

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

735B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

May 18, 2010

SUBJECT: Moreno MDP Line F, Stage 2
Project No. 4-0-00752-02
Parcel Map 33532 (Moreno Valley)
Termination Agreement

RECOMMENDED MOTION:

Approve the Termination Agreement between the District, the City of Moreno Valley and Moreno Valley Properties, L.P. (Developer); and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which all parties shall be released from the obligations set forth in a previous Agreement between all parties dated June 17, 2008, and recorded June 30, 2008, as Document No. 2008-0355993.

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A
SOURCE OF FUNDS: N/A				Positions To Be Deleted Per A-30 <input type="checkbox"/>
				Requires 4/5 Vote <input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:

Alex Gann

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: May 18, 2010
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.:

District: 5th

Agenda Number:

11.3

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

Departmental Concurrence

☐ Policy

☐ Policy

☐ Consent

☐ Consent

☐ Dep't Recomm.:

☐ Per Exec. Ofc.:

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

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Page 2

BACKGROUND (continued):

The Agreement dated June 17, 2008, set forth terms and conditions concerning the construction, inspection, operation and maintenance of certain flood control facilities associated with Parcel Map 33532. The development of Parcel Map 33532 has been delayed indefinitely by Developer due to changing market conditions. This Termination Agreement is necessary to formally release all parties from the obligations imposed upon them in the Agreement dated June 17, 2008.

County Counsel has approved the Agreement as to legal form and both the City and the Developer have executed the Agreement.

No costs will accrue to the District.

JPS:blj

TERMINATION AGREEMENT

Moreno MDP Line F, Stage 2

(Project No. 4-0-00752-02)

(Parcel Map 33532)

This Termination Agreement is entered into by and among the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MORENO VALLEY, hereinafter called "CITY" and MORENO VALLEY PROPERTIES, L.P., a Delaware limited partnership hereinafter called "DEVELOPER".

RECITALS

A. DISTRICT, CITY and DEVELOPER previously entered into that certain Agreement, hereinafter called "AGREEMENT", dated June 17, 2008, and recorded June 30, 2008, as Document No. 2008-0355993, providing for DEVELOPER to construct certain flood control and drainage facilities, hereinafter called "PROJECT", in order to provide flood protection and drainage for DEVELOPER'S planned development of Parcel Map 33532.

B. Under the terms of AGREEMENT, DEVELOPER is required to complete construction of PROJECT within eighteen (18) consecutive months following the execution of AGREEMENT.

C. Due to changes in market conditions following the execution of AGREEMENT, DEVELOPER has not yet begun construction of PROJECT. Furthermore, DEVELOPER does not anticipate beginning or completing said construction of PROJECT within the required 18 month period, nor does DEVELOPER anticipate proceeding with the development of Parcel Map 33532 within any presently known period of time.

1 D. DEVELOPER desires to terminate AGREEMENT in order to be relieved
2 from all obligations set forth therein, and to also release DISTRICT and CITY from all
3 obligations set forth within AGREEMENT.

4 E. DISTRICT is willing to terminate AGREEMENT and release
5 DEVELOPER and CITY from all obligations set forth therein.

6 F. CITY is willing to terminate AGREEMENT and release DEVELOPER
7 and DISTRICT from all obligations set forth therein.

8 NOW, THEREFORE, the parties hereto mutually agree as follows:
9

10 1. Effective as of the date this Termination Agreement is fully executed by
11 DISTRICT, CITY and DEVELOPER, that certain Agreement between DISTRICT, CITY and
12 DEVELOPER dated June 17, 2008, and recorded June 30, 2008, as Document No. 2008-
13 0355993, is hereby terminated, and all provisions thereof shall become null and void.

14 2. DISTRICT, CITY and DEVELOPER each understand and mutually agree
15 that the termination of AGREEMENT at this time shall not negatively affect DEVELOPER'S
16 right to renew PROJECT and enter into a new agreement for such purpose at a future date,
17 subject to all rules and conditions then in existence at the time of any such PROJECT renewal.

18 DISTRICT, CITY and DEVELOPER each mutually agree that upon time
19 of such PROJECT renewal, good and faithful effort shall be made to utilize that certain
20 Agreement, previously recorded as Document No. 2008-0355993, although said new
21 agreement shall also be subject to all rules and conditions in existence at the time of any such
22 PROJECT renewal.
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24 3. This Termination Agreement is to be construed in accordance with the
25 laws of the State of California.
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1 4. Any and all notices sent or required to be sent to the parties of this
2 Termination Agreement will be mailed by first class mail, postage prepaid, to the following
3 addresses:

4 RIVERSIDE COUNTY FLOOD CONTROL
5 AND WATER CONSERVATION DISTRICT
6 1995 Market Street
7 Riverside, CA 92501
8 Attn: Administrative Services

 CITY OF MORENO VALLEY
 Post Office Box 88005
 Moreno Valley, CA 92552-0805
 Attn: Chris Vogt

9 MORENO VALLEY PROPERTIES, L.P.
10 14225 Corporate Way
11 Moreno Valley, CA 92553
12 Attn: Iddo Benzeevi

13 5. Any action at law or in equity brought by any of the parties hereto for the
14 purpose of enforcing a right or rights provided for by the Termination Agreement, shall be tried
15 in a court of competent jurisdiction in the County of Riverside, State of California, and the
16 parties hereto waive all provisions of law providing for a change of venue in such proceedings
17 to any other county.

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

24 7. The rights and obligations of DEVELOPER shall inure to and be binding
25 upon all heirs, successors and assignees.

26 8. DEVELOPER shall not assign or otherwise transfer any of its rights,
27 duties or obligations hereunder to any person or entity without the written consent of the other
28

1 parties hereto being first obtained. In the event of any such transfer or assignment,
2 DEVELOPER expressly understands and agrees that it shall remain liable with respect to any
3 and all of the obligations and duties contained in this Termination Agreement.

4 9. The individual(s) executing this Termination Agreement on behalf of
5 DEVELOPER hereby certify that they have the authority within their respective company(ies)
6 to enter into and execute this Termination Agreement, and have been authorized to do so by
7 any and all boards of directors, legal counsel, and or any other board, committee or other entity
8 within their respective company(ies) which have the authority to authorize or deny entering
9 into this Termination Agreement.
10

11 10. This Termination Agreement is intended by the parties hereto as a final
12 expression of their understanding with respect to the subject matter hereof and as a complete
13 and exclusive statement of the terms and conditions thereof and supersedes any and all prior
14 and contemporaneous agreements and understandings, oral or written, in connection therewith.
15 This Termination Agreement may be changed or modified only upon the written consent of the
16 parties hereto.
17

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IN WITNESS WHEREOF, the parties hereto have executed this Termination
 Agreement on MAY 18 2010
 (to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL
 AND WATER CONSERVATION DISTRICT**

By Warren D. Williams
 WARREN D. WILLIAMS
 General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
 County Counsel

KECIA HARPER-IHEM
 Clerk of the Board

By Neal Kipnis
 NEAL KIPNIS
 Deputy County Counsel

By John B. [Signature]
 Deputy

(SEAL)

Termination Agreement: Parcel Map 33532
 JPS:blj
 11/9/09

RECOMMENDED FOR APPROVAL:

By


CHRIS A. VOGT, P.E.
Public Works Director/City Engineer


CITY OF MORENO VALLEY

By


Mayor

APPROVED AS TO FORM:

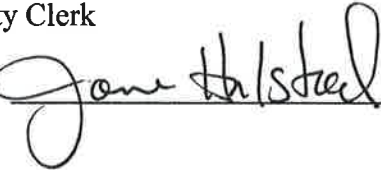
By


~~BOB HANSEN~~ ROBERT L. HANSEN
Interim City Attorney

ATTEST:

JANE HALSTEAD
City Clerk

By



(SEAL)

Termination Agreement: Parcel Map 33532

JPS:blj
11/9/09

1
2
3 **MORENO VALLEY PROPERTIES, L.P.,**
4 a Delaware limited partnership

5 By: 

6 IDDO BENZEEVI
7 President

8 (ATTACH NOTARY WITH
9 CAPACITY STATEMENT)

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18 Termination Agreement: Parcel Map 33532
19 JPS:blj
20 11/9/09
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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Riverside

On January 12 2010 before me, J. Moore, Notary Public
(Here insert name and title of the officer)

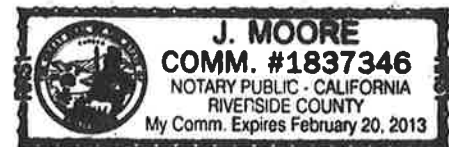
personally appeared Ido Benzevi

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

J. Moore
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT

Termination Agreement
(Title or description of attached document)

Moreno MDP Line F Stage 2
(Title or description of attached document continued)

Number of Pages 7 Document Date _____

Project # 4-0-00752-02
(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☒ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document