

---

---

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

**by and among**

**ROMOLAND SCHOOL DISTRICT,**

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

**COUNTY OF RIVERSIDE,**

**VALLEY WIDE RECREATION AND PARK DISTRICT,**

**and**

**MENIFEE DEVELOPMENT, LLC,  
a California limited liability company**

**Dated as of February 1, 2005**

**Relating to:  
Community Facilities District No. 2004-1  
of Romoland School District (Heritage Lake)**

## **TABLE OF CONTENTS**

### **ARTICLE I DEFINITIONS**

Section 1.1. Definitions.....	5
-------------------------------	---

### **ARTICLE II CONDITIONS PRECEDENT**

Section 2.1. Proceedings.....	10
Section 2.2. Amendment of this Agreement for Additional Series of Bonds.....	11

### **ARTICLE III ACQUISITION OF THE FLOOD CONTROL FACILITIES**

Section 3.1. Acquisition of the Flood Control Facilities.....	12
Section 3.2. Determination of the Purchase Price.....	12
Section 3.3. Dedication of Property and Easements to the Flood Control District.....	14
Section 3.4. Modifications to Stated Acquisition Costs .....	14
Section 3.5. Application of Realized Savings.....	15

### **ARTICLE IV CONSTRUCTION OF THE FLOOD CONTROL FACILITIES**

Section 4.1. Preparation and Approval of Plans .....	16
Section 4.2. Duty of Developer to Construct .....	16
Section 4.3. Bid and Construction Requirements .....	16
Section 4.4. Licenses and Regulatory Permits .....	18
Section 4.5. NPDES Compliance.....	19
Section 4.6. Cal/OSHA, Confined Space Entry.....	20
Section 4.7. Notice of Intent to Commence Construction .....	20
Section 4.8. Bonding Requirements.....	21
Section 4.9. Additional Conditions to be Satisfied during Construction.....	21
Section 4.10. Inspection, Completion of Construction .....	22
Section 4.11. Maintenance of Facilities; Warranties .....	22
Section 4.12. Insurance Requirements.....	23
Section 4.13. Ownership of the Facilities .....	25

### **ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION**

Section 5.1. Representations, Warranties and Covenants of the Developer. ....	26
---	----

Section 5.2. Representations, Warranties and Covenants of the School District.....	27
Section 5.3. Representations, Warranties and Covenants of the Flood Control District .....	28
Section 5.4. Representations, Warranties and Covenants of the County .....	29
Section 5.4. Representations, Warranties and Covenants of the Valley Wide .....	29
Section 5.5. Developer Indemnification .....	30
Section 5.6. Reciprocal Indemnification between Valley Wide and the Flood Control District.....	31

## ARTICLE VI MISCELLANEOUS

Section 6.1. Developer as Independent Contractor.....	32
Section 6.2. Other Agreements .....	32
Section 6.3. Binding on Successors and Assigns.....	32
Section 6.4. Amendments .....	33
Section 6.5. Waivers .....	33
Section 6.6. No Third Party Beneficiaries .....	33
Section 6.7. Notices .....	33
Section 6.8. Jurisdiction and Venue.....	34
Section 6.9. Attorney's Fees.....	34
Section 6.10. Governing Law .....	35
Section 6.11. Usage of Words.....	35
Section 6.12. Counterparts.....	35
Section 6.13. Interpretation.....	35
Section 6.14. Designation of Party Representative.....	35

EXHIBIT A PROPOSED BOUNDARY MAP OF CFD NO. 2003-15 .....	A-1
EXHIBIT B FLOOD CONTROL IMPROVEMENTS - DIAGRAM, DESCRIPTION AND ACQUISITION COSTS.....	B-1
EXHIBIT C EASEMENTS AND PARCELS TO BE CONVEYED TO THE FLOOD CONTROL DISTRICT.....	C-1
EXHIBIT D FORMS OF PAYMENT AND PERFORMANCE BONDS .....	D-1
EXHIBIT E FORM OF PAYMENT REQUEST .....	E-1



## **JOINT COMMUNITY FACILITIES AGREEMENT**

**THIS JOINT COMMUNITY FACILITIES AGREEMENT** (this "Joint Community Facilities Agreement") is made and entered into as of February 1, 2005, by and among Romoland School District, a California school district (hereinafter the "School District"), Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code (hereinafter, the "Flood Control District"), County of Riverside, a political subdivision of the State of California (hereinafter the "County"), Valley Wide Recreation and Park District, ("Valley Wide") and Menifee Development, L.L.C., a California limited liability company (hereinafter, the "Developer").

### **RECITALS**

A. Pursuant to a petition presented to the School District executed by the Developer who owns more than ten percent (10%) of approximately 911 vacant acres of land in the unincorporated portion of the County otherwise known as Romoland (the "Property") and is commonly referred to as "Menifee Valley Ranch," the Board of Trustees of the School District (the "Board of Trustees") has initiated proceedings to form a community facilities district that is to be identified as "Community Facilities District No. 2004-1) of Romoland School District (Heritage Lake)" (the "Community Facilities District") in which there will be established four improvement areas (individually, "Improvement Area No. 1," "Improvement Area No. 2," "Improvement Area No. 3" and "Improvement Area No. 4," and collectively, the "Improvement Areas") under the authority of the Mello-Roos Community Facilities Act of 1982 (the "Act") (commencing with Section 53311 of the California Government Code (the "Code")).

B. The Developer is the master developer of the Property whose boundaries are coterminous with the proposed boundaries of the Community Facilities District, as shown on Exhibit A, attached hereto, and is to provide for the development of approximately 2,641 single-family detached residential units, two school sites and four park sites.

C. The Developer has requested and proposed that the Community Facilities District be formed for the purpose of providing the means of financing, among other things, the acquisition and improvement of two school sites to be owned and maintained by the School District, certain water and sewer fees and construction of certain water and sewer facilities to be constructed by or on behalf of the Eastern Municipal Water District, certain street and appurtenant drainage facilities to be constructed by the Developer, the Purchase Price (as defined in Article I, below) for which is to be paid by the Community Facilities District, and title thereto conveyed to the County, certain flood control and storm water drainage facilities (the "Flood Control Facilities") to be constructed by the Developer, the Purchase Price for which is to be paid by the Community Facilities District, and title thereto conveyed to the Flood Control District, and certain park,



parkway landscaping and open space improvements to be constructed by or on behalf of Valley-Wide Recreation and Park District. The Flood Control Facilities are to be owned, operated and maintained by the Flood Control District upon the completion of the construction thereof by the Developer and the acceptance thereof by the Flood Control District. The Flood Control Facilities are depicted, described and their estimated acquisition costs are stated in Exhibit B attached hereto and incorporated herein by this reference.

D. Improvement Area No. 1 is coterminous with the boundaries of Tract No. 30705, that provides for the development of approximately 632 single family detached residential lots and for which the initial series of special tax bonds (the "Bonds") are to be sold and issued by the Community Facilities District.

E. The improvement plans for the drainage system for Tract No. 30705 include a debris basin and a detention basin (collectively the "Basins") which are not Flood Control Facilities but are integral to said drainage system and the operation of the Flood Control Facilities. Valley Wide has reviewed and will approved the improvement plans for the Basins and desires to commit to the Flood Control District, the County, the School District, the Community Facilities District and the Developer that it intends to operate and maintain said Basins in such a manner that the drainage system, including the Flood Control Facilities, will function at its design level as shown on the approved improvement plans for the drainage system.

F. 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 School District or a local public agency, in this instance, the Flood Control District.

G. 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 School District or of a local public agency, in this instance, the Flood Control District.

H. Pursuant to the Act, the Board of Trustees, upon approval of this Joint Community Facilities Agreement by the Flood Control District and the County, intends to consider the Resolution of Intention stating that it is the intention of the School District to cause the proposed Community Facilities District to be established, and if established, 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.

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

J. The School District, the Flood Control District, the County, Valley Wide 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 Trustees of the resolution establishing the Community Facilities District. The provisions of this Joint Community Facilities Agreement are intended to apply only to the Flood Control Facilities, unless expressly stated otherwise.

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

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



## ARTICLE I

### DEFINITIONS

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

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

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

**"Acquisition Cost"** means, with respect to a Flood Control Facility, the amount specified as the Acquisition Cost for such Flood Control 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, an amount equal to the sum of (a) the Developer's actual, reasonable cost of constructing such Flood Control Facility, including labor, material and equipment costs, (b) the Developer's actual reasonable cost of designing and preparing the Plans for such Flood Control 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 Flood Control Facility, or portions thereof, (d) the amount of any fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Flood Control Facility, (e) the Developer's actual reasonable cost for professional services directly related to the construction of such Flood Control Facility, including engineering, legal, inspection, construction staking, materials testing and similar professional services, (f) the Developer's actual, reasonable cost for construction management, bid administration and contract administration services which shall not exceed 5% of construction costs, (g) the Developer's actual reasonable cost of payment, performance or maintenance bonds and insurance (including any title insurance required hereby) for such Flood Control Facility, (h) the Developer's actual, reasonable cost of the easements described in Exhibit C and other real property or interest therein acquired after the date on which the Community Facilities District is established pursuant to the Act for a party other than the Developer, which real property or interest therein is either necessary for the construction of such Flood Control



facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Flood Control Facility in order to convey Acceptable Title thereto to the Flood Control District, all as specified in a Payment Request that is to be reviewed and approved by the Flood Engineer; provided, however, that (x) no item of cost relating to a Flood Control Facility shall be included in more than one category of cost specified in clauses (a) through (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 Flood Control Facility, the actual reasonable cost of the salaries and benefits paid by the Developer to such employees for performing such services may be included as an item of cost relating to such Flood Control Facility for the category of cost specified in clause (f) of this definition and subject to the 5% limitation specified in clause (f).

**"Administrator"** means the Superintendent of the School District, or her/his designee.

**"Basins"** means the debris and detention basins, as shown in red on Exhibit C, the improvement plans for which have been submitted for review and approval by Valley Wide.

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

**"Board of Trustees"** means the Board of Trustees of the School District.

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

**"Business Day"** means a day which is not a Saturday or Sunday or a day of the year on which the Flood Control District or the School District are 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. 2004-1 of Romoland School District (Heritage Lake)," a community facilities district to be organized and existing under the Act.

**"Construction Site"** means the site on which the Flood Control 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 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 Meniffee Development, LLC, a California limited liability company, organized and existing under the laws of the State, and its successors and assigns, acting as the master developer of infrastructure within the Community Facilities District, including but not limited to the Flood Control Facilities.

**"Developer's Representative"** means the person or persons designated as such by the Developer in a certificate signed by the Developer and delivered to 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.

**"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 and described in Exhibit B attached hereto and are to be owned, operated and maintained by the Flood Control District.

**"Flood Control Facilities Account"** means the account to be established pursuant to the Indenture to hold that portion of Bond proceeds to be applied to pay the Purchase Price for each Flood Control Facility.

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

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

**"Hazardous Material"** means any 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.



**"Improvement Area" or "Improvement Areas"** means, either individually or collectively, Improvement Area Nos. 1, 2, 3, and 4, as the context would indicate, that are to be established within the Community Facilities District.

**"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 February 1, 2005, by and among the School District, the Flood Control District, the County, Valley Wide 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 Trustees of the School District, acting *ex officio* as the legislative body of the Community Facilities District.

**"Mitigation Agreement"** means the "School Impact Mitigation and Public Facilities Mitigation Agreement," dated July 15, 2003 by and between the School District and the Developer, as originally executed or as the same may from time to time be supplemented or amended pursuant to the provisions thereof.

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

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

**"Proceedings"** means those proceedings to be undertaken by the Board of Trustees to consider the formation of the Community Facilities District and the approval by the Board of Trustees and the qualified electors of the Community Facilities District of the authorization to levy special taxes therein pursuant to the Rate and Method and to incur bonded indebtedness to finance the construction and acquisition of certain infrastructure 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 Flood Control 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 Proceedings.

**"School District"** means Romoland School District, a school district organized and existing pursuant to the laws of the State.

**"State"** means the State of California.

**"Valley Wide"** means Valley Wide Recreation and Park District which has been established and exists pursuant to Section 5780, et al., of the Public Resources Code of the State.

## ARTICLE II

### CONDITIONS PRECEDENT

**Section 2.1. Proceedings.** The Developer has submitted to the School District a petition requesting that the Proceedings be initiated by the School District with regard to the formation of the Community Facilities District for the purpose of obtaining authorization to incur bonded indebtedness to finance the acquisition or construction of certain public facilities, including the Flood Control Facilities, and to authorize the levy of special taxes within the Community Facilities District pursuant to the Rate and Method and 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 cause to be sold and issued in accordance with the provisions of Article 3 of the Mitigation Agreement and, pursuant to the terms of the Act and Indenture, the Bonds in one or more series for each Improvement Area. A portion of the proceeds of the Bonds are intended to provide funds that will allow the Community Facilities District to finance a portion of the costs of acquiring the Flood Control Facilities. Should the Board of Trustees not be able to approve the formation of the Community Facilities District and/or the Legislative Body not be able to sell and issue the Bonds, the School District, the Flood Control District, the County, Valley Wide 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 hereto.

The Developer acknowledges that the decision of the Board of Trustees 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 Trustees and Legislative Body, respectively, and that the School District may not enter into a contract or obligate either the Board of Trustees 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 Trustees to approve the formation of the Community Facilities District or the Legislative Body to authorize the sale and issuance of the Bonds.

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

The Board of Trustees 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 Mitigation Agreement.

**Section 2.2. Modifications and Amendment of this Agreement for Additional Series of Bonds.** It is the intent of both the Developer and the School District to cause one or more series of Bonds to be issued for each Improvement Area. Although all of the Flood Control Facilities to be financed by the Community Facilities District are identified in Exhibit B, only those Flood Control Facilities for Improvement Area No. 1 are described consistent with improvement plans that have been submitted for review and approval by the Flood Control District. In order to ensure that Flood Control Facilities are accurately described for each Improvement Area, it is agreed among the parties hereto that any modifications to Exhibit B and Exhibit C with regard to Improvement Area Nos. 2, 3, and 4 are to be made consistent with the expeditious procedure provided for in Section 3.4 hereof. For the purposes of this Section, the identification of the precise Flood Control Facilities to be financed by the Community Facilities District for Improvement Area Nos. 2, 3, and 4 is not to be considered the identification of an "additional facility" as the term is used in Section 3.4. requiring a formal amendment to this Joint Community Facilities Agreement. Other than the modifications described in the previous sentences, should there be additional amendments deemed necessary by the Flood Control District be made to this Joint Community Facilities Agreement, they are to be made pursuant to Section 6.4 hereof, and all required modifications and amendments shall be made prior to the approval of the improvement plans for any tract map within Improvement Area Nos. 2, 3, and 4.



## ARTICLE III

### ACQUISITION OF THE FLOOD CONTROL FACILITIES

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

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

The date on which the Purchase Price is to be paid by the Community Facilities District and whether all or any portion of the Purchase Price will be paid to the Developer are controlled by the terms of the Mitigation Agreement.

Failure of the Developer to comply with the terms of Articles III and IV of this Joint Community Facilities Agreement may result in the Flood Control Facilities that the Developer is responsible to construct not being accepted by into the Flood Control District's maintained system in which case the Developer shall not receive reimbursement for any costs it incurs in the design, engineering and construction of said Flood Control Facilities.

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

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

- (a) A Payment Request for said Flood Control 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 Acceptable Title to the real property on, in or over which such Flood Control Facility is located, as described in Section 3.3 hereof;

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

(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 redlined "as-built" plans and profile sheets for the Flood Control Facility. After the Flood Control District's approval of the redlined "as-built" drawings, the Developer's engineer shall schedule with the Flood Engineer a time to transfer the redlines onto the Flood Control District's original mylars at the Flood Control District'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 Flood Control Facility shall be made unless the Flood Control District has by written notice to the Community Facilities District stated that the Flood Control District is willing to accept ownership of the Flood Control Facility as constructed and to include it as part of its maintained system as of the Acceptance Date. Said notice will not be provided to the Community Facilities District until the Developer has provided or caused to be provided to the Flood Control District:

(a) Documents by which the Developer conveys or causes to be conveyed to the Flood Control District an easement for ingress and egress in a form approved by the Flood Control District as shown in red on Exhibit C, and 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.

(b) Documents by which the Developer conveys to the Flood Control District an easement for underground Flood Control Facilities, including ingress and egress, in a form approved by the Flood Control District, for the rights of way shown in concept in green on Exhibit C, and 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.

(c) Documents by which the Developer conveys to the Flood Control District fee title, in a form approved by the Flood Control District, for the rights of way shown in concept in blue on Exhibit C, and policies of title insurance, in an



amount not less than one hundred percent (100%) 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 Flood Engineer has been provided with a complete Payment Request Form and all other documents as required by him to determine the Purchase Price, the Flood Engineer will sign the Payment Request Form, identifying the Purchase Price and (i) forward said document to the Administrator for payment consistent with the terms of the Mitigation Agreement and (ii) provide written notice to the Community Facilities District as provided above.

**Section 3.3. Dedication of Property and Easements to Flood Control District.** Acceptable Title to all property not presently held by the Flood Control District on, in or over which a Flood Control Facility will be located shall be deeded over to Flood Control District by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such easement is approved by Flood Control District as being a sufficient interest therein to permit Flood Control District to properly own, operate and maintain such Flood Control 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 a title report for such property not previously dedicated or otherwise conveyed to the Flood Control District for review and approval at least thirty (30) calendar days prior to the notice required by Section 4.7 hereof. The Flood Control District shall approve the title report unless it reveals a matter that, in the sole judgment of the Flood Control District, could materially affect the Flood Control District's use and enjoyment of any part of the property or easement covered by the title report. In the event the Flood Control District does not approve such title report, the Flood Control District shall notify the Administrator in writing and the Flood Control District shall not be obligated to accept title to said Flood Control Facility, and the Community Facilities District shall not be obligated to pay any portion of the Purchase Price for said Flood Control Facility until the Developer has cured such objections to title to the satisfaction of the Flood Control District.

Consistent with the proceeding paragraph, the Developer shall obtain and provide, or cause to be obtained or provided, to the Flood Control District duly executed irrevocable offer(s) of dedication to the public for flood control purposes, including ingress and egress, for rights of way deemed necessary by the Flood Control District for the construction, inspection, operation and maintenance of the Flood Control Facilities as shown in concept in blue on Exhibit C as shown in concept in green on Exhibit C and as shown in concept in red on Exhibit C, which is attached hereto and by this referenced incorporated herein. The irrevocable offer(s) of dedication shall be in a form approved by the Flood Control District 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 Engineer and the Developer may make modifications in the



composition and description of the Flood Control Facilities, or in the amount of the Acquisition Cost for the Flood Control Facilities, whenever the Administrator, the Flood Engineer and the Developer deem such modifications to be appropriate; provided, however, that such Flood Control 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 Flood Control Facilities 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, and the Developer by executing a supplement to Exhibit B containing a description of the modified Flood Control Facility and, if applicable, the adjusted Acquisition Cost. Upon the execution of any such supplement to Exhibit B, the description of the Flood Control 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 Flood Control Facility may be deleted or added from Exhibit B pursuant to this Section 3.4., except as allowed by Section 2.2, above. The deletion or addition of a Flood Control 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 determined by the Flood Engineer for a Flood Control 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 Flood Control Facility or other improvements whose acquisition or construction is authorized to be funded 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 Community Facilities District, the Flood Engineer on behalf of the Flood Control District, and the Developer.

## ARTICLE IV

### CONSTRUCTION OF THE FLOOD CONTROL 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 Flood Control Facilities. The Developer shall obtain the written approval of the Plans from the Flood Engineer and 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 Engineer and the County Engineer.

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

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

(a) In order to ensure that a Flood Control 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 the Public Contract Code regarding the notice of bidding and award of contract for a public works project by a public agency such as the Flood Control District.

(b) Prior to awarding the bid for any Flood Control Facilities, the Developer shall submit a bid packet for review to the Flood Engineer. A copy of the bid packet is to also be provided to the County Engineer. The contract for construction of any Flood Control Facility is to be awarded to the responsible bidder submitting the lowest responsive bid after notice inviting sealed bids. Bids are to be publicly solicited consistent with the applicable provisions of Public Contract Code dealing with the bidding of public works projects constructed by the Flood Control District. Public notice is to be given consistent with the Public Contract Code as to the date, time and place



where bids will be opened. The Flood Control District is to be provided with copies of all bids received 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 Flood Control Facility, as required by the Labor Code, to pay not less than General Prevailing Wage Rates to all workers employed in the execution of the contract, to post a copy of the General Prevailing Wage Rates at the job-site in a conspicuous place available to all employees and applicants for employment, and to otherwise comply with applicable provisions of the California Labor Code, the Code and the California Public Contracts Code relating to General Prevailing Wage Rates as required by the specifications approved by the Flood Engineer. The Flood Control District has 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 to the Flood Control District satisfying the requirements of Section 4.12 hereof throughout the term of the construction of the Flood Control Facilities. Rather than requiring its principal contractors to provide such insurance, the Developer may elect to provide the same for the benefit of its principal contractors.

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

(f) The Developer shall comply, and shall cause each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such individual or entity is engaged to perform work on the Flood Control Facilities, to comply, with such other requirements relating to the construction of the Flood Control Facilities as the Flood Control District 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 Flood Control Facilities, to submit certified weekly payroll records or other proof of payment of General Prevailing Wage Rates to the Developer and to



furnish certified payroll records or such other proof of payment of General Prevailing Wage Rates to the Flood Engineer promptly upon request.

(h) All change orders shall be reviewed and, if appropriate, approved by the Flood Engineer for the purpose of ensuring that they comply with Flood Control District standards and for the work represented by the change order to be eligible for consideration in determining the Purchase Price. If necessary, the provisions of Section 3.3 and 3.5 hereof may be utilized to accommodate the construction costs associated with the change order.

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

(j) The Developer has deposited with the Flood Control District funds presently estimated 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 with 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.

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

**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 Flood Control Facilities. The Developer is to secure all permits approvals or agreements, if any, required by the various Federal and State resource and/or regulatory agencies (collectively, the "Regulatory Permits") for the construction, operation and maintenance of the Flood Control 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 Game and the Regional Water Quality Control Board. All Licenses and Regulatory Permits secured by the Developer shall be reviewed by the Flood Engineer prior to execution or acceptance by the Developer to determine whether the conditions they specify are satisfactory to the Flood Control District to allow it to operate and maintain the Flood Control 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 requirement of the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction Activity (SWRCB Order No. 99-08 DWQ) and any amendments thereto (the "General Permit"). The General Permit regulates both stormwater and non-stormwater discharges associated with construction activities required 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 Flood Control 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 Flood Control Facilities and any area of disturbance outside said Construction Site relating to the Flood Control 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 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, Valley Wide, the School 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 Flood Control 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 School 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 5157 and 5158 of Title 8 of the California Code of Regulations and the Flood Control District's "Confined Space Procedure, SOM-18." The confined space procedure is to be review and approved by the Flood Engineer before proceeding with construction of the Flood Control 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 Flood Control Facility, the Developer is to provide written "Notice of Intent" to the Flood Engineer. Construction on the Flood Control Facility may not proceed until the Flood Engineer issues a "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) Copies of the bonds required by Section 4.3(c), 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 is subject to staff availability. In the event the Developer wishes to expedite issuance of the Notice to Proceed, 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 Engineer for review and approval. The Flood 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 (45) days of 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 for the construction, inspection, operation and maintenance of the Flood Control Facilities as required by Section 3.3., above.

(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 Flood Control 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 Flood Control 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 Flood Control Facilities and assign their ownership to the Flood Control District prior to the start of construction of each Flood Control Facility.

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

(j) The confined space 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. The Developer's obligations pursuant to this Section will be considered satisfied, in part, through the contract performance bonds to be provided by the Developer's contractors pursuant to Section 4.3(e) hereof.

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

(a) The Developer shall make a good faith effort to complete construction of the Flood Control Facilities within eighteen (18) consecutive months after the date of issuance of the series of Bonds to finance said Flood Control Facilities. 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 Flood Control Facilities Account, and

should the amounts held in the Flood Control Facilities Account prove insufficient to complete the Flood Control Facilities, the Flood Control District 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 Flood Control 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 as legal holidays, unless otherwise approved by the Flood Control District. 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 to work the additional hours (with a copy to the County Engineer). The request shall be submitted to the Flood Control District 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 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 Flood Engineer shall have primary responsibility for providing inspection of the work of construction of the Flood Control Facilities to ensure that the work of construction is accomplished in accordance with the Plans approved by the Flood Control District. Flood Control District staff shall have access to the Construction Site at all reasonable times for the purpose of accomplishing such inspection.

The Developer shall provide the Flood Control District with written notice that it considers construction of a Flood Control Facility to have been completed consistent with the Plans and, upon receipt of said notice, Flood Control District's staff will provide written confirmation that construction of the Flood Control Facility is complete consistent with the approved Plans and the provisions of this Joint Community Facilities Agreement. Upon receipt of both written notices, the Flood Engineer will in a timely manner notify the Developer and the Administrator that the Flood Control Facility has been satisfactorily completed and that the Developer will 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 will provide a duplicate copy of the recorded Notice of Completion to the Administrator and the Flood Control District. 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 Flood Control District will issue the written notice required by said Section 3.2 that it will accept the Flood Control Facility into its maintained system.

**Section 4.11. Maintenance of Facilities; Warranties.**

(a) The Developer shall maintain the Flood Control Facilities in good and safe condition until the Acceptance Date of the Flood Control Facilities. Prior to the



Acceptance Date, the Developer shall be responsible for maintaining the Flood Control Facilities in proper operating condition, and shall perform such maintenance on the Flood Control Facilities as the Flood Engineer reasonably determines to be necessary. As of the Acceptance Date, the performance bond provided by the Developer for the Flood Control Facilities 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 the Flood Control Facilities 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. As of the Acceptance Date, the Developer shall assign to Flood Control District all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to the Flood Control Facilities.

(b) Valley Wide shall maintain the Basins consistent with its standards represented by its approval of the improvement plans for said Basins, including but not limited to the removal of trash, debris, sediment and vegetation, in such a manner that the drainage system for Tract No. 30705, which includes the Flood Control Facilities, function at the design level represented by the approved plans for said drainage system.

**Section 4.12. Insurance Requirements.** Without limiting or diminishing the Developer's obligation to indemnify or hold the Flood Control District, the County, Valley Wide, Community Facilities District and the School District harmless pursuant to Section 5.6 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, Valley Wide, the Community Facilities District, the School District, their respective directors, officers, Board of Supervisors, Board of Trustees, 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, Valley Wide, the Community Facilities District, the School District, their respective directors, officers, Board of Supervisors, Board of Trustees, 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, Valley Wide, the Community Facilities District, the School 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 Flood Control District, 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 Control District, 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, Valley Wide, the Community Facilities District, the County and the School District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Joint Community Facilities Agreement shall terminate forthwith, unless the Flood Control District, the Community Facilities District, the County and the School 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 Flood Control Facilities until the Flood Control District has been furnished either original certificate(s) of insurance and certified original copies of endorsement, policies of insurance including all endorsements and any and all other attachments as required in this Section, or other evidence of coverage acceptable to County's Risk Manager.

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

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

**Section 4.13. Ownership of Facilities.** (a) Notwithstanding the fact that some or all of the Flood Control 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, a Flood Control Facility shall be and remain the property of the Developer until Acceptable Title to parcels not owned by the Flood Control District or the County with respect to such Flood Control Facility 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, connector pipes and laterals that have been identified on the approved drainage plans as County maintained drainage facilities. The County, by execution of this Agreement, grants to the Developer the right to construct the Flood Control Facilities and to the Flood Control District the right to inspect, operate and maintain the Flood Control Facilities located within those County rights-of-way in which the Flood Control Facilities are located.

(c) Valley Wide is to operate and maintain the Basins as identified on the approved improvement plans for the drainage system for Tract No. 30705.



## 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, Valley Wide and the School District, as of the date hereof:

(a) Organization. The Developer represents and warrants that it is a limited liability company duly organized and validly existing under the laws of the State, 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 Flood Control 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 Flood Control Facilities to be completed in accordance with this Joint Community Facilities Agreement.

(e) Compliance with Laws. The Developer covenants that, while the Flood Control Facilities are owned by the Developer or required pursuant to this Joint Community Facilities Agreement to be maintained by 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 Flood Control 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 Flood Control 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 Flood Control Facility, and (ii) it will diligently follow all procedures set forth in this Joint Community Facilities Agreement.

(g) Financial Records. Until the determination of the Purchase Price of all Flood Control Facilities to be financed by the Community Facilities District, the Developer covenants to maintain proper books of record and account for the Flood Control Facilities and all costs related thereto. The Developer covenants that such accounting books will be maintained in accordance with generally accepted accounting principles, and will be available for inspection by the Community Facilities District, the Flood Control District, the County and the School 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 Flood Control Facilities or transport any Hazardous Material to or from the Construction Site or the Flood Control Facilities in violation of any federal, state or local law, ordinance, regulation, rule, decision or policy statement regulating Hazardous Material.

(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 Flood Control Facilities and that it will pay all fees relating thereto. The Developer represents and warrants that to the best of the Developer's knowledge, as of the date hereof, there is no material legal impediment to the Developer's proceeding with and completing the construction of the Flood Control Facilities or to the development of the Construction Site as contemplated by the Developer, except for government or other permits to be obtained.

(j) Environmental Matters. The Developer represents and warrants that to its present actual knowledge all governmental agencies have complied with CEQA as required for the construction of the Flood Control Facilities and their conveyance to the Flood Control District.

**Section 5.2. Representations, Warranties and Covenants of the School District.** The School District makes the following representations, warranties and covenants for the benefit of the Flood Control District, the County, Valley Wide and the Developer:

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

Community Facilities Agreement has been duly and validly executed and delivered on behalf of the School District.

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

(c) Payment Requests. The School District represents and warrants that the School District will follow all procedures applicable to it set forth in this Joint Community Facilities Agreement.

(d) Financial Records. Until the determination of the Purchase Price of all Flood Control Facilities to be financed by the Community Facilities District, the School District covenants to maintain, or cause to be maintained, books of record and account for the Special Taxes and the proceeds of the Bonds in accordance with the requirements of the Code. The School District covenants that such accounting books will be maintained in accordance with generally accepted accounting principles applicable to governmental entities, and will be available for inspection by the Developer and its agents at any reasonable time during regular business hours on two Business Days prior written notice.

**Section 5.3. Representations, Warranties and Covenants of the Flood Control District.** The Flood Control District makes the following representations, warranties and covenants for the benefit of the School District, the County, Valley Wide 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.

(d) Payment Requests. The Flood Control District represents and warrants that the Flood Control District will follow all procedures applicable to it set forth in 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 School District, the Flood Control District, Valley Wide 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 Flood Control 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 No. 30705 and the construction of the public improvements, including the Flood Control Facilities

**Section 5.5. Representations, Warranties and Covenants of Valley Wide.** Valley Wide makes the following representations, warranties and covenants for the benefit of the School District, the Flood Control District, County and the Developer:

(a) Authority. Valley Wide represents and warrants that Valley Wide 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. Valley Wide represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of Valley Wide and is enforceable against Valley Wide 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. Valley Wide 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.

**Section 5.6. The Developer Indemnification.** The Developer agrees to protect, indemnify, defend and hold the School District, the Community Facilities District, the Flood Control District, Valley Wide, the County, and their respective directors, officers, Board of Supervisors, Board of Trustees, Board of Directors, the Legislative Body, elected officials, employees, representatives and agents (the "Indemnified Parties"), and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees, and court costs which the Indemnified Parties, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, or any combination thereof, as a result of or by reason of or arising out of or in consequence of (a) the approval of this Joint Community Facilities Agreement, (b) the acquisition, construction, or installation of the Flood Control Facilities, (c) the design, construction, or failure of the Flood Control Facilities or an assertion, pursuant to Article I, Section 8 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seek to impose any other liability or damage whatsoever, from the diversion of the waters from their natural drainage patterns, or from the discharge of drainage from the Flood Control Facilities, (d) the untruth or inaccuracy of any representation or warranty made by the Developer in this Joint Community Facilities Agreement or in any certifications delivered by the Developer hereunder, or (e) any act or omission of the Developer or any of its contractors, subcontractors, or their respective officers, employees or agents, in connection with the Flood Control Facilities. If the Developer fails to do so, the Indemnified Parties, or each of them, shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorneys' fees or court costs, to and recover the same from the Developer.

No indemnification is required to be paid by the Developer for any claim, loss or expense (a) arising directly from the willful misconduct or sole and active negligence of the Indemnified Parties or (b) arising from the use or operation of a Flood Control Facility after the Acceptance Date of the Flood Control Facility, unless such claim, loss or expense results from the defective or improper design, acquisition, construction or installation of such Flood Control Facility by the Developer or its agents.

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



**Section 5.7. Reciprocal Indemnifications of Valley Wide and the Flood Control District.**

(a) Valley Wide shall indemnify and hold the Flood Control District, the County, and their respective directors, officers, Board of Supervisors, elected officials, employees, representatives and agents (the "Indemnified Parties") and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees, and court costs which the Indemnified Parties, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, or any combination thereof, as a result of or by reason of or arising out of or in consequence of any act or omission by Valley Wide with regard to the operation and maintenance of the Basins as required by Section 4.13(c), above. If Valley Wide fails to do so, the Indemnified Parties, or each of them, shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorneys' fees or court costs, to and recover the same from Valley Wide.

(b) The Flood Control District shall indemnify and hold Valley Wide, and its respective Board of Directors, officers, elected officials, employees, representatives and agents (the "Indemnified Parties") and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees, and court costs which the Indemnified Parties, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, or any combination thereof, as a result of or by reason of or arising out of or in consequence of any act or omission by the Flood Control District with regard to the maintenance of the Flood Control Facilities which drain into of out of the Basins. If the Flood Control District fails to do so, the Indemnified Parties, or each of them, shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorneys' fees or court costs, to and recover the same from the Flood Control District.

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

## ARTICLE VI

### MISCELLANEOUS

**Section 6.1. Developer as Independent Contractor.** In performing under this Joint Community Facilities Agreement, it is mutually understood that the Developer is acting as an independent contractor, and not as an agent of the School District, the Community Facilities District, the Flood Control District, Valley Wide or the County. Neither the School District, the Flood Control District, Valley Wide 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 the Developer pursuant to this Joint Community Facilities Agreement in which case the Community Facilities District shall be responsible for making such payment only if such Payment Request is approved pursuant to the provisions of this Joint Community Facilities Agreement and the Mitigation Agreement and only from funds available in the Flood Control Facilities Account.

**Section 6.2. Other Agreements.** Nothing contained herein shall be construed as affecting the Flood Control District, the County, Valley Wide, School 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 School District, Valley Wide 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 Flood Control Facilities.

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



**Section 6.4. Amendments.** This Joint Community Facilities Agreement can only be amended by an instrument in writing executed and delivered by the School District, the Flood Control District, the County, Valley Wide and the Developer. Notwithstanding the foregoing, Exhibit B may be supplemented consistent with Section 3.4 and 3.5., above.

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

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

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

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

School District and Community  
Facilities District: Romoland School District  
Attn: Roland Skumawitz, Superintendent  
25900 Leon Road  
Homeland, California 92548  
Telephone: (951) 926-9244  
Fax: (951) 926-2170

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

Valley Wide: Valley Wide Recreation and Park District  
Attn: Samuel W. Goepp, General Manager  
901 West Esplanade Avenue  
San Jacinto, California 92582  
Telephone: (951) 654-1505  
Fax: (951) 654-5279

Developer: Menifee Development, LLC  
c/o Standard Pacific Corp.  
Attn: Menifee Valley Ranch Project Manager  
255 E. Rincon Street, Suite 200  
Corona, California 92879  
Telephone: (951) 372-8500  
Fax: (951) 372-8510

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 School District, the Community Facilities District, the Flood Control District, the County, Valley Wide and the Developer (a) agrees that any suit action or other legal proceeding arising out of or relating to this Joint Community Facilities Agreement shall be brought in state or local court in the County of Riverside or in the Courts of the United States of America in the district in which said County is located, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the School District, the Community Facilities District, the Flood Control District, the County, Valley Wide 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, Valley Wide and the Community Facilities District regarding design, engineering and construction of the Flood Control Facilities. The certificates are to contain an original and specimen signature of each designated person. The certificates are to be provided to the Flood Control District, the County, Valley Wide and the Community Facilities District at the time the Bonds are issued.

[Balance of Page Intentionally Left Blank]

## CLERK'S COPY

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

### RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

#### RECOMMEND FOR APPROVAL:

By: \_\_\_\_\_  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

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

#### ATTEST:

NANCY ROMERO, Clerk to the  
Riverside County Flood Control and  
Water Conservation District Board of Supervisors

By: Tanel Schlemmer  
Deputy Clerk

APPROVED AS TO FORM:  
WILLIAM C. KATZENSTEIN,  
County Counsel

By: William C. Katzenstein  
Deputy County Counsel

### COUNTY OF RIVERSIDE

#### RECOMMEND FOR APPROVAL:

By: George A. Johnson  
GEORGE A. JOHNSON  
Director of Transportation

By: Marion Ashley  
MARION ASHLEY  
Chairman, Board of Supervisors

#### ATTEST:

NANCY ROMERO, Clerk to the  
Board of Supervisors

By: Tanel Schlemmer  
Deputy Clerk

[Signature continued on next page.]



# CLERK'S COPY

---

## ROMOLAND SCHOOL DISTRICT

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

President of the Board of Trustees

### ATTEST:

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

Clerk of the Board of Trustees  
of the Romoland School District

## VALLEY WIDE RECREATION AND PARK DISTRICT

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

SAMUEL W. GOEPP  
General Manager

## MENIFEE DEVELOPMENT, LLC, a California limited liability company

By: STANDARD PACIFIC CORP.,  
a Delaware corporation,  
its Managing Member

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: ALAMEDA PROPERTY INVESTMENTS, LLC,  
a Delaware limited liability company,  
its Member

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

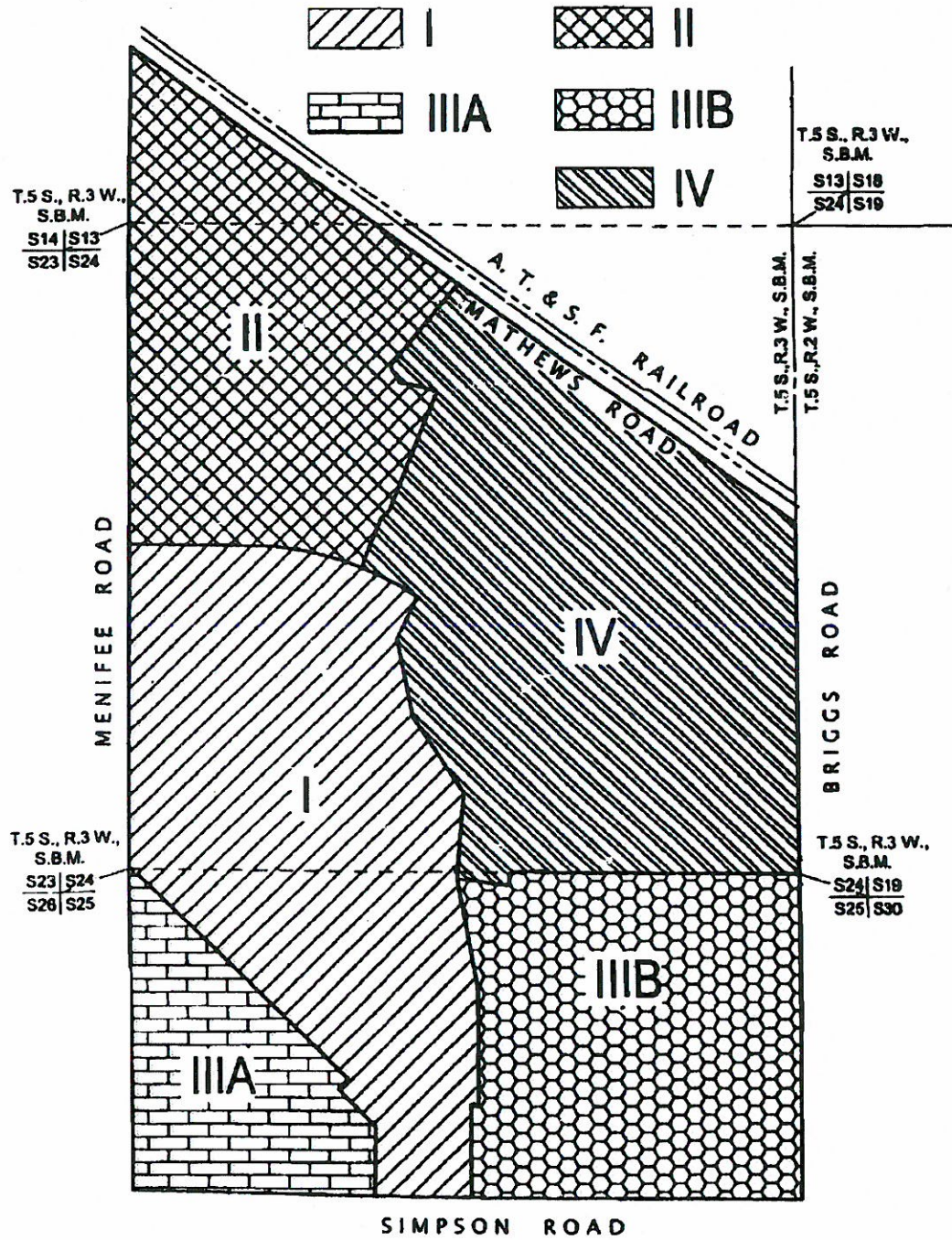
**EXHIBIT A**

---

**Proposed Boundary Map of  
Community Facilities District No. 2004-1  
of Romoland School District (Heritage Lake)**



Exhibit A



## EXHIBIT B

### FLOOD CONTROL FACILITIES

#### Community Facilities District No. 2004-1 of Romoland School District (Heritage Lake)

The Flood Control Facilities consist of the following storm drain lines and channels that are identified on the approved improvement plans as improvements to be owned and maintained by the Flood Control District, including, but not limited to grading, pipe (including reinforced concrete pipe), manholes, junction structures, and inlet/outlets. The description of improvements is preliminary. The final location, scope, nature and specification, of the improvements shall be determined by reference to the final Flood Control District and County-approved improvement plans for each improvement.

#### IMPROVEMENT AREA 1

(Improvement Plans have been submitted for review.)

Facility	Description (Stationing is approximate and subject to change.)	Acquisition Cost
1-1	<b>Line "D", From station 1+12.98 to 3+68.35, The entire length of this line is to be RCP. Maintained by R.C.F.C.</b>  Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, RCP pipe, manholes, junction structures.	\$ 68,503
1-2	<b>Line "A-3", From Station 1+05.72 to Station 5+40.77, The entire length of this line is to be RCP. Maintained By R.C.F.C.</b>  Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, and inlet/outlets.	\$ 106,809
1-3	<b>Line "J", From Station 11+03.21 to 22+70.16, The entire length of this line is to be RCB. Maintained By R.C.F.C.</b>  Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, RCB and inlet/outlets.	\$ 1,325,699



1-4	<p><b>Line "H", From Station 11+02.51 to 23+02.88, Line "H" will be constructed of RCB from 11+02.51 to 15+33.36 and RCP from station 15+45.77 to 23+02.88. Line "I-1" From station 10+12.00 to 16+35.09, The entire length of this line is RCP. Line "H &amp; I-1" will be maintained by R.C.F.C.</b></p> <p>Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, RCB and inlet/outlets, easement acquisitions.</p>	\$ 1,436,391
1-5	<p><b>Line "E" (Salt Creek - Lindenberger Road), From station 9+86.74 to station 28+08.02, The entire length of this line is RCP. Maintained by R.C.F.C.</b></p> <p>Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, and inlet/outlets, easement acquisitions.</p>	\$ 806,177
1-6	<p><b>Line "F", From station 10+76.89 to 17+04.99. The entire length of this line is RCB. Maintained by R.C.F.C.</b></p> <p>Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, RCB concrete channels and inlet/outlets, easement acquisitions</p>	\$ 787,579
1-7	<p><b>Line "N-1", from Station 10+20.65 to 19+80.78, The entire length of this line is RCP; and Line "N-2", From station 10+15.18 to 38+68.37, Line "N-2" will be constructed of RCB and Concrete Trapezoidal Channel. Maintained by R.C.F.C.</b></p> <p>Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, RCB concrete channels and inlet/outlets, easement acquisitions</p>	\$ 1,331,706
	<b>TOTAL FOR FLOOD CONTROL FACILITIES FOR IMPROVEMENT AREA NO. 1</b>	<b>\$ 5,862,864</b>

**IMPROVEMENT AREA 2**  
**(No Improvement Plans have been submitted for review;**  
**consequently subject to Section 2.2)**

Facility	Description	Acquisition Cost
2-1	<b>Flood Control Improvements, Storm Drain Facilities  39" &amp; Larger, Maintained by R.C.F.C.</b>  Limits: Storm Drainage Facilities 39" and larger, including but not limited to grading, pipe, manholes, junction structures, RCB, Channels and inlet/outlets.	\$ 1,914,661
	<b>TOTAL FOR FLOOD CONTROL FACILITIES FOR IMPROVEMENT AREA NO. 2</b>	<b>\$ 1,914,661</b>



**IMPROVEMENT AREA 3**  
**(No Improvement Plans have been submitted for review;**  
**consequently subject to Section 2.5)**

Facility	Description	Acquisition Cost
3-1	<b>Phase 3 Storm Drain Facilities 39" &amp; Larger,  Maintained by R.C.F.C.</b>  Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, RCB, Channels and inlet/outlets.	\$ 1,355,459
	<b>TOTAL FOR FLOOD CONTROL FACILITIES FOR IMPROVEMENT AREA NO. 3</b>	<b>\$ 1,335,459</b>

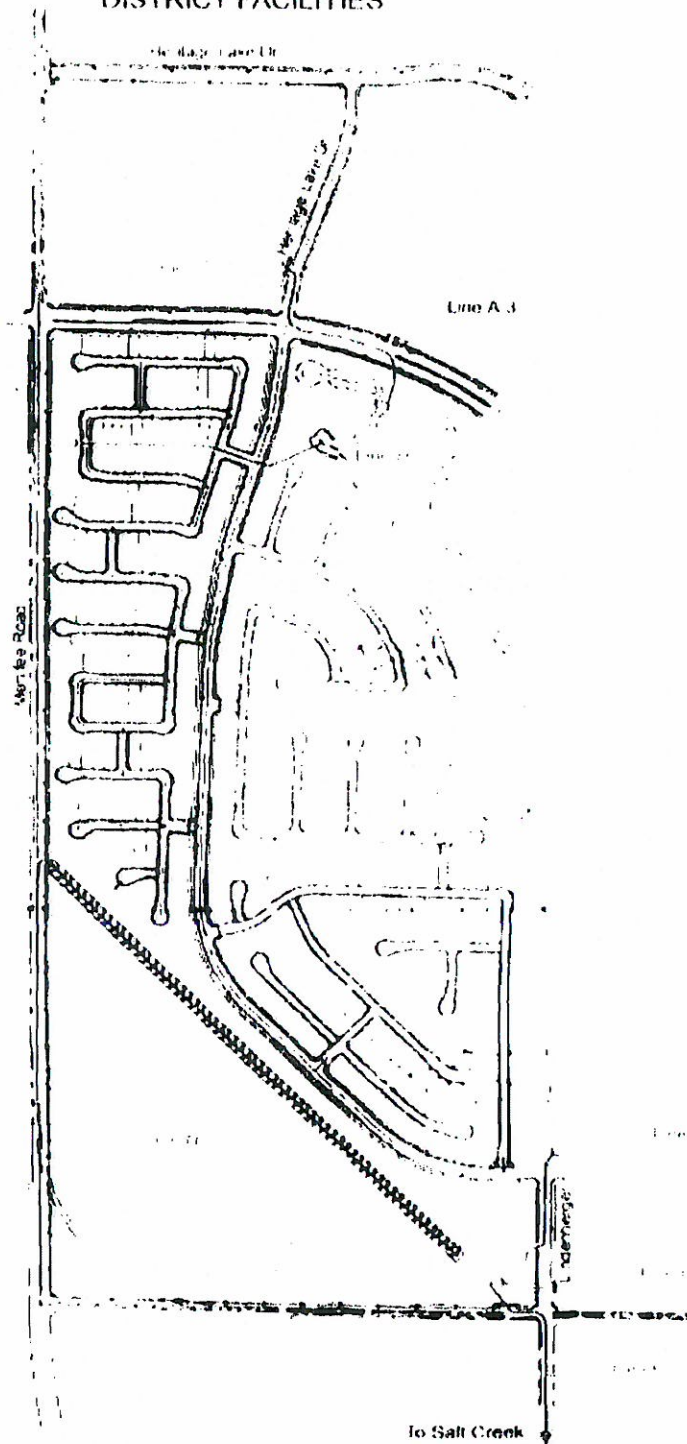
**IMPROVEMENT AREA 4**  
**(No Improvement Plans have been submitted for review;**  
**consequently subject to Section 2.2)**

Facility	Description	Acquisition Cost
4-1	<b>Flood Control, Storm Drain 39" &amp; Larger, Maintained by R.C.F.C.</b>  Limits: Storm Drainage Facilities 39" and Larger, including but not limited to grading, pipe, manholes, junction structures, PCB, Channels and inlet/outlets.	\$ 1,235,899
	<b>TOTAL FOR FLOOD CONTROL FACILITIES FOR ALL IMPROVEMENT AREAS</b>	\$ 10,368,883



IMPROVEMENT AREA I  
STORM DRAIN

RIVERSIDE COUNTY FLOOD  
CONTROL & WATER CONSERVATION  
DISTRICT FACILITIES



STORM DRAIN  
IMPROVEMENT EXHIBIT

02/01/05

**MOOTE**  
CONSULTANTS

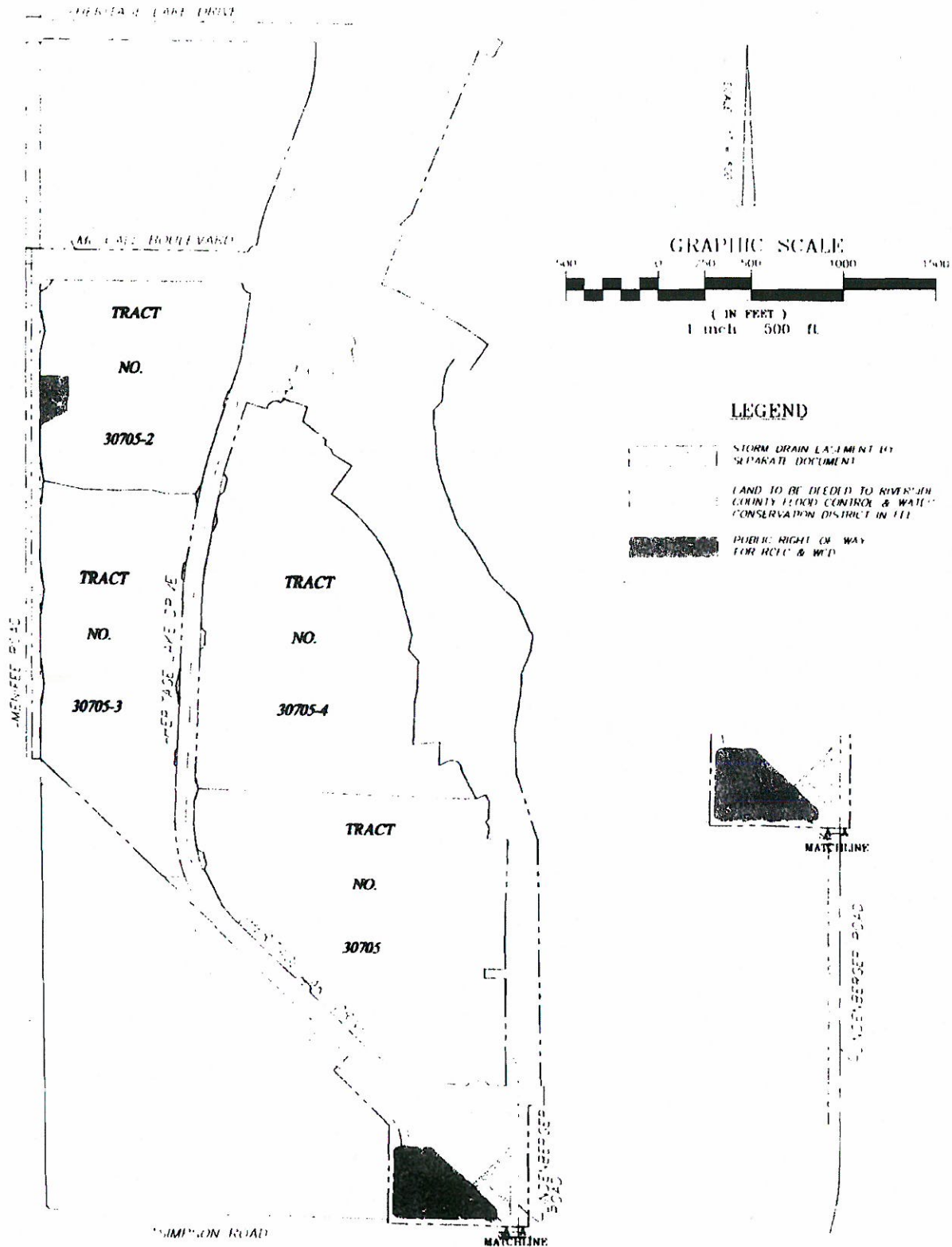
**EXHIBIT C**

**Community Facilities District No. 2004-1  
of Romoland School District (Heritage Lake)**

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



# TRACT 30705-1 STORM DRAIN RIGHT OF WAY EXHIBIT



**DOUGLAS BENDER AND ASSOCIATES**

Consulting Civil Engineers

557 WEST  
IRVINE, CA 92618

(949) 777-4300  
FAX (949) 777-4303

1-27-2005

**EXHIBIT D**  
**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 July 1, 200 , 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 Romoland School District, Riverside County Flood Control And Water Conservation District, County of Riverside and Meniffee Development, L.L.C." dated as of February 1, 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 \_\_\_\_\_ 200 \_\_\_\_\_

(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 \_\_\_\_\_, 200 for those certain \_\_\_\_\_ as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Romoland School District, Riverside County Flood Control and Water Conservation District, County of Riverside and Menifee Development, LLC" dated as of February 1, 2005.

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 \_\_\_\_\_, 200

(Firm Name - Principal)

(Business Address)

By:

(Signature - Attach Notary's Acknowledgment)

( Title)

---

Affix Seal  
if Corporation

(Corporation Name - Surety)

(Business Address)

By:

(Signature - Attach Notary's Acknowledgment)

Affix  
Corporate  
Seal

ATTORNEY-IN-FACT

(Title-Attach Power of Attorney)

## **EXHIBIT E**

### **FORM OF PAYMENT REQUEST**

#### **Community Facilities District No. 2004-1 of Romoland School District (Heritage Lake)**

Meniffee Development, LLC, hereby requests payment of the Purchase Price for the Flood Control Facility described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Joint Community Facilities Agreement, dated as of February 1, 2005 (the "Joint Community Facilities Agreement"), by and among Romoland School District (the "School District"), Riverside County Flood Control and Water Conservation District (the "Flood Control District"), the County of Riverside (the "County") and Meniffee Development, LLC (the "Developer"). In connection with this Payment Request, the undersigned hereby represents and warrants to the Flood Control District as follows:

1. The undersigned is a Party Representative, 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 Flood Engineer and the County Engineer as-built drawings or similar Plans and specifications for the Flood Control Facility for which payment is requested, and such drawings or plans and specifications, as applicable, are true, correct and complete.
3. The Flood Control Facility has been constructed in accordance with the Plans therefor, and in accordance with all applicable Flood Control District standards and the requirements of the Joint Community Facilities Agreement, and the as-built drawings or similar Plans and specifications referenced in paragraph 2 above.
4. There has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than material men's or mechanics' liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.
5. The representations and warranties of the Developer set forth in Section 5.1 of the Joint Community Facilities Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.



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

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

Developer

By: \_\_\_\_\_  
Party Representative

# ATTACHMENT A PAYMENT REQUEST - ACTUAL COSTS

Developer is to complete Columns 1 through 7

CFD / Tract Number: \_\_\_\_\_

Facility Description: \_\_\_\_\_

1 Bid Item No.	2 Bid Item Description	3 Unit of Measure	4 Unit Price	5 Original Contract Quantity	6 Quantity Invoiced	7 Amount Invoiced	8 Quantity Calculated By Flood District	9 Amount Calculated By Flood District	10 Difference	11 Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	
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

Amount Requested: \_\_\_\_\_



### **APPROVAL BY THE FLOOD ENGINEER**

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

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

**FLOOD CONTROL ENGINEER**

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

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

Flood Control District to complete Columns 8 through 11

CFD / Tract Number: \_\_\_\_\_

Facility Description: \_\_\_\_\_

1 Bid Item No.	2 Bid Item Description	3 Unit of Measure	4 Unit Price	5 Original Contract Quantity	6 Quantity Involved	7 Amount Involved	8 Quantity Calculated By Flood District	9 Amount Calculated By Flood District	10 Difference	11 Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	
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: \_\_\_\_\_