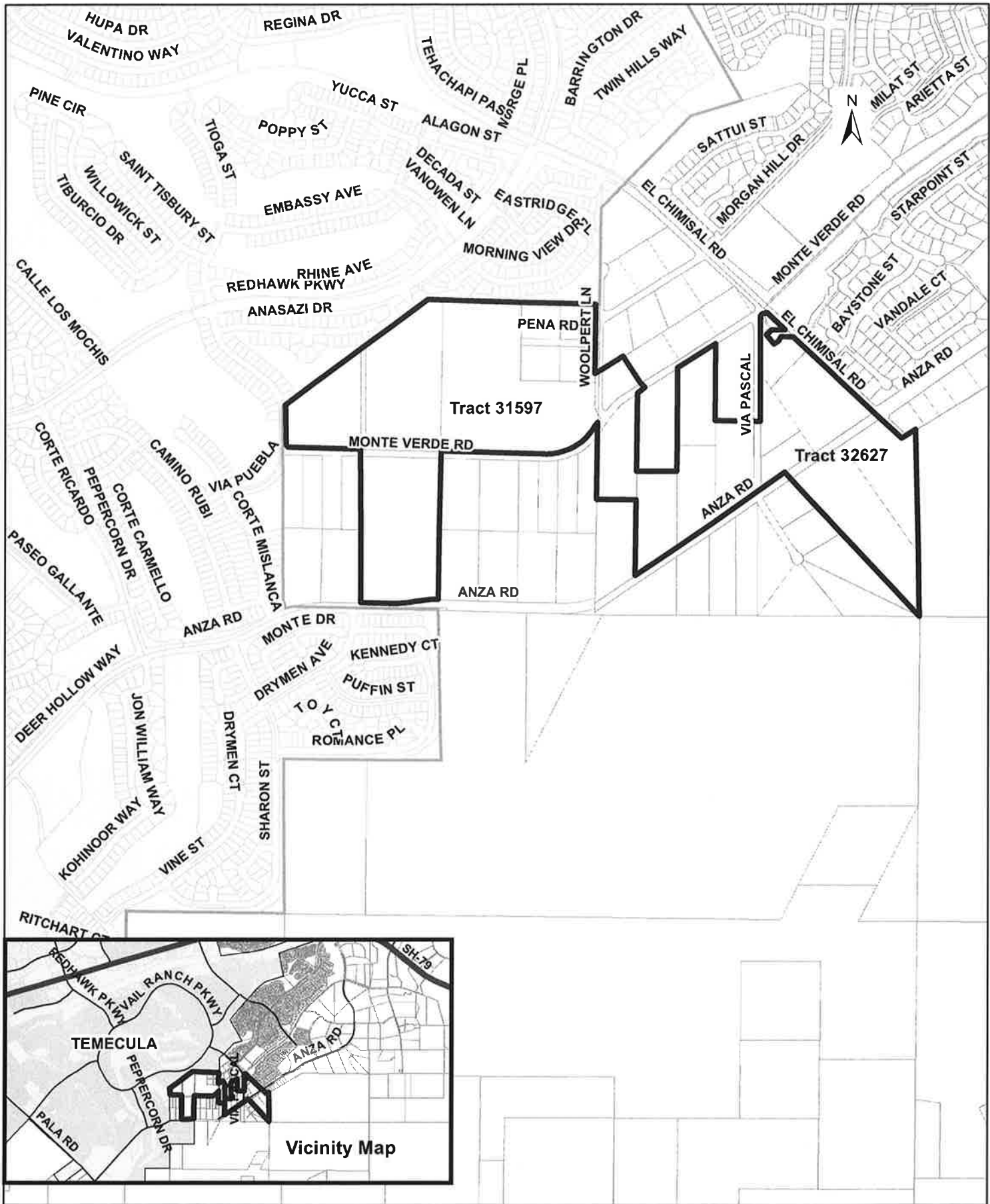
1 inch = 1,042 feet  
 Orthophotos Flown 2/11 (WR, CV) or 4/07 (REMAP, Blythe)  
 Printed by almedina on 12/1/2015

# Vicinity Map

## Tract 31597 & Tract 32627

### CFD 2013-64

The County of Riverside assumes no warranty or legal responsibility for the information contained on this map. Date and information represented on this map is subject to updates, modifications and may not be complete or appropriate for all purposes. County GIS and other sources should be queried for the most current information. Do not copy or reuse this map.



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**JOINT COMMUNITY FACILITIES AGREEMENT  
(Flood Control Improvements)**

**by and among**

**EASTERN MUNICIPAL WATER DISTRICT,**

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

**COUNTY OF RIVERSIDE,**

**AND**

**LS TERRACINA, LLC,  
a Delaware limited liability company,**

**Dated as of \_\_\_\_\_**

**Relating to:  
Community Facilities District No. 2013-64 (Atherton and Terracina)  
of Eastern Municipal Water 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 \_\_\_\_\_ 1, 2015 by and among Eastern Municipal Water District, a public agency organized and existing pursuant to Chapter 13 of the California Water Code (hereinafter, the “Water District”), 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 (hereinafter, the “Flood Control District”), County of Riverside, a political subdivision of the State of California (hereinafter, the “County”), and LS Terracina, LLC, a Delaware limited liability company (hereinafter, “Developer”).

### RECITALS

A. Pursuant to a petition executed by LS Terracina LLC, a Delaware limited liability company (the “Developer”), which owns approximately 136.77 acres located in an unincorporated area of the County of Riverside, the Board of Directors of the Water District (the “Board of Directors”) has initiated proceedings (the “Proceedings”) to form a community facilities district to be identified as “Community Facilities District No. 2013-64 (Atherton and Terracina) of Eastern Municipal Water District” (the “Community Facilities District”) under the Mello-Roos Community Facilities Act of 1982 (the “Act”) (commencing with Section 53311 of the California Government Code (the “Code”). The proposed boundaries of the Community Facilities District are shown on Exhibit A and are coterminous with the boundaries of the acreage owned by the Developer that comprises approved Tract Map Nos. 31597 and 32627 (the “Tracts”) allowing for the construction of approximately 318 single-family, detached residential units.

B. The Developer requested and proposed that the Community Facilities District be formed for the purpose of providing the means of financing certain sewer and water fees and construction of certain sewer and water facilities to be constructed by or on behalf of the Water District, certain drainage facilities (the “County Drainage Facilities”) to be constructed by the Developer and subsequently acquired by the Community Facilities District on behalf of the County and certain flood control and storm water drainage facilities (the “Flood Control Facilities”), to be constructed by the Developer and subsequently acquired by the Community Facilities District on behalf of the Flood Control District. The County Drainage Facilities and the Flood Control Facilities are to be owned, operated and maintained, respectively, by the County and the Flood Control District upon the completion of the construction thereof by the Developer and the acceptance thereof by the County and the Flood Control District, respectively. The County Drainage Facilities and the Flood Control Facilities are shown in concept and their estimated acquisition costs are stated in Exhibit B attached hereto and incorporated herein by this reference. The Flood Control Facilities are shown in concept outlined in red on Exhibit B, and the County Drainage Facilities shown in concept in green on Exhibit B.

C. 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, the local agency.

D. Alternatively, 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.

E. Pursuant to the Act, the Board of Directors will adopt a resolution (the "Resolution of Intention") stating that it is the intention of the Water District to cause the proposed Community Facilities District to be established, and if established, 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 the proceeds of special tax bonds, if any are sold and issued by the proposed Community Facilities District.

F. The Act provides that the proposed Community Facilities District may finance the Flood Control Facilities and the County Drainage Facilities only pursuant to a Joint Community Facilities Agreement adopted pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Code.

G. The Water District, the Flood Control District, the County, and the Developer desire to enter into this Joint Community Facilities Agreement, as required by the aforementioned sections of the Code and prior to the adoption by the Board of Directors of the resolution establishing the Community Facilities District. The provisions of this Agreement are intended to apply only to the Flood Control Facilities and the County Drainage Facilities, unless expressly stated otherwise.

H. The Water District, the County, and the Flood Control District have determined that this Joint Community Facilities Agreement will be beneficial to the respective residents of the Flood Control District, the County and the Water 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 County and/or



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 Facility, the date that the Flood Engineer or County Engineer, as appropriate, provides written notice pursuant to Section 4.10 hereof that the Flood Control Facility or County Drainage Facility has been accepted by the Flood Control District or the County, respectively into its maintained system.

**“Acquisition Account”** means the acquisition account, by that or a similar name, established within the “Improvement Fund” to be established by the Indenture to hold Bond proceeds to be applied to pay the Purchase Price for the Flood Control Facilities and the County Drainage Facilities.

**“Acquisition Cost”** means, with respect to a Flood Control Facility and a County Drainage Facility, the amount specified as the Acquisition Cost for such Flood Control Facility or County Drainage Facility in Exhibit B attached hereto, as the same may be modified by one or more supplements thereto entered into in accordance with Section 3.4 hereof or augmented as a result of cost savings pursuant to Section 3.5 hereof.

**“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 and a County Drainage Facility (each a “Facility”), an amount equal to the sum of (a) the Developer’s actual, reasonable cost of constructing such Facility, including labor, material and equipment costs, (b) the Developer’s actual reasonable cost of designing and preparing the Plans for such Facility, including engineering services provided in connection with designing and preparing such Plans, (c) the Developer’s actual, reasonable cost of environmental evaluations required specifically for such Facility, (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 Facility, (e) the Developer’s actual reasonable cost for professional services directly related to the construction of such 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 services which shall not exceed 5% of construction costs, (g) the Developer’s actual reasonable cost of payment, performance or maintenance bonds and insurance (including any title insurance required hereby) for such Facility, and (h) the Developer’s actual, reasonable cost of any real property or interest therein acquired after the date on which the Community Facilities District is established pursuant to the Act from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Facility in order to convey Acceptable Title thereto to the Flood Control District or the County, all as specified in a Payment Request that is to be reviewed and approved by the Flood Engineer or County Engineer, as appropriate; provided, however, that (x) no item of cost relating to a Facility shall be included in more than one category of cost specified in clauses (a) through (h) 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 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 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 Special Funding Districts Coordinator of the Water District, or her/his designee.

**“Board of Directors”** means the Board of Directors of the Water District.

**“Board of Supervisors”** means the Board of Supervisors of the Flood Control District and the County.

**“Bonds”** means the bonds that the Community Facilities District may 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, among other authorized facilities, the 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 and the County is not required or authorized to be open.

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

**“Code”** means the California Government Code.

**“Community Facilities District”** means Community Facilities District No. 2013-64 (Atherton and Terracina) of Eastern Municipal Water District, a community facilities district to be organized and existing under the laws of the State.

**“Construction Site”** means the site on which the Facilities are to be constructed, including off site staging areas and material storage areas.

**“County”** means the County of Riverside, a political subdivision of the State, and its successors.

**“County Drainage Facilities”** means those public improvements that are identified outlined in green and described in Exhibit B attached hereto and are to be owned, operated and maintained by the County.

**“County Engineer”** means the Director of Transportation of the County (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee.

**“Developer”** means LS Terracina LLC, Delaware limited liability company, and its successors and assigns, acting as the developer of infrastructure within the Community Facilities District, including but not limited to the Facilities.

**“Developer’s Representative”** means the person or persons designated as such in a certificate signed by the Developer and delivered to the Water District, the County, the Community Facilities District, and the Flood Control District, which certificate shall contain an original or specimen signature of each person so designated.

**“Engineer”** means either the County Engineer or the Flood Engineer, depending on the Facility to which reference is being made.

**“Facility” or “Facilities”** means either a County Drainage Facility or a Flood Control Facility, depending on the Facility to which reference is being made.

**“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 public improvements that are identified outlined in red and described in Exhibit B attached hereto and are to be owned, operated and maintained by the Flood Control District.

**“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.

**“Funding Agreement”** means “Acquisition, Construction and Funding Agreement” to be entered into by and between the Water District and the Developer, as originally executed or as the same may be amended from time to time in accordance with its terms.

**“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 hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State or the United States Government, including, without limitation, any material or substance which is (a) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (33 U.S.C. § 1321), (b) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903), (c) 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. § 9601 *et seq.*, (d) petroleum, or (e) asbestos.

**“Indenture”** means the 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 the date herein above first written, by and among the Water District, the Flood Control District, the County, 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 Directors of the Water District, acting *ex officio* as the legislative body of the Community Facilities District.

**“Payment Request”** means the document to be provided by the Developer to substantiate the Purchase Price of one or more the Facilities, which shall be substantially in the form of Exhibit F attached hereto.

“Plans” mean the plans and specifications for the 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 Directors to consider the formation of the Community Facilities District and the approval by the Board of Directors and the qualified electors of the Community Facilities District of the authorization to levy special taxes therein pursuant to the Rate and Method and by the Legislative Body to sell and issue the Bonds.

“Property” means the real property located within the Community Facilities District.

“Purchase Price” means, subject to the provisions of Section 3.2 hereof, the lesser of the Actual Cost or the Acquisition Cost of a Facility, allowing for the application of the provisions of Section 3.4 which provides for the modification of the Acquisition Cost and the provisions of Section 3.5 which specifies the circumstances in which additional monies may be made available to pay the Purchase Price.

“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 Formation Proceedings.

“State” means the State of California.

“Water District” means Eastern Municipal Water District, a public agency organized and existing pursuant to Chapter 13 of the California Water Code.

## ARTICLE II

### CONDITIONS PRECEDENT

**Section 2.1 Formation Proceedings.** The Developer has submitted to the Water District a petition requesting that the Proceedings be initiated by the Water District 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 Facilities, to authorize the levy of special taxes within the Community Facilities District pursuant to the Rate and Method and 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.

Should the formation of the Community Facilities District be approved, the Legislative Body will use its best efforts to cause to be sold and issued, pursuant to the terms of the Act and Indenture, the Bonds in one or more series and a portion of the proceeds of the Bonds are intended to provide funds that will allow the Community Facilities District to finance the acquisition of the Facilities. Should the Board of Directors not form the Community Facilities District and/or the Legislative Body not sell and issue the Bonds within five years of the date hereof, the Water District, the County, 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 Developer acknowledges that the decision of the Board of Directors 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 Directors and

Legislative Body, respectively, and that the Water District may not enter into a contract or obligate either the Board of Directors 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 Directors 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 Water District, the County and the Flood Control District.

The Board of Directors 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, the Indenture and the applicable provisions of the Funding Agreement.

### ARTICLE III

#### ACQUISITION OF FACILITIES

**Section 3.1 Acquisition of Facilities.** The Developer hereby agrees to transfer to the Flood Control District or the County, as appropriate, a Facility and the Community Facilities District hereby agrees to pay the Purchase Price thereof, subject to the terms and conditions hereof. Acceptable Title to any parcels on which any Facility is constructed and for which title is not presently held by the Flood Control District and/or the County as well as the Facility financed pursuant hereto shall be transferred to the Flood Control District or the County, as appropriate, as of the Acceptance Date; provided, however, that notwithstanding such transfer, as provided in Section 4.11 hereof, the Developer shall be solely responsible for the maintenance of said Facility until the Acceptance Date of said Facility.

The Purchase Price of the Facilities is to be paid solely from the amount held in the Acquisition Account, and the Community Facilities District shall not be obligated to pay the Purchase Price of the Facilities except from the amounts in the Acquisition Account. Neither the Water District, the Community Facilities District, the Flood Control District nor the County make any warranty, either expressed or implied, that the amounts held in the Acquisition Account available for the payment of the Purchase Price of the Facilities will be sufficient for such purpose.

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

From and after the Acceptance Date for a Facility, such Facility shall be and remain the property of the Flood Control District or the County, as appropriate. From and after the Acceptance Date for a Facility, the Flood Control District or the County, as appropriate, shall be solely responsible for the maintenance of such Facility, and neither the Water District nor the Community Facilities District shall have any responsibility therefor or liability with respect thereto. From and after the Acceptance Date for a Facility, such Facility shall be and remain the sole and separate property of the Flood Control District or the County, as appropriate, and be operated, maintained and utilized by the Flood Control District or the County, as appropriate. Neither Water District nor the Community Facilities District shall have any ownership interest in any Facility, and neither Water

District nor the Community Facilities District shall have any responsibility for the operation, maintenance or utilization of any Facility or any liability with respect thereto.

**Section 3.2 Payment of Purchase Price.** The determination of the Purchase Price and its payment shall be made consistent with the provisions of this Section 3.2.

In order to receive the Purchase Price for a completed Facility, the Developer shall deliver to the Engineer:

(a) A Payment Request for said Facility, together with all attachments and exhibits to be included therewith;

(b) A copy of the documents conveying or which previously conveyed to the Flood Control District and/or the County Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 3.3 thereof;

(c) A copy of the Notice of Completion for said Facility that will be filed in accordance with Section 3093 of the California Civil Code, if applicable. Final lien releases addressed to the Water District, the Community Facilities District, the Flood Control District and the County must be received by the Engineer prior to the Engineer executing the Payment Request which determines the Purchase Price for said Facility and authorizes payment therefor.

(d) The Developer's civil engineer of record or construction civil engineer of record duly registered in the State shall provide to the Flood Control District or the County, as appropriate, redlined "as-built" plans and profile sheets for the Facility. After the Flood Control District's or the County's approval of the redlined "as-built" drawings, the Developer's engineer shall schedule with the Flood Control District or the County, as appropriate, a time to transfer the redlines onto the Flood Control District's or the County's original mylars at the Flood Control District's or the County's office, after which, said engineer shall review, stamp and sign the original mylars "As-Built."

Notwithstanding anything to the contrary contained herein, no determination of the Purchase Price for any Facility shall be made unless the Flood Control District or the County, as appropriate, has by written notice to the Community Facilities District stated that the Flood Control District or the County is willing to accept the Facility as constructed into its maintained system as of the Acceptance Date. Prior to the issuance of said notice of acceptance of a Facility for ownership, operation, and maintenance by the Flood Control District or the County, as appropriate, each of the following shall be provided or completed by the Developer to the satisfaction of the Engineer:

(i) Documents by which the Developer conveys to the Flood Control District an easement, including ingress and egress, in a form approved by the Flood Control District, for the rights of way shown in concept cross-hatched blue on Exhibit D; and

(ii) Policies of title insurance, in an amount not less than fifty percent (50%) of the estimated fee value, as determined by the Flood Control District, for each parcel so conveyed have been provided to the Flood Control District.

Once the Engineer has been provided with a complete Payment Request Form and all other documents as required by him to determine the Purchase Price, the Engineer will sign the Payment Request, identifying the Purchase Price to be paid, and (i) forward said document to the

Administrator for payment and (ii) provide written notice to the Community Facilities District and the Water District as provided above.

**Section 3.3 Dedication of Property and Easements to the Flood Control District and the County.** For purposes of this Section, the applicability of the references to the Flood Control District or the County is to be determined by the Facility for which Acceptable Title is required. Acceptable Title to all property not presently held by the Flood Control District or the County on, in or over which the Facility will be located shall be deeded over to the Flood Control District or the County by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such easement is approved by Flood Control District or the County as being a sufficient interest therein to permit Flood Control District or the County to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Joint Community Facilities Agreement.

The Developer shall furnish to the Flood Control District or the County a title report for such property not previously dedicated or otherwise conveyed to the Flood Control District or the County for review and approval not more than thirty (30) Business Days prior to or concurrent with the notice required by Section 4.7 hereof. The Flood Control District or the County shall approve the title report unless it reveals a matter that, in the sole judgment of the Flood Control District or the County, could materially affect the Flood Control District's or the County's use and enjoyment of any part of the property or easement covered by the title report. In the event the Flood Control District or the County does not approve such title report, the Flood Control District or the County shall notify the Administrator in writing and the Flood Control District or the County shall not be obligated to accept title to said Facility, and the Community Facilities District shall not be obligated to pay any portion of the Purchase Price for said Facility until the Developer has cured such objections to title to the satisfaction of the Flood Control District or the County.

Consistent with the preceding paragraph, the Developer shall obtain and provide, or cause to be obtained or provided, to the Flood Control District or the County duly executed irrevocable offer(s) of dedication to the public for flood control or drainage purposes, including ingress and egress, for rights of way deemed necessary by the Flood Control District or the County for the construction, inspection, operation and maintenance of the Facilities as identified in Exhibit B, and as shown in concept, cross-hatched in blue, on Exhibit D which is attached hereto and by this reference incorporated herein. The irrevocable offer(s) of dedication shall be in a form approved by the Flood Control District or the County and shall be executed by all legal and equitable owners described in the offer.

**Section 3.4 Modifications to the Stated Acquisition Cost.** The Administrator, the Flood Control District, the County and the Developer may make modifications in the composition and description of any Facility, or in the amount of the Acquisition Cost for said Facility, whenever the Administrator, the Flood Engineer, the County and the Developer deem such modifications to be appropriate; provided, however, that such Facility, as so modified, must be fully functioning and capable of being used for its intended purpose and must be consistent with the description of the Facility in the Proceedings. Any such modification shall be approved and implemented by the Administrator, on behalf of the Community Facilities District, the Flood Engineer, on behalf of the Flood Control District, the County Engineer, on behalf of the County, and the Developer by executing a supplement to Exhibit B containing a description of the modified Facility and, if applicable, the adjusted Acquisition Cost. Upon the execution of any such supplement to Exhibit B, the description of the Facility and, if applicable, the adjusted Acquisition Cost in Exhibit B shall be

deemed to have been modified in accordance therewith. Any modification made pursuant to this Section shall not be deemed to be an amendment of this Joint Community Facilities Agreement for purposes of Section 6.4 hereof. No Facility may be deleted from or added to Exhibit B pursuant to this Section 3.4. The deletion or addition of a Facility from Exhibit B constitutes an amendment to this Joint Community Facilities Agreement and may only be made pursuant to Section 6.4 hereof.

**Section 3.5 Application of Realized Savings.** If the Purchase Price paid for a Facility is less than the Acquisition Cost of said Facility, then the difference is to be identified as “savings” that are available and can be applied to increase the Purchase Price of another Facility or other improvements authorized to be financed with the proceeds of the Bonds. The determination as to whether an adjustment to the Acquisition Cost pursuant to this Section 3.5 is to be made by the Developer and the Administrator and an appropriate supplement to Exhibit B is to be prepared by the initiating party and approved by the Administrator, on behalf of the Water District, the Flood Engineer on behalf of the Flood Control District, the County Engineer, on behalf of the County, and the Developer.

**Section 3.6 Tax Matters.** The Flood Control District and the County understand that proceeds of tax-exempt bonds (the “Bonds”) will be used to acquire the Facilities as provided herein, and that such Bonds are subject to certain restrictions under the Internal Revenue Code of 1986, as amended (the “Code”). In connection with any Bond proceeds being made available to acquire Facilities, County and Flood Control District, as appropriate, agree to execute and deliver such certifications and agreements as may be reasonably required in order for bond counsel to conclude that interest on such Bonds will be excluded from gross income under Section 103 of the Code and any amendments thereto.

## ARTICLE IV

### CONSTRUCTION OF THE FACILITIES

**Section 4.1 Preparation and Approval of Plans.** To the extent that the Developer has not already done so, it shall cause Plans to be prepared for the Facilities. The Developer shall obtain the written approval of the Plans from the Flood Engineer and/or the County Engineer. The Developer shall provide a copy of all such Plans to the Flood Engineer and the County Engineer. Once the Plans have been approved, no changes are to be made thereto without prior written consent of the Flood Control District and/or the County.

**Section 4.2 Duty of Developer to Construct.** The Developer shall construct or cause to be constructed the Facilities in accordance with the Plans approved by the Flood Engineer and/or the County Engineer. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the 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 to be prepared for the Facilities at a specific time or in a manner other than as required by the approved conditions for the development of the Property.



### **Section 4.3 Bid and Construction Requirements.**

(a) In order to ensure that a Facility is constructed as if it had been constructed under the direction and supervision, or under the authority of, a public agency, so that they may be acquired pursuant to Section 53313.5 of the Code, the Developer shall comply with all of the requirements set forth in Exhibit C. The provisions of this Section 4.3 and Exhibit C, which is attached hereto and by this reference incorporated herein, shall be applicable for each Facility.

(b) Prior to awarding a construction contract for any Facilities, the Developer shall submit a bid packet for review to the Engineer. The contract for construction of any 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 provisions of Exhibit C. The Flood Control District or the County, as appropriate, is to be provided with copies of all bids received to assure that the Developer adheres to the applicable legal requirements for public works projects.

(c) The Developer shall require, and the Plans, 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 Facility, 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 Contracts Code relating to General Prevailing Wage Rates as required by the specifications approved by the Engineer. The Flood Control District and the County have provided 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 satisfying the requirements of Section 4.12 hereof throughout the term of the construction of the 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 any Facility 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, the Flood Control District, the Water District, and the County as obligees and issued by a California admitted surety having a current A.M. Best A:VIII (A:8) rating or an admitted surety insurer which complies 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 E. The bonds tendered pursuant to this sub-section are to be accepted and held by the County Engineer. Rather than requiring its principal 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 Facilities, to comply, with such other requirements relating to the construction of the Facilities as the Flood Control District or the County, as appropriate 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 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 Facilities, to submit certified weekly payroll records or other proof of payment of General Prevailing Wage Rates to the Developer for inspection by the Administrator, and to furnish certified payroll records or such other proof of payment of General Prevailing Wage Rates to the Engineer promptly upon request.

(h) All change orders shall be reviewed and approved by the Engineer for the purpose of ensuring that they comply with Flood Control District or County standards, which review and approval shall not be unreasonably withheld. In order for a change order to be accepted as an eligible element of the Purchase Price of a Facility, the provisions of Sections 3.4 and 3.5 hereof shall first be satisfied.

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

(j) The Developer has deposited with the Flood Control District and/or the County, as appropriate a sufficient dollar amount to cover the anticipated costs, deemed necessary and reasonable, associated with the review and approval of the Plans, the review and approval of right of way and conveyance documents and an additional \$ \_\_\_\_\_ deposited with the County Executive Office for the processing and administration of this Joint Community Facilities Agreement. The Developer, within thirty (30) days after receipt of an additional billing for such costs, will forward the billed amount to the Flood Control District or the County, as appropriate.

(k) At the time the Developer submits a "Notice of Intent" to commence construction as set forth in Section 4.7 below, the Developer shall deposit with Flood Control District (Attention: Business Office – Accounts Receivable) or with the County, as appropriate, the estimated cost of providing construction inspection for the Facilities, in an amount as determined and approved by Flood Control District or the County in accordance with Ordinance Nos. 671 and 749, including any amendments thereto, of the County, based upon the bonded value of Facilities to be inspected, operated and maintained by Flood Control District or the County, as applicable.

**Section 4.4 Licenses, and Regulatory Permits.** The Developer shall secure all necessary licenses, agreements, permits, rights of entry and temporary construction easements (collectively "Licenses") that may be needed for the construction, inspection, operation and maintenance of the Facilities. The Developer is to secure all permits, approvals or agreements, if any, required by the various Federal, State and local resource and/or regulatory agencies (collectively, the "Regulatory Permits") for the construction, operation and maintenance of the Facilities. The Regulatory Permits include, but are not limited to, those permits issued by the U.S. Army Corps of Engineers, the State Water Resources Control Board ("SWRCB"), California State Department of Fish and Wildlife and the Regional Water Quality Control Board. All Licenses and Regulatory Permits secured by the Developer shall be reviewed by the Engineer prior to execution or acceptance by the Developer to determine whether the conditions they specify are satisfactory to the Flood Control District or the County to allow it to operate and maintain the Facilities.

**Section 4.5 NPDES Compliance.** The Developer shall prepare and implement, or cause to be prepared and implemented, a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of the latest State's National Pollutant Discharge Elimination System

(NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities and any amendments thereto (the "General Permit"). The General Permit is issued by Order of and adopted by the State Water Resources Control Board (SWRCB). The General Permit regulates both stormwater and non-stormwater discharges associated with construction activities required for the Facilities covered by this Joint Community Facilities Agreement.

The SWPPP shall identify site specific "Best Management Practices" ("BMP's") to be implemented during and after construction to control pollution of Stormwater runoff and receiving waters. The identified BMP's shall include, but not be limited to, "good housekeeping" practices for the Construction Site such as establishing stabilized construction access points, providing adequate sanitary/septic waste management, designating vehicle and equipment cleaning/maintenance areas, employing proper material handling and storage practices, maintaining adequate soil stabilization and erosion control practices to control the discharge of pollutants from the Construction Site and any activities thereon. The SWPPP shall also stipulate to an ongoing program for monitoring and maintenance of all BMP's.

The Developer shall be solely responsible throughout the duration of constructing the Facilities for placing, installing, constructing, inspecting and maintaining all BMP's identified in the SWPPP and amendments thereto and for removing and disposing of temporary BMP's.

The Developer shall become fully informed of and comply with the applicable provisions of the General Permit, Federal, State and local regulations that govern the Developer's activities and operation pertaining to both stormwater and non-stormwater discharges from the Construction Site of the Facilities and any area of disturbance outside said Construction Site relating to the Facilities. The Developer shall, at all times, keep copies of the General Permit, approved SWPPP and all amendments at the Construction Site. The SWPPP shall be made available upon request of a representative of the SWRCB, Santa Ana Regional Water Quality Control Board, or the United States Environmental Protection Agency. The Developer shall, at reasonable times, allow authorized agents of the above sited agencies, upon the presentation of credentials to: (i) enter upon the Construction Site; (ii) have access to and copy any records required to be kept as specified in the General Permit, (iii) inspect the Construction Site and determine whether related soil stabilization and sediment control BMP's have been implemented and maintained, and (iv) sample or monitor stormwater or non-stormwater runoff for purposes of ensuring compliance with the General Permit.

The Developer shall be solely and exclusively responsible for any arrangements made between it and other property owners or entities that result in disturbance of land at the Construction Site.

The Developer shall be responsible for all costs and for any liability imposed by law as a result of the its failure to comply with the requirements set forth in this Section, including but not limited to, compliance with the applicable provisions of the General Permit and Federal, State and local regulations. For the purpose of this Section, costs and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the Flood Control District, the County, the Water District, the Community Facilities District or the Developer, including those levied under the Federal Clean Water Act and the State's Porter-Cologne Water Quality Act.

**Section 4.6 Cal/OSHA, Confined Space Entry.** At all times during the construction of the Facilities, the Developer shall require all contractors to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintenance of a safe working

environment for the Flood Control District, the County, the Water District and their respective employees on the site. This will include the preparation of a confined space procedure specific for all storm drain facilities. The procedure shall comply with requirements contained in Sections 5156, 5157 and 5158 of Title 8 of the California Code of Regulations and the Flood Control District's "Confined Space Procedure, SOM-18" and the County Program Agency Policy 13. The confined space procedure is to be reviewed and approved by the Engineer before proceeding with construction of the Facilities.

**Section 4.7 Notice of Intent to Commence Construction.** Not less than twenty (20) Business Days prior to the date on which it intends to commence construction on a Facility, the Developer is to provide written "Notice of Intent" to the Engineer. Construction of a Facility may not proceed until the Engineer issues a written "Notice to Proceed" to the Developer. The "Notice of Intent" is to include the following documents:

(a) Copies of all Licenses and Regulatory Permits secured pursuant to Sections 4.4 and 4.5, above, including a copy of the Notice of Intent ("NOI") and waste discharge identification number ("WDID No.") received from the SWRCB pursuant to Section 4.5, above.

(b) County's written confirmation of its approval and acceptance of the bonds required by Section 4.3(e), above.

(c) Construction Inspection Deposit required by Section 4.3(k), above. The Flood Control District's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed with regard to Flood Control Facilities is subject to staff availability. In the event the Developer wishes to expedite issuance of the Notice to Proceed with regard to Flood Control Facilities, the Developer may elect to furnish an independent qualified construction inspector. The Developer shall furnish appropriate documentation of the individual's credentials and experience to the Flood Control Engineer for review and approval. The Flood Control Engineer shall review the individual's qualifications and experience and, upon approval, said individual shall be "deputized" and authorized to act on the Flood Control District's behalf on all construction inspection and quality control matters. If the Developer's initial construction inspection deposit furnished pursuant to Section 4.3(k) exceeds the amount of \$5,000, the Flood Control District shall refund to the Developer up to eighty percent (80%) of the Developer's initial inspection deposit within forty-five (45) days of the Flood Engineer's approval of the "deputized" inspector; however, a minimum balance of \$5,000 shall be retained in the account.

(d) Duly executed irrevocable offer(s) of dedication to the public for flood control purposes, including ingress and egress, for the rights of way deemed necessary by the Flood Control District and/or the County for the construction, inspection, operation and maintenance of the Facilities.

(e) Preliminary reports of title dated not more than thirty (30) days prior to date of submission for all property described in the irrevocable offer(s) of dedication.

(f) A complete list of all contractors and subcontractors to be performing work on the Facilities, including the corresponding license number and license classification of each. On said list, the Developer shall also identify its designated superintendent for construction of the Facilities.

(g) A construction schedule which shall show the order and dates in which the Developer and the Developer's contractor proposes to carry on the various parts of work, including estimated start and completion dates. As the construction progresses the Developer shall update said construction schedule upon request.

(h) The final mylar plan and profile sheets for the Facilities and assign their ownership to the Flood Control District or the County, as appropriate prior to the start of construction of each Facility.

(i) Certificates of insurance and endorsements as required by Section 4.12. below.

(j) The confined space entry procedure as required by Section 4.6, above.

**Section 4.8 Bonding Requirements.** The Developer shall post such subdivision bonds as are required by the County in connection with the recording of all subdivision maps for the Property.

**Section 4.9 Additional Conditions to be Satisfied during Construction.**

(a) The Developer shall make a good faith effort to complete construction of the Facilities within twelve (12) consecutive months after the date of issuance of the Bonds. It is expressly understood that since time is of the essence in this Joint Community Facilities Agreement, failure of the Developer to perform the work within the agreed upon time shall constitute authority for the Flood Control District to cause the remaining work to be performed and the cost thereof to be paid from the Acquisition Account, and should the amounts held in the Acquisition Account prove insufficient to complete the Facilities, the Flood Control District and/or the County, as appropriate, may require the Developer's surety to pay to the Flood Control District the penal sum of any and all bonds.

(b) Construction of the Facilities shall be on a five (5) day, forty (40) hour workweek with no work on Saturday, Sundays or days designated by the Flood Control District and the County as legal holidays, unless otherwise approved by the Flood Control District or the County. If the Developer feels it is necessary to work more than normal forty (40) hour workweek or on holidays, the Developer shall make a written request for permission from the Flood Control District or the County to work the additional hours (with a copy to the County Engineer). The request shall be submitted to the Flood Control District or the County 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 Control District or the County, 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 Ordinances Nos. 671 and 749 of the County, including any amendments thereto.

**Section 4.10 Inspection; Completion of Construction.** The Engineer shall have primary responsibility for providing inspection of the work of construction of the Facilities to ensure that the work of construction is accomplished in accordance with the Plans approved by the Flood Control District and/or the County. The Engineer, or his/her designee, shall have access to the Construction Site at all reasonable times for the purpose of accomplishing such inspection.

Upon completion of construction of a Facility, the Developer is to provide the Engineer with written notice that it considers construction of said Facility to have been completed consistent with the approved Plans and, upon receipt of said notice, the Engineer, or his/her designee, shall perform a final inspection of said Facility. Upon finding that construction of said Facility is completed in accordance with the County and Flood Control District approved Plans and the provisions of this Joint Community Facilities Agreement, the Engineer, or his/her designee, shall provide written confirmation to the Developer that construction of said Facility has been satisfactorily completed.

Upon receipt of both written notices, the Engineer will in a timely manner notify both the Developer and the Water District that the Facility has been satisfactorily completed and that the Developer is to 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 is to provide a duplicate copy of the recorded Notice of Completion to the Administrator and the Flood Control District or the County, as appropriate. Within a reasonable time following receipt of the duplicate copy of the recorded Notice of Completion and the Developer's compliance with other provisions of Section 3.2 hereof, the Engineer will issue the written notice required by said Section 3.2 that the Flood Control District or the County, as appropriate, will accept the Facility into its maintained system.

**Section 4.11 Maintenance of Facilities; Warranties.** The Developer shall maintain any Facility in good and safe condition until the Acceptance Date of said Facility. Prior to the Acceptance Date, the Developer shall be responsible for maintaining said Facility in proper operating condition, and shall perform such maintenance on said Facility as the Engineer reasonably determines to be necessary. As of the Acceptance Date, the performance bond provided by the Developer for said Facility pursuant to Section 4.3(e) hereof shall be reduced to an amount equal to 10% of the original amount thereof and shall serve as a warranty bond to guarantee that said Facility will be free from defects due to faulty workmanship or materials for a period of 12 months from the Acceptance Date, or the Developer may elect to provide a new warranty bond or cash in such an amount, and said warranty bond will be discharged 12 months from the Acceptance Date. At the conclusion of said 12 month period, the Developer shall assign to Flood Control District or the County, as appropriate, all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to said Facility.

**Section 4.12 Insurance Requirements.** Without limiting or diminishing the Developer's obligation to indemnify or hold the Flood Control District, the County, Community Facilities District and the Water District harmless pursuant to Section 5.5 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 Community Facilities District, the Water District, their respective directors, officers, Board of Supervisors, Board of Directors, 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:* The Developer shall maintain 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 Community Facilities District, the Water District, their respective directors, officers, Board of Supervisors, Board of Directors, Legislative Body, elected officials, employees, agents or representatives as Additional Insureds.

(c) *Worker's Compensation Insurance:* The Developer shall maintain 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 Community Facilities District, the Water 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 deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions 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 deductibles or self-insured retentions which are deemed unacceptable to the County, at the election of the County's Risk Manager, the Developer's carriers shall either: (i) reduce or eliminate such deductibles or self-insured retentions as respects this Agreement with the Flood District and the County, or (ii) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

(iii) The Developer shall cause its insurance carrier(s) to furnish the Flood Control District and the County with (i) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; or (ii) evidence of coverage acceptable to the County's Risk Manager that may include 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 and the Water District prior to any material modification or cancellation of such insurance that contravenes the coverage required in this Section 4.12. 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 and the Water District receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies,

including all endorsements and attachments thereto evidencing coverages 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 Facilities until the Flood Control District and the County have 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 and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

**Section 4.13 Ownership of Facilities.** (a) Notwithstanding the fact that some or all of the Facilities may be constructed in 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 County, the Facilities shall be and remain the property of the Developer until Acceptable Title to parcels not owned by the Flood Control District or the County is conveyed to the Flood Control District or the County, as appropriate, as provided herein. 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 County pursuant to the provisions of the Subdivision Map Act, Section 66410 *et seq.* of the Code, and the provisions of this Section shall control.

(b) The County is to own, maintain and operate those catch basins, storm drain pipes, connector pipes and laterals within those street rights-of-way in which the Flood Control Facilities are located. The County, by execution of this Joint Community Facilities Agreement, grants to the Developer the right to construct the Flood Control Facilities and to the Flood Control District the right to construct, inspect, operate and maintain the Flood Control Facilities located within those County rights-of-way in which the Flood Control Facilities are located.

## ARTICLE V

### REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

**Section 5.1 Representations, Warranties and Covenants of the Developer.** The Developer makes the following representations, warranties and covenants for the benefit of the Flood Control District, the County, the Water District, and Community Facilities District when formed, as of the date hereof:

(a) Organization. The Developer represents and warrants that the Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of 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 the 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 reasonable and diligent efforts to do all things that may be lawfully required of it in order to cause the Facilities to be completed in accordance with this Joint Community Facilities Agreement.

(e) Compliance with Laws. The Developer covenants that, while the Facilities are owned by the Developer or required pursuant to this Joint Community Facilities Agreement to be maintained by the Developer, it 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 Facilities in violation in any material respect of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Facilities.

(f) 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 Facility, and (ii) it will diligently follow all procedures set forth in this Joint Community Facilities Agreement and the Funding Agreement.

(g) Financial Records. Until the determination of the Purchase Price of all Facilities to be financed by the Community Facilities District, the Developer covenants to maintain proper books of record and account for the 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 Flood Control District, the County and the Water 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.

(h) Hazardous Materials. The Developer represents and warrants that neither the Developer, nor 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 Facilities or transport any Hazardous Material to or from the Construction Site or the Facilities in violation of any federal, state or local law, ordinance, regulation, rule, decision or policy statement regulating Hazardous Material.

(i) 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 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 Facilities or to the development of the Construction Site as contemplated by the Developer, except for government or other permits to be obtained.

(j) Environmental Matters. The Developer represents and warrants that it has complied with, or has caused compliance with, CEQA as required for the construction, operation and maintenance of the Facilities and their conveyance to the Flood Control District or the County, as appropriate.

**Section 5.2 Representations, Warranties and Covenants of the Water District.** The Water District makes the following representations, warranties and covenants for the benefit of the Flood Control District, the County, the Community Facilities District when formed, and the Developer:

(a) Authority. The Water District represents and warrants that the Water 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 Water District.

(b) Binding Obligation. The Water District represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the Water District and is enforceable against the Water 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 Water District represents and warrants that the Water District will follow all procedures set forth in the Funding Agreement and this Joint Community Facilities Agreement.

(d) Financial Records. Until the final Acceptance Date, the Water District covenants to maintain, or cause to be maintained, proper books of record and account for the special taxes and the Bonds. The Water 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 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 Water District, the County, and the Developer:

(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 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 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 issuing permits, processing and approving Plans and inspecting the Flood Control Facilities in accordance with this Joint Community Facilities Agreement.

**Section 5.4 Representations, Warranties and Covenants of County.** The County makes the following representations, warranties and covenants for the benefit of the Water District, the Flood Control District, and the Developer:

(a) Authority. The County represents and warrants that the County 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 County.

(b) Binding Obligation. The County represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the County and is enforceable against the County 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 the County Drainage Facilities. The County covenants that it will use its reasonable and diligent efforts to take expeditiously all actions that may be lawfully required of it in issuing permits and processing and approving Plans in accordance with this Joint Community Facilities Agreement.

(d) CEQA Compliance. The County represents and warrants that it has taken all actions necessary under CEQA to allow for the development of Tract Map Nos. 31597 and 32627 and the construction of the public improvements, including the Flood Control Facilities.

**Section 5.5 Indemnification.** The Developer (the "Indemnifier") agrees to protect, indemnify, defend and hold the Water District, the Community Facilities District, the Flood Control District, the County, and their respective directors, officers, Board of Supervisors, Board of Directors, the Legislative Body, elected officials, employees, and representatives (the "Indemnified Parties" and individually, an "Indemnified Party"), and each of them, harmless from and against any and all claims, liabilities, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs which an Indemnified Party, or any combination thereof, may suffer or which may be sought against or recovered or obtained from an Indemnified Party, 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 of any Facility or the construction or installation of any Facility by or on behalf of the Developer, (c) for the design, construction, or failure of any Facility constructed by or on behalf of the Developer, or an assertion, pursuant to Article I, Section 7 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage whatsoever, from the diversion of the waters from their natural drainage patterns, or from the discharge of drainage from the Facilities constructed by or on behalf of the Developer, (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 Facilities. 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 attorney's fees or court costs, to and recover the same from the Developer.

Notwithstanding the foregoing, no indemnification is required to be paid by the Developer for any claim, loss or expense (a) arising directly from the willful misconduct or active negligence of the Indemnified Party or (b) arising from the use or operation of a Facility after the Acceptance Date of said Facility, unless such claim, loss or expense results from the defective or improper design, acquisition, construction or installation of such Facility by the Indemnifier or their agents.

The provisions of this Section shall survive the discharge or other 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 Water District, the Community Facilities District, the Flood Control District or the County. Neither the Water District, the Flood Control District nor the County 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 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 only from funds available in the Acquisition Account.

**Section 6.2 Other Agreements.** Nothing contained herein shall be construed as affecting the Flood Control District, the County, Water District, or the Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of the Developer's rights and obligations, and the Flood Control District, the Water District and the County's rights and obligations, under this Joint Community Facilities Agreement; provided, however, that the Developer shall use its 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 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 other than an affiliate of the Developer without the written consent of the Water District, the Community Facilities District, the Flood Control District and the County, which consent shall not be unreasonably withheld or delayed. Neither this Joint Community Facilities Agreement nor the duties and obligations of the Water District, the Flood Control District, the County 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 Water District, the Flood Control District, the County, and the Developer. Notwithstanding the foregoing, Exhibit B may be supplemented consistent with Sections 3.4 and 3.5 herein.

**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, 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 Water District, the Community Facilities District, the Flood Control District, the County, and the Developer (and their 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  
1995 Market Street  
Riverside, California 92501  
Telephone: (951) 955-1200  
Fax: (951) 955-788-9965

Water District and Community  
Facilities District:                      Eastern Municipal Water District  
Attn: Charles Turner, Director of Finance  
2270 Trumble Road  
Perris, California 92572-8300, Ext. 4363  
Telephone: (951) 928-3777  
Fax: (951) 928-6178

County:                                      Director of Transportation  
County of Riverside  
4080 Lemon Street, 8th Floor  
Riverside, California 92501  
Telephone: (951) 955-6740  
Fax: (951) 955-3198

Developer:

LS Terracina LLC  
c/o Standard Pacific Homes, Southern California Inland  
Attn: Rick Wood  
Vice President, Project Development  
255 East Rincon Street, Suite 200  
Corona, California 92879  
Telephone: (951) 898-5525  
Fax: (951) 532-8295

With a copy to:

Standard Pacific Homes  
15360 Barranca Parkway  
Irvine, California 92618  
Attn: \_\_\_\_\_

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 Water District, the Community Facilities District, the Flood Control District, the County, 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 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 Water District, the Community Facilities District, the Flood Control District, the County, 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 County, the Developer, and the Community Facilities District regarding design, engineering and construction of the 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, the County, the Developer, and the Community Facilities District at the time the Bonds are issued.

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

**RECOMMEND FOR APPROVAL:**

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

By:   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

By: \_\_\_\_\_  
MARION ASHLEY  
Chairman, Board of Supervisors of the Flood Control and Water Conservation District

**APPROVED AS TO FORM:**

**ATTEST:**

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM,  
Clerk of the Board

By:   
Deputy County Counsel

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

(SEAL)

**RECOMMEND FOR APPROVAL:**

**COUNTY OF RIVERSIDE**

By:   
JUAN C. PEREZ  
Director of Transportation and Land Management

By: \_\_\_\_\_  
MARION ASHLEY  
Chairman, Board of Supervisors

**ATTEST:**

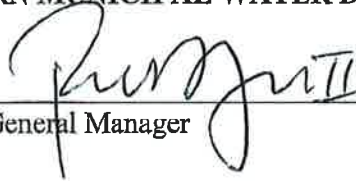
KECIA HARPER-IHEM,  
Clerk of the Board

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

[Signature continued on next page.]



**EASTERN MUNICIPAL WATER DISTRICT**

By:   
General Manager

**ATTEST:**

By:   
Board Secretary

**LS TERRACINA, LLC**  
a Delaware limited liability company

By: Standard Pacific Investment Corp., a Delaware Corporation  
Its: Manager

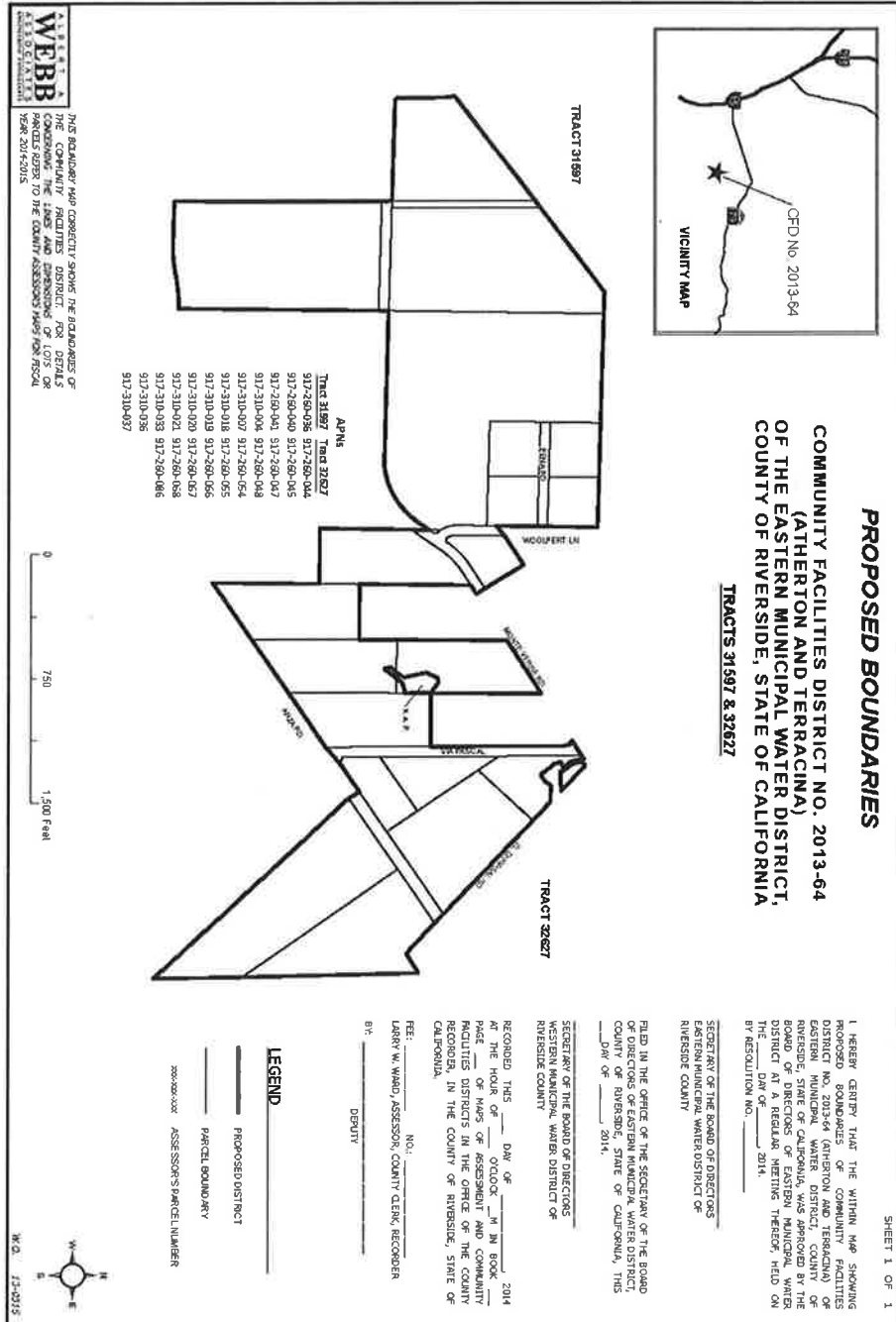
By:   
Martin P. Langpap,  
Authorized Representative

By:   
Sean Doyle,  
Authorized Representative

# EXHIBIT A

## PROPOSED BOUNDARY MAP

### Community Facilities District No. 2013-64 (Atherton and Terracina) of Eastern Municipal Water District

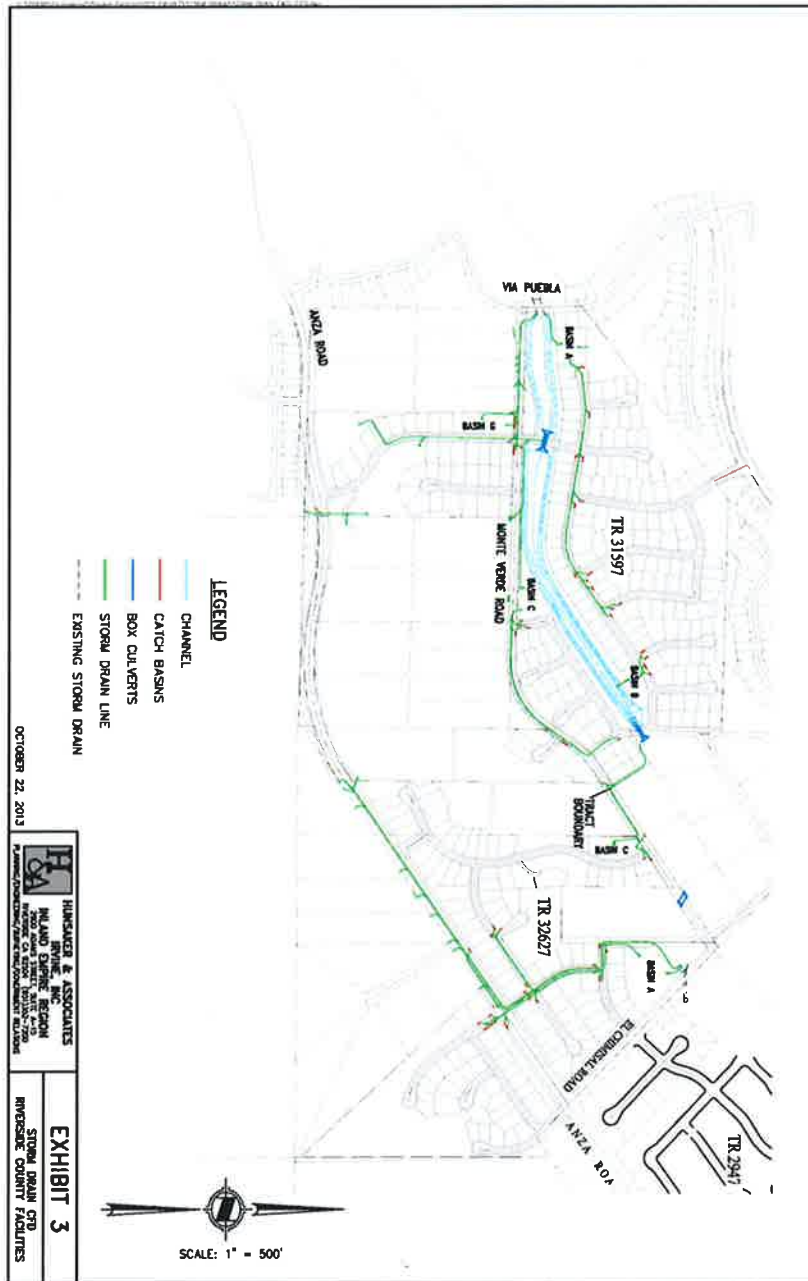


# EXHIBIT B

## FACILITIES

### DIAGRAM, DESCRIPTION AND ACQUISITION COSTS

#### Community Facilities District No. 2013-64 (Atherton and Terracina) of Eastern Municipal Water District



**RCFCWCD Authorized Facilities**

<b><u>Description of Fees and Improvements</u></b>	<b><u>32627</u></b>	<b><u>31597</u></b>	<b><u>Total</u></b>
County Drainage Facilities	\$ 1,545,267	\$ 2,104,356	\$ 3,649,623
Flood Control Facilities	<u>          --</u>	<u>      356,550</u>	<u>      356,550</u>
RCFCWCD Facilities Total	\$ 1,545,267	\$ 2,460,906	\$ 4,006,173
Construction Management (5%)	\$ 77,263	\$ 123,045	\$ 200,309
Professional/Soft Costs (10%) <sup>(1)</sup>	154,527	246,091	<u>400,617</u>
RCFCWCD Facilities Total			\$ 4,607,099

<sup>(1)</sup> Includes engineering, inspection, plan check, staking, testing, and similar professional services.

## EXHIBIT C

### PUBLIC WORKS BIDDING REQUIREMENTS

#### Contract Bidding by Developer

Public funding reimbursement or approval by the County of Riverside (County) and the Riverside County Flood Control and Water Conservation District (Flood Control District) requires the following, in addition to any additional requirements of State and Federal law:

- ❑ Advertisement for a minimum of ten (10) consecutive days in a newspaper of general circulation (Pub. Cont. Code §20125, Gov. Code §6062). A two to three week bid period is recommended. Proof of publication will be required by the County and Flood Control District for verification of advertisement. Failure to advertise the project in a newspaper of general circulation for at least the minimum period of notice will disqualify the developer from receiving reimbursement from public funds.
- ❑ Requirement for contractors and subcontractors to be registered with the State of California Department of Industrial Relations (DIR) in order to be qualified to bid on, be listed in a bid proposal, or to perform public work (Labor Code §1725.5). Online application for registration with DIR can be found at the following website:  
  
<http://www.dir.ca.gov/Public-Works/PublicWorksContractorsAndSubcontractors.html>
- ❑ Requirement for payment of general prevailing wages (Labor Code §1770-§1774). Failure to comply with this requirement will disqualify the developer from receiving reimbursement from public funds. General prevailing wage rates are available from the DIR website at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>
- ❑ Requirement for certified payroll records (Labor Code §1776).
- ❑ Bonds
  - Bid Bond 10% (recommended)
  - Performance Bond 100% (mandatory) (Pub. Cont. Code §20129)
  - Payment Bond 100% (mandatory) (Civil Code §3247)
  - Surety required by an admitted surety insurer in the State of California
  - The bonds shall include the County of Riverside as co-beneficiary
- ❑ Required State Contractor's license shall be specified in the notice inviting bids (Pub. Cont. Code §3300). License shall be verified before award (Pub. Cont. Code §6100).
- ❑ Proprietary and brand specific items shall not be specified (Pub. Cont. Code §3400).
- ❑ Standard County/Flood Control District/Caltrans bid items and units of measurement should be utilized. Refer to Engineer's Estimate Guidelines at the following website: <http://rctlma.org/trans/Engineering-Services/Engineers-Estimate-Guidelines>
- ❑ Sufficient liability insurance, naming the County and Flood Control District as additional insured for both General and Automobile liability policies. Insurance company is required to be an admitted insurance company in the State of California, and to have a Best Guide rating

of A with a financial size of VIII or greater. General liability insurance coverage to be at least \$2 Million Aggregate and \$2 Million per occurrence (or higher if exposure is great).

- ❑ Hold Harmless Clause (Specifically naming the County of Riverside and Riverside County Flood Control and Water Conservation District).
- ❑ The bid items should be only for the public works improvements. On site work should not be included in the scope of work.
- ❑ Construction plans shall be signed and stamped by a duly Registered Civil Engineer in the State of California prior to advertisement (Bus. & Prof. Code §6735).
- ❑ Specifications, special provisions, and estimates shall be prepared, signed and stamped by a duly Registered Civil Engineer in the State of California prior to advertisement (Bus. & Prof. Code §6735).
- ❑ Construction plans shall be signed as approved by the County of Riverside Transportation Department and/or the Flood Control District, as appropriate, prior to advertisement.
- ❑ NPDES Requirements.
- ❑ Bid exclusions are not allowed. Bids must be required for all items of work in order for a proper, legal and fair determination of who is the lowest responsive bidder.
- ❑ Time and place of bid opening must be made known to the bidders. Sealed bids shall be opened in a public forum and read aloud (Pub. Cont. Code §20393).
- ❑ Working days and liquidated damages should be clearly noted in the Notice Inviting Bids and/or other prominent location in the general conditions. Liquidated damages should be calculated using Caltrans methodology, or other industry standard means.
- ❑ Non-collusion affidavit shall be required of each bidder (Pub. Cont. Code §7106).
- ❑ Additional advertisement in trade Journals (F.W. Dodge, CMD, etc.) is advisable, but not mandatory. A listing of plan rooms used by the County is available upon request.
- ❑ All sub-contractors shall be listed (Pub. Cont. Code §4104).
- ❑ Bids must be made on bid forms, which are to be included in the contract documents, and must be completely filled in, dated and signed. Signature(s) provided by the bidder must be from an authorized officer or agent.
- ❑ Addenda should be reviewed and approved by the Riverside County Transportation Department and Flood Control District for all addenda that either modify any bidding requirements or modify any item addressed herein. Addenda shall be signed and stamped by a Civil Engineer duly registered in the State of California.
- ❑ Addenda issued within 72 hours of bid closing, and which contain material changes, shall extend the bidding period by at least 72 hours (Pub. Cont. Code §4104.5).

- ❑ A summary of bids shall be prepared, summarizing each bid item, the unit price bid and the total price bid for each bid item, as well as the total sum bid. The bid summary should include the engineer's estimate of unit prices. The bid summary shall include a summary of alternate bid schedules, if applicable.
- ❑ Award to the lowest responsive and responsible bidder (Pub. Cont. Code §20128 and §6100 et seq.). Contract to be kept on file by the Developer, and provided to the County and Flood Control District upon request.

### **Additional Information and Requirements**

- County and Flood Control District review and approval are required prior to advertisement, and separately, prior to award.
- Developer must register the public works project online with the Department of Industrial Relations (DIR) within five (5) days of project award using the online PWC-100 form. The following is a link to this online form:  
<https://www.dir.ca.gov/pwc100ext/>
- Submission of an Engineer's Estimate of quantities, unit costs and extended totals should be made with the Developer's first request for review of the bid documents.
- All construction work shall be coordinated with the Flood Engineer and the County's Construction Engineer (951) 955-6885. The Flood Engineer and the County's Construction Engineer or their respective designees will provide oversight inspection. Approval of the final quantities shall be obtained from the Flood Engineer and the County's Construction Engineer prior to final payment. Contract Change Orders shall be reviewed and approved by the Flood Engineer and the County's Construction Engineer prior to execution.
- Bidding and contract records shall be maintained by the Developer for a period of not less than three years, and shall be made available upon request to the County and Flood Control District. Documents to be retained shall include:
  1. Bid documents
  2. Addenda issued
  3. Bidders list, including date and time of bid submissions
  4. Each bid received
  5. Summary of bids
  6. Executed contracts
  7. Approved change orders
  8. Certified payroll records
  9. Other pertinent documents
- The following items shall be provided to the County and Flood Control District after bid opening:
  1. Advertisement Proof of Publication
  2. Owner's written certification of Public Bid Opening

3. Copy of bidders envelopes
  4. Log of bids received including date/time of receipt
  5. Copies of any addenda
  6. Tabulated Bid Summary
  7. Copy of low-bidder's and other bidder's proposals
- The following items shall be provided to the County and Flood Control District after award:
    1. Copy of Insurance Certificate, meeting the above requirements, and naming the County of Riverside, the Riverside County Flood Control and Water Conservation District, et al., as additionally insured
    2. Copy of contract, performance bond and payment bond.



**EXHIBIT D**

**EASEMENTS TO BE CONVEYED TO THE FLOOD CONTROL DISTRICT**

**EXHIBIT E**  
**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 \_\_\_\_\_, 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 \_\_\_\_\_ as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Eastern Municipal Water District, Riverside County Flood Control And Water Conservation District, County of Riverside, and LS Terracina LLC, a Delaware limited liability company" dated as of \_\_\_\_\_, 2005

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)

Affix Seal  
if  
Corporation

By: \_\_\_\_\_  
(Signature - Attach Notary's Acknowledgment)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Corporation Name - Surety)

\_\_\_\_\_  
(Business Address)

Affix  
Corporate  
Seal

By: \_\_\_\_\_  
(Signature - Attached Notary's Acknowledgment)

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

**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 \_\_\_\_\_, 20\_\_ for those certain \_\_\_\_\_ as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Eastern Municipal Water District, Riverside County Flood Control and Water Conservation District, County of Riverside, and LS Terracina LLC, a Delaware limited liability company" dated as of \_\_\_\_\_, 2015.

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 \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(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)

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

Affix  
Corporate  
Seal

## EXHIBIT F

### FORM OF PAYMENT REQUEST

#### Community Facilities District No. 2013-64 (Atherton and Terracina) of Eastern Municipal Water District

LS Terracina LLC, a Delaware limited liability company (the "Developer") hereby requests payment of the Purchase Price for the 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 \_\_\_\_\_ 1, 2015 (the "Joint Community Facilities Agreement"), by and among the Eastern Municipal Water District (the "Water District"), Riverside County Flood Control and Water Conservation District (the "Flood Control District"), the County of Riverside (the "County"), and 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 Engineer as-built drawings or similar Plans and specifications for the Facility for which payment is requested, and such drawings or plans and specifications, as applicable, are true, correct and complete.

3. The Facility has been constructed in accordance with the Plans therefor, and in accordance with all applicable [County/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. The true and correct Actual Cost of the Facility is set forth in Attachment A.

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

6. 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.

7. 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.

I hereby declare that the above representations and warranties are true and correct.

Date: \_\_\_\_\_

LS TERRACINA, LLC  
a Delaware limited liability company

By: Standard Pacific Investment Corp., a Delaware  
Corporation  
Its: Manager

By: \_\_\_\_\_  
Martin P. Langpap,  
Authorized Representative

By: \_\_\_\_\_  
Rick Wood,  
Authorized Representative

**ATTACHMENT A  
PAYMENT REQUEST - ACTUAL COSTS**

Developer is to complete Columns 1 through 7

CFD / Tract Number: \_\_\_\_\_  
 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  
 Amount Requested: 0.00

**APPROVAL BY THE ENGINEER**

The Engineer confirms that the Facility described in Attachment A-1 has been constructed in accordance with the Plans therefor. The Actual Cost of the Facility as described in Attachment A-1 has been reviewed, verified and approved by the Engineer. The Purchase Price for said Facility is established at \$ \_\_\_\_\_. Payment of the Purchase Price of the Facility is hereby approved.

Date: \_\_\_\_\_

**ENGINEER**

By: \_\_\_\_\_

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

Flood Control District to complete Columns 8 through 11

CFD / Tract Number: \_\_\_\_\_  
Facility Description: \_\_\_\_\_

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:										