



**REVISED AGENDA  
CITY COUNCIL OF THE CITY OF MORENO VALLEY  
MORENO VALLEY COMMUNITY SERVICES DISTRICT  
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO  
VALLEY  
BOARD OF LIBRARY TRUSTEES**

**March 8, 2011**

**SPECIAL PRESENTATIONS – 6:00 P.M.  
REGULAR MEETING – 6:30 P.M.**

**City Council Closed Session**

First Tuesday of each month – 6:00 p.m.

**City Council Study Sessions**

Third Tuesday of each month – 6:00 p.m.

**City Council Meetings**

Second and Fourth Tuesdays – 6:30 p.m.

City Hall Council Chamber - 14177 Frederick Street

**Teleconference: Washington Marriott Wardman Park Hotel  
2660 Woodley Road, NW  
Washington, DC 20008**

*Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, in compliance with the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Mel Alonzo, ADA Coordinator, at 951.413.3027 at least 48 hours before the meeting. The 48-hour notification will enable the City to make reasonable arrangements to ensure accessibility to this meeting.*

Richard A. Stewart, Mayor

Jesse L. Molina, Mayor Pro Tem  
Robin N. Hastings, Council Member

Marcelo Co, Council Member  
William H. Batey II, Council Member

**REVISED AGENDA\***  
**CITY COUNCIL OF THE CITY OF MORENO VALLEY**  
**March 8, 2011**

**CALL TO ORDER**

SPECIAL PRESENTATIONS

1. Proclamation Recognizing International DeMolay Month
2. Proclamation Recognizing Job's Daughter's Week
3. "Spotlight on Moreno Valley Business"

**REVISED AGENDA\***  
**JOINT MEETING OF THE**  
**CITY COUNCIL OF THE CITY OF MORENO VALLEY**  
**MORENO VALLEY COMMUNITY SERVICES DISTRICT**  
**COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO**  
**VALLEY AND THE BOARD OF LIBRARY TRUSTEES**

**REGULAR MEETING - 6:30 PM**  
**MARCH 8, 2011**

**CALL TO ORDER**

(Joint Meeting of the City Council, Community Services District, Community Redevelopment Agency, and the Board of Library Trustees - actions taken at the Joint Meeting are those of the Agency indicated on each Agenda item)

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL**

**INTRODUCTIONS**

PUBLIC COMMENTS ON MATTERS ON THE AGENDA WILL BE TAKEN UP AS THE ITEM IS CALLED FOR BUSINESS, BETWEEN STAFF'S REPORT AND CITY COUNCIL DELIBERATION (SPEAKER SLIPS MAY BE TURNED IN UNTIL THE ITEM IS CALLED FOR BUSINESS.)

PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL WILL BE HEARD PRIOR TO CITY COUNCIL REPORTS AND CLOSING COMMENTS. IN THE EVENT THAT THE AGENDA ITEM FOR SUCH PUBLIC COMMENTS HAS NOT BEEN CALLED BY 9:00 P.M., IT SHALL BE CALLED AS THE NEXT ITEM OF BUSINESS FOLLOWING THE CONCLUSION OF ANY ITEM BEING HEARD AT 9:00 P.M. Those wishing to speak should submit a BLUE speaker slip to the Bailiff. There is a three-minute time limit per person. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

**JOINT CONSENT CALENDARS (SECTIONS A-D)**

All items listed under the Consent Calendars, Sections A, B, C, and D are considered to be routine and non-controversial, and may be enacted by one motion unless a member of the Council, Community Services District, Redevelopment Agency or the Board of Library Trustees requests that an item be removed for

separate action. The motion to adopt the Consent Calendars is deemed to be a separate motion by each Agency and shall be so recorded by the City Clerk. Items withdrawn for report or discussion will be heard after public hearing items.

## **A. CONSENT CALENDAR-CITY COUNCIL**

### **A.1 ORDINANCES - READING BY TITLE ONLY**

**Recommendation:** Waive reading of all Ordinances.

### **A.2 MINUTES - REGULAR MEETING OF FEBRUARY 22, 2011 (Report of: City Clerk Department)**

**Recommendation:**

Approve as submitted.

### **A.3 CITY COUNCIL REPORTS ON REIMBURSABLE ACTIVITIES (Report of: City Clerk Department)**

**Recommendation:**

Receive and file the Reports on Reimbursable Activities for the period of February 16 - March 1, 2011.

### **A.4 AUTHORIZATION TO AWARD THE CONSTRUCTION CONTRACT FOR 2011 CITYWIDE BRIDGE MAINTENANCE PROGRAM; PROJECT NO. 11-22679828 (Report of: Public Works Department)**

**Recommendation:**

1. Award the construction contract for 2011 Citywide Bridge Maintenance Program to Beador Construction Company, Inc. (Beador), 26320 Lester Circle, Corona CA 92883, the lowest responsible bidder;
2. Authorize the City Manager to execute a contract with Beador;
3. Authorize the issuance a Purchase Order to Beador in the amount of \$243,960.00 (\$203,300.00 base bid amount plus 20% contingency) when the contract has been signed by all parties; and
4. Authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Beador, up to but not to exceed the Purchase Order contingency of \$40,660.00, subject to the approval of the City Attorney.

### **A.5 AUTHORIZATION TO AWARD THE CONSTRUCTION CONTRACT FOR THE 2011 LOCAL STREET PAVEMENT RESURFACING PROJECT NO. 11-22679728 - PHASE I (Report of: Public Works Department)**



**Recommendation:**

1. Award the construction contract for the 2011 Local Street Pavement Resurfacing – Phase 1 project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder;
2. Authorize the City Manager to execute a contract with Hardy & Harper, Inc.;
3. Authorize the issuance of a Purchase Order to Hardy & Harper, Inc. in the amount of \$2,410,400.00 (bid amount \$2,096,000.00 plus 15% contingency of \$314,400.00) when the contract has been signed by all parties (Account Nos. 125.56330 and 226.79728); and
4. Authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Hardy & Harper, Inc., up to but not to exceed the Purchase Order contingency of \$314,400.00.

**A.6 AUTHORIZATION TO AWARD THE CONSTRUCTION CONTRACT FOR THE 2011 PAVEMENT RESURFACING PROJECT; PROJECT NO. 11-12556330 (Report of: Public Works Department)**

**Recommendation:**

1. Award the construction contract in the amount of \$1,441,000 for the 2011 Pavement Resurfacing Project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder;
2. Authorize the City Manager to Execute a contract with Hardy & Harper, Inc.;
3. Authorize the issuance of a Purchase Order to Hardy & Harper, Inc. for a total amount of \$1,729,200 (\$1,441,000 bid amount plus 20% contingency) when the contract has been signed by all parties; and
4. Authorize the Public Works Director/City Engineer to execute any subsequent change order to the contract with Hardy & Harper, Inc. up to but not to exceed the Purchase Order's total contingency of \$288,200, subject to the approval of the City Attorney.

**A.7 APPROVE THE AGREEMENT TO REIMBURSE TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) FUNDS BETWEEN WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG) AND CITY OF MORENO VALLEY FOR CONSTRUCTION PHASE OF NASON/SR-60**

INTERCHANGE OVERCROSSING PROJECT - PROJECT NO. 07-41570024 (ITEM ALSO LISTED AS AGENDA ITEM C.3) (Report of: Public Works Department)

**Recommendation:**

1. Approve the Agreement to Reimburse Transportation Uniform Mitigation Fee (TUMF) Funds between the Western Riverside Council of Governments (WRCOG) and the Community Redevelopment Agency of the City of Moreno Valley for the construction phase of the Nason/SR-60 Interchange Overcrossing project; and
2. Authorize the City Manager, as City Manager and acting in his capacity as the Executive Director for the Community Redevelopment Agency of the City of Moreno Valley, to execute the Agreement to Reimburse TUMF Funds for the construction phase of the Nason/SR-60 Interchange Overcrossing project, and authorize the City Manager to approve any changes that may be requested by WRCOG or the City, on behalf of the City and the Community Redevelopment Agency, subject to the approval of the City Attorney.

A.8 PM 35629 - REQUEST TO CONDUCT A FULL ROAD CLOSURE OF THEODORE STREET BETWEEN EUCALYPTUS AVENUE AND THE SR-60 WESTBOUND RAMP FOR THE CONSTRUCTION OF STREET IMPROVEMENTS FROM MARCH 21, 2011 - APRIL 18, 2011 - DEVELOPER: HF LOGISTICS - SKX T1, LLC, MORENO VALLEY, CA 92553 (Report of: Public Works Department)

**Recommendation:**

1. Authorize a full road closure of Theodore Street from Eucalyptus Avenue to the SR-60 Westbound Ramp for the construction of street improvements from March 21, 2011 to April 18, 2011; and
2. Authorize the City Engineer to allow for an additional 30 day extension to the proposed road closure window if the project is delayed due to unforeseen construction issues.

\*A.9 AMENDED MARCH JOINT POWER AUTHORITY AGREEMENT #12 (Report of: Community and Economic Development Department)

**Recommendation:**

1. Approve the Amended March Joint Powers Authority Amendment #12; and
2. Authorize the Mayor to execute the Amended Agreement.

**B. CONSENT CALENDAR-COMMUNITY SERVICES DISTRICT**

B.1 ORDINANCES - READING BY TITLE ONLY  
**Recommendation:** Waive reading of all Ordinances.

B.2 MINUTES - REGULAR MEETING OF FEBRUARY 22, 2011 (Report of: City Clerk Department)

**Recommendation:**  
Approve as submitted.

### C. CONSENT CALENDAR - COMMUNITY REDEVELOPMENT AGENCY

C.1 ORDINANCES - READING BY TITLE ONLY  
**Recommendation:** Waive reading of all Ordinances.

C.2 MINUTES - REGULAR MEETING OF FEBRUARY 22, 2011 (Report of: City Clerk Department)

**Recommendation:**  
Approve as submitted.

C.3 APPROVE THE AGREEMENT TO REIMBURSE TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) FUNDS BETWEEN WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG) AND CITY OF MORENO VALLEY FOR CONSTRUCTION PHASE OF NASON/SR-60 INTERCHANGE OVERCROSSING PROJECT - PROJECT NO. 07-41570024 (ALSO LISTED AS AGENDA ITEM A.7) (Report of: Public Works Department)

**Recommendation:**

1. Approve the Agreement to Reimburse Transportation Uniform Mitigation Fee (TUMF) Funds between the Western Riverside Council of Governments (WRCOG) and the Community Redevelopment Agency of the City of Moreno Valley for the construction phase of the Nason/SR-60 Interchange Overcrossing project; and
2. Authorize the City Manager, as City Manager and acting in his capacity as the Executive Director for the Community Redevelopment Agency of the City of Moreno Valley, to execute the Agreement to Reimburse TUMF Funds for the construction phase of the Nason/SR-60 Interchange Overcrossing project, and authorize the City Manager to approve any changes that may be requested by WRCOG or the City, on behalf of the City and the Community Redevelopment Agency, subject to the approval of the City Attorney.

### D. CONSENT CALENDAR - BOARD OF LIBRARY TRUSTEES

D.1 ORDINANCES - READING BY TITLE ONLY  
**Recommendation:** Waive reading of all Ordinances.

D.2 MINUTES - REGULAR MEETING OF FEBRUARY 22, 2011 (Report of: City Clerk Department)

**Recommendation:**  
Approve as submitted.

#### **E. PUBLIC HEARINGS - NONE**

Questions or comments from the public on a Public Hearing matter are limited to five minutes per individual and must pertain to the subject under consideration. Those wishing to speak should complete and submit a GOLDENROD speaker slip to the Bailiff.

#### **F. ITEMS REMOVED FROM CONSENT CALENDARS FOR DISCUSSION OR SEPARATE ACTION**

#### **G. REPORTS**

G.1 CITY COUNCIL REPORTS ON REGIONAL ACTIVITIES (Informational Oral Presentation - not for Council action)  
a) Mayor Richard A. Stewart report on March Joint Powers Commission (MJPC)

G.2 APPOINTMENTS TO THE PLANNING COMMISSION (Report of: City Clerk's Department)

**Recommendation: That the City Council:**

1. After reviewing the ballot provided by the City Clerk:

Appoint three (3) members for terms expiring March 31, 2015; or

2. If the appointments are not made, authorize the City Clerk to re-notice the positions as vacant.

G.3 RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS OF COMMUNITY FACILITIES DISTRICT NO. 4-INFRASTRUCTURE DESIGNATED 2011 SPECIAL TAX BONDS, APPOINTING THE FISCAL AGENT, APPROVING THE FORMS OF THE FISCAL AGENT AGREEMENT, PRELIMINARY OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT AND CONTINUING DISCLOSURE AGREEMENT, AUTHORIZING NEGOTIATION OF TERMS OF THE SALE OF SAID BONDS, AND PREPARATION OF FINAL OFFICIAL

STATEMENT. APPROVAL OF A THIRD AMENDMENT TO THE FIELDMAN, ROLAPP & ASSOCIATES, INC. AGREEMENT FOR PROFESSIONAL FINANCIAL ANALYST CONSULTANT SERVICES. (Report of: Public Works Department)

**Recommendation: That the City Council:**

1. Approve and adopt Resolution No. 2011-21, Authorizing the Issuance of Bonds of Community Facilities District No. 4-Infrastructure Designated 2011 Special Tax Bonds, in an Aggregate Principal Amount Not-to-Exceed \$10,000,000, Appointing a Fiscal Agent, Approving a Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Agreement, Authorizing Negotiation of Terms of the Sale of Said Bonds, and Authorizing Preparation of Final Official Statement; and

Resolution No. 2011-21

Resolution of the City Council of the City of Moreno Valley, Acting as the Legislative Body of the CFD No. 4 - Infrastructure of the City of Moreno Valley, Authorizing the Issuance of Bonds of Community Facilities District No. 4 - Infrastructure Designated 2011 Special Tax Bonds, in an Aggregate Principal Amount not to Exceed \$10,000,000, Appointing a Fiscal Agent, Approving a Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Agreement, and Authorizing Negotiation of Terms of the Sale of Said Bonds, and Authorizing Preparation of Final Official Statement

2. Approve the Third Amendment to the Agreement for Professional Financial Analyst Consultant Services for Community Facilities District No 4-Infrastructure and authorize the Mayor to execute said Amendment to the Agreement.

G.4 ADOPTION OF RESOLUTIONS APPROVING THE REDEMPTION OF 2007 TAXABLE TAX ALLOCATION BONDS, SERIES B (Report of: Financial & Administrative Services Department)

**Recommendation: That the City Council and RDA**

1. That the City Council adopt Resolution No. 2011-20 approving the redemption of Moreno Valley Redevelopment Agency 2007 taxable tax allocation bonds in the amount of \$22,500,000; and

Resolution No. 2011-20

A Resolution of the City Council of the City of Moreno Valley Requesting, Authorizing and Approving the Redemption of

Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Redevelopment Project, Subordinate 2007 Taxable Tax Allocation Bonds and Making Certain Determinations and Approvals in Connection Therewith

2. That the City Council acting in the capacity as Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley adopt Resolution No. RDA 2011-01 approving the redemption of Moreno Valley Redevelopment Agency 2007 taxable tax allocation bonds in the amount of \$22,500,000.

Resolution No. RDA 2011-01

A Resolution of the Community Redevelopment Agency of the City of Moreno Valley Authorizing and Approving the Redemption of its Moreno Valley Redevelopment Project, Subordinate 2007 Taxable Tax Allocation Bonds and Making Certain Determinations and Approvals in Connection Therewith

- \*G.5 COOPERATION AGREEMENT BETWEEN THE CITY OF MORENO VALLEY AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY ( Report of: Community and Economic Department)

**Recommendation: That the City Council:**

1. Adopt Resolution No. 2011-22 making certain findings in support of a Cooperation Agreement between the Community Redevelopment Agency and the City of Moreno Valley to set forth indebtedness and security between the Agency and City; and

Resolution No. 2011-22

A Resolution of the City Council of the City of Moreno Valley Authorizing and Approving a Cooperation Agreement Between the City and the Community Redevelopment Agency of the City of Moreno Valley and Making Certain Determinations and Approvals in Connection Therewith

2. Authorize the City Manager or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

**Recommendation: That the RDA:**

1. Adopt Resolution No. RDA 2011-02 making certain findings in support of a Cooperation Agreement between the Agency and the City of Moreno Valley to set forth indebtedness and security between the Agency and City; and

Resolution No. RDA 2011-02

A Resolution of the Community Redevelopment Agency of the City of Moreno Valley Authorizing and Approving a Cooperation Agreement Between the Agency and the City of Moreno Valley and Making Certain Determinations and Approvals in Connection Therewith

2. Authorize the Executive Director or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

**\*G.6 COOPERATIVE AGREEMENT BETWEEN THE CITY OF MORENO VALLEY AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY (Report of: Community & Economic Development Department)**

**Recommendation: That the City Council:**

1. Approve and authorize the execution of Resolution No. 2011-23 in support of a Cooperative Agreement between the City of Moreno Valley and the Community Redevelopment Agency and making certain findings in connection with the provision of public improvements and authorizing such improvements in connection therewith; and

Resolution No. 2011-23

A Resolution of the City Council of the City of Moreno Valley Approving and Authorizing the Execution of a Cooperative Agreement with the Community Redevelopment Agency of the City of Moreno Valley and Making Certain Findings in Connection with the Provision of Public Improvements and Authorizing Such Improvements in Connection Therewith

2. Authorize the City Manager or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

**Recommendation: That the RDA:**

1. Approve and authorize the execution of Resolution No. RDA 2011-03 in support of a Cooperative Agreement with the City of Moreno Valley

and making certain findings in connection with the provision of public improvements and authorizing such improvements in connection therewith; and

Resolution No. RDA 2011-03

A Resolution of the Community Redevelopment Agency of the City of Moreno Valley Approving and Authorizing the Execution of a Cooperative Agreement with the City of Moreno Valley and Making Certain Findings in Connection with the Provision of Public Improvements and Authorizing Such Improvements in Connection Therewith

2. Authorize the Executive Director or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

\*G.7 AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND MV RANCHO DORADO II LIMITED PARTNERSHIP (Report of: Community and Economic Development Department)

**Recommendation: That the City Council:**

Adopt Resolution No. 2011-24 consenting to the approval by the Community Redevelopment Agency of the City of Moreno Valley of an Affordable Housing Agreement by and between the Agency and MV Rancho Dorado II Limited Partnership, a California Limited Partnership.

Resolution No. 2011-24

A Resolution of the City Council of the City of Moreno Valley Consenting to the Approval by the Community Redevelopment Agency of the City of Moreno Valley Approving an Affordable Housing Agreement by and Between the Agency and MV Rancho Dorado Limited Partnership, a California Limited Partnership

**Recommendation: That the RDA:**

Adopt Resolution RDA No. 2011-04 approving an Affordable Housing Agreement by and between the Agency and MV Rancho Dorado II Limited Partnership.

Resolution No. RDA 2011-04

A Resolution of the Community Redevelopment Agency of the City of Moreno Valley Approving an Affordable Housing Agreement by and Between the Agency and MV Rancho Dorado Limited Partnership, a



California Limited Partnership

- \*G.8 CREATING A HOUSING AUTHORITY AND ESTABLISHING THE COMMISSIONERS AND DESIGNATING THE FIRST INTERIM CHAIRMAN (Report of: Community and Economic Development Department)

**Recommendation: That the City Council:**

Adopt Resolution No. 2011-25 declaring that there is a need for a Housing Authority to function in the City, along with declaring that the members of the City Council shall be the Commissioners of the Housing Authority and designating the first interim Chairman of the Housing Authority.

Resolution No. 2011-25

A Resolution of the City Council of the City of Moreno Valley, California, Declaring that there is a Need for a Housing Authority to Function in the City, Declaring that the Members of the City Council Shall be the Commissioners of the Housing Authority and Designating the First Interim Chairman of the Housing Authority

- \*G.9 AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND RANCHO BELAGO DEVELOPERS INC. (ATTACHMENTS TO BE PROVIDED UNDER SEPARATE COVER) (Report of: Community & Economic Development Department)

**Recommendation: That the City Council:**

Adopt Resolution No 2011-26 consenting to the approval by the Community Redevelopment Agency of the City of Moreno Valley of an Affordable Housing Agreement by and between the Agency and Rancho Belago Developers Inc.

Resolution No. 2011-26

A Resolution of the City Council of the City of Moreno Valley Consenting to the Approval by the Community Redevelopment Agency of the City of Moreno Valley Approving an Affordable Housing Agreement by and Between the Agency and Rancho Belago Developers Inc.

**Recommendation: That the RDA:**

Adopt Resolution No. RDA 2011-05 approving an Affordable Housing Agreement by and between the Agency and Rancho Belago Developers

Inc.

Resolution No. RDA 2011-05

A Resolution of the Agency Board Approving an Affordable Housing Agreement by and Between the Agency and Rancho Belago Developers Inc.

G.10 CITY MANAGER'S REPORT (Informational Oral Presentation - not for Council action)

**H. LEGISLATIVE ACTIONS**

H.1 ORDINANCES - 1ST READING AND INTRODUCTION - NONE

H.2 ORDINANCES - 2ND READING AND ADOPTION - NONE

H.3 ORDINANCES - URGENCY ORDINANCES - NONE

H.4 RESOLUTIONS - NONE

**PUBLIC COMMENTS ON ANY SUBJECT NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL**

Those wishing to speak should complete and submit a BLUE speaker slip to the Bailiff. There is a three-minute time limit per person. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

**CLOSING COMMENTS AND/OR REPORTS OF THE CITY COUNCIL, COMMUNITY SERVICES DISTRICT, OR COMMUNITY REDEVELOPMENT AGENCY**

Materials related to an item on this Agenda submitted to the City Council/Community Services District/Community Redevelopment Agency or the Board of Library Trustees after distribution of the agenda packet are available for public inspection in the City Clerk's office at 14177 Frederick Street during normal business hours.

\*Revision to Agenda

## **CLOSED SESSION**

A Closed Session of the City Council, Community Services District and Community Redevelopment Agency of the City of Moreno Valley will be held in the City Manager's Conference Room, Second Floor, City Hall. The City Council will meet in Closed Session to confer with its legal counsel regarding the following matter(s) and any additional matter(s) publicly and orally announced by the City Attorney in the Council Chamber at the time of convening the Closed Session.

- **PUBLIC COMMENTS ON MATTERS ON THE CLOSED SESSION AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL**

There is a three-minute time limit per person. Please complete and submit a BLUE speaker slip to the City Clerk. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

The Closed Session will be held pursuant to Government Code:

- 1 SECTION 54956.9(b)(1) - CONFERENCE WITH LEGAL COUNSEL - SIGNIFICANT EXPOSURE TO LITIGATION

Number of Cases: 5

- 2 SECTION 54956.9(c) - CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Number of Cases: 5

## **REPORT OF ACTION FROM CLOSED SESSION, IF ANY, BY CITY ATTORNEY**

## **ADJOURNMENT**

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**MINUTES**  
**CITY COUNCIL OF THE CITY OF MORENO VALLEY**  
**February 22, 2011**

**CALL TO ORDER**

SPECIAL PRESENTATIONS

1. Officer of the Quarter - Officer Michael Koehler
2. Officer of the Year - Officer Jonathan Bodnar

**MINUTES  
JOINT MEETING OF THE  
CITY COUNCIL OF THE CITY OF MORENO VALLEY  
MORENO VALLEY COMMUNITY SERVICES DISTRICT  
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY  
BOARD OF LIBRARY TRUSTEES**

**REGULAR MEETING – 6:30 PM  
February 22, 2011**

**CALL TO ORDER**

Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, the Community Redevelopment Agency of the City of Moreno Valley and the Board of Library Trustees was called to order at 6:31 p.m. by Mayor Stewart in the Council Chamber located at 14177 Frederick Street.

**PLEDGE OF ALLEGIANCE** - The Pledge of Allegiance was led by Council Member Hastings

**INVOCATION** - Mayor Stewart

**ROLL CALL**

Council:

Richard A. Stewart	Mayor
Jesse L. Molina	Mayor Pro Tem
William H. Batey II	Council Member
Marcelo Co	Council Member
Robin N. Hastings	Council Member

Staff:

Jane Halstead	City Clerk
Ewa Lopez	Deputy City Clerk
Henry T. Garcia	City Manager
Richard Teichert	Financial & Administrative Services Director
Robert Hansen	City Attorney
Michelle Dawson	Acting Assistant City Manager
Chad Bianco	Lt. Detectives
Abdul Ahmad	Battalion Chief
Chris Vogt	Public Works Director
Barry Foster	Community & Economic Development Director
Sonny Morkus	Human Resources Director
Paula Smus	Acting Library Services Division Manager
Mike McCarty	Parks & Community Services Director

MINUTES  
February 22, 2011

**JOINT CONSENT CALENDARS (SECTIONS A-D) OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, MORENO VALLEY COMMUNITY SERVICES DISTRICT, COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND THE BOARD OF LIBRARY TRUSTEES**

Mayor Stewart opened the agenda items for the Consent Calendars for public comments, which were received from Pete Bleckert (A.4 & A.10), Deanna Reeder (time limit for public comments on consent calendar and study session items; Item A.5, A.7, A.8 & A.11), and Daryl Terrell (Item A.10, thanked for clarification).

**A. CONSENT CALENDAR-CITY COUNCIL**

A.1 ORDINANCES - READING BY TITLE ONLY

**Recommendation:** Waive reading of all Ordinances.

A.2 MINUTES - REGULAR MEETING OF FEBRUARY 8, 2011 (Report of: City Clerk Department)

**Recommendation:**

Approve as submitted.

A.3 CITY COUNCIL REPORTS ON REIMBURSABLE ACTIVITIES (Report of: City Clerk Department)

**Recommendation:**

Receive and file the Reports on Reimbursable Activities for the period of February 2 – 15, 2011.

A.4 APPROVAL OF CHECK REGISTER FOR DECEMBER, 2010 (Report of: Financial & Administrative Services Department)

**Recommendation:**

Adopt Resolution No. 2011-16, approving the Check Register for the month of December, 2010 in the amount of \$8,598,598.73.

Resolution No. 2011-16

A Resolution of the City Council of the City of Moreno Valley, California, Approving the Check Register for the Month of December, 2010

A.5 ACCEPTANCE OF SOUTHERN CALIFORNIA EDISON LOCAL GOVERNMENT STRATEGIC PLAN GRANT (Report of: Community & Economic Development Department)

MINUTES  
February 22, 2011

**Recommendation:**

Approve Resolution No. 2011–17 to accept the Southern California Edison Local Government Strategic Plan Grant and authorize the Financial and Administrative Services Director to create the necessary budgetary appropriations for the Grant.

Resolution No. 2011-17

Resolution of the City Council of the City of Moreno Valley to accept the Southern California Edison Local Government Strategic Plan Grant and authorizing the Financial and Administrative Services Director to create the necessary budgetary appropriations for the grant

- A.6 RECEIPT OF QUARTERLY INVESTMENT REPORT - QUARTER ENDED DECEMBER 31, 2010 (Report of: Financial & Administrative Services Department)

**Recommendation:**

Receive and file the Quarterly Investment Report, in compliance with the City's Investment Policy

- A.7 RECEIVE THE ANNUAL REPORT ON DEVELOPMENT IMPACT FEES FOR FISCAL YEAR 2009-10 (Report of: Financial & Administrative Services Department)

**Recommendation:**

1. Approve and accept the Annual Report on Development Impact Fees in compliance with California Government Code Section 66006; and
2. Approve the finding that staff has demonstrated a continuing need to hold unexpended Development Impact Fees.

- A.8 ACCEPTANCE OF DONATION IN THE AMOUNT OF \$13,475 BY THE MORENO VALLEY FRIENDS OF THE LIBRARY FOR THE MORENO VALLEY PUBLIC LIBRARY (Report of: Library Services Department)

**Recommendation:**

Accept a monetary donation from the Moreno Valley Friends of the Library in the amount of \$13,475.

- A.9 CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) GRANT FUNDING OPPORTUNITY (Report of: Police Department)

**Recommendation:**

Approve the grant application and authorize acceptance (if awarded) of the California Office of Traffic Safety grant in the amount of \$204,581.24,

MINUTES  
February 22, 2011



entitled "DUI Enforcement and Awareness Program."

- A.10 APPROVE RE-APPROPRIATION OF FUNDS AND AUTHORIZE A CHANGE ORDER TO INCREASE THE PURCHASE ORDER WITH HILLCREST CONTRACTING, INC. FOR DAY STREET ROADWAY IMPROVEMENTS FROM ALESSANDRO BOULEVARD TO COTTONWOOD AVENUE (ITEM ALSO LISTED AS ITEM C.3) (Report of: Public Works Department)

**Recommendation:**

1. Authorize the Public Works Director/City Engineer to execute any subsequent related minor change orders to the contract with Hillcrest Contracting, Inc. up to, but not exceeding, the contingency amount of \$28,200, subject to the approval of the City Attorney;
2. Authorize a full road closure of Day Street from Alessandro Boulevard to Cottonwood Avenue, including adjacent side streets, as necessary, for the construction of roadway improvements from February 2011 to April 2011; and
3. Authorize the Public Works Director/City Engineer to allow for an additional 60 day extension to the proposed road closure window if the project is delayed due to unforeseen construction issues.

- A.11 PA07-0090 – APPROVAL OF AMENDMENT NO. 1 TO THE COOPERATIVE AGREEMENT FOR MORENO MASTER DRAINAGE PLAN LINE F, STAGE 3, LINE D, LINE D-5, LINE D-6, AND LINE F SINCLAIR STREET STORM DRAIN, ASSOCIATED WITH THE HIGHLAND FAIRVIEW LOGISTICS CORPORATE PARK, BETWEEN THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, CITY OF MORENO VALLEY, AND HF LOGISTICS-SKX T1, LLC, HF LOGISTICS-SKX T2, LLC, HIGHLAND FAIRVIEW PARTNERS I, HIGHLAND FAIRVIEW PARTNERS II, HIGHLAND FAIRVIEW PARTNERS III, AND HIGHLAND FAIRVIEW PARTNERS IV, BETWEEN STATE ROUTE 60 AND EUCALYPTUS AVENUE, AND REDLANDS BOULEVARD AND THEODORE STREET, DEVELOPER: HF LOGISTICS - SKX T1, LLC, MORENO VALLEY, CA (Report of: Public Works Department)

**Recommendation:**

1. Approve Amendment No. 1 to the Cooperative Agreement between Riverside County Flood Control and Water Conservation District, the City of Moreno Valley, and HF Logistics-SKX T1, LLC, HF Logistics-SKX T2, LLC, Highland Fairview Partners I, Highland Fairview Partners II, Highland Fairview Partners III, and Highland Fairview Partners IV for Moreno Master Drainage Plan Line F, Stage 3, Line D,

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Line D-5, Line D-6, and Line F Sinclair Street Storm Drain improvements; and

2. Authorize the Mayor to execute Amendment No. 1 to the Cooperative Agreement contingent upon the Developer providing the City with an executed version of the Amendment No. 1 from the County Board of Supervisors.

- A.12 A RESOLUTION IN SUPPORT OF A HIGH SPEED RAIL ALIGNMENT ALONG THE I-215 CORRIDOR NEAR MARCH AIR RESERVE BASE AND THE DOWNTOWN SAN BERNARDINO TRANSIT CENTER (Report of: Community & Economic Development Department)

**Recommendation:**

Adopt Resolution No. 2011-18 in support of a High Speed Rail (HSR) alignment along the I-215 corridor near March Air Reserve Base (MARB) and the Downtown San Bernardino Transit Center.

Resolution No. 2011-18

A Resolution of the City Council of the City of Moreno Valley, California, Supporting a High Speed Rail Alignment Along the I-215 Corridor with Stations near March Air Reserve Base and the Downtown San Bernardino Transit Center

**B. CONSENT CALENDAR-COMMUNITY SERVICES DISTRICT**

- B.1 ORDINANCES - READING BY TITLE ONLY

**Recommendation:** Waive reading of all Ordinances.

- B.2 MINUTES - REGULAR MEETING OF FEBRUARY 8, 2011 (Report of: City Clerk Department)

**Recommendation:**

Approve as submitted.

**C. CONSENT CALENDAR - COMMUNITY REDEVELOPMENT AGENCY**

- C.1 ORDINANCES - READING BY TITLE ONLY

**Recommendation:** Waive reading of all Ordinances.

- C.2 MINUTES - REGULAR MEETING OF FEBRUARY 8, 2011 (Report of: City Clerk Department)

**Recommendation:**

MINUTES  
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Approve as submitted.

- C.3 APPROVE RE-APPROPRIATION OF FUNDS AND AUTHORIZE A CHANGE ORDER TO INCREASE THE PURCHASE ORDER WITH HILLCREST CONTRACTING, INC. FOR DAY STREET ROADWAY IMPROVEMENTS FROM ALESSANDRO BOULEVARD TO COTTONWOOD AVENUE (ITEM ALSO LISTED AS ITEM A.10) (Report of: Public Works Department)

**Recommendation: That the RDA:**

1. Re-appropriate \$232,000 from Account No. 897.91728 (SR-60 / Nason Street Overcrossing Bridge) to Account No. 897.91724 (Day Street Roadway Improvements from Alessandro Boulevard to Cottonwood Avenue);
2. Authorize a Change Order to increase the Purchase Order with Hillcrest Contracting, Inc., in the amount of \$192,000 for Day Street Roadway Improvements from Alessandro Boulevard to Cottonwood Avenue (Account No. 897.91724); and
3. Authorize the City Manager, acting in his capacity as the Executive Director for the Community Redevelopment Agency of the City of Moreno Valley, to execute the Change Order to the Purchase Order for Hillcrest Contracting, Inc. on behalf of the Community Redevelopment Agency.

**D. CONSENT CALENDAR - BOARD OF LIBRARY TRUSTEES**

- D.1 ORDINANCES - READING BY TITLE ONLY

**Recommendation:** Waive reading of all Ordinances.

- D.2 MINUTES - REGULAR MEETING OF FEBRUARY 8, 2011 (Report of: City Clerk Department)

**Recommendation:**

Approve as submitted.

**Motion to Approve Joint Consent Calendar Items A.1 through D.2 by m/Council Member William H. Batey II, s/Mayor Pro Tem Jesse L. Molina Approved by a vote of 5-0.**

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## **E. PUBLIC HEARINGS**

- E.1 PROPOSED AMENDMENT TO THE GENERAL PLAN HOUSING ELEMENT (PA08-0053) AND ADOPTION OF RESOLUTION NO. 2011-19 (Report of: Community and Economic Development Department)

**Recommendation: That the City Council:**

Adopt Resolution No. 2011-19 approving PA08-0053; an amendment of the City of Moreno Valley General Plan Housing Element.

Resolution No. 2011-19

A Resolution of the City Council of the City of Moreno Valley, California, Approving PA08-0053: An Amendment of the City of Moreno Valley General Plan Housing Element

Mayor Stewart opened the public testimony portion of the public hearing. Public testimony was received from Susan Gilchrist (opposes), Stephen Crews (opposes), and Deanna Reeder (opposes part of it and supports part).

**Motion to Approve by m/Council Member William H. Batey II, s/Mayor Pro Tem Jesse L. Molina**  
**Approved by a vote of 4-1, Council Member Robin N. Hastings opposed.**

**RECESS;  
RECONVENED**

**F. ITEMS REMOVED FROM CONSENT CALENDARS FOR DISCUSSION OR SEPARATE ACTION - None**

## **G. REPORTS**

- G.1 CITY COUNCIL REPORTS ON REGIONAL ACTIVITIES (Informational Oral Presentation - not for Council action)  
a. Mayor Richard A. Stewart report on March Joint Powers Commission (MJPC)

Mayor Stewart reported that Recreation Center, bank, liquor store and theater at the old base area have been demolished and the hospital demolition will take place in about two weeks; 85 percent of the buildings will be recycled. The March JPA will receive about 8 million dollars for RDA bonds, part of which will be used for U.S. vets and Van Buren interchange.

- G.2 APPOINTMENT TO THE ACCESSIBILITY APPEALS BOARD AND TO THE ENVIRONMENTAL AND HISTORICAL PRESERVATION BOARD

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(Report of: City Clerk's Department)

**Recommendation: That the City Council:**

1. After reviewing the ballot provided by the City Clerk:

Appoint Alvin C. Horn to the Accessibility Appeals Board as Construction Representative with a term expiring June 30, 2011;

2. Appoint one member to the Environmental and Historical Preservation Board with a term expiring June 30, 2012; or

3. If appointments are not made, declare the positions vacant and authorize the City Clerk to re-notice the positions as vacant.

Mayor Stewart opened the agenda item for public comments, which were received from Joseph Brooks.

**Motion to appoint Alvin C. Horn to the Accessibility Appeals Board with a term expiring June 30, 2011 by m/Mayor Pro Tem Jesse L. Molina, s/Council Member William H. Batey II**  
**Approved by a vote of 5-0.**

**Motion to appoint Joseph E. Brooks to the Environmental and Historical Preservation Board with a term expiring June 30, 2012 by m/Mayor Pro Tem Jesse L. Molina, s/Council Member William H. Batey II**  
**Approved by a vote of 5-0.**

- G.3 SUBSTANTIAL AMENDMENT #1 TO THE FY 2010-2011 CDBG ANNUAL ACTION PLAN, THE NEIGHBORHOOD STABILIZATION PROGRAM 3 (NSP3) (Report of: Community and Economic Development Department)

**Recommendation: That the City Council:**

Review and adopt the proposed 2010-11 CDBG Annual Action Plan Substantial Amendment #1, the Neighborhood Stabilization Program 3 grant application, and authorize the City Manager to reallocate grant funds between HUD-approved NSP3 grant activities.

Mayor Stewart opened the agenda item for public comments; there being none, public comments were closed.

**Motion to Approve by m/Mayor Pro Tem Jesse L. Molina, s/Council Member William H. Batey II**  
**Approved by a vote of 5-0.**

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G.4 CITY MANAGER'S REPORT (Informational Oral Presentation - not for Council action)

None

## H. LEGISLATIVE ACTIONS

H.1 ORDINANCES - 1ST READING AND INTRODUCTION - NONE

H.2 ORDINANCES - 2ND READING AND ADOPTION - NONE

H.3 ORDINANCES - URGENCY ORDINANCES - NONE

H.4 RESOLUTIONS - NONE

PUBLIC COMMENTS ON ANY SUBJECT NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL

Susan Gilchrist

1. Housing element
2. Jobs/housing ratio
2. E-verifying for warehouse employment and low-income housing

V. Stephan

1. Complimented the City Manager for his vision
2. Community development and transparency
3. Bringing arts to the City and bringing the community together

Daryl Terrell

1. Reforms and transparency of government - submitted an ordinance for good government

Stephen Crews

1. Burglaries at the Stater Bros center on Moreno Beach

Pete Bleckert

1. Street lights; electric companies
2. Driveways on Sunnymead Blvd.

Deanna Reeder

1. How things are getting done in Moreno Valley
2. Public's participation

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**CLOSING COMMENTS AND/OR REPORTS OF THE CITY COUNCIL,  
COMMUNITY SERVICES DISTRICT, OR COMMUNITY REDEVELOPMENT  
AGENCY**

Mayor Pro Tem Molina

1. Stated that the city manager has a vision and a plan to bring jobs to the City; we need to start changing the way we bring the business to the City and to increase public's input
2. Is willing to work with the council members; the sooner we start working the better
3. Thanked everyone for coming to the Council meetings and voicing opinion

Council Member Batey - no comments

Council Member Hastings

1. Thanked Deanna Reeder and Susan Gilchrist for their input
2. Stated that she supports change and that we need to move forward; job to housing ratio is horrible, and the city has to compete with other cities trying to get the same jobs; listed several projects that are bringing jobs to the City, including March LifeCare, Allied Health Sciences, expansion of Riverside County Regional Medical Center and Kaiser, Skechers project and retail stores; emphasized that the City has to be aggressive in bringing the jobs and dealing with foreclosed houses
3. Stated that she has a duty to live up to what she believes is right and cannot agree all the time with other council members

Council Member Co

1. Believes that we are on the right track; the City Manager is presenting an outline how to bring jobs, and the details will be worked out later; we have a lot of housing, but not jobs; therefore, we need to concentrate on attracting jobs, as housing doesn't have revenue tax base; jobs are important to the people in Moreno Valley; asked the residents for support
2. Asked to work together towards the goal of bringing more business and revenue to the City
3. Inquired about signs for Skechers that were approved by the City Council - signs are not posted yet; Skechers is progressive and bringing a lot of jobs

Mayor Stewart

1. Responded to speaker's comments about public's input on consent calendar and study sessions - explained that study sessions are only for discussion and presenting ideas, not for action; consent calendar items are non-controversial and can be pulled for a separate action
2. Regarding jobs - we have the potential with March LifeCare, with Moreno Valley college partnering with Allied Health Sciences, with

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Riverside County Regional Medical Center and with Kaiser- we are looking at a strong presence of medical-related jobs - it is good for our community and we are looking forward to

3. Announced that a free concert will be held this Thursday at 7 p.m. at the Conference and Recreation Center

4. Responded to speaker's comments regarding Edison - worked with Edison, and Edison is a great company; the City has own utility for a variety of reasons

5. Regarding public's input - meetings are televised and live-streamed; the council members receive a lot of letters; the input and interaction with people is important; encouraged citizens to e-mail council members any ideas

7. Planning goals workshop is scheduled to be held soon

8. On February 23, Planning Commission interviews will be held for three Planning Commission openings; announced that Planning Commissioner Michael Geller is resigning effective February 25; the vacancy is being advertised

9. Stated that last Saturday, while visiting Skechers; noticed a lot of construction workers working; the company is highly automated, modern, and technologically advanced; the project includes, besides a warehouse, corporate headquarters, offices and a retail store; a suggestion was made to set up a joint training and recruiting for the highly technical positions between Sketchers and Moreno Valley college

## **CLOSED SESSION**

Canceled

MINUTES  
February 22, 2011



## ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 9:29 p.m. by unanimous informal consent.

Submitted by:

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Jane Halstead, City Clerk, CMC  
Secretary, Moreno Valley Community Services District  
Secretary, Community Redevelopment Agency of the City of Moreno Valley  
Secretary, Board of Library Trustees

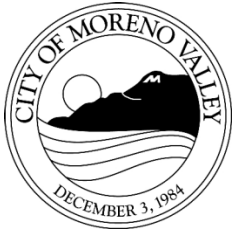
Approved by:

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Richard Stewart, Mayor  
President, Moreno Valley Community Services District  
Chairperson, Community Redevelopment Agency of the City of Moreno Valley  
Chairperson, Board of Library Trustees

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## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Jane Halstead, City Clerk

**AGENDA DATE:** March 8, 2011

**TITLE:** CITY COUNCIL REPORTS ON REIMBURSABLE ACTIVITIES

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### RECOMMENDED ACTION

Staff recommends that the City Council receive and file the Reports on Reimbursable Activities for the period of February 16 – March 1, 2011.

<i>Reports on Reimbursable Activities</i> February 16 – March 1, 2011		
Council Member	Date	Meeting
William H. Batey II		None
Marcelo Co		None
Robin N. Hastings		None
Jesse L. Molina	3/01/11	Moreno Valley Hispanic Chamber of Commerce Adelante
Richard A. Stewart	2/16/11	Student of the Month Luncheon

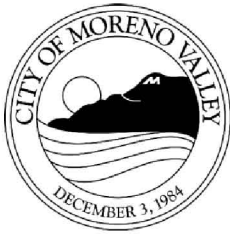
Prepared By:  
Cindy Miller  
Executive Assistant to the Mayor/City Council

Department Head Approval:  
Jane Halstead  
City Clerk

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>Rut</i>
CITY MANAGER	<i>mo</i>

## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Chris A. Vogt, P.E., Public Works Director/City Engineer

**AGENDA DATE:** March 8, 2011

**TITLE:** Authorization to Award the Construction Contract for 2011 Citywide Bridge Maintenance Program  
Project No. 11-22679828

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### RECOMMENDED ACTION

Staff recommends that the City Council:

1. Award the construction contract for 2011 Citywide Bridge Maintenance Program to Beador Construction Company, Inc. (Beador), 26320 Lester Circle, Corona CA 92883, the lowest responsible bidder.
2. Authorize the City Manager to execute a contract with Beador in the form attached hereto.
3. Authorize the issuance a Purchase Order to Beador in the amount of \$243,960.00 (\$203,300.00 base bid amount plus 20% contingency) when the contract has been signed by all parties.
4. Authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Beador, up to but not to exceed the Purchase Order contingency of \$40,660.00, subject to the approval of the City Attorney.

### BACKGROUND

As required by law, California Department of Transportation (Caltrans) performs bridge inspections for bridges owned and maintained by the City of Moreno Valley on a periodic basis. The bridge inspections assess conditions for the bridges and make recommendations for maintenance and repair.

For the current year, City staff reviewed the most recent Caltrans bridge inspection reports and conducted detailed field review of all bridges within the City to identify items of work necessary to repair and maintain eight (8) of the bridges and prepared contract documents.

**DISCUSSION**

The 2011 Bridge Maintenance Program involves the application of Methacrylate Deck Treatment to three (3) bridges including Cactus Avenue Bridge, west side of Kitching Street (Bridge No. 56C0407), Bay Avenue Bridge, 0.25 mile east of Kitching Street, (Bridge No. 56C0401), Oliver Street Bridge, 500 feet north of John F. Kennedy Drive (Bridge No. 56C0559). For the remaining five (5) bridges the work includes cold mill and pave back the existing asphalt concrete over the bridge deck and the bridge approaches at the following bridges: Cottonwood Avenue Bridge, 0.2 mile east of Heacock Street (Bridge No. 56C0214), Dracaea Avenue Bridge, 0.14 mile west of Indian Street (Bridge No. 56C0274), Cactus Avenue Bridge, 0.5 mile west of John F. Kennedy Drive (Bridge No. 56C0420), Cactus Avenue Bridge, , 0.2 mile west of John F. Kennedy Drive (Bridge No. 56C0421), and Perris Boulevard Bridge Approaches, 1.0 mile south of Iris Avenue (Bridge No. 56C0464).

The project was advertised for bids on January 10, 2011. Formal bidding procedures have been followed in conformance with the Public Contract Code. The City Clerk opened bids at 2:00 p.m., on February 8, 2011, for the subject project. The five (5) valid bids received are as follows:

<u>CONTRACTORS</u>	<u>Bid Amount</u>
1. <b>Beador Construction Company, Inc.</b> .....	<b>\$203,300</b>
2. West Coast Structures, Inc. dba Western Structures .....	\$237,122
3. O'Donnell Construction, Inc.....	\$264,850
4. Peterson-Chase General Engineering Construction, Inc. ....	\$298,140
5. Sean Malek Engineering and Construction. ....	\$336,050
Engineer's Estimate.....	\$247,890

Staff has reviewed the bid by Beador and finds it to be the lowest responsible bidder in possession of a valid license and bid bond. No outstanding issues were identified through review of the references submitted by Beador.

**ALTERNATIVES**

1. Award the construction contract for 2011 Citywide Bridge Maintenance Program to Beador Construction Company, Inc. (Beador), 26320 Lester Circle, Corona CA 92883, the lowest responsible bidder, authorize the City Manager to execute a contract with Beador in the form attached hereto, authorize the issuance a Purchase Order to Beador in the amount of \$243,960.00 (\$203,300.00 base bid

amount plus 20% contingency) when the contract has been signed by all parties, Authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Beador, up to but not to exceed the Purchase Order contingency of \$40,660.00, subject to the approval of the City Attorney. *This alternative will allow much needed improvements.*

2. Do not award the construction contract for 2011 Citywide Bridge Maintenance Program to Beador Construction Company, Inc. (Beador), 26320 Lester Circle, Corona CA 92883, the lowest responsible bidder, do not authorize the City Manager to execute a contract with Beador in the form attached hereto, authorize the issuance a Purchase Order to Beador in the amount of \$243,960.00 (\$203,300.00 base bid amount plus 20% contingency) when the contract has been signed by all parties, do not authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Beador, up to but not to exceed the Purchase Order contingency of \$40,660.00, subject to the approval of the City Attorney. *This alternative will delay the completion of much needed improvements.*

**FISCAL IMPACT**

This project is included in the Fiscal Year 2010-2011 Capital Improvement Budget and is funded by Proposition 1B (Fund 226) funds. There is no impact to the General Fund.

**AVAILABLE FUNDS:**

Fiscal Year 2010/2011 Budget (Account No. 226.79828) .....	<u>\$420,000</u>
<b>Total Available Funds .....</b>	<b><u>\$420,000</u></b>

**ESTIMATED PROJECT COSTS:**

Design Costs.....	\$15,000
Construction Costs (plus 20% contingency).....	\$244,000
Geotechnical Services Costs .....	\$7,000
Project Administration* .....	\$40,000
Miscellaneous .....	<u>\$3,000</u>
<b>Total Estimated Project Costs .....</b>	<b><u>\$309,000</u></b>

\* Public Works and consultant staff will provide Project Administration and Inspection Services.

**ANTICIPATED PROJECT SCHEDULE:**

Notice of Award .....	March 2011
Start Construction.....	April 2011
Complete Construction.....	June 2011

**CITY COUNCIL GOALS**

**POSITIVE ENVIRONMENT:**

Create a positive environment for the development of Moreno Valley’s future.

**PUBLIC FACILITIES AND CAPITAL PROJECTS:**

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

**SUMMARY**

This project involves the maintenance and repair of eight (8) bridges within the City of Moreno Valley. Items of work include the application of Methacrylate Deck Treatment, cold milling, and repaving the existing asphalt concrete over the bridge deck and approaches. The project is funded by the State’s Proposition 1B funding program.

**ATTACHMENTS**

- Attachment “A” – Vicinity Map
- Attachment “B” – Contract Agreement

Concurred By:  
 Viren A. Shah, P.E.  
 Consultant Project Manager

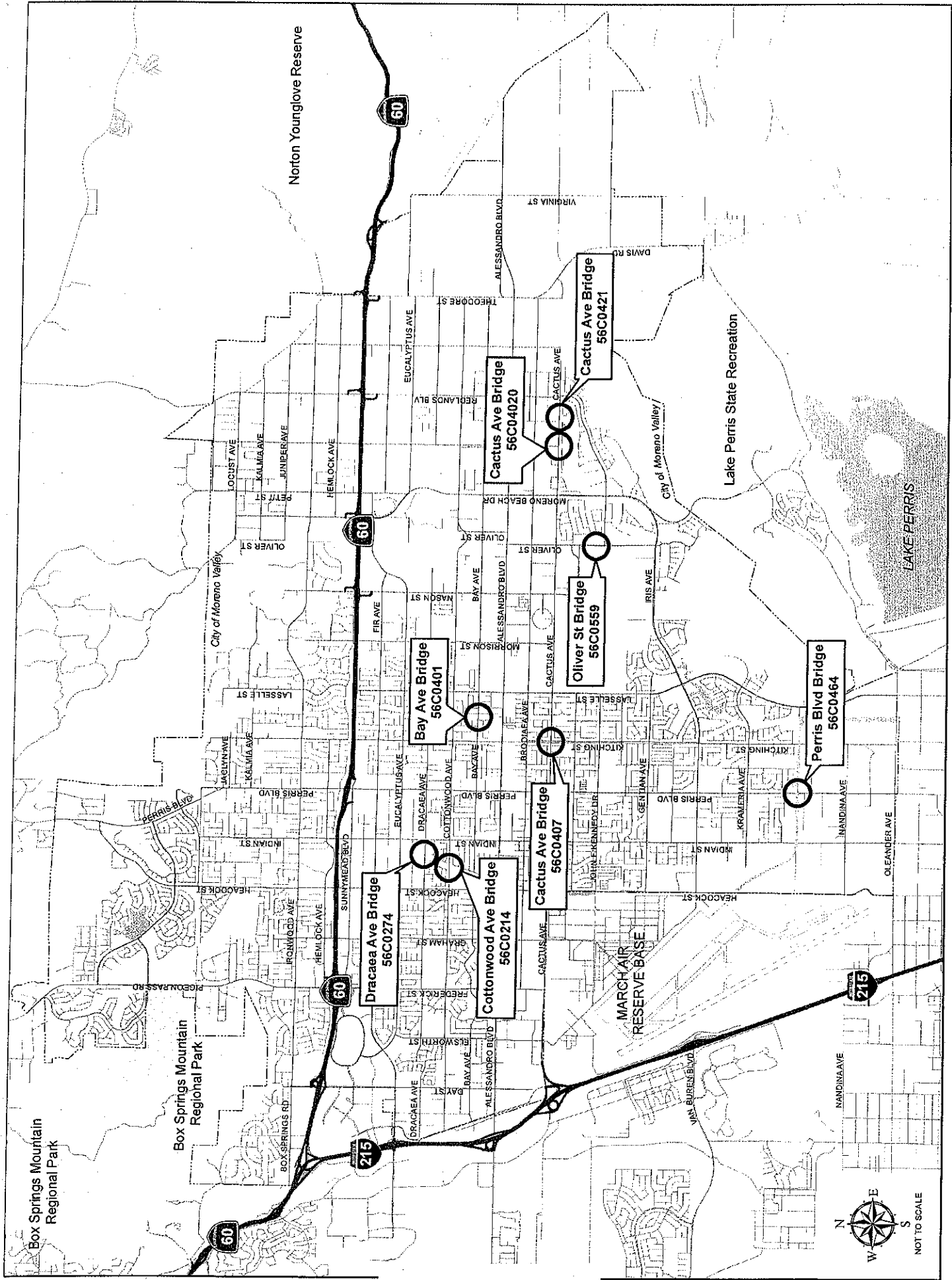
Concurred By:  
 Prem Kumar, P.E.  
 Deputy Public Works Director/Assistant City Engineer

Department Head Approval:  
 Chris A. Vogt, P.E.  
 Public Works Director/City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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VICINITY MAP: 2011 CITYWIDE BRIDGE MAINTENANCE PROGRAM - MORENO VALLEY

ATTACHMENT "A"

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AGREEMENT

PROJECT NO. 11-22679828

**2011 CITYWIDE BRIDGE MAINTENANCE PROGRAM**

THIS Agreement, made and entered into as of the date signed by the City Manager, by and between the City of Moreno Valley, a municipal corporation, County of Riverside, State of California, hereinafter called the "City" and Beador Construction Company, Inc. hereinafter called the "Contractor."

That the City and the Contractor for the consideration hereinafter named, agree as follows:

1. The written Agreement includes all of the following:
  - a. Any and all Contract Change Orders issued after execution of this Agreement
  - b. Addenda Nos. 0 inclusive, issued prior to the opening of the Bids
  - c. The bound Bid Documents
  - d. The Special Provisions which include the General Provisions and Technical Provisions, all of which are parts of this Agreement
  - e. The project Plans
  - f. The Standard Plans
  - g. The Standard Specifications
  - h. Reference Specifications, all of which are essential parts of this Agreement
  - i. The Bidder's Proposal which includes the Bidder's Bond and Noncollusion Affidavit

In the event of any conflict in the provisions thereof, the terms of said Bid Documents as set forth above shall control, each over the other, in the order provided. The above items are incorporated in this Agreement as though set forth in full.

2. The Contractor shall furnish all materials, tools, equipment and labor, except as otherwise provided in the Plans or Special Provisions, and will perform all the work which is necessary to complete in a good, workmanlike and substantial manner the above said project in accordance with the Bid Documents for this project, the Bid Documents which are hereby specifically referred to and by such reference made a part hereof.

3. The City will pay the Contractor and the Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the City, to wit, the Base Bid Item(s) and Additive Bid Item(s) in the sum total amount of **\$203,300.00**, subject to additions or reductions of the quantities of the various bid items at the unit prices bid, for furnishing all materials and for doing all the work contemplated and embraced under this Agreement; for all loss or damages arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work, until the work is accepted by the City Council; for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work, the whole thereof, in the manner and in accordance with the Bid Documents therefore and the requirements of the Engineer under them.

4. The Contractor hereby agrees to commence work pursuant to this Agreement within fifteen (15) calendar days after the date of authorization specified in the Notice to Proceed. The Contractor agrees to diligently prosecute the contracted work, including corrective items of work, day to day thereafter, to completion, within **forty (40) working days** after said date in the "Notice to Proceed with Construction," except as adjusted by subsequent Contract Change Order(s).

5. The City and Contractor hereby agree that in case all construction called for under the Contract is not completed within the time hereinabove specified, including City caused delays or extensions, damages will be sustained by the City and that, it is and will be impracticable or extremely difficult to ascertain and determine the actual amount of damages the City will sustain in the event of, and by reason of, such delay.

ATTACHMENT "B"

**AGREEMENT**  
**PROJECT NO. 11-22679828**

It is, therefore, agreed that such damages shall be presumed to be in the amount of \$400.00 per calendar day, and that the Contractor will pay to the City, or City may retain from amounts otherwise payable to Contractor, said amount for each calendar day by which the Contractor fails to complete the work, including corrective items of work, under this Agreement within the time hereinabove specified and as adjusted by Contract Change Order(s). The Contractor will not be assessed liquidated damages for delay(s) occasioned by the failure of the City or of the owner of a utility to provide for the removal or relocation of utility facilities.

6. The Contractor shall procure and maintain, at its sole expense, and throughout the term of this Agreement, any extension thereof, and for a one (1) year warranty period, General Liability, Automobile Liability, and Workers' Compensation Insurance with such coverage limits as described in this Agreement.

The Contractor shall name as additional insured, the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), and shall furnish the City with a certificate of insurance evidencing liability insurance policy or policies which shall provide coverage for owned and non-owned automobiles; manufacturers and Contractor's liability; broad form property damage in any case where the Contractor has any property belonging to the City in his care, custody or control; owners and Contractor's protective liability; blanket contractual liability; products and completed operations coverage; coverage for collapse, explosion, and where any excavation, digging or trenching is done with power equipment; and shall bear an endorsement containing the following Provisions:

Solely as respect to work done by or on behalf of the named insured for the City of Moreno Valley, it is agreed that the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), its officers, employees and agents, are added as additional insured under this policy and the coverage provided hereunder shall be primary insurance and not contributing with any other insurance available to the City of Moreno Valley, California, the Community Redevelopment Agency of the City of Moreno Valley, and the Moreno Valley Community Services District, its officers, employees and agents; under any third party liability policy.

It is further agreed that the other insurance provision(s) of the policy are amended to conform therewith.

The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. Insurance companies providing insurance here under shall be rated (A minus: VII - Admitted) or better in Best's Insurance Rating Guide and shall be legally licensed and qualified to conduct insurance business in the State of California.

The terms of the insurance policy or policies issued to provide the below insurance coverage(s) shall not be amended or canceled by the carrier without thirty (30) days prior written notice by certified or registered mail of amendments or cancellation to the City, except that cancellation for non-payment of premium shall require (10) days prior written notice by certified or registered mail. In the event the said insurance is canceled, the Contractor shall, prior to the cancellation date, submit to the City Clerk new evidence of insurance in the amounts established.

All liability insurance policies shall bear an endorsement or shall have an attached rider which provides that the City of Moreno Valley will be notified by certified or registered mail at least 30 days prior to the effective date of cancellation, non-renewal, or material alteration of such policy.

All liability insurance shall cover comprehensive general liability for both bodily injury (including death) and property damage, including but not limited to aggregate products, aggregate operations, aggregate

**AGREEMENT  
PROJECT NO. 11-22679828**

protective and aggregate contractual with the following minimum limits:

	Each Person	Each Occurrence	Aggregate
<b>Bodily Injury</b>	\$500,000.00	\$1,000,000.00	\$2,000,000.00
<b>Property Damage</b>	---	\$1,000,000.00	\$2,000,000.00

A combined single limit for Bodily Injury Liability and Property Damage Liability of \$2,000,000.00 for each occurrence will be considered equivalent to the above minimum limits for Comprehensive General Liability.

Property Damage Insurance shall cover full replacement value for damages to any property caused directly or indirectly by or from acts or activities of the Contractor or its sub-contractors or any person acting for the Contractor or under its control or direction.

The Contractor shall procure and maintain, at its sole expense, and throughout the term of this Agreement and any extension thereof, Public Liability and Property Damage Insurance coverage for owned and non-owned automotive equipment operated. Such coverage limits shall not be less than \$1,000,000 combined single limit.

Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

The Contractor shall also furnish the City with a certificate evidencing Worker's Compensation Insurance with limits as established by the State of California.

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

7. The Contractor hereby agrees to provide and maintain in effect two (2) good and sufficient Surety Bonds for one hundred percent (100%) each of the contract price. The bonds shall be a "Faithful Performance Bond" which shall guarantee the faithful performance of all work and a "Labor and Materials Payment Bond" which shall secure the payment of the claims of labor, mechanics, or materialmen for all work under the Contract pursuant to Section 3247 of the Civil Code.

8. The Contractor, the Contractor's heirs, executors, administrators, successors, or assigns guarantee that all work performed under this Agreement fully meets the requirements thereof as to quality of workmanship and materials furnished. If any defects in materials or workmanship become evident within a period of one year from the date of the acceptance of the work by the City Council, the Contractor shall, at his or her own expense, make any repair(s) or replacement(s) necessary to restore the work to full compliance with the Plans and Specifications.

9. The Contractor and any agents or subcontractors of the Contractor shall pay the prevailing rates of per diem wages established by the California Department of Industrial Relations. The Contractor and any agents or subcontractors of the Contractor shall also adhere to the California Labor Code, Division 2, Part 7, "Public Works and Public Agencies," and the California Administrative Code, Title 8, Group 3, "Payment of Prevailing Wages upon Public Works," all of which are made a part of the Contract documents.

10. The Contractor agrees that he or she and its subcontractors shall maintain and keep books, payrolls,

**AGREEMENT  
PROJECT NO. 11-22679828**

invoices of materials, records on a current basis, and recording all transactions pertaining to this Agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the City of Moreno Valley, County, the State of California, the Federal Government and to any authorized representative thereof for purposes of audit and inspection at all reasonable times and places. All such books, payrolls, invoices of materials, and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter period of retention, all books, records, and supporting detail shall be retained for a period of at least three years after expiration of the term of this Agreement.

11. Pursuant to California Public Contract Code Section 22300, the Contractor will be permitted the substitution of securities for any monies withheld by the City of Moreno Valley to ensure performance under Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City of Moreno Valley, or with a state or federally chartered bank as the escrow agent, who shall pay such monies to the Contractor. Securities eligible for substitution under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, and standby letters of credit. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any dividends or interest thereon. The Contractor shall give the City written notice within thirty (30) days after the Contract is awarded that it desires to substitute securities for money that would ordinarily be withheld. If the substituted securities are deposited into an escrow, the escrow shall be governed by a written escrow Agreement in a form which is substantially similar to the Agreement set forth in Section 22300, of the Public Contract Code.

12. The Contractor agrees to indemnify, defend, and save the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), its officers, agents, and employees harmless from any and all liability, claims, damages or injuries to any person, including injury to the Contractor's employees and all claims which arise from or are connected with the negligent performance of or failure to perform the work or other obligations of this Agreement, or are caused or claimed to be caused by the negligent acts of the Contractor its officers, agents, employees, sub-contractors or suppliers, and all expenses of investigating and defending against the same; provided, however, that this indemnification and hold harmless shall not include any claims arising from the sole negligence or willful misconduct of the City, RDA, and CSD, its officers, agents, or employees.

The obligation to indemnify, defend and hold harmless set forth herein shall include, without limitation, any and all attorney's fees incurred by the party to be indemnified, defended, or held harmless, whether in a judicial or administrative action or in arbitration, and whether the issue is between the parties or involves one or more third parties.

13. The parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all of the provisions herein contained. The Contractor may not, either voluntarily or by action of law, assign any obligation assumed by the Contractor hereunder without prior written consent of the City.

14. Should either party bring any legal or equitable action for the purpose of protecting or enforcing its rights under this Agreement, the prevailing party in such action shall recover in addition to all other relief, its reasonable attorney's fees and court costs to be fixed by the court.

In addition to the foregoing award of attorney's fees, the prevailing party shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgments in connection with this Agreement. The Provision is separate and several and shall survive the merge of this Provision into any judgment.

**AGREEMENT  
PROJECT NO. 11-22679828**

15. By my signature hereunder, as Contractor, I certify that I am aware of the Provisions of Section 3700, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the Provisions of that code, and I will comply with such Provisions before commencing the performance of the work of this Agreement.

16. The effective date of this Agreement shall be the date of the Award of Contract by the City of Moreno Valley.

17. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95826. Mailing address: P.O. Box 26000, Sacramento, CA 95826.

**(SIGNATURE PAGE FOLLOWS)**

**AGREEMENT  
PROJECT NO. 11-22679828**

CITY OF MORENO VALLEY, Municipal Corporation

Beador Construction Company, Inc.

BY: \_\_\_\_\_  
City Manager

License No./  
Classification: \_\_\_\_\_

DATE: \_\_\_\_\_

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

Federal I.D. No.: \_\_\_\_\_

<u>INTERNAL USE ONLY</u>	
APPROVED AS TO LEGAL FORM:	
_____	City Attorney
_____	Date
RECOMMENDED FOR APPROVAL:	
_____	Public Works Director/City Engineer
_____	Date

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SIGNING INSTRUCTION TO THE CONTRACTOR:**

All signatures on the Agreement on behalf of the Contractor must be acknowledged before a notary public. Attach Notary Certificates following this page.

**General Partners must sign on behalf of the partnership.**

**In the event that the contracting firm is a corporation, two (2) corporate officer's having authority from the corporation MUST sign (two (2) signatures total). If the corporation has a corporate resolution stating that one person is authorized to sign on behalf of all officers, attach corporate resolution immediately following the notary certificates. Corporate Seal may be affixed hereto.**

W:\CapProj\CapProj\PROJECTS\Wren - 11-22679828 - 2011 Bridge Maintenance Program\Construction\Contractor\Agreement\Agreement - 2011 Bridge.DOC



CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

(Notary Seal)

\_\_\_\_\_  
Signature of Notary Public

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

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- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
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- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.

DESCRIPTION OF THE ATTACHED DOCUMENT

AGREEMENT SIGNATURE PAGE

(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

\_\_\_\_\_  
Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

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

- Partner (s)
- Attorney-in-Fact
- Other \_\_\_\_\_

BOND NO. \_\_\_\_\_

PREMIUM \$ \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND  
(100% of Total Contract Amount)**

**PROJECT NO. 11-22679828**

**2011 CITYWIDE BRIDGE MAINTENANCE PROGRAM**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City," has awarded to Beador Construction Company, Inc., as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City Manager, and identified as **Project No. 11-22679828**, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Agreement is required to furnish a bond guaranteeing the faithful performance of said Agreement;

NOW THEREFORE, we the undersigned Contractor and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Moreno Valley, County of Riverside in the penal sum of \_\_\_\_\_ dollars, (\$ \_\_\_\_\_), lawful money of the United States, to be paid to the said City or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Contractor, his or her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in said Agreement and any alterations thereof made as therein provided, on his or her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Moreno Valley, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In the event suit is brought upon this bond by the City and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder, or the Provisions accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or the Provisions.

**(SIGNATURE PAGE FOLLOWS)**

**FAITHFUL PERFORMANCE BOND  
PROJECT NO. 11-22679828**

**BOND NO.** \_\_\_\_\_

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this \_\_\_\_\_ day  
of \_\_\_\_\_ 2011.

**CONTRACTOR (Principal)**

**SURETY**

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

Print Name: \_\_\_\_\_  
Attorney-in-Fact

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved as to Form this

\_\_\_\_\_ day of \_\_\_\_\_ 2011

\_\_\_\_\_  
City Attorney  
City of Moreno Valley

**NOTE:**

- The bond shall be executed by an admitted Surety insurer (CCP 995.311) and the Surety must be registered as an admitted insurer in at least one county in the State of California.
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact and the Contractor.
- The bond shall include an attached original Power of Attorney duly authorizing the Attorney-in-Fact to act for the Surety (CCP 1305).
- The bond shall include the address at which the Principal (contractor) and Surety may be served with notices, papers and other documents (CCP 995.320 (a)(2)).

Corporate Seal may be affixed hereto.

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

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- Print the name(s) of document signer(s) who personally appear at the time of notarization.
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  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.

DESCRIPTION OF THE ATTACHED DOCUMENT

FAITHFUL PERFORMANCE BOND SIGNATURE PAGE  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

\_\_\_\_\_  
Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

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

- Partner (s)
- Attorney-in-Fact
- Other \_\_\_\_\_

BOND NO. \_\_\_\_\_

PREMIUM \$ \_\_\_\_\_

**LABOR AND MATERIALS PAYMENT BOND  
(100% of Total Contract Amount)**

**PROJECT NO. 11-22679828**

**2011 CITYWIDE BRIDGE MAINTENANCE PROGRAM**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City", has awarded to **Beador Construction Company, Inc.**, as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City Manager, and identified as **Project No. 11-22679828**, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Agreement is required to furnish a bond to secure the payment of claims of laborers, mechanics, materialmen, and other persons, as provided by law;

NOW, THEREFORE, we the undersigned Contractor and \_\_\_\_\_, as Surety are held and firmly bound unto the City of Moreno Valley, County of Riverside, in the penal sum of \_\_\_\_\_ dollars, (\$ \_\_\_\_\_), lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Contractor, his or her or its heirs, executors, administrator, successors or assigns, or subcontractors, shall fail to pay any of the persons described in the State of California Civil Code, Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and his or her subcontractors, pursuant to Section 13020, of the Unemployment Insurance Code, with respect to such work and labor, that the Surety or Sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In the event suit is brought upon this bond by the City or other person entitled to bring such an action and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons described in the State of California Civil Code Section 3181, to give a right of action to such persons or their assigns in any suit brought upon this bond.

**(SIGNATURE PAGE FOLLOWS)**

**LABOR AND MATERIALS PAYMENT BOND  
PROJECT NO. 11-22679828**

**BOND NO.** \_\_\_\_\_

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this \_\_\_\_\_ day  
of \_\_\_\_\_ 2011.

**CONTRACTOR (Principal)**

**SURETY**

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

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

Attorney-in-Fact

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved as to Form this

\_\_\_\_\_ day of \_\_\_\_\_ 2011

\_\_\_\_\_  
City Attorney  
City of Moreno Valley

**NOTE:**

- The bond shall be executed by an admitted Surety insurer (CCP 995.311) and the Surety must be registered as an admitted insurer in at least one county in the State of California.
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact and the Contractor.
- The bond shall include an attached original Power of Attorney duly authorizing the Attorney-in-Fact to act for the Surety (CCP 1305).
- The bond shall include the address at which the Principal (contractor) and Surety may be served with notices, papers and other documents (CCP 995.320 (a)(2)).

Corporate Seal may be affixed hereto.

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

DESCRIPTION OF THE ATTACHED DOCUMENT

LABOR AND MATERIALS PAYMENT BOND  
SIGNATURE PAGE

(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

\_\_\_\_\_  
Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

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

- Partner (s)
- Attorney-in-Fact
- Other \_\_\_\_\_

ADDITIONAL OPTIONAL INFORMATION

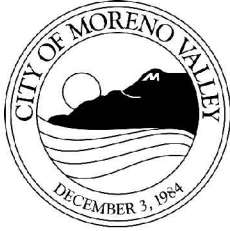
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- Securely attach this document to the signed document.

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>But</i>
CITY MANAGER	<i>MCS</i>

## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Chris A. Vogt, Public Works Director/City Engineer

**AGENDA DATE:** March 8, 2011

**TITLE:** AUTHORIZATION TO AWARD THE CONSTRUCTION CONTRACT FOR THE 2011 **LOCAL** STREET PAVEMENT RESURFACING – PROJECT NO. 11-22679728 - *PHASE 1*

---

### **RECOMMENDED ACTION**

Staff recommends that the City Council:

1. Award the construction contract for the 2011 Local Street Pavement Resurfacing – Phase 1 project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder.
2. Authorize the City Manager to execute a contract with Hardy & Harper, Inc. in the form attached hereto.
3. Authorize the issuance of a Purchase Order to Hardy & Harper, Inc. in the amount of \$2,410,400.00 (bid amount \$2,096,000.00 plus 15% contingency of \$314,400.00) when the contract has been signed by all parties (Account Nos. 125.56330 and 226.79728).
4. Authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Hardy & Harper, Inc., up to but not to exceed the Purchase Order contingency of \$314,400.00.

### **BACKGROUND**

On April 8, 2008 the City Council approved the Project Recommendations for Proposition 1B - Transportation which made the City eligible to receive Proposition 1B

funding from the State Department of Finance. On June 18, 2008, the City received the first Proposition 1B funding installment in the amount of \$2.9 million. On May 18, 2010, the City received the second installment in the amount of \$2.6 million, totaling \$5.5 million in Proposition 1B funding. The City has used \$3.0 million of this Proposition 1B funding in combination with Proposition 42 (Fund 225) funding for pavement rehabilitation of seven (7) arterial street segments and four (4) collector street segments in Fiscal Year 2009-2010 and 2010-2011. In addition, approximately \$450,000 of Proposition 1B funding was also used for citywide bridge repairs and maintenance.

As part of the Fiscal Year 2010-2011 CIP Budget, the City Council approved to use the remaining Proposition 1B monies for pavement rehabilitation of a number of local streets. The local streets included in Fiscal Year 2010-2011 CIP Budget were prioritized based on City Council authorization on March 24, 2009, and separated into two (2) phases. This Phase 1 project will resurface a total of twenty six (26) local streets. The number of streets to be included in Phase 2 project will depend on the remaining funding and project savings from Phase 1 project.

On June 8, 2010, the City Council actions taken as part of the Fiscal Year 2010-2011 City Budget Approval, a portion of \$1,037,000 in Measure A (Fund 125, Account No. 125.56330) became available for this project. The remaining portion of this Measure A (Fund 125) monies and the remaining Proposition 42 (Fund 225) monies will be used for the 2011 Pavement Resurfacing Project, which is to be constructed concurrently with this project.

The design and contract documents have been completed by in-house staff as a cost saving solution for the City. In January 2011, the project was advertised for construction bids.

**DISCUSSION**

This project will resurface twenty six (26) local streets which are included in the approved Capital Improvement Plan Fiscal Year 2010-2011. This project was designed to minimize the imported asphalt concrete materials by the use of pavement recycling to reduce the construction costs. The existing asphalt concrete pavement is to be ground up, hauled to designated processing plant, mixed with additional asphalt/oil, and re-layed in the streets. After pavement recycling, the streets will be overlaid with rubberized asphalt concrete to provide smooth, dark and robust finish surface. Rubberized asphalt concrete has many benefits including being cost effective, durable, safe, a proven road noise reduction paving product, and an environmentally friendly.

Formal bidding procedures have been followed in conformance with the Public Contract Code (PCC) and the City Clerk opened bids at 8:30 a.m., February 17, 2011, for the subject project. Five (5) bids were received, as follows:

- 1. **Hardy & Harper, Inc.** ..... **\$2,096,000.00**
- 2. All American Asphalt..... \$2,112,000.00

3. PALP, Inc. DBA Excel Paving Company.....	\$2,269,548.00
4. R.J. Nobel Company.....	\$2,336,170.00
5. Vance Corporation.....	\$2,379,940.00

Engineer’s Estimate ..... \$ 2,728,000.00

Staff has reviewed the bid by Hardy & Harper, Inc. and finds it to be the lowest responsible bidder in possession of a valid license and bid bond. No outstanding problems were identified through review of the references submitted by Hardy & Harper, Inc.

**ALTERNATIVES**

1. Award the construction contract for the 2011 Local Street Pavement Resurfacing – Phase 1 project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder, authorize the City Manager to execute a contract with Hardy & Harper, Inc. in the form attached hereto, authorize the issuance of a Purchase Order to Hardy & Harper, Inc. in the amount of \$2,410,400.00 (bid amount \$2,096,000.00 plus 15% contingency of \$314,400.00) when the contract has been signed by all parties (Account Nos. 125.56330 and 226.79728), authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Hardy & Harper, Inc., up to but not to exceed the Purchase Order contingency of \$314,400.00. *This alternative will allow for much needed improvements.*
  
2. Do not award the construction contract for the 2011 Local Street Pavement Resurfacing – Phase 1 project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder, authorize the City Manager to execute a contract with Hardy & Harper, Inc. in the form attached hereto, do not authorize the issuance of a Purchase Order to Hardy & Harper, Inc. in the amount of \$2,410,400.00 (bid amount \$2,096,000.00 plus 15% contingency of \$314,400.00) when the contract has been signed by all parties (Account Nos. 125.56330 and 226.79728), do not authorize the Public Works Director/City Engineer to execute any subsequent change orders to the contract with Hardy & Harper, Inc., up to but not to exceed the Purchase Order contingency of \$314,400.00. *This alternative will delay the completion of needed improvements.*

**FISCAL IMPACT**

The construction phase of this project is included in Fiscal Year 2010-2011 Capital Improvements Project Budget and will be financed by Measure A (Fund 125) and Proposition 1B (Fund 226). These funds are restricted to street rehabilitation or improvements. **There is no impact to the General Fund.**

**BUDGETED FUNDS**

Annual Pavement Resurfacing Program (Acct. No. 125.56330) .....	\$1,037,100
Annual Pavement Resurfacing Program (Acct. No. 225.68722) .....	\$1,550,000
Annual Pavement Resurfacing Program (Acct. No. 226.79728) .....	<u>\$3,793,300</u>
Total 2010/2011 Budgeted Funds .....	\$6,380,400
Completed 2010 Pavement Resurfacing Project Costs.....	(\$1,244,000)
2011 Pavement Resurfacing Project Costs (to be constructed concurrently).....	<u>(\$1,889,000)</u>
Remaining Funds Available.....	\$3,247,400

**ESTIMATED CONSTRUCTION RELATED COSTS FOR PROPOSED PROJECT**

Contractor Construction Costs (plus 15% contingency) .....	\$2,410,400
Construction Geotechnical Services .....	\$50,000
Construction Survey .....	\$30,000
Project Administration and Inspection (by City staff & consultants).....	<u>\$95,000</u>
Total Estimated Construction Related Costs.....	\$2,585,400

**ANTICIPATED PROJECT SCHEDULE**

Begin Construction.....	April, 2011
Complete Construction.....	July, 2011

**CITY COUNCIL GOALS**

**PUBLIC SAFETY:**

Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work, and visit the City of Moreno Valley.

**PUBLIC FACILITIES AND CAPITAL PROJECTS:**

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

**SUMMARY**

This project involves resurfacing twenty six (26) local street segments by rejuvenating the existing pavement and overlaying the recycled pavement with rubberized asphalt concrete. The project will enhance the drivability and appearance of the streets and protect the pavement against environmental effects, prolonging the service life of the pavement. The City Council is requested to approve the award of the construction contract to Hardy & Harper, Inc.

**ATTACHMENTS**

- Attachment "A" – Location Map
- Attachment "B" – Agreement with Hardy & Harper, Inc.

Prepared By:  
 Quang Nguyen, P.E.  
 Senior Engineer

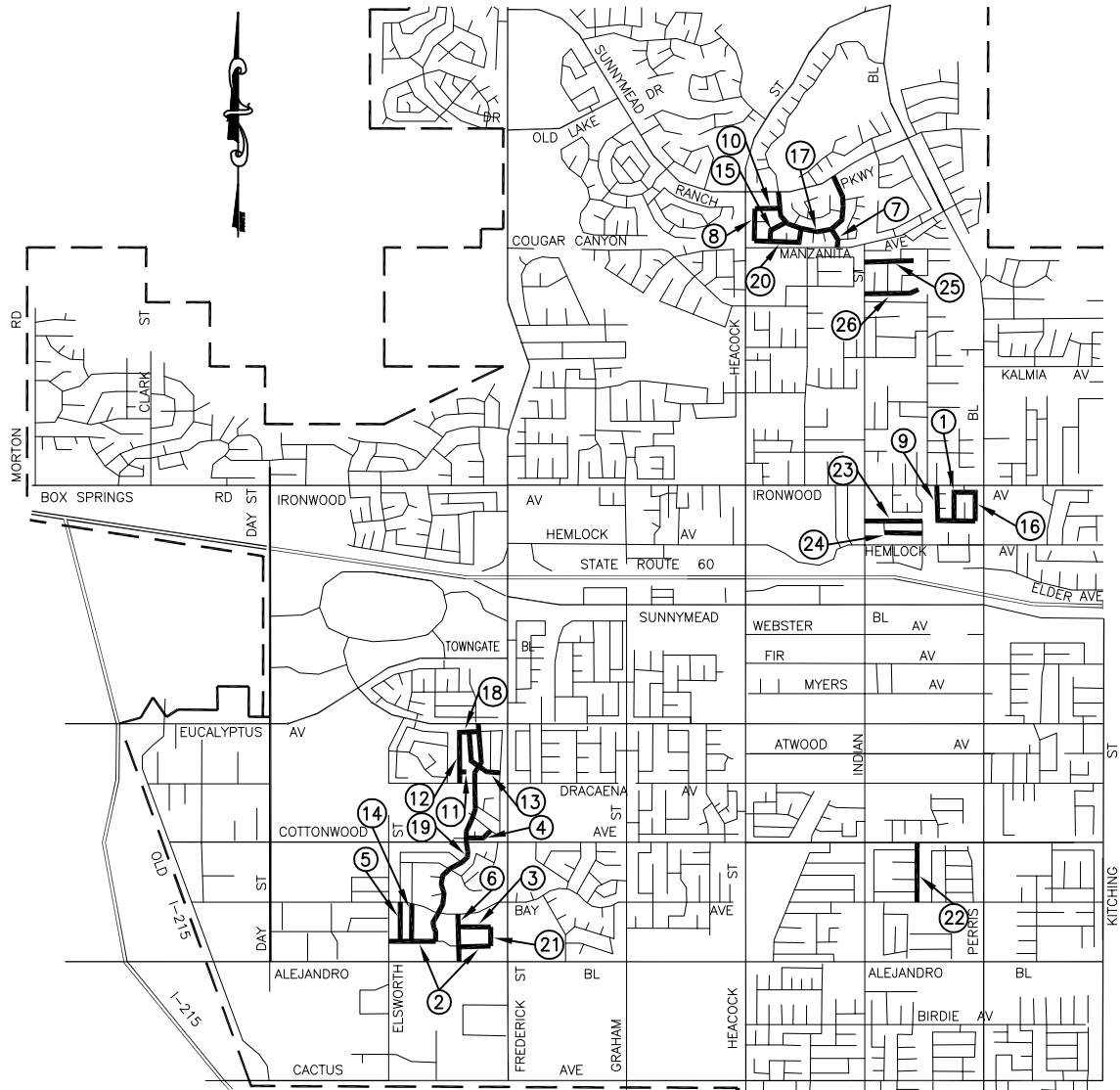
Department Head Approval:  
 Chris A. Vogt, P.E.  
 Public Works Director/City Engineer

Concurred By:  
 Prem Kumar, P.E.  
 Deputy Public Works Director/Assistant City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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STREET	LIMITS	STREET	LIMITS
① AARON DR:	GASSEN PL TO HARCLARE DR	⑭ MCDONNELL ST:	BAY AVE TO ADRIENNE AVE
② ADRIENNE AVE:	ELSWORTH ST TO PRIDE LN	⑮ NOBLEWOOD RD:	OLD COUNTRY RD TO PLEASANT RUN RD
③ ALLIES CT:	COURAGE ST TO PRIDE LN	⑯ ODESSA RD:	GASSEN PL TO HARCLARE DR
④ BAYWOOD DR:	PAN AM BLVD TO AQUEDUCT WY	⑰ OLD COUNTRY RD:	SUNNYMEAD RANCH TO SUNNYMEAD RANCH PKY
⑤ BOEING ST:	BAY AVE TO ADRIENNE AVE	⑱ PAHUTE DR:	PAN AM BLVD TO KIOWA DR
⑥ COURAGE ST:	BAY AVE TO ALESSANDRO BLVD	⑲ PAN AM BLVD:	EUCALYPTUS AVE TO ADRIENNE AVE
⑦ DUCKBILL RD:	OLD COUNTRY RD TO MANZANITA AVE	⑳ PLEASANT RUN RD:	FENTON RD TO OLD COUNTRY RD
⑧ FENTON RD:	IRONBARK RD TO PLEASANT RUN RD	㉑ PRIDE LN:	ALLIES CT TO ADRIENNE AVE
⑨ HARCLARE DR:	ODESSA DR TO IRONWOOD AVE	㉒ SEARSON DR:	IRONWOOD AVE TO BAY AVE
⑩ IRONBARK RD:	FENTON RD TO OLD COUNTRY RD	㉓ SINALOA ST:	INDIAN ST TO LEAHY DR
⑪ KIOWA CT:	KIOWA DR TO EAST END	㉔ SINGER ST:	HANOVER AVE TO LEAHY DR
⑫ KIOWA DR:	PAHUTE DR TO DRACAENA AVE	㉕ SUMMERFIELD DR:	INDIAN ST TO EAST END
⑬ LAKOTA DR:	PAHUTE DR TO OAK DELL ST	㉖ SUNNY RIDGE DR:	INDIAN ST TO EAST END



## 2011 LOCAL STREET PAVEMENT RESURFACING - PHASE 1

Public Works Department  
Capital Projects Division

VARIOUS LOCATIONS  
PROJECT NO. 11-22679728

### LOCATION MAP

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AGREEMENT

PROJECT NO. 11-22679729

**2011 LOCAL STREET PAVEMENT RESURFACING – PHASE 1  
Various Locations**

THIS Agreement, made and entered into as of the date signed by the City Manager, by and between the City of Moreno Valley, a municipal corporation, County of Riverside, State of California, hereinafter called the "City" and **Hardy & Harper, Inc.** hereinafter called the "Contractor."

That the City and the Contractor for the consideration hereinafter named, agree as follows:

1. The written Agreement includes all of the following:
  - a. Any and all Contract Change Orders issued after execution of this Agreement
  - b. Addenda No. 1 inclusive, issued prior to the opening of the Bids
  - c. The bound Bid Documents
  - d. The Special Provisions which include the General Provisions and Technical Provisions, all of which are parts of this Agreement
  - e. The project Plans
  - f. The Standard Plans
  - g. The Standard Specifications
  - h. Reference Specifications, all of which are essential parts of this Agreement
  - i. The Bidder's Proposal which includes the Bidder's Bond and Noncollusion Affidavit

In the event of any conflict in the provisions thereof, the terms of said Bid Documents as set forth above shall control, each over the other, in the order provided. The above items are incorporated in this Agreement as though set forth in full.

2. The Contractor shall furnish all materials, tools, equipment and labor, except as otherwise provided in the Plans or Special Provisions, and will perform all the work which is necessary to complete in a good, workmanlike and substantial manner the above said project in accordance with the Bid Documents for this project, the Bid Documents which are hereby specifically referred to and by such reference made a part hereof.

3. The City will pay the Contractor and the Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the City, to wit, the Bid Item(s) in the sum total amount of **\$2,096,000.00**, subject to additions or reductions of the quantities of the various bid items at the unit prices bid, for furnishing all materials and for doing all the work contemplated and embraced under this Agreement; for all loss or damages arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work, until the work is accepted by the City Council; for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work, the whole thereof, in the manner and in accordance with the Bid Documents therefore and the requirements of the Engineer under them.

4. The Contractor hereby agrees to commence work pursuant to this Agreement within fifteen (15) calendar days after the date of authorization specified in the Notice to Proceed. The Contractor agrees to diligently prosecute the contracted work, including corrective items of work, day to day thereafter, to completion, within **forty-five (45) working days** after said date in the "Notice to Proceed with Construction," except as adjusted by subsequent Contract Change Order(s).

5. The City and Contractor hereby agree that in case all construction called for under the Contract is

**AGREEMENT  
PROJECT NO. 11-22679728**

not completed within the time hereinabove specified, including City caused delays or extensions, damages will be sustained by the City and that, it is and will be impracticable or extremely difficult to ascertain and determine the actual amount of damages the City will sustain in the event of, and by reason of, such delay.

It is, therefore, agreed that such damages shall be presumed to be in the amount of \$250.00 per calendar day, and that the Contractor will pay to the City, or City may retain from amounts otherwise payable to Contractor, said amount for each calendar day by which the Contractor fails to complete the work, including corrective items of work, under this Agreement within the time hereinabove specified and as adjusted by Contract Change Order(s). The Contractor will not be assessed liquidated damages for delay(s) occasioned by the failure of the City or of the owner of a utility to provide for the removal or relocation of utility facilities.

6. The Contractor shall procure and maintain, at its sole expense, and throughout the term of this Agreement, any extension thereof, and for a one (1) year warranty period, General Liability, Automobile Liability, and Workers' Compensation Insurance with such coverage limits as described in this Agreement.

The Contractor shall name as additional insured, the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), and shall furnish the City with a certificate of insurance evidencing liability insurance policy or policies which shall provide coverage for owned and non-owned automobiles; manufacturers and Contractor's liability; broad form property damage in any case where the Contractor has any property belonging to the City in his care, custody or control; owners and Contractor's protective liability; blanket contractual liability; products and completed operations coverage; coverage for collapse, explosion, and where any excavation, digging or trenching is done with power equipment; and shall bear an endorsement containing the following Provisions:

Solely as respect to work done by or on behalf of the named insured for the City of Moreno Valley, it is agreed that the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), its officers, employees and agents, are added as additional insured under this policy and the coverage provided hereunder shall be primary insurance and not contributing with any other insurance available to the City of Moreno Valley, California, the Community Redevelopment Agency of the City of Moreno Valley, and the Moreno Valley Community Services District, its officers, employees and agents; under any third party liability policy.

It is further agreed that the other insurance provision(s) of the policy are amended to conform therewith.

The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. Insurance companies providing insurance here under shall be rated (A minus: VII - Admitted) or better in Best's Insurance Rating Guide and shall be legally licensed and qualified to conduct insurance business in the State of California.

The terms of the insurance policy or policies issued to provide the below insurance coverage(s) shall not be amended or canceled by the carrier without thirty (30) days prior written notice by certified or registered mail of amendments or cancellation to the City, except that cancellation for non-payment of premium shall require (10) days prior written notice by certified or registered mail. In the event the said insurance is canceled, the Contractor shall, prior to the cancellation date, submit to the City Clerk new evidence of insurance in the amounts established.

All liability insurance policies shall bear an endorsement or shall have an attached rider which provides that the City of Moreno Valley will be notified by certified or registered mail at least 30 days prior to the effective

**AGREEMENT  
PROJECT NO. 11-22679728**

date of cancellation, non-renewal, or material alteration of such policy.

All liability insurance shall cover comprehensive general liability for both bodily injury (including death) and property damage, including but not limited to aggregate products, aggregate operations, aggregate protective and aggregate contractual with the following minimum limits:

	Each Person	Each Occurrence	Aggregate
<b>Bodily Injury</b>	\$500,000.00	\$1,000,000.00	\$2,000,000.00
<b>Property Damage</b>	---	\$1,000,000.00	\$2,000,000.00

A combined single limit for Bodily Injury Liability and Property Damage Liability of \$2,000,000.00 for each occurrence will be considered equivalent to the above minimum limits for Comprehensive General Liability.

Property Damage Insurance shall cover full replacement value for damages to any property caused directly or indirectly by or from acts or activities of the Contractor or its sub-contractors or any person acting for the Contractor or under its control or direction.

The Contractor shall procure and maintain, at its sole expense, and throughout the term of this Agreement and any extension thereof, Public Liability and Property Damage Insurance coverage for owned and non-owned automotive equipment operated. Such coverage limits shall not be less than \$1,000,000 combined single limit.

Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

The Contractor shall also furnish the City with a certificate evidencing Worker's Compensation Insurance with limits as established by the State of California.

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

7. The Contractor hereby agrees to provide and maintain in effect two (2) good and sufficient Surety Bonds for one hundred percent (100%) each of the contract price. The bonds shall be a "Faithful Performance Bond" which shall guarantee the faithful performance of all work and a "Labor and Materials Payment Bond" which shall secure the payment of the claims of labor, mechanics, or materialmen for all work under the Contract pursuant to Section 3247 of the Civil Code.

8. The Contractor, the Contractor's heirs, executors, administrators, successors, or assigns guarantee that all work performed under this Agreement fully meets the requirements thereof as to quality of workmanship and materials furnished. If any defects in materials or workmanship become evident within a period of one year from the date of the acceptance of the work by the City Council, the Contractor shall, at his or her own expense, make any repair(s) or replacement(s) necessary to restore the work to full compliance with the Plans and Specifications.

9. The Contractor and any agents or subcontractors of the Contractor shall pay the prevailing rates of per diem wages established by the California Department of Industrial Relations. The Contractor and any

**AGREEMENT  
PROJECT NO. 11-22679728**

agents or subcontractors of the Contractor shall also adhere to the California Labor Code, Division 2, Part 7, "Public Works and Public Agencies," and the California Administrative Code, Title 8, Group 3, "Payment of Prevailing Wages upon Public Works," all of which are made a part of the Contract documents.

10. The Contractor agrees that he or she and its subcontractors shall maintain and keep books, payrolls, invoices of materials, records on a current basis, and recording all transactions pertaining to this Agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the City of Moreno Valley, County, the State of California, the Federal Government and to any authorized representative thereof for purposes of audit and inspection at all reasonable times and places. All such books, payrolls, invoices of materials, and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter period of retention, all books, records, and supporting detail shall be retained for a period of at least three years after expiration of the term of this Agreement.

11. Pursuant to California Public Contract Code Section 22300, the Contractor will be permitted the substitution of securities for any monies withheld by the City of Moreno Valley to ensure performance under Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City of Moreno Valley, or with a state or federally chartered bank as the escrow agent, who shall pay such monies to the Contractor. Securities eligible for substitution under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, and standby letters of credit. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any dividends or interest thereon. The Contractor shall give the City written notice within thirty (30) days after the Contract is awarded that it desires to substitute securities for money that would ordinarily be withheld. If the substituted securities are deposited into an escrow, the escrow shall be governed by a written escrow Agreement in a form which is substantially similar to the Agreement set forth in Section 22300, of the Public Contract Code.

12. The Contractor agrees to indemnify, defend, and save the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), its officers, agents, and employees harmless from any and all liability, claims, damages or injuries to any person, including injury to the Contractor's employees and all claims which arise from or are connected with the negligent performance of or failure to perform the work or other obligations of this Agreement, or are caused or claimed to be caused by the negligent acts of the Contractor its officers, agents, employees, sub-contractors or suppliers, and all expenses of investigating and defending against the same; provided, however, that this indemnification and hold harmless shall not include any claims arising from the sole negligence or willful misconduct of the City, RDA, and CSD, its officers, agents, or employees.

The obligation to indemnify, defend and hold harmless set forth herein shall include, without limitation, any and all attorney's fees incurred by the party to be indemnified, defended, or held harmless, whether in a judicial or administrative action or in arbitration, and whether the issue is between the parties or involves one or more third parties.

13. The parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all of the provisions herein contained. The Contractor may not, either voluntarily or by action of law, assign any obligation assumed by the Contractor hereunder without prior written consent of the City.

14. Should either party bring any legal or equitable action for the purpose of protecting or enforcing its rights under this Agreement, the prevailing party in such action shall recover in addition to all other relief, its reasonable attorney's fees and court costs to be fixed by the court.

**AGREEMENT  
PROJECT NO. 11-22679728**

In addition to the foregoing award of attorney's fees, the prevailing party shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgments in connection with this Agreement. The Provision is separate and several and shall survive the merge of this Provision into any judgment.

15. By my signature hereunder, as Contractor, I certify that I am aware of the Provisions of Section 3700, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the Provisions of that code, and I will comply with such Provisions before commencing the performance of the work of this Agreement.

16. The effective date of this Agreement shall be the date of the Award of Contract by the City of Moreno Valley.

17. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95826. Mailing address: P.O. Box 26000, Sacramento, CA 95826.

**(SIGNATURE PAGE FOLLOWS)**

**AGREEMENT  
PROJECT NO. 11-22679728**

CITY OF MORENO VALLEY, Municipal Corporation

Hardy & Harper, Inc.

BY: \_\_\_\_\_  
City Manager

License No./  
Classification: \_\_\_\_\_

DATE: \_\_\_\_\_

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

Federal I.D. No.: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

<u>INTERNAL USE ONLY</u>
APPROVED AS TO LEGAL FORM:
_____
City Attorney
_____
Date
RECOMMENDED FOR APPROVAL:
_____
Public Works Director/City Engineer <i>(if contract exceeds \$15,000)</i>
_____
Date

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SIGNING INSTRUCTION TO THE CONTRACTOR:**

All signatures on the Agreement on behalf of the Contractor must be acknowledged before a notary public. Attach Notary Certificates following this page.

**General Partners must sign on behalf of the partnership.**

**In the event that the contracting firm is a corporation, two (2) corporate officer's having authority from the corporation MUST sign (two (2) signatures total). If the corporation has a corporate resolution stating that one person is authorized to sign on behalf of all officers, attach corporate resolution immediately following the notary certificates. Corporate Seal may be affixed hereto.**

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CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_,

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

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

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

DESCRIPTION OF THE ATTACHED DOCUMENT

AGREEMENT SIGNATURE PAGE  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

\_\_\_\_\_  
Additional Information

CAPACITY CLAIMED BY THE SIGNER

Individual(s)  
 Corporate Officer  
\_\_\_\_\_  
(Title)

Partner (s)  
 Attorney-in-Fact  
 Other \_\_\_\_\_

BOND NO. \_\_\_\_\_

PREMIUM \$ \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND  
(100% of Total Contract Amount)**

**PROJECT NO. 11-22679728**

**2011 LOCAL STREET PAVEMENT RESURFACING – PHASE 1  
Various Locations**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City," has awarded to Hardy & Harper, Inc., as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City Manager, and identified as Project No. 11-22679728, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Agreement is required to furnish a bond guaranteeing the faithful performance of said Agreement;

NOW THEREFORE, we the undersigned Contractor and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Moreno Valley, County of Riverside in the penal sum of \_\_\_\_\_ dollars, (\$ \_\_\_\_\_), lawful money of the United States, to be paid to the said City or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Contractor, his or her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in said Agreement and any alterations thereof made as therein provided, on his or her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Moreno Valley, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In the event suit is brought upon this bond by the City and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder, or the Provisions accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or the Provisions.

**(SIGNATURE PAGE FOLLOWS)**



**FAITHFUL PERFORMANCE BOND  
PROJECT NO. 11-22679728**

**BOND NO.** \_\_\_\_\_

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_.

**CONTRACTOR (Principal)**

**SURETY**

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

Print Name: \_\_\_\_\_  
Attorney-in-Fact

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved as to Form this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
City Attorney  
City of Moreno Valley

**NOTE:**

- The bond shall be executed by an admitted Surety insurer (CCP 995.311) and the Surety must be registered as an admitted insurer in at least one county in the State of California.
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact and the Contractor.
- The bond shall include an attached original Power of Attorney duly authorizing the Attorney-in-Fact to act for the Surety (CCP 1305).
- The bond shall include the address at which the Principal (contractor) and Surety may be served with notices, papers and other documents (CCP 995.320 (a)(2)).

Corporate Seal may be affixed hereto.

**CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT**

**SAMPLE**

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_,

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

**ADDITIONAL OPTIONAL INFORMATION**

**INSTRUCTIONS FOR COMPLETING THIS FORM**

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

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

**DESCRIPTION OF THE ATTACHED DOCUMENT**

FAITHFUL PERFORMANCE BOND SIGNATURE PAGE

(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

\_\_\_\_\_  
Additional Information

**CAPACITY CLAIMED BY THE SIGNER**

- Individual(s)
- Corporate Officer

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

- Partner (s)
- Attorney-in-Fact
- Other \_\_\_\_\_

BOND NO. \_\_\_\_\_

PREMIUM \$ \_\_\_\_\_

**LABOR AND MATERIALS PAYMENT BOND  
(100% of Total Contract Amount)**

**PROJECT NO. 11-22679728**

**2011 LOCAL STREET PAVEMENT RESURFACING – PHASE 1  
Various Street**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City", has awarded to Hardy & Harper, Inc., as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City Manager, and identified as Project No. 11-22679728, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Agreement is required to furnish a bond to secure the payment of claims of laborers, mechanics, materialmen, and other persons, as provided by law;

NOW, THEREFORE, we the undersigned Contractor and \_\_\_\_\_, as Surety are held and firmly bound unto the City of Moreno Valley, County of Riverside, in the penal sum of \_\_\_\_\_ dollars, (\$ \_\_\_\_\_), lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Contractor, his or her or its heirs, executors, administrator, successors or assigns, or subcontractors, shall fail to pay any of the persons described in the State of California Civil Code, Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and his or her subcontractors, pursuant to Section 13020, of the Unemployment Insurance Code, with respect to such work and labor, that the Surety or Sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In the event suit is brought upon this bond by the City or other person entitled to bring such an action and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons described in the State of California Civil Code Section 3181, to give a right of action to such persons or their assigns in any suit brought upon this bond.

**(SIGNATURE PAGE FOLLOWS)**

**LABOR AND MATERIALS PAYMENT BOND  
PROJECT NO. 11-22679728**

**BOND NO.** \_\_\_\_\_

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_.

**CONTRACTOR (Principal)**

**SURETY**

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

Print Name: \_\_\_\_\_  
Attorney-in-Fact

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved as to Form this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
City Attorney  
City of Moreno Valley

**NOTE:**

- The bond shall be executed by an admitted Surety insurer (CCP 995.311) and the Surety must be registered as an admitted insurer in at least one county in the State of California.
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact and the Contractor.
- The bond shall include an attached original Power of Attorney duly authorizing the Attorney-in-Fact to act for the Surety (CCP 1305).
- The bond shall include the address at which the Principal (contractor) and Surety may be served with notices, papers and other documents (CCP 995.320 (a)(2)).

Corporate Seal may be affixed hereto.

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CERTIFICATE OF ACKNOWLEDGMENT**

**SAMPLE**

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_,

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

**DESCRIPTION OF THE ATTACHED DOCUMENT**

LABOR AND MATERIALS PAYMENT BOND  
SIGNATURE PAGE

(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

\_\_\_\_\_  
Additional Information

**CAPACITY CLAIMED BY THE SIGNER**

- Individual(s)
- Corporate Officer

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

- Partner (s)
- Attorney-in-Fact
- Other \_\_\_\_\_

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INSTRUCTIONS FOR COMPLETING THIS FORM**

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- Securely attach this document to the signed document.

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>Ret</i>
CITY MANAGER	<i>ms</i>

## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Chris A. Vogt, P.E., Public Works Director/City Engineer

**AGENDA DATE:** March 8, 2011

**TITLE:** AUTHORIZATION TO AWARD THE CONSTRUCTION CONTRACT FOR THE 2011 PAVEMENT RESURFACING PROJECT  
PROJECT NO. 11-12556330

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### RECOMMENDED ACTION

Staff recommends that the City Council:

1. Award the construction contract in the amount of \$1,441,000 for the 2011 Pavement Resurfacing Project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder.
2. Authorize the City Manager to Execute a contract with Hardy & Harper, Inc. in the form attached hereto.
3. Authorize the issuance of a Purchase Order to Hardy & Harper, Inc. for a total amount of \$1,729,200 (\$1,441,000 bid amount plus 20% contingency) when the contract has been signed by all parties.
4. Authorize the Public Works Director/City Engineer to execute any subsequent change order to the contract with Hardy & Harper, Inc. up to but not to exceed the Purchase Order's total contingency of \$288,200, subject to the approval of the City Attorney.

### BACKGROUND

The State of California provides street maintenance funding to the City on a quarterly basis as part of the Traffic Congestion Relief Program (Proposition 42). These funds are typically utilized to rehabilitate streets under the Annual Pavement Resurfacing

Program (Account No. 225.68722) and are time sensitive in requirement for expenditure.

On April 8, 2008 the City Council approved this Project as Recommended for Proposition 1B funding - the City was made eligible to receive Proposition 1B funding from the State Department of Finance through transportation (Account No. 226.79728). On June 18, 2008, the City received the first Proposition 1B funding installment in the amount of \$2.9 million. On May 18, 2010, the City received the second installment in the amount of \$2.6 million, totaling \$5.5 million in Proposition 1B funding. The City has used approximately \$3.3 million of the available Proposition 1B funding in combination with Proposition 42 (Fund 225) funding for pavement rehabilitation of seven (7) arterial street segments and four (4) collector street segments in Fiscal Years 2009/2010 and 2010/2011.

As part of the Fiscal Year 2010/2011 CIP Budget, the City Council approved use of the remaining Proposition 1B monies for pavement rehabilitation of the six arterial and collector streets identified in this report.

The design and construction documents have been prepared by in-house staff as a cost saving solution for the City. In January 2011, the Plans and Specifications were approved by the City Engineer, and the project was advertised for construction bids.

**DISCUSSION**

This project will provide for the resurfacing of six (6) existing city streets: Kitching Street from Fir Avenue to Cottonwood Avenue, Fir Avenue from Perris Boulevard to Lasselle Street, Perris Boulevard from Webster Avenue to Sunnymead Boulevard, Cactus Avenue from Commerce Center Drive to Elsworth Street, Indian Street from Ironwood Avenue to Sunnymead Boulevard, and Manzanita Avenue from Heacock Street to Perris Boulevard. Construction will generally include crack sealing, resurfacing with cold-in-place recycling (CIPR), rubberized asphalt concrete overlay, slurry seal, repair and/or reconstruction of several PCC access ramps to ADA requirements, re-establishment of traffic signal detector loops, hand-holes, utility covers, manholes, and re-striping work.

Formal bidding procedures have been followed in conformance with the Public Contract Code. The lowest responsible bidder was determined by comparing the cumulative total for all Base Bid, and Additive Alternate "A" and "B" bid items, as stipulated in the bid documents. The City Clerk opened bids at 2:00 p.m., on February 16, 2011, for the subject project. The Eight (8) valid bids received are as follows:

<u>CONTRACTORS</u>	<u>Bid Amount</u>
1. <b>Hardy &amp; Harper, Inc., Santa Ana</b> .....	<b>\$1,441,000.00</b>
2. Cooley Construction, Inc., Hesperia .....	\$1,499,974.70
3. Elite Bobcat Services, Inc., Corona .....	\$1,537,852.06



4.	R.J. Noble Company, Orange.....	\$1,600,353.29
5.	All American Asphalt, Corona.....	\$1,661,759.96
6.	Silvia Construction, Inc., Rancho Cucamonga.....	\$1,698,517.62
7.	Excel Paving Company, Long Beach .....	\$1,719,187.98
8.	Vance Corporation, Rialto .....	\$1,771,771.00
	Engineer's Estimate .....	\$1,471,682.00

Staff has reviewed the bid by Hardy & Harper, Inc. and finds it to be the lowest responsible bidder in possession of a valid license and bid bond. No outstanding issues were identified through review of the references submitted by Hardy & Harper, Inc. in their bid.

City staff is recommending a contract award to Hardy & Harper, Inc. for the Base Bid items, Additive Alternate "A" and Additive Alternate "B".

The Contractor will provide notification to all potentially affected property owners, and provide safe ingress and egress to their properties during construction. The Contractor shall notify local law enforcement, Fire Department, Waste Management of the Inland Empire, postal service, school district, and other affected entities of the project schedule.

**ALTERNATIVES**

1. Award the construction contract in the amount of \$1,441,000 for the 2011 Pavement Resurfacing Project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder, authorize the City Manager to Execute a contract with Hardy & Harper, Inc. in the form attached hereto, authorize the issuance of a Purchase Order to Hardy & Harper, Inc. for a total amount of \$1,729,200 (\$1,441,000 bid amount plus 20% contingency) when the contract has been signed by all parties, and authorize the Public Works Director/City Engineer to execute any subsequent change order to the contract with Hardy & Harper, Inc. up to but not to exceed the Purchase Order's total contingency of \$288,200, subject to the approval of the City Attorney. *This alternative will allow for the timely construction of needed improvements.*
  
2. Do not award the construction contract in the amount of \$1,441,000 for the 2011 Pavement Resurfacing Project to Hardy & Harper, Inc., 1312 East Warner Avenue, Santa Ana, CA 92705, the lowest responsible bidder, do not authorize the City Manager to Execute a contract with Hardy & Harper, Inc. in the form attached hereto, do not authorize the issuance of a Purchase Order to Hardy & Harper, Inc. for a total amount of \$1,729,200 (\$1,441,000 bid amount plus 20% contingency) when the contract has been signed by all parties, and do not authorize the Public Works Director/City Engineer to execute any subsequent change order to the contract with Hardy & Harper, Inc. up to but not to exceed the Purchase Order's total contingency of \$288,200, subject to the approval of

the City Attorney. *This alternative will delay the construction of these needed improvements.*

### **FISCAL IMPACT**

The construction phase of this project is included on the Fiscal Year 2010/2011 Capital Improvements Project Budget and will be financed by Measure A (Fund 125), Proposition 1B (Fund 226), and Proposition 42 (Fund 225). The funding for this project is restricted to capital improvements, and cannot be used for operational activities. There is no impact to the General Fund.

#### **AVAILABLE CONSTRUCTION FUNDS:**

Annual Pavement Resurfacing Program (Acct. No. 125.56330) .....	\$1,037,100
Annual Pavement Resurfacing Program (Acct. No. 225.68722) .....	\$1,550,000
Annual Pavement Resurfacing Program (Acct. No. 226.79728) .....	<u>\$3,793,300</u>
Total 2010/2011 Budgeted Funds .....	\$6,380,400
Completed 2010 Pavement Resurfacing Project Costs.....	(\$1,244,000)
2011 Local Street Pavement Resurfacing Phase I (to be completed concurrently) .....	<u>(\$2,585,400)</u>
Remaining Funds Available.....	\$2,551,000

#### **ESTIMATED CONSTRUCTION RELATED COSTS:**

Construction (Includes 20% contingency) .....	\$1,729,000
Construction Surveying Costs .....	\$30,000
Construction Geotechnical Costs .....	\$40,000
Project Administration and Inspection Services .....	<u>\$90,000</u>
<b>Total Estimated Construction Related Costs .....</b>	<b><u>\$1,889,000</u></b>

#### **ANTICIPATED PROJECT SCHEDULE:**

Start Construction.....	April 2011
Complete Construction.....	June 2011

### **CITY COUNCIL GOALS**

#### **POSITIVE ENVIRONMENT:**

Create a positive environment for the development of Moreno Valley's future.

#### **PUBLIC FACILITIES AND CAPITAL PROJECTS:**

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

**SUMMARY**

This project will provide for the resurfacing of six (6) existing city streets: Kitching Street from Fir Avenue to Cottonwood Avenue, Fir Avenue from Perris Boulevard to Lasselle Street, Perris Boulevard from Webster Avenue to Sunnymead Boulevard, Cactus Avenue from Commerce Center Drive to Elsworth Street, Indian Street from Ironwood Avenue to Sunnymead Boulevard, and Manzanita Avenue from Heacock Street to Perris Boulevard. Construction will generally include crack sealing, resurfacing with cold-in-place recycling (CIPR), rubberized asphalt concrete overlay, slurry seal, repair and/or reconstruction of several PCC access ramps to ADA requirements, re-establishment of traffic signal detector loops, hand-holes, utility covers, manholes, and re-striping work.

**ATTACHMENTS**

Attachment "A" – Location Map

Attachment "B" – Agreement, Project No. 11-12556330

Prepared By:  
Christopher L. Wiberg  
Senior Engineer, P.E.

Department Head Approval:  
Chris A. Vogt, P.E.  
Public Works Director/City Engineer

Concurred By:  
Prem Kumar, P.E.  
Deputy Public Works Director/Assistant City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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AGREEMENT

PROJECT NO. 11-12556330

**2011 PAVEMENT RESURFACING PROJECT**

**Kitching Street (Fir Avenue to Cottonwood Avenue)**  
**Manzanita Avenue (Heacock Street to Perris Boulevard)**  
**Cactus Avenue (Commerce Center Drive to Elsworth Street)**  
**Indian Street (Ironwood Avenue to Sunnymead Boulevard)**  
**Fir Avenue (Perris Boulevard to Lasselle Street)**  
**Perris Boulevard (Webster Avenue to Sunnymead Boulevard)**

THIS Agreement, made and entered into as of the date signed by the City Manager, by and between the City of Moreno Valley, a municipal corporation, County of Riverside, State of California, hereinafter called the "City" and Hardy & Harper, Inc., hereinafter called the "Contractor."

That the City and the Contractor for the consideration hereinafter named, agree as follows:

1. The written Agreement includes all of the following:
  - a. Any and all Contract Change Orders issued after execution of this Agreement
  - b. Addenda Nos. 2 inclusive, issued prior to the opening of the Bids
  - c. The bound Bid Documents
  - d. The Special Provisions which include the General Provisions and Technical Provisions, all of which are parts of this Agreement
  - e. The project Plans
  - f. The Standard Plans
  - g. The Standard Specifications
  - h. Reference Specifications, all of which are essential parts of this Agreement
  - i. The Bidder's Proposal which includes the Bidder's Bond and Noncollusion Affidavit

In the event of any conflict in the provisions thereof, the terms of said Bid Documents as set forth above shall control, each over the other, in the order provided. The above items are incorporated in this Agreement as though set forth in full.

2. The Contractor shall furnish all materials, tools, equipment and labor, except as otherwise provided in the Plans or Special Provisions, and will perform all the work which is necessary to complete in a good, workmanlike and substantial manner the above said project in accordance with the Bid Documents for this project, the Bid Documents which are hereby specifically referred to and by such reference made a part hereof.

3. The City will pay the Contractor and the Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the City, to wit, the Base Bid Item(s) and Additive Bid Item(s) in the sum total amount of **\$1,441,000**, subject to additions or reductions of the quantities of the various bid items at the unit prices bid, for furnishing all materials and for doing all the work contemplated and embraced under this Agreement; for all loss or damages arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work, until the work is accepted by the City Council; for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work, the whole thereof, in the manner and in accordance with the Bid Documents therefore and the requirements of the Engineer under them.

**AGREEMENT**  
**PROJECT NO. 11-12556330**

4. The Contractor hereby agrees to commence work pursuant to this Agreement within fifteen (15) calendar days after the date of authorization specified in the Notice to Proceed. The Contractor agrees to diligently prosecute the contracted work, including corrective items of work, day to day thereafter, to completion, within **Sixty (60) working days** after said date in the "Notice to Proceed with Construction," except as adjusted by subsequent Contract Change Order(s).

5. The City and Contractor hereby agree that in case all construction called for under the Contract is not completed within the time hereinabove specified, including City caused delays or extensions, damages will be sustained by the City and that, it is and will be impracticable or extremely difficult to ascertain and determine the actual amount of damages the City will sustain in the event of, and by reason of, such delay.

It is, therefore, agreed that such damages shall be presumed to be in the amount of \$350.00 per calendar day, and that the Contractor will pay to the City, or City may retain from amounts otherwise payable to Contractor, said amount for each calendar day by which the Contractor fails to complete the work, including corrective items of work, under this Agreement within the time hereinabove specified and as adjusted by Contract Change Order(s). The Contractor will not be assessed liquidated damages for delay(s) occasioned by the failure of the City or of the owner of a utility to provide for the removal or relocation of utility facilities.

6. The Contractor shall procure and maintain, at its sole expense, and throughout the term of this Agreement, any extension thereof, and for a one (1) year warranty period, General Liability, Automobile Liability, and Workers' Compensation Insurance with such coverage limits as described in this Agreement.

The Contractor shall name as additional insured, the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), and shall furnish the City with a certificate of insurance evidencing liability insurance policy or policies which shall provide coverage for owned and non-owned automobiles; manufacturers and Contractor's liability; broad form property damage in any case where the Contractor has any property belonging to the City in his care, custody or control; owners and Contractor's protective liability; blanket contractual liability; products and completed operations coverage; coverage for collapse, explosion, and where any excavation, digging or trenching is done with power equipment; and shall bear an endorsement containing the following Provisions:

Solely as respect to work done by or on behalf of the named insured for the City of Moreno Valley, it is agreed that the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), its officers, employees and agents, are added as additional insured under this policy and the coverage provided hereunder shall be primary insurance and not contributing with any other insurance available to the City of Moreno Valley, California, the Community Redevelopment Agency of the City of Moreno Valley, and the Moreno Valley Community Services District, its officers, employees and agents; under any third party liability policy.

It is further agreed that the other insurance provision(s) of the policy are amended to conform therewith.

The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. Insurance companies providing insurance here under shall be rated (A minus: VII - Admitted) or better in Best's Insurance Rating Guide and shall be legally licensed and qualified to conduct insurance business in the State of California.



**AGREEMENT  
PROJECT NO. 11-12556330**

The terms of the insurance policy or policies issued to provide the below insurance coverage(s) shall not be amended or canceled by the carrier without thirty (30) days prior written notice by certified or registered mail of amendments or cancellation to the City, except that cancellation for non-payment of premium shall require (10) days prior written notice by certified or registered mail. In the event the said insurance is canceled, the Contractor shall, prior to the cancellation date, submit to the City Clerk new evidence of insurance in the amounts established.

All liability insurance policies shall bear an endorsement or shall have an attached rider which provides that the City of Moreno Valley will be notified by certified or registered mail at least 30 days prior to the effective date of cancellation, non-renewal, or material alteration of such policy.

All liability insurance shall cover comprehensive general liability for both bodily injury (including death) and property damage, including but not limited to aggregate products, aggregate operations, aggregate protective and aggregate contractual with the following minimum limits:

	Each Person	Each Occurrence	Aggregate
<b>Bodily Injury</b>	\$500,000.00	\$1,000,000.00	\$2,000,000.00
<b>Property Damage</b>	---	\$1,000,000.00	\$2,000,000.00

A combined single limit for Bodily Injury Liability and Property Damage Liability of \$2,000,000.00 for each occurrence will be considered equivalent to the above minimum limits for Comprehensive General Liability.

Property Damage Insurance shall cover full replacement value for damages to any property caused directly or indirectly by or from acts or activities of the Contractor or its sub-contractors or any person acting for the Contractor or under its control or direction.

The Contractor shall procure and maintain, at its sole expense, and throughout the term of this Agreement and any extension thereof, Public Liability and Property Damage Insurance coverage for owned and non-owned automotive equipment operated. Such coverage limits shall not be less than \$1,000,000 combined single limit.

Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

The Contractor shall also furnish the City with a certificate evidencing Worker's Compensation Insurance with limits as established by the State of California.

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

7. The Contractor hereby agrees to provide and maintain in effect two (2) good and sufficient Surety Bonds for one hundred percent (100%) each of the contract price. The bonds shall be a "Faithful Performance Bond" which shall guarantee the faithful performance of all work and a "Labor and Materials Payment Bond" which shall secure the payment of the claims of labor, mechanics, or materialmen for all work under the Contract pursuant to Section 3247 of the Civil Code.

**AGREEMENT**  
**PROJECT NO. 11-12556330**

8. The Contractor, the Contractor's heirs, executors, administrators, successors, or assigns guarantee that all work performed under this Agreement fully meets the requirements thereof as to quality of workmanship and materials furnished. If any defects in materials or workmanship become evident within a period of one year from the date of the acceptance of the work by the City Council, the Contractor shall, at his or her own expense, make any repair(s) or replacement(s) necessary to restore the work to full compliance with the Plans and Specifications.

9. The Contractor and any agents or subcontractors of the Contractor shall pay the prevailing rates of per diem wages established by the California Department of Industrial Relations. The Contractor and any agents or subcontractors of the Contractor shall also adhere to the California Labor Code, Division 2, Part 7, "Public Works and Public Agencies," and the California Administrative Code, Title 8, Group 3, "Payment of Prevailing Wages upon Public Works," all of which are made a part of the Contract documents.

10. The Contractor agrees that he or she and its subcontractors shall maintain and keep books, payrolls, invoices of materials, records on a current basis, and recording all transactions pertaining to this Agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the City of Moreno Valley, County, the State of California, the Federal Government and to any authorized representative thereof for purposes of audit and inspection at all reasonable times and places. All such books, payrolls, invoices of materials, and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter period of retention, all books, records, and supporting detail shall be retained for a period of at least three years after expiration of the term of this Agreement.

11. Pursuant to California Public Contract Code Section 22300, the Contractor will be permitted the substitution of securities for any monies withheld by the City of Moreno Valley to ensure performance under Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City of Moreno Valley, or with a state or federally chartered bank as the escrow agent, who shall pay such monies to the Contractor. Securities eligible for substitution under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, and standby letters of credit. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any dividends or interest thereon. The Contractor shall give the City written notice within thirty (30) days after the Contract is awarded that it desires to substitute securities for money that would ordinarily be withheld. If the substituted securities are deposited into an escrow, the escrow shall be governed by a written escrow Agreement in a form which is substantially similar to the Agreement set forth in Section 22300, of the Public Contract Code.

12. The Contractor agrees to indemnify, defend, and save the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), and the Moreno Valley Community Services District (CSD), its officers, agents, and employees harmless from any and all liability, claims, damages or injuries to any person, including injury to the Contractor's employees and all claims which arise from or are connected with the negligent performance of or failure to perform the work or other obligations of this Agreement, or are caused or claimed to be caused by the negligent acts of the Contractor its officers, agents, employees, sub-contractors or suppliers, and all expenses of investigating and defending against the same; provided, however, that this indemnification and hold harmless shall not include any claims arising from the sole negligence or willful misconduct of the City, RDA, and CSD its officers, agents, or employees.

The obligation to indemnify, defend and hold harmless set forth herein shall include, without limitation, any and all attorney's fees incurred by the party to be indemnified, defended, or held harmless, whether in a judicial or administrative action or in arbitration, and whether the issue is between the parties or involves one or more third parties.

**AGREEMENT**  
**PROJECT NO. 11-12556330**

13. The parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all of the provisions herein contained. The Contractor may not, either voluntarily or by action of law, assign any obligation assumed by the Contractor hereunder without prior written consent of the City.

14. Should either party bring any legal or equitable action for the purpose of protecting or enforcing its rights under this Agreement, the prevailing party in such action shall recover in addition to all other relief, its reasonable attorney's fees and court costs to be fixed by the court.

In addition to the foregoing award of attorney's fees, the prevailing party shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgments in connection with this Agreement. The Provision is separate and several and shall survive the merge of this Provision into any judgment.

15. By my signature hereunder, as Contractor, I certify that I am aware of the Provisions of Section 3700, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the Provisions of that code, and I will comply with such Provisions before commencing the performance of the work of this Agreement.

16. The effective date of this Agreement shall be the date of the Award of Contract by the City of Moreno Valley.

17. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95826. Mailing address: P.O. Box 26000, Sacramento, CA 95826.

**(SIGNATURE PAGE FOLLOWS)**

**AGREEMENT  
PROJECT NO. 11-12556330**

CITY OF MORENO VALLEY, Municipal Corporation

(Name of Contractor)

BY: \_\_\_\_\_  
City Manager

License No./  
Classification: \_\_\_\_\_

DATE: \_\_\_\_\_

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

Federal I.D. No.: \_\_\_\_\_

<b>INTERNAL USE ONLY</b>
APPROVED AS TO LEGAL FORM:
_____
City Attorney
_____
Date
RECOMMENDED FOR APPROVAL:
_____
Public Works Director/City Engineer
_____
Date

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SIGNING INSTRUCTION TO THE CONTRACTOR:**

All signatures on the Agreement on behalf of the Contractor must be acknowledged before a notary public. Attach Notary Certificates following this page.

**General Partners must sign on behalf of the partnership.**

**In the event that the contracting firm is a corporation, two (2) corporate officer's having authority from the corporation MUST sign (two (2) signatures total). If the corporation has a corporate resolution stating that one person is authorized to sign on behalf of all officers, attach corporate resolution immediately following the notary certificates. Corporate Seal may be affixed hereto.**

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

DESCRIPTION OF THE ATTACHED DOCUMENT

AGREEMENT SIGNATURE PAGE  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

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

- Partner (s)
- Attorney-in-Fact
- Other \_\_\_\_\_

ADDITIONAL OPTIONAL INFORMATION  
INSTRUCTIONS FOR COMPLETING THIS FORM

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  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.

BOND NO. \_\_\_\_\_

PREMIUM \$ \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND  
(100% of Total Contract Amount)**

**PROJECT NO. 11-12556330**

**2011 PAVEMENT RESURFACING PROJECT**

**Kitching Street (Fir Avenue to Cottonwood Avenue)  
Manzanita Avenue (Heacock Street to Perris Boulevard)  
Cactus Avenue (Commerce Center Drive to Elsworth Street)  
Indian Street (Ironwood Avenue to Sunnymead Boulevard)  
Fir Avenue (Perris Boulevard to Lasselle Street)  
Perris Boulevard (Webster Avenue to Sunnymead Boulevard)**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City," has awarded to **Hardy & Harper, Inc.**, as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City Manager, and identified as **Project No. 11-12556330**, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Agreement is required to furnish a bond guaranteeing the faithful performance of said Agreement;

NOW THEREFORE, we the undersigned Contractor and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Moreno Valley, County of Riverside in the penal sum of \_\_\_\_\_ dollars, (\$ \_\_\_\_\_), lawful money of the United States, to be paid to the said City or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Contractor, his or her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in said Agreement and any alterations thereof made as therein provided, on his or her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Moreno Valley, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In the event suit is brought upon this bond by the City and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder, or the Provisions accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or the Provisions.

**(SIGNATURE PAGE FOLLOWS)**

**FAITHFUL PERFORMANCE BOND  
PROJECT NO. 11-12556330**

**BOND NO.** \_\_\_\_\_

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_\_.

**CONTRACTOR (Principal)**

**SURETY**

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

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

Attorney-in-Fact

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved as to Form this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
City Attorney  
City of Moreno Valley

**NOTE:**

- The bond shall be executed by an admitted Surety insurer (CCP 995.311) and the Surety must be registered as an admitted insurer in at least one county in the State of California.
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact and the Contractor.
- The bond shall include an attached original Power of Attorney duly authorizing the Attorney-in-Fact to act for the Surety (CCP 1305).
- The bond shall include the address at which the Principal (contractor) and Surety may be served with notices, papers and other documents (CCP 995.320 (a)(2)).

Corporate Seal may be affixed hereto.

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

DESCRIPTION OF THE ATTACHED DOCUMENT

FAITHFUL PERFORMANCE BOND SIGNATURE PAGE  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

Additional Information

ADDITIONAL OPTIONAL INFORMATION  
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- Securely attach this document to the signed document.

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)
- Corporate Officer

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

- Partner (s)
- Attorney-in-Fact
- Other \_\_\_\_\_



BOND NO. \_\_\_\_\_

PREMIUM \$ \_\_\_\_\_

**LABOR AND MATERIALS PAYMENT BOND  
(100% of Total Contract Amount)**

**PROJECT NO. 11-12556330**

**2011 PAVEMENT RESURFACING PROJECT**

**Kitching Street (Fir Avenue to Cottonwood Avenue)  
Manzanita Avenue (Heacock Street to Perris Boulevard)  
Cactus Avenue (Commerce Center Drive to Elsworth Street)  
Indian Street (Ironwood Avenue to Sunnymead Boulevard)  
Fir Avenue (Perris Boulevard to Lasselle Street)  
Perris Boulevard (Webster Avenue to Sunnymead Boulevard)**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City", has awarded to **Hardy & Harper, Inc.**, as Principal hereinafter designated as "Contractor" and have entered into an Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Agreement, effective on the date signed by the City Manager, and identified as **Project No. 11-12556330**, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Agreement is required to furnish a bond to secure the payment of claims of laborers, mechanics, materialmen, and other persons, as provided by law;

NOW, THEREFORE, we the undersigned Contractor and \_\_\_\_\_, as Surety are held and firmly bound unto the City of Moreno Valley, County of Riverside, in the penal sum of \_\_\_\_\_ dollars, (\$ \_\_\_\_\_), lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally liable (CCP 995.320 (a)(1)), firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Contractor, his or her or its heirs, executors, administrator, successors or assigns, or subcontractors, shall fail to pay any of the persons described in the State of California Civil Code, Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and his or her subcontractors, pursuant to Section 13020, of the Unemployment Insurance Code, with respect to such work and labor, that the Surety or Sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In the event suit is brought upon this bond by the City or other person entitled to bring such an action and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons described in the State of California Civil Code Section 3181, to give a right of action to such persons or their assigns in any suit brought upon this bond.

**(SIGNATURE PAGE FOLLOWS)**

**LABOR AND MATERIALS PAYMENT BOND  
PROJECT NO. 11-12556330**

BOND NO. \_\_\_\_\_

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_\_.

**CONTRACTOR (Principal)**

**SURETY**

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

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

Attorney-in-Fact

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved as to Form this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
City Attorney  
City of Moreno Valley

**NOTE:**

- The bond shall be executed by an admitted Surety insurer (CCP 995.311) and the Surety must be registered as an admitted insurer in at least one county in the State of California.
- The bond shall include an attached Notary Certificate for the Attorney-in-Fact and the Contractor.
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- The bond shall include the address at which the Principal (contractor) and Surety may be served with notices, papers and other documents (CCP 995.320 (a)(2)).

Corporate Seal may be affixed hereto

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

SAMPLE

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(Here insert name and title of the officer)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

DESCRIPTION OF THE ATTACHED DOCUMENT

LABOR AND MATERIALS PAYMENT BOND  
SIGNATURE PAGE

(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_

Document Date \_\_\_\_\_

Additional Information

CAPACITY CLAIMED BY THE SIGNER

- Individual(s)  
 Corporate Officer

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

- Partner (s)  
 Attorney-in-Fact  
 Other \_\_\_\_\_

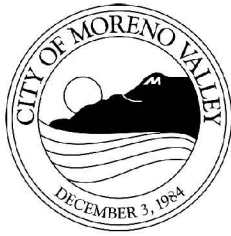
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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>But</i>
CITY MANAGER	<i>MS</i>

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## Report to City Council

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**TO:** Mayor and City Council and Redevelopment Agency Chairperson and Board of Directors

**FROM:** Chris A. Vogt, P.E., Public Works Director/City Engineer

**AGENDA DATE:** March 8, 2011

**TITLE:** APPROVE THE AGREEMENT TO REIMBURSE TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) FUNDS BETWEEN WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG) AND CITY OF MORENO VALLEY FOR CONSTRUCTION PHASE OF NASON/SR-60 INTERCHANGE OVERCROSSING PROJECT -- PROJECT NO. 07-41570024

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### RECOMMENDED ACTION

Staff recommends that the City Council and the Community Redevelopment Agency:

1. Approve the Agreement to Reimburse Transportation Uniform Mitigation Fee (TUMF) Funds between the Western Riverside Council of Governments (WRCOG) and the Community Redevelopment Agency of the City of Moreno Valley for the construction phase of the Nason/SR-60 Interchange Overcrossing project.
2. Authorize the City Manager, as City Manager and acting in his capacity as the Executive Director for the Community Redevelopment Agency of the City of Moreno Valley, to execute the Agreement to Reimburse TUMF Funds for the construction phase of the Nason/SR-60 Interchange Overcrossing project in the form attached hereto, and authorize the City Manager to approve any changes that may be requested by WRCOG or the City, on behalf of the City and the Community Redevelopment Agency, subject to the approval of the City Attorney.

## **BACKGROUND**

Over the past several years, the Nason Street/SR-60 interchange has experienced increased traffic resulting from commercial, residential, and recreational growth. Two separate City projects are ongoing to improve the interchange. The SR-60/Nason Street Interchange Ramp Improvements Project (98-25897) improves the interchange ramps through reconstruction and realignment, while providing a design that will accommodate ultimate bridge overcrossing improvements needed to serve anticipated future traffic demand. The Nason/SR-60 Overcrossing project (07-41570024) consists of improvements to the Nason Street overcrossing bridge, which will replace the existing bridge with a wider structure as well as increase the vertical clearance over SR-60.

On March 14, 2006, the City and WRCOG entered into an agreement for the Nason Street/State Route 60 interchange to receive reimbursement in the amount of \$500,000 for the Project Approval/Environmental Document (PA&ED) phase of the project. On June 24, 2008, the City Council approved an amendment to the TUMF Reimbursement Agreement up to the maximum TUMF share for all phases of the project as the monies are allocated in the TUMF Transportation Improvement Plan (TIP). The TUMF agreement was further amended on December 3, 2008 and August 18, 2010 to update the scope of services, project schedule and project cost. The TUMF amendments continued to provide for reimbursement of design and right-of-way costs. Due to the subsequent drop in TUMF revenues, WRCOG could no longer guarantee funding for the construction phase.

On May 13, 2008, the City Council awarded an "Agreement for Professional Consultant Services" to Parsons Transportation Group for design, right-of-way engineering, and construction support services. Design has progressed to the 95% plan stage. Proposed improvements are consistent with the City's General Plan.

On October 23, 2007, the Community Redevelopment Agency was authorized to issue Series A tax allocation bonds (the "Series A Bonds") in an amount not to exceed \$55 million to finance projects. One of the Series A projects authorized by the City Council was the Main Public Library. On January 13, 2009, the City Council reprioritized the capital projects to be funded by the bonds. Funding for construction of the new library was reallocated to the Nason Overcrossing project. The funding of Nason Overcrossing project with RDA funds is eligible for reimbursement from TUMF revenues upon completion of construction as the monies are allocated in the TUMF Transportation Improvement Plan (TIP). The terms of reimbursement have been formalized and WRCOG has submitted a final draft agreement to the City.

## **DISCUSSION**

The overcrossing project is expected to be advertised between September 2011 and March/April 2012 in order to begin construction of the project after completion of the SR-60/Nason Interchange Ramp Improvements Project (98-25897).

The Agreement requires that the City complete construction of the project, including preparation of contract documents and advertising, award and administration of the construction contract. Upon project completion, WRCOG will reimburse the Redevelopment Agency at the rate of \$1,000,000 per year up to the maximum TUMF share amount of \$11,128,000. The Agreement provides a structured mechanism for reimbursement of the RDA bond funds.

The agreement is in its final draft form. Any changes that may be requested by either the City or WRCOG will be authorized by the City Manager, subject to the approval of the City Attorney. It is prudent to approve the agreement at this time prior to its finalization in order to memorialize the arrangement and protect the revenue stream for the RDA.

### **ALTERNATIVES**

1. Approve the Agreement to Reimburse Transportation Uniform Mitigation Fee (TUMF) Funds between the Western Riverside Council of Governments (WRCOG) and the Community Redevelopment Agency of the City of Moreno Valley for the construction phase of the Nason/SR-60 Interchange Overcrossing project, and authorize the City Manager, as City Manager and acting in his capacity as the Executive Director for the Community Redevelopment Agency of the City of Moreno Valley, to execute the Agreement to Reimburse TUMF Funds for the construction phase of the Nason/SR-60 Interchange Overcrossing project in the form attached hereto, and authorize the City Manager to approve any changes that may be requested by WRCOG or the City, on behalf of the City and the Community Redevelopment Agency, subject to the approval of the City Attorney. *Staff recommends this alternative.*
  
2. Do not approve the Agreement to Reimburse Transportation Uniform Mitigation Fee (TUMF) Funds between the Western Riverside Council of Governments (WRCOG) and the Community Redevelopment Agency of the City of Moreno Valley for the construction phase of the Nason/SR-60 Interchange Overcrossing project, and do not authorize the City Manager, as City Manager and acting in his capacity as the Executive Director for the Community Redevelopment Agency of the City of Moreno Valley, to execute the Agreement to Reimburse TUMF Funds for the construction phase of the Nason/SR-60 Interchange Overcrossing project in the form attached hereto, and do not authorize the City Manager to approve any changes that may be requested by WRCOG or the City, on behalf of the City and the Community Redevelopment Agency, subject to the approval of the City Attorney. *Staff does not recommend this alternative. This alternative will delay the construction of needed improvements.*

### **FISCAL IMPACT**

The project is currently funded with 2007 Redevelopment Agency Tax Allocation Bond (Series A) proceeds (Fund 897) and Developer In-lieu Street Improvement Funds (Fund

414). These funds have been allocated for Nason/SR-60 overcrossing improvements and cannot be utilized for operational activities. There is no impact to the General Fund.

**AVAILABLE FUNDS**

FY 2010/2011 2007 RDA Bond Funds (Account 897.91728).....	\$16,604,000
FY 2010/2011 Developer In-lieu Street Improvement Funds (Account 414.80429).....	<u>\$ 30,000</u>
<b>Available Funds.....</b>	<b>\$16,634,000</b>

**ESTIMATED CONSTRUCTION-RELATED COST**

Nason/SR-60 Overcrossing.....	\$14,000,000
<b>Estimated Cost.....</b>	<b>\$14,000,000</b>

**ANTICIPATED PROJECT SCHEDULE**

Complete Design and Right-of-Way.....	August 2011
Advertise Project*.....	September 2011 to March/April 2012
Begin Construction*.....	June 2012
Complete Construction.....	July 2013

\* *Contingent upon completion of SR-60/Nason Interchange Ramp Project*

**CITY COUNCIL GOALS**

**PUBLIC SAFETY:**

Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

**PUBLIC FACILITIES AND CAPITAL PROJECTS:**

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

**POSITIVE ENVIRONMENT:**

Create a positive environment for the development of Moreno Valley's future.

**SUMMARY**

This reimbursement agreement with WRCOG sets forth the details of the City's and WRCOG's responsibilities pertaining to the reimbursement of the construction phase of the Nason/SR-60 Overcrossing project.

**ATTACHMENT**

Attachment "A" – Agreement to Reimburse TUMF Funds for Nason/SR-60 Interchange



Prepared By:  
 Margery A. Lazarus  
 Senior Engineer, P.E.

Department Head Approval  
 Chris A. Vogt, P.E.  
 Public Works Director/City Engineer

Concurred By:  
 Prem Kumar, P.E.  
 Deputy Public Works Director/Assistant City Engineer

Concurred By:  
 Barry Foster  
 Economic Development Director

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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**TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

**AGREEMENT TO REIMBURSE TUMF FUNDS**

**NASON/SR-60 INTERCHANGE**

THIS AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (“WRCOG”) and the CITY OF MORENO VALLEY (the “AGENCY”). WRCOG and the AGENCY are sometimes collectively referred to herein as the “PARTIES”.

**RECITALS**

A. WRCOG is the Administrator of the Transportation Uniform Mitigation Fee Program of Western Riverside County (“TUMF Program”).

B. WRCOG has identified and designated certain transportation improvement projects throughout Western Riverside County as projects of regional importance (“Qualifying Projects” or “Projects”). The Qualifying Projects are more specifically described in that certain WRCOG study entitled “TUMF Nexus Study”, as may be amended from time to time.

C. The TUMF Program is funded by TUMF fees paid by new development in Western Riverside County (collectively, “TUMF Program Funds”). TUMF Program Funds are held in trust by WRCOG for the purpose of funding the Qualifying Projects.

D. TUMF Program Funds are allocated in part to five geographic Zones established by WRCOG for making improvements to the Regional System of Highways and Arterials. Each Zone has adopted a Transportation Improvement Program (“Zone TIP”) for its geographic area and a corresponding list of Qualifying Projects within the Zone TIP subject to reimbursement by TUMF Program Funds. The priority of Qualifying Projects receiving TUMF Program Funds is determined on a yearly basis for each Zone by WRCOG, in part based on the amount of TUMF Program Funds available.

E. The AGENCY proposes to continue to implement a Qualifying Project within the Central Zone’s Zone TIP, and it is the purpose of this Agreement to identify the project and to set forth the terms and conditions by which WRCOG will release TUMF Program Funds to Agency.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the PARTIES hereby agree as follows:

Attachment "A"

1. Description of the Qualifying Project. This Agreement is intended to distribute TUMF Program Funds to the AGENCY for Nason/SR-60 Interchange with Bridge, (the "Project"), a Qualifying Project, designated as WRCOG Project #05-CN-MOR-1013. A description of the Project, its implementation schedule setting forth the phases of work for the Project, a detailed scope of work and the AGENCY's estimated project cost thereof, is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference and, pursuant to Section 19 below, is subject to modification as requested by the AGENCY and approved by WRCOG. It is understood and agreed that the AGENCY shall expend TUMF Program Funds only as set forth in the Agreement and only for the Project. To this end, any use of the funds provided pursuant to this Agreement shall be subject to the review and approval of WRCOG.

2. WRCOG Funding Amount. WRCOG hereby agrees to distribute to AGENCY, on the terms and conditions set forth herein, a sum not to exceed Eleven Million One Hundred Twenty-Eight Thousand Dollars (\$11,128,000.00) or the actual cost, to be used for reimbursing the AGENCY for eligible Project expenses as described in Section 4 herein ("Funding Amount"). The PARTIES acknowledge and agree that the Funding Amount may be less than the actual cost of the Project. Nevertheless, the PARTIES acknowledge and agree that WRCOG shall not be obligated to contribute TUMF Program Funds in excess of the maximum TUMF share identified in the TUMF Nexus Study ("Maximum TUMF Share"), as may be amended from time to time. The AGENCY shall regularly update the Project cost and shall be eligible to request additional funds accordingly for the full cost of the project, but not in excess of the "Maximum TUMF Share." The PARTIES also acknowledge that WRCOG may distribute less than the Funding Amount or no TUMF Program Funds at all to the Agency for reimbursement of eligible Project expenses, if Funds are not available.

3. Release of TUMF Program Funds. The PARTIES acknowledge that the release of TUMF Program Funds shall be made for the reimbursement of Project costs until AGENCY completes the Project as determined by WRCOG and WRCOG determines the reimbursement, based on the five year Transportation Improvement Plan (TIP), approved by the Central Zone Committee and the WRCOG Executive Committee. The current 2009/2010-2013/14 TIP allocates one million dollars beginning in fiscal year 2012/13 annually to the Project. The payment to the Agency is subject to change by WRCOG due to a variety of factors that go into developing the TIP; any change to the payment will be processed through the TUMF Committee structure and the WRCOG Executive Committee.

4. Project Costs Eligible for Advance/Reimbursement. The total Project costs ("Total Project Cost") may include the following items, provided that such items are included in the scope of work attached hereto as Exhibit "A" ("Scope of Work"): (1) AGENCY and/or consultant costs associated with direct Project coordination and support; (2) funds expended in preparation of preliminary engineering studies; (3) funds expended for preparation of environmental review documentation for the Project; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the AGENCY, and costs of reviewing appraisals and offers for property acquisition; (5) costs reasonably incurred if condemnation proceeds; (6) costs incurred in the preparation of plans, specifications, and estimates by AGENCY or consultants;

(7) AGENCY costs associated with bidding, advertising and awarding of the Project contracts; (8) construction costs, including change orders to construction contract approved by the AGENCY; and (9) construction management, field inspection, surveying, and material testing costs.

5. Ineligible Project Costs. The Total Project Cost shall not include the following items which shall be borne solely by the AGENCY without reimbursement: (1) any Agency administrative fees attributed to the reviewing and processing of the Project ; and (2) expenses for items of work not included within the Scope of Work in Exhibit “A”.

6. Procedures for Distribution of TUMF Program Funds to AGENCY.

(a) Initial Payment by the AGENCY. The AGENCY shall be responsible for initial payment of all the Project costs as they are incurred. Following the completion of a phase and upon WRCOG’s determination that the Project is eligible to receive a disbursement of TUMF Program Funds, the AGENCY shall submit all invoices for Project costs incurred and paid, separated by phase, to WRCOG requesting reimbursement of eligible Project costs. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the AGENCY, and documents evidencing the AGENCY’s payment of the invoices or demands for payment. Documents evidencing the AGENCY’S payment of the invoices shall be retained for four (4) years and shall be made available for review by WRCOG. The AGENCY shall submit invoices regularly during the course of the Project.

(b) Review and Reimbursement by WRCOG. Upon receipt of all invoices from the AGENCY, WRCOG may request additional documentation or explanation of the Project costs for which reimbursement is sought. In the event that WRCOG disputes the eligibility of the AGENCY for reimbursement of all or a portion of an invoiced amount, the PARTIES shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the AGENCY may appeal WRCOG’s decision as to the eligibility of one or more invoices to WRCOG’s Executive Director. The WRCOG Executive Director shall provide his/her decision in writing. If the AGENCY disagrees with the Executive Director’s decision, the AGENCY may appeal the decision of the Executive Director to the full WRCOG Executive Committee, provided the AGENCY submits its request for appeal to WRCOG within ten (10) days of the Executive Director’s written decision. The decision of the WRCOG Executive Committee shall be final. Additional details concerning the procedure for the AGENCY’s submittal of invoices to WRCOG and WRCOG’s consideration and payment of submitted invoices are set forth in Exhibit “B”, attached hereto and incorporated herein by reference.

(c) Funding Amount/Adjustment. If a post Project audit or review indicates that WRCOG has provided reimbursement to the AGENCY in an amount in excess of the Maximum TUMF Share of the Project, or has provided reimbursement of ineligible Project costs, the AGENCY shall reimburse WRCOG for the excess or ineligible payments within thirty (30) days of notification by WRCOG.

7. Increases in Project Funding. The Funding Amount may, at the discretion of the Central Zone Committees in consultation with WRCOG, be augmented with additional TUMF

Program Funds if the TUMF Nexus Study is amended to increase the maximum eligible TUMF share for the Project. Any such increase in the Funding Amount must be approved in writing by WRCOG's Executive Director. In no case shall the amount of TUMF Program Funds allocated to the AGENCY exceed the then-current maximum eligible TUMF share for the Project. No such increased funding shall be expended to pay for any Project already completed. For purposes of this Agreement, the Project or any portion thereof shall be deemed complete upon its acceptance by WRCOG's Executive Director which shall be communicated to the AGENCY in writing.

8. No Funding for Temporary Improvements. Only segments or components of the construction that are intended to form part of or be integrated into the Project may be funded by TUMF Program Funds. No improvement which is temporary in nature, including but not limited to temporary roads, curbs, tapers or drainage facilities, shall be funded with TUMF Program Funds, except as needed for staged construction of the Project.

9. AGENCY's Funding Obligation to Complete the Project. In the event that the TUMF Program Funds allocated to the Project represent less than the total cost of the Project, the AGENCY shall provide such additional funds as may be required to complete the Project.

10. AGENCY's Obligation to Repay TUMF Program Funds to WRCOG. In the event that: (i) the AGENCY, for any reason, determines not to proceed with or complete the Project; or (ii) the Project is not timely completed, subject to any extension of time granted by WRCOG pursuant to the terms of this Agreement; the AGENCY agrees that any TUMF Program Funds that were distributed to the AGENCY for the Project shall be repaid in full to WRCOG. The PARTIES shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism.

11. Term/Notice of Completion. The term of this Agreement shall commence on the date first herein above written and shall terminate at such time the \$11,128,000 has been paid through allotments on the TIP as approved by the Central Zone TAC and Committee and WRCOG Executive Committee. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

12. Representatives of the PARTIES. WRCOG's Executive Director, or his or her designee, shall serve as WRCOG's representative and shall have the authority to act on behalf of WRCOG for all purposes under this Agreement. The AGENCY hereby designates \_\_\_\_\_ [INSERT NAME AND TITLE], or his or her designee, as the AGENCY's representative to WRCOG. The AGENCY's representative shall have the authority to act on behalf of the AGENCY for all purposes under this Agreement and shall coordinate all activities of the Project under the AGENCY's responsibility. The AGENCY shall work closely and cooperate fully with WRCOG's representative and any other agencies which may have jurisdiction over or an interest in the Project.

13. Expenditure of Funds by AGENCY Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the AGENCY from expending funds on the Project prior to the execution of the Agreement, or from being reimbursed by WRCOG for such expenditures. However, the AGENCY understands and acknowledges that any expenditure

of funds on the Project prior to the execution of the Agreement is made at the AGENCY's sole risk, and that some expenditures by the AGENCY may not be eligible for reimbursement under this Agreement.

14. Review of Services. The AGENCY shall allow WRCOG's Representative to inspect or review the progress of the Project at any reasonable time in order to determine whether the terms of this Agreement are being met.

15. Termination.

(a) Notice. Either WRCOG or AGENCY may, by written notice to the other party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other Party, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a thirty (30) day period to cure any alleged breach. During the thirty (30) day cure period, the PARTIES shall discuss, in good faith, the manner in which the breach can be cured.

16. Effect of Termination. In the event that the AGENCY terminates this Agreement, the AGENCY shall, within one hundred eighty (180) days, repay to WRCOG any unexpended TUMF Program Funds provided to the AGENCY under this Agreement and shall, within one hundred eighty (180) days, complete, with its own funds any portion or segment of work for the Project for which TUMF Program Funds have been provided so as to make all portions or segments of the Project which have received funding under this Agreement usable for their intended purpose..

This Agreement shall terminate upon receipt by the non-terminating Party of the amounts due it hereunder and upon completion of the segment or portion of Project work for which TUMF Program Funds have been provided so as to make all portions or segments of the work which have received funding under this Agreement usable for their intended purpose. .

17. Prevailing Wages. The AGENCY and any other person or entity hired to perform services on the Project are alerted to the requirements of California Labor Code Sections 1770 et seq., which would require the payment of prevailing wages were the services or any portion thereof determined to be a public work, as defined therein. The AGENCY shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform the Project. The AGENCY shall defend, indemnify, and hold harmless WRCOG, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys, fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770 et seq.

18. Progress Reports. WRCOG may request the AGENCY to provide WRCOG with progress reports concerning the status of the Project.

19. Indemnification.

(a) AGENCY Responsibilities. In addition to the indemnification required under Section 15, the AGENCY agrees to indemnify and hold harmless WRCOG, its officers,

agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of the AGENCY or its subcontractors. The AGENCY will reimburse WRCOG for any expenditures, including reasonable attorneys' fees, incurred by WRCOG, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of the AGENCY.

(b) WRCOG Responsibilities. WRCOG agrees to indemnify and hold harmless the AGENCY, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of WRCOG or its sub-consultants. WRCOG will reimburse the AGENCY for any expenditures, including reasonable attorneys' fees, incurred by the AGENCY, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of WRCOG.

(c) Effect of Acceptance. The AGENCY shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Project. WRCOG's review, acceptance or funding of any services performed by the AGENCY or any other person or entity under this Agreement shall not be construed to operate as a waiver of any rights WRCOG may hold under this Agreement or of any cause of action arising out of this Agreement. Further, the AGENCY shall be and remain liable to WRCOG, in accordance with applicable law, for all damages to WRCOG caused by the AGENCY's negligent performance of this Agreement or supervision of any services provided to complete the Project.

20. Insurance. The AGENCY shall require, at a minimum, all persons or entities hired to perform the Project to obtain, and require their subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to the AGENCY and WRCOG. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Project, whichever occurs last.

(a) Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:

(i) Name WRCOG and AGENCY, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Project and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;

(ii) Be primary with respect to any insurance or self insurance programs covering WRCOG and AGENCY, and/or their respective officials, officers, employees, agents, and consultants; and



(iii) Contain standard separation of insured provisions.

(b) Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

(c) Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than One Million Dollars (\$1,000,000.00). Professional liability insurance shall only be required of design or engineering professionals.

(d) Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) each accident.

21. Project Amendments. Changes to the characteristics of the Project, including the deadline for Project completion, and any responsibilities of the AGENCY or WRCOG may be requested in writing by the AGENCY and are subject to the approval of WRCOG's Representative, which approval will not be unreasonably withheld, provided that extensions of time for completion of the Project shall be requested prior to the expiration of the term within which the AGENCY is doing work for the PROJECT and approved by the Central Zone Committee structure in consultation with WRCOG.. Nothing in this Agreement shall be construed to require or allow completion of the Project without full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA") and the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*), if applicable, but the necessity of compliance with CEQA and/or NEPA shall not justify, excuse, or permit a delay in completion of the Project.

22. Conflict of Interest. For the term of this Agreement, no member, officer or employee of the AGENCY or WRCOG, during the term of his or her service with the AGENCY or WRCOG, as the case may be, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

23. Limited Scope of Duties. WRCOG's and the AGENCY's duties and obligations under this Agreement are limited to those described herein. WRCOG has no obligation with respect to the safety of any Project performed at a job site. In addition, WRCOG shall not be liable for any action of AGENCY or its contractors relating to the condemnation of property undertaken by AGENCY or construction related to the Project.

24. Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Project under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees such other evidence or information as they may require with respect to any such expense or

disbursement charged by them. All such information shall be retained by the PARTIES for at least four (4) years following termination of this Agreement, and they shall have access to such information during the four-year period for the purposes of examination or audit.

25. Equal Opportunity Employment. The PARTIES represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

26. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

27. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

28. Time of Essence. Time is of the essence for each and every provision of this Agreement.

29. Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

30. Public Acknowledgement. The AGENCY agrees that all public notices, news releases, information signs and other forms of communication shall indicate that the Project is being cooperatively funded by the AGENCY and WRCOG TUMF Program Funds.

31. No Joint Venture. This Agreement is for funding purposes only and nothing herein shall be construed to make WRCOG a party to the construction of the Project or to make it a partner or joint venture with the AGENCY for such purpose.

32. Compliance With the Law. The AGENCY shall comply with all applicable laws, rules and regulations governing the implementation of the Qualifying Project, including, where applicable, the rules and regulations pertaining to the participation of businesses owned or controlled by minorities and women promulgated by the Federal Highway Administration and the Federal Department of Transportation.

33. Notices. All notices hereunder and communications regarding interpretation of the terms of this Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to AGENCY: City of Moreno Valley  
Public Works Department  
PO Box 88005  
Moreno Valley, CA 92552-0805  
Telephone: (951) 413-3130  
Facsimile: (951) 413-3170

If to WRCOG: Western Riverside Council of Governments  
Riverside County Administrative Center  
4080 Lemon Street, Third Floor  
Riverside, California 92501-3609  
Attention: Deputy Executive Director  
Telephone: (951) 955-7985  
Facsimile: (951) 787-7991

Any notice so given shall be considered served on the other party three (3) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

34. Integration. This Agreement contains the entire agreement between the PARTIES. Any agreement or representation respecting matters addressed herein that are not expressly set forth in this Agreement, or in a fully executed contract amendment as described below, is null and void.

35. Severability. If any term, provision, condition or covenant of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

36. Conflicting Provisions. In the event that provisions of any attached appendices or exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the PARTIES and the interpretation of the PARTIES' understanding concerning the Agreement.

37. Contract Amendment. In the event that the PARTIES determine that the provisions of this Agreement should be altered, the PARTIES may execute a contract amendment to add any provision to this Agreement, or delete or amend any provision of this Agreement. All such contract amendments must be in the form of a written instrument signed by the original signatories to this Agreement, or their successors or designees.

38. Independent Contractors. Any person or entities retained by the AGENCY or any contractor shall be retained on an independent contractor basis and shall not be employees of WRCOG. Any personnel performing services on the Project shall at all times be under the exclusive direction and control of the AGENCY or contractor, whichever is applicable. The AGENCY or contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Project and as required by law. The AGENCY or consultant shall be responsible for all reports and obligations respecting such

personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

39. Effective Date. This Agreement shall not be effective until executed by both PARTIES. The failure of one party to execute this Agreement within forty-five (45) days of the other party executing this Agreement shall render any execution of this Agreement ineffective.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

**WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS**

**CITY OF MORENO VALLEY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Rick Bishop  
Executive Director

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Garcia  
City Manager

**COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF  
MORENO VALLEY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Garcia  
Executive Director

## **EXHIBIT “A”**

### **SCOPE OF WORK**

The Project scope consists construction and all construction phase services, including advertisement and award.

The purpose of the overall project is to alleviate congestion, enhance freeway access, and increase vertical clearance for the SR-60/Nason Street interchange. The purpose of the project will be achieved, in general, by realigning the SR-60/Nason ramps, adding auxiliary lanes, and replacing the overcrossing structure.

The SR-60/Nason Street Overcrossing project (Caltrans EA 323020) consists of the following: 1) replacement of the SR-60/Nason Street overcrossing structure, 2) widening of Nason Street overcrossing approaches, 3) modification of the intersection, ramp, and traffic signals at the intersections of the eastbound and westbound ramps and Nason Street, to the extent required, 4) provision for landscaping and irrigation and/or hardscape for the Nason Street interchange, 5) addition of bike facilities and sidewalks to the Nason Street overcrossing, 6) utility relocations, 7) addition of a soundwall between Elder Avenue and SR-60; and 8) related work as required.

A separate, prior project, the SR-60/Nason Street Ramp Realignment Project (Caltrans EA 323001) will construct eastbound on and off ramps, westbound on and off ramps and road improvements on Nason Street from Fir Avenue to Elder Avenue. The SR-60/Nason overcrossing project (Caltrans EA 323020) will be constructed upon completion of the SR-60/Nason Ramp Realignment Project (EA 323001).

**EXHIBIT "A-1"**

**ESTIMATE OF TUMF SHARE**

**CONSTRUCTION PHASE ONLY**

**Per February 2009 Adopted Tip (Amended June 2009)**

<b>PHASE</b>	<b>TUMF</b>	<b>LOCAL</b>	<b>TOTAL</b>
CON	\$11,128,000	\$0	\$11,128,000
<i>Subtotal per Feb. 2009 Adopted TIP (as amended June 2009)</i>	<b>\$11,128,000</b>	<b>\$0</b>	<b>\$11,128,000</b>

**Total Estimated Project Cost**

Exhibit "A - 1"-1

**EXHIBIT “A-2”**

**PROJECT SCHEDULE**

**Project Schedule needs to be updated**

**SR-60/Nason Overcrossing (Caltrans EA 323020)**

<b>PHASE</b>	<b>START DATE</b>	<b>COMPLETION DATE</b>
PA&ED*	April 2004	February 2008
ENG	March 2008	May 2010
ROW	May 2008	December 2009
CON**	November 2010 (start construction Feb. 2011 following completion of EA 323001)	October 2012

\* Completed.

\*\* Includes advertisement and award.

## Elements of Compensation

### EXHIBIT “B”

#### PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. For professional services, WRCOG recommends that the AGENCY incorporate this Exhibit “B-1” into its contracts with any subcontractors to establish a standard method for preparation of invoices by contractors to the AGENCY and ultimately to WRCOG for reimbursement of AGENCY contractor costs.
2. During the course of the Project AGENCY shall submit invoices for eligible Project costs incurred during the course of the Project, divided by phase of work. The original invoices shall be submitted to WRCOG’s Executive Director with a copy to WRCOG’s Project Coordinator. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit “B-2”.
3. Each invoice shall include documentation from each contractor used by the AGENCY for the Project, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a progress report and spreadsheets showing the hours or amounts expended by each contractor or subcontractor for the phase and for the entire Project to date. Samples of acceptable task level documentation and progress reports are attached as Exhibits “B-4” and “B-5”. All documentation from the Agency’s contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit “B-3”.
4. If the AGENCY is seeking reimbursement for direct expenses incurred by AGENCY staff for eligible Project costs, the AGENCY shall provide the same level of information for its labor and any expenses as required of its contractors pursuant to Exhibit “B” and its attachments.
5. Charges for each task and milestone listed in Exhibit “A” shall be listed separately in the invoice.
6. Each invoice shall include a certification signed by the AGENCY Representative or his or her designee which reads as follows:

“I hereby certify that the hours and salary rates submitted for reimbursement in this invoice are the actual hours and rates worked and paid to the contractors or subcontractors listed.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Exhibit “B”-1



Date \_\_\_\_\_

Invoice No. \_\_\_\_\_”

7. WRCOG will pay the AGENCY if WRCOG formally accepts the Project as complete, if the Project is of sufficient priority, as determined by WRCOG to receive TUMF Program funds, and all invoices have been submitted. If WRCOG disputes any portion of an invoice, payment for that portion will be withheld, without interest, pending resolution of the dispute, but the uncontested balance will be paid.
8. The final payment under this Agreement will be made only after: (i) the AGENCY has obtained a Release and Certificate of Final Payment from each contractor or subcontractor used on the Project; (ii) the AGENCY has executed a Release and Certificate of Final Payment; and (iii) the AGENCY has provided copies of each such Release to WRCOG.

Exhibit “B”-2

**EXHIBIT “B-1”**  
**[Sample for Professional Services]**

For the satisfactory performance and completion of the Services under this Agreement, Agency will pay the Contractor compensation as set forth herein. The total compensation for this service shall not exceed (\_\_\_\_INSERT WRITTEN DOLLAR AMOUNT\_\_\_\_) (\$\_\_INSERT NUMERICAL DOLLAR AMOUNT\_\_) without written approval of Agency’s City Manager [or applicable position] (“Total Compensation”).

**1. ELEMENTS OF COMPENSATION.**

Compensation for the Services will be comprised of the following elements: 1.1 Direct Labor Costs; 1.2 Fixed Fee; and 1.3 Additional Direct Costs.

**1.1 DIRECT LABOR COSTS.**

Direct Labor costs shall be paid in an amount equal to the product of the Direct Salary Costs and the Multiplier which are defined as follows:

1.1.1 DIRECT SALARY COSTS

Direct Salary Costs are the base salaries and wages actually paid to the Contractor's personnel directly engaged in performance of the Services under the Agreement. (The range of hourly rates paid to the Contractor's personnel appears in Section 2 below.)

1.1.2 MULTIPLIER

The Multiplier to be applied to the Direct Salary Costs to determine the Direct Labor Costs is \_\_\_\_\_, and is the sum of the following components:

1.1.2.1 Direct Salary Costs \_\_\_\_\_

1.1.2.2 Payroll Additives \_\_\_\_\_

*The Decimal Ratio of Payroll Additives to Direct Salary Costs.* Payroll Additives include all employee benefits, allowances for vacation, sick leave, and holidays, and company portion of employee insurance and social and retirement benefits, all federal and state payroll taxes, premiums for insurance which are measured by payroll costs, and other contributions and benefits imposed by applicable laws and regulations.

1.1.2.3 Overhead Costs \_\_\_\_\_

*The Decimal Ratio of Allowable Overhead Costs to the Contractor Firm's Total Direct Salary Costs.* Allowable Overhead Costs include general, administrative and overhead costs of maintaining and operating established offices, and consistent with established firm policies, and as defined in the Federal Acquisitions Regulations, Part 31.2.

Total Multiplier \_\_\_\_\_  
(sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3)

**1.2 FIXED FEE.**

1.2.1 The fixed fee is \$ \_\_\_\_\_.

1.2.2 A pro-rata share of the Fixed Fee shall be applied to the total Direct Labor Costs expended for services each phase, and shall be included on each invoice.

**1.3 ADDITIONAL DIRECT COSTS.**

Additional Direct Costs directly identifiable to the performance of the services of this Agreement shall be reimbursed at the rates below, or at actual invoiced cost.

Rates for identified Additional Direct Costs are as follows:

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
	<i>[__ insert charges __]</i>
Per Diem	\$ /day
Car mileage	\$ /mile
Travel	\$ /trip
Computer Charges	\$ /hour
Photocopies	\$ /copy
Blueline	\$ /sheet
LD Telephone	\$ /call
Fax	\$ /sheet
Photographs	\$ /sheet

Travel by air and travel in excess of 100 miles from the Contractor's office nearest to Agency's office must have Agency's prior written approval to be reimbursed under this Agreement.

Exhibit "B-1"-2

**2. DIRECT SALARY RATES**

Direct Salary Rates, which are the range of hourly rates to be used in determining Direct Salary Costs in Section 1.1.1 above, are given below and are subject to the following:

- 2.1 Direct Salary Rates shall be applicable to both straight time and overtime work, unless payment of a premium for overtime work is required by law, regulation or craft agreement, or is otherwise specified in this Agreement. In such event, the premium portion of Direct Salary Costs will not be subject to the Multiplier defined in Paragraph 1.1.2 above.
- 2.2 Direct Salary Rates shown herein are in effect for one year following the effective date of the Agreement. Thereafter, they may be adjusted annually to reflect the Contractor's adjustments to individual compensation. The Contractor shall notify Agency in writing prior to a change in the range of rates included herein, and prior to each subsequent change.

<u>POSITION OR CLASSIFICATION</u>	<u>RANGE OF HOURLY RATES</u>
-----------------------------------	------------------------------

*[\_\_sample\_\_]*

Principal	\$ .00 - \$ .00/hour
Project Manager	\$ .00 - \$ .00/hour
Sr. Engineer/Planner	\$ .00 - \$ .00/hour
Project Engineer/Planner	\$ .00 - \$ .00/hour
Assoc. Engineer/Planner	\$ .00 - \$ .00/hour
Technician	\$ .00 - \$ .00/hour
Drafter/CADD Operator	\$ .00 - \$ .00/hour
Word Processor	\$ .00 - \$ .00/hour

- 2.3 The above rates are for the Contractor only. All rates for subcontractors to the Contractor will be in accordance with the Contractor's cost proposal.

**3. INVOICING.**

- 3.1 Upon completion of each phase, Contractor shall submit all invoices for Services performed during the Project, divided by phase of work. The original invoice shall be submitted to Agency's Executive Director with two (2) copies to Agency's Project Coordinator.
- 3.2 Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by Agency's Representative.
- 3.3 Base Work and Extra Work shall be charged separately, and the charges for each task and Milestone listed in the Scope of Services, shall be listed separately. The

Exhibit "B-1"-3

charges for each individual assigned by the Contractor under this Agreement shall be listed separately on an attachment to the invoice.

- 3.4 A charge of \$500 or more for any one item of Additional Direct Costs shall be accompanied by substantiating documentation satisfactory to Agency such as invoices, telephone logs, etc.
- 3.5 Each copy of each invoice shall be accompanied by a Progress Report and spreadsheets showing hours expended by task for each phase and total Project to date.
- 3.6 If applicable, each invoice shall indicate payments to DBE subcontractors or supplies by dollar amount and as a percentage of the total invoice.
- 3.7 Each invoice shall include a certification signed by the Contractor's Representative or an officer of the firm which reads as follows:

I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed.

Signed \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_  
 Invoice No. \_\_\_\_\_

**4. PAYMENT**

- 4.1 Agency shall pay the Contractor within four to six weeks after receipt by Agency of an original invoice. Should Agency contest any portion of an invoice, that portion shall be held for resolution, without interest, but the uncontested balance shall be paid.
- 4.2 The final payment for Services under this Agreement will be made only after the Contractor has executed a Release and Certificate of Final Payment.

**EXHIBIT B-2**  
**Sample Cover Letter to WRCOG**

Date  
Western Riverside Council of Governments  
Riverside County Administrative Center  
4080 Lemon Street, Third Floor  
Riverside, California 92501-3679  
Attention: Deputy Executive Director  
ATTN: Accounts Payable

Re: Project Title – Phase #     - Invoice #    

Enclosed for your review and payment approval is the AGENCY’s invoice for professional and technical services that was rendered by our contractors in connection with the 2002 Measure “A” Local Streets and Roads Funding per Agreement No.                    effective    (Month/Day/Year)   . The required support documentation received from each contractor is included as backup to the invoice.

Invoice period covered is from    Month/Date/Year    to    Month/Date/Year   .

Total Authorized Agreement Amount:	\$0,000,000.00
Total Invoiced to Date:	\$0,000,000.00
Total Previously Invoiced:	\$0,000,000.00
Balance Remaining:	\$0,000,000.00

<b>Amount due this Invoice:</b>	<b>\$0,000,000.00</b> =====
---------------------------------	--------------------------------

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the contractors listed.

By: \_\_\_\_\_  
Name  
Title

cc:

Exhibit “B-2”-1

**EXHIBIT B-3**  
**Sample Letter from Contractor to AGENCY**

Month/Date/Year

Western Riverside Council of Governments  
Riverside County Administrative Center  
4080 Lemon Street, Third Floor  
Riverside, California 92501-3679  
Attention: Deputy Executive Director  
Attn: Accounts Payable

Phase # \_\_\_\_\_ -Invoice # \_\_\_\_\_

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For **[type of services]** rendered by **[contractor name]** in connection with **[name of project]**  
This is per agreement No. XX-XX-XXX effective Month/Date/Year.

Invoice period covered is from Month/Date/Year to Month/Date/Year.

Total Base Contract Amount:	\$000,000.00
Authorized Extra Work (if Applicable)	\$000,000.00
	-----
<b>TOTAL AUTHORIZED CONTRACT AMOUNT:</b>	<b>\$000,000.00</b>
Total Invoice to Date:	\$000,000.00
Total Previously Billed:	\$000,000.00
Balance Remaining:	\$000,000.00
Amount Due this Invoice:	<u>\$000,000.00</u>

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed,

By: \_\_\_\_\_  
Name  
Title

Exhibit "B-3"-1

**EXHIBIT B-4**  
**SAMPLE TASK SUMMARY SCHEDULE**  
**(OPTIONAL)**

Exhibit "B-4"-1



**EXHIBIT B-5**  
**Sample Progress Report**

PHASE NUMBER:

REPORTING PERIOD: Month/Date/Year to Month/Date/Year

PROGRESS REPORT: #1

A. Activities and Work Completed during Current Work Periods

TASK 01 – 100% PS&E SUBMITTAL

1. Responded to Segment 1 comments from Department of Transportation
2. Completed and submitted Segment 1 final PS&E

B. Current/Potential Problems Encountered & Corrective Action

Problems	Corrective Action
None	None

C. Work Planned Next Period

TASK 01 – 100% PS&E SUBMITTAL

1. Completing and to submit Traffic Signal and Electrical Design plans
2. Responding to review comments

Exhibit “B-5”-1

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APPROVALS	
BUDGET OFFICER	<i>caj</i>
CITY ATTORNEY	<i>caj</i>
CITY MANAGER	<i>MB</i>

## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Chris A. Vogt, Public Works Director/City Engineer

**AGENDA DATE:** March 8, 2011

**TITLE:** PM 35629 – REQUEST TO CONDUCT A FULL ROAD CLOSURE OF THEODORE STREET BETWEEN EUCALYPTUS AVENUE AND THE SR-60 WESTBOUND RAMP FOR THE CONSTRUCTION OF STREET IMPROVEMENTS FROM MARCH 21, 2011 – APRIL 18, 2011

**DEVELOPER:** HF LOGISTICS – SKX T1, LLC  
14425 CORPORATE WAY  
MORENO VALLEY, CA 92553

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### RECOMMENDED ACTION

Staff recommends that the City Council:

1. Authorize a full road closure of Theodore Street from Eucalyptus Avenue to the SR-60 Westbound Ramp for the construction of street improvements from March 21, 2011 to April 18, 2011.
2. Authorize the City Engineer to allow for an additional 30 day extension to the proposed road closure window if the project is delayed due to unforeseen construction issues.

### ADVISORY BOARD/COMMISSION RECOMMENDATION

Not applicable.

### BACKGROUND

Tentative Parcel Map 35629 was approved by City Council on February 10, 2009. The project is more commonly known as the Skechers Warehouse project. As part of the

conditions of the approved project, the developer is required to construct street improvements along Theodore Street from the SR-60 Westbound Ramp to Eucalyptus Avenue. Improvements include new turn lanes, signing and striping, guardrail, street lights, and associated paving.

### **DISCUSSION**

HF Logistics – SKX T1, LLC. is requesting a full road closure of Theodore Street between Eucalyptus Avenue and the SR-60 Westbound Ramp to facilitate the construction of street improvements on Theodore Street. The road closure will be for four weeks, or 28 calendar days. The developer is currently seeking a permit from Caltrans for the closure of the SR-60 Eastbound and Westbound Ramps at Theodore Street. The closure of the SR-60 Eastbound Ramps at Theodore Street would run concurrently with the closure of Theodore Street. The request for the road closure is due to major improvement work along Theodore Street as well as within the ramp terminal.

Given the limits of the closure, no residences are located within the proposed closure. Residents located south of Eucalyptus Avenue will be able to follow detours to Gilman Springs Road as well as Redlands Boulevard to access SR-60. Furthermore, the detour plan routes traffic destined for the County Landfill via Redlands Boulevard and Ironwood Avenue.

### **ALTERNATIVES**

1. Authorize a full road closure of Theodore Street between Eucalyptus Avenue and the SR-60 Westbound Ramp for the construction of street improvements from March 21, 2011 to April 18, 2011. Authorize the City Engineer to allow for an additional 30 day extension to the proposed road closure window if the project is delayed to unforeseen construction issues.
2. Do not authorize a full road closure of Theodore Street between Eucalyptus Avenue and the SR-60 Westbound Ramp for the construction of street improvements from March 21, 2011 to April 18, 2011. Do not authorize the City Engineer to allow for an additional 30 day extension to the proposed road closure window if the project is delayed due to unforeseen construction issues. There would be no road closure. *This alternative would result in an unsafe work environment.*

### **FISCAL IMPACT**

The developer will be responsible for all costs associated with this proposal.

### **NOTIFICATION**

The contractor will be required to give notification to the County Landfill, Post Office, Police, Fire Department, Ambulance Services, Riverside Transit Authority, Waste

Management, and affected residents. The public will be notified by special roadside signage showing the dates of closure and detour signs.

**CITY COUNCIL GOALS**

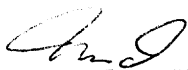
**PUBLIC SAFETY:**

Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous materials incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

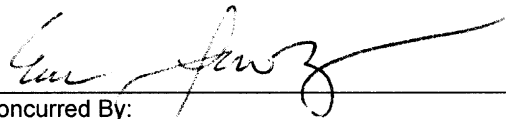
**ATTACHMENTS**

Exhibit "A" – Vicinity Map

Exhibit "B" – Road Closure Detour Map

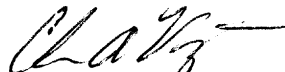


Prepared By:  
Michael Lloyd, P.E.  
Senior Engineer



Concurred By:  
Eric Lewis, P.E., T.E.  
City Traffic Engineer

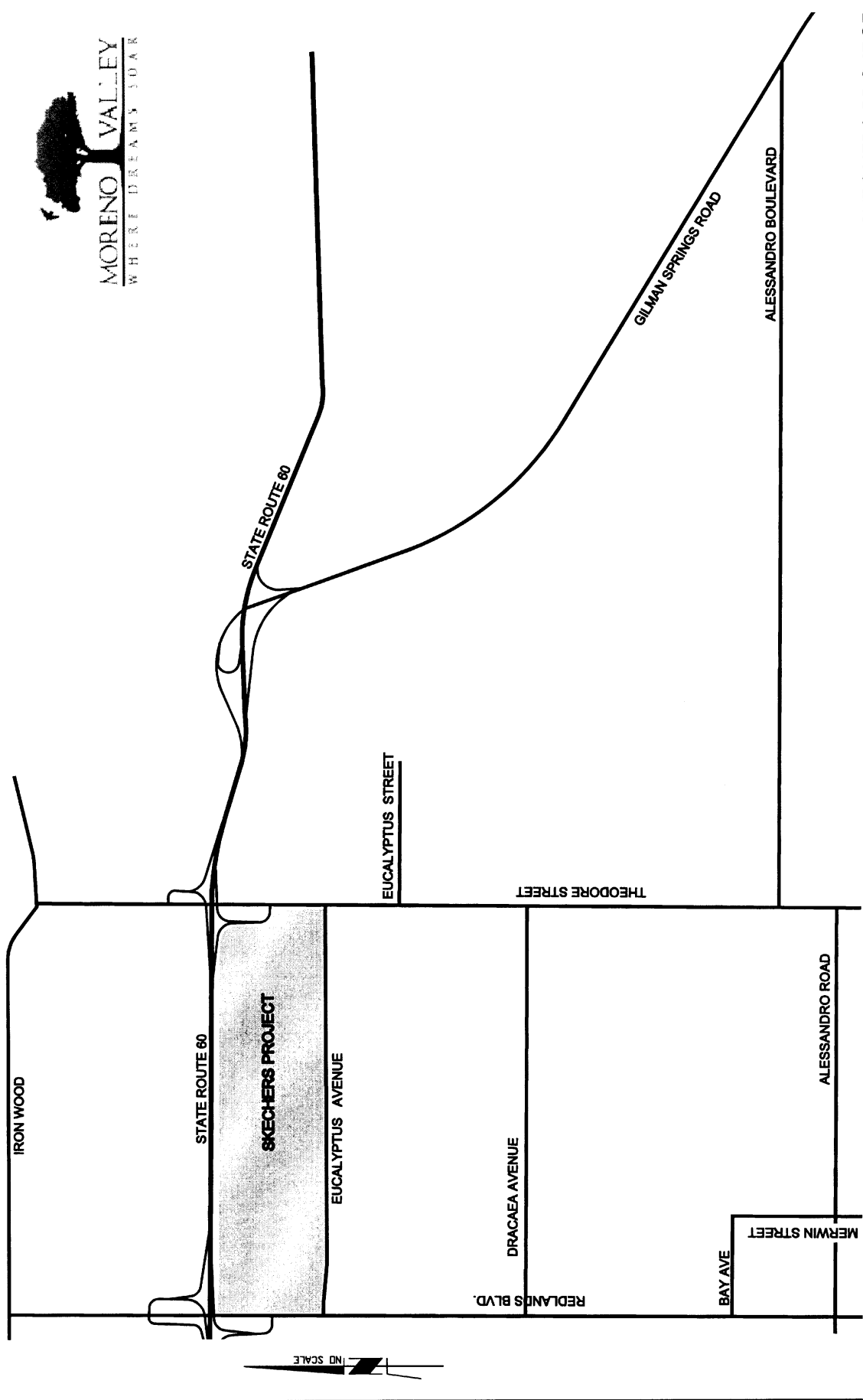
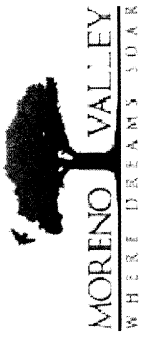
Concurred By:  
Mark Sambito, P.E.  
Engineering Division Manager



Department Head Approval:  
Chris A. Vogt, P.E.  
Public Works Director/City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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SKECHERS PROJECT VICINITY MAP  
CITY OF MORENO VALLEY  
SAN DIEGO, CALIFORNIA  
RBF CONSULTING  
14728 ALTON PARKWAY, SAN DIEGO, CA 92118-0627 (619)472-3000



EXHIBIT "A"

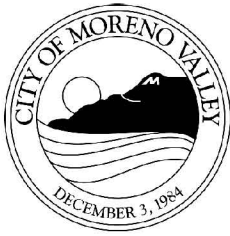
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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>Rut</i>
CITY MANAGER	<i>ms</i>

## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Barry Foster, Community & Economic Development Director

**AGENDA DATE:** March 8, 2011

**TITLE:** AMENDED MARCH JOINT POWER AUTHORITY AGREEMENT #12

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### **RECOMMENDED ACTION**

Staff recommends that the City Council:

1. Approve the Amended March Joint Powers Authority Amendment #12.
2. Authorize the Mayor to execute the Amended Agreement.

### **BACKGROUND**

The March Joint Powers Authority consists of Riverside County, along with the cities of Moreno Valley, Perris and Riverside. The March Joint Powers Agreement has been modified many times to meet the ever changing needs for the reuse efforts of the March Joint Powers Authority.

### **DISCUSSION**

Because proposed legislation by the State of California threatens to abolish redevelopment agencies in California, an Amendment to the March Joint Powers Authority has been adopted to provide, under the terms of the agreement, for a succession plan upon the dissolution of the March JPA's Redevelopment Agency. The March Joint Powers Authority shall assume all the rights, powers, duties and obligations of the March JPA Redevelopment Agency should the entity be dissolved.

### **ALTERNATIVES**

1. Approve the Amended March Joint Powers Authority Amendment #12.

2. Decline to approve the Amended March Joint Powers Authority Amendment #12.

**FISCAL IMPACT**

Approval of the Amended March Joint Powers Authority Amendment #12 shall have NO fiscal impact on the City of Moreno Valley.

**ATTACHMENTS/EXHIBITS**

Attachment A - Amended March Joint Powers Authority Amendment #12

Prepared By:  
Barry Foster  
Community & Economic Development Director

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

JOINT POWERS AGREEMENT  
BETWEEN  
THE CITIES OF MORENO VALLEY,  
PERRIS AND RIVERSIDE AND THE  
COUNTY OF RIVERSIDE  
FOR  
THE FORMATION OF A  
JOINT POWERS AUTHORITY  
TO FORMULATE AND IMPLEMENT  
PLANS FOR THE USE AND REUSE  
OF  
MARCH AIR FORCE BASE

PROPOSED AMENDMENT #12  
MARCH 2, 2011

Attachment A

**TWELFTH AMENDED JOINT POWERS AGREEMENT BETWEEN THE  
CITIES OF MORENO VALLEY, PERRIS AND RIVERSIDE AND THE  
COUNTY OF RIVERSIDE FOR THE FORMATION OF A JOINT POWERS  
AUTHORITY TO FORMULATE AND IMPLEMENT PLANS FOR THE USE  
AND REUSE OF MARCH AIR FORCE BASE**

THIS JOINT POWERS AGREEMENT dated this \_\_\_ day of \_\_\_\_\_, 2011, is made by and between the CITIES OF MORENO VALLEY, a general law city of the State of California, PERRIS, a general law city of the State of California, and RIVERSIDE, a charter city and municipal corporation of the State of California (hereinafter sometimes jointly referred to as “Cities”) and the COUNTY OF RIVERSIDE, a political subdivision of the State of California (hereinafter sometimes referred to as “County”).

**WITNESSETH**

WHEREAS, Cities and County and other governmental entities have met and discussed the present and future use and reuse of March Air Force Base, including the impacts associated therewith upon surrounding communities and upon region; and

WHEREAS, although Cities and County each have the authority and power to formulate and implement plans for the use and reuse of March Air Force Base, and to acquire, own, maintain and operate and airport in conjunction therewith, nevertheless it is apparent that no single existing local governmental entity or institution has the requisite capability to exercise such powers, hereinafter sometimes referred to as “the Joint Powers,” in a manner which would most efficaciously serve the interests of the Cities and County or of the region; and

WHEREAS, March Air Force Base is a federal enclave located in the western portion of the County of Riverside; and

WHEREAS, the Cities and certain unincorporated areas of the County are adjacent and in close proximity to March Air Force Base; and

WHEREAS, Cities and County desire to organize themselves pursuant to this Joint Powers Agreement, hereinafter referred to as “the Agreement,” to develop and formulate goals, objectives and priorities, and thereafter, to amend this Agreement or to create an appropriate successor entity to implement such goals, objectives and priorities; and

WHEREAS, Cities and County (sometimes jointly hereinafter referred to as “Parties”) are authorized to contract with each other for the joint exercise of powers pursuant to Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California, hereinafter referred to as “the Act”;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

Section 1. Purpose. This Agreement is made under the provisions of the Act and is made for the following express purposes: (a) Developing and formulating and implementing plans for the organization, development and establishment of program goals, objectives and priorities for the use and reuse of March Air Force Base; (b) Obtaining of funding and other resources, as is more specifically set forth in Section 6 herein; (c) Creating a Redevelopment Agency having all of the rights, powers, and duties related thereto and carrying out the necessary actions to form and implement a redevelopment project area; (d) Creating an “Airport Authority” having all the rights, powers, and duties related thereto; (e) Functioning as the single, local, representative of the region and the most affected communities in respect to formulating and implementing plans for the use and reuse of March Air Force Base; and (f) Planning and implementing the development of land in the area covered by the March “Master Reuse Plan” and Air Force Village West in it’s entirety, including the preparation and adoption of a General Plan and/or a Specific Plan, the preparation and adoption of zoning and other land development standards, the preparation and adoption of health and safety codes related to

development activities, and the implementation of these functions through the creation of appropriate Boards and Commissions pursuant to California law.

The purposes of this Agreement shall be accomplished and said common powers exercised in the manner hereinafter set forth, subject however to such restrictions as are applicable to County in its manner of exercising such powers, as required by Government Code Section 6509.

Section 2. Creation of the Authority. Pursuant to the Act, there is hereby created a public entity to be known as the “March Joint Powers Authority,” hereinafter referred to as “the Authority.” The Authority shall be a public entity, separate and apart from its members, and, as provided by law and not otherwise prohibited by this Agreement, shall be empowered to take such actions as may be necessary or desirable to implement and carry out the purposes of this Agreement.

Section 3. Term. The term of this Agreement shall commence upon approval and execution of this document by County and all three Cities and shall continue until terminated by the Parties hereto by their mutual written consent as provided in Section 4.

Section 4. Terminations and Amendments.

(a) Any Party to this Agreement may withdraw for any reason upon giving all other Parties sixty (60) days advance written notice of the effective date of such withdrawal, and this Agreement shall thereupon be deemed automatically amended to reflect the deletion of said Party from this Agreement.

(b) This Agreement initially contemplates a four-party Agreement. However, if any Party elects to withdraw during the term of this Agreement pursuant to Subsection 4 (a) above, the remaining Parties, if two or more in number, may elect to continue with the purposes of this Agreement and this Agreement shall be appropriately amended to reflect the change in membership.

(c) Provided there is mutual consent by the governing bodies of each of the Parties to this Agreement, evidenced in writing, this Agreement may be: (1) amended to



extend the term thereof; (2) amended to add new Parties; or (3) amended to change any substantive portion of the Agreement, or any one or more of the foregoing, in accordance with all applicable laws, rules and regulations.

(d) The Parties to this Agreement specifically agree that this Agreement creates an entity which may acquire or hold property. If it is deemed that Sections 6511 and 6512 of the Act are applicable after completion of the purposes of this Agreement or upon termination thereof, any property or assets acquired or surplus money on hand which was obtained pursuant to this Agreement and which is not required by law or contract to be distributed in a different manner, shall be returned to the then Parties to the Agreement in proportion to the contributions made. For purposes of this distribution, “contributions made” include unreimbursed in-kind services, materials and equipment provided by a Party.

Section 5. Creation of the Joint Powers Commission (“JPC”).

(a) Creation of JPC. In order to effectuate the purposes of this Agreement as set forth in Section 1 hereof and to accomplish the Action Steps described in Section 6 hereof, Cities and County agree to establish at the earliest possible date after commencement of this Agreement, a Joint Powers Commission (hereinafter referred to as “JPC”), which shall be the governing body of the entity created by this Agreement and all the powers of such entity shall be exercised by the JPC.

(b) Membership. The JPC shall initially be composed of eight (8) Members. Each Party to this Agreement shall be represented by two (2) JPC Members with each Member being entitled to one (1) vote. In the event only one Member or the Alternate is present representing the same Party, that Member or Alternate who is present may cast two (2) votes on behalf of that Party in any manner deemed appropriate by such Member or Alternate. In the event no Member or Alternate of a Party is present at the time that votes are cast on a matter, the votes of such absent Members or Alternate shall be considered as not having been cast.

(c) Designation of Representatives and Alternates. The governing body of each Member on the JPC shall appoint by resolution its Representatives and may appoint by resolution an Alternate to the JPC. A copy of the resolution shall be furnished to the JPC. Each Representative and Alternate must hold an elective office on the respective governing body appointing the Representative and Alternate. Alternates shall have the authority to act in a Representative's absence. Representatives for the County of Riverside shall be the Supervisors of Districts I and V and the Alternate for the County of Riverside shall be the Supervisor of District III.

Representatives and Alternates shall serve on the JPC during the term for which they were appointed or until their successor has been appointed or their appointment has been revoked, whichever is earlier. However, a Representative's or Alternate's position on the JPC shall automatically terminate if and when the term of the elected public office of such Representative or Alternate is terminated. When a vacancy occurs, it shall be the duty of the respective Party having the vacancy to promptly inform the JPC of the name of the replacement Representative or Alternate by forwarding a copy of the resolution appointing such replacement Representative or Alternate to the JPC .

(d) Quorum and Transaction of Business. The presence of five (5) Members of the JPC shall constitute a quorum of which a least four (4) Members shall represent each Party to this Agreement, provided, however, that there shall be no requirement for the presence of four (4) Members representing each Party if both Members of the Party are absent for two (2) successive meetings. A vote of five (5) Members shall be necessary for the transaction of business, except for adjournment of a meeting which shall require only a majority vote of those present. No proxy or absentee voting shall be permitted.

(e) Meetings. The JPC shall establish the time and place for its regular and special meetings. The dates, hour and location of regular meetings shall be fixed by resolution of the JPC and a copy of such resolution shall be filed with the governing body of each of

the Parties and with each Party's designated Representatives. Special meetings and adjourned meetings may be held as required or permitted by law.

(f) Ralph M. Brown Act. All meetings of the JPC, including without limitation, regular, special and adjourned meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

Pursuant to Government Code Section § 54956.96, Members or Alternates may disclose information discussed in closed session that has direct financial or liability implications for any Party to this Agreement to the following individuals:

(1) Legal counsel of any Party to this Agreement for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Party.

(2) Other members of the legislative body of the Party present in closed session of that member Party.

Furthermore, any Alternate who is also a member of the legislative body of any Party and who is attending a properly noticed meeting of the JPC in lieu of a Member may attend closed sessions of the JPC.

(g) Officers. The JPC shall select a Chairperson and a Vice-Chairperson at its first meeting and at the first meeting held in each succeeding calendar year shall select or re-select its officers. In the event an officer resigns or ceases to be an officer, the JPC shall select a replacement therefor at the next regular meeting of the JPC. In the absence or inability of the Chairperson to act, the Vice-Chairperson shall act as Chairperson.

(h) Management, Staff and Support Personnel. Subject to the availability of funds, the JPC may contract for or employ such staff and support personnel as may be necessary or desirable in implementing and carrying out the purposes of this Agreement. Such staff and personnel shall exercise those powers, duties and responsibilities imposed or conferred herein or conferred thereon by the JPC.

Additional support personnel for the JPC may be provided by the staff of the Parties to this Agreement subject to such conditions as may be approved by the governing bodies of such personnel and by the JPC.

(i) Rules. The JPC may adopt, from time to time, such rules and regulations for the conduct of its meetings and affairs as it may deem necessary, including, without limitation, the designation of a person to record and transcribe the minutes of each public meeting of the JPC.

(j) Funding and Support. It is anticipated that the operating funds of the JPC will be derived from grants, donations, and from “in kind” contributions from the Parties to this Agreement.

The JPC, in the name and on behalf of the Authority, may apply for, accept, and utilize grants from any governmental or private source in order to implement and carry out the purposes of this Agreement.

After consultation with the JPC, any Party to this Agreement may apply for or accept grants, or other funds or resources for any purpose relating to the objectives of this Agreement and, unless otherwise approved by all members of the JPC, all obligations assumed thereunder shall be the sole obligations of the Party obtaining such monies or resources, and not the obligation of any other Party to this Agreement or of the JPC.

The JPC may request the Parties to this Agreement to contribute funds; provided, however, that any such contribution shall be on an equal basis as among the Parties unless such request by unanimous vote of all the Members of the JPC provides otherwise. Such funds may not be assessed or collected unless the governing body of each Party to this Agreement consents thereto.

Any revenue, rents, profits or issues derived by, or on behalf of, the JPC other than grants, donations and “on kind” contributions from the Parties to this Agreement and which are not required to implement and carry out the purposes of this Agreement, shall

be shared and distributed equally to the Parties of this Agreement unless otherwise as directed by unanimous vote of all the Members of the JPC.

(k) Consultants. Subject to the availability of funds, the JPC may employ such consultants as are deemed necessary and desirable in implementing and carrying out the purposes of this Agreement.

(l) Fiscal Year. The fiscal year of the Authority shall be the period commencing on July 1 of each year and ending on and including the following June 30.

(m) Treasurer. The Treasurer of the Authority shall be a designated member of the Commission or the staff. The Treasurer shall have the custody of the Authority money and disburse Authority funds pursuant to the accounting procedures developed in accordance with the provisions of this Agreement, the Act, and with those procedures established by the JPC. The Treasurer shall assume the duties described in Section 6505.5 of the Government Code, namely: receive and receipt for all money of the Authority and place in the Treasury of the Treasurer to the credit of the Authority; be responsible upon an official bond as prescribed by the JPC for the safekeeping and disbursement of all Authority money so held; pay, when due, out of money of the Authority so held, all sums payable, only upon warrants of the officer performing the functions of the Controller who has been designated by the Authority or JPC; verify and report in writing on the first day of July, October, January and April of each year to the Authority and to the Parties to the Agreement the amount of money held for the Authority, the amount of receipts since the last report, and the amount paid out since the last report; and perform such other duties as are set forth in this Agreement or specified by the JPC.

(n) Controller. The Executive Director, or another appointed person or a contracted private firm at the discretion of the Commission, shall be the Controller of the Authority. The Controller shall draw warrants to pay demands against the Authority when such demands have been approved by the JPC or by any other person authorized to so approve such by this Agreement or by resolution of the JPC. The Controller shall

perform such duties as are set forth in this Agreement and such other duties as are specified by the JPC.

There shall be strict accountability of all funds and reporting of all receipts and disbursements. The Controller shall establish and maintain such procedures, funds and accounts as may be required by sound accounting practices, the books and records of the Authority in the hands of the Controller shall be open to inspection at all reasonable times by representatives of the Parties.

The Controller, with the approval of the JPC, shall contract with an independent certified public certified public accountants to make accountant or firm or an annual audit of the accounts and records of the Authority, and a complete written report of such audit shall be filed as public records annually, within six (6) months of the end of the fiscal year under examination, with each of the Parties. Such annual audit and written report shall comply with the requirements of Section 6505 of the Government Code. The cost of the annual audit, including contracts with, or employment of such independent certified public accountants in making an audit pursuant to this Agreement shall be a charge against any unencumbered funds of the Authority available for such purpose. The JPC by unanimous vote, may replace the annual audit with a special audit covering a two-year period.

(o) Technical Advisory Committee. There is hereby established within the Authority a Technical Advisory Committee. The members of the Technical Committee shall be as follows:

- (i) The Member of the United States House of Representatives who represents the Congressional District which includes March Air Force Base, or the designee of such Member;
- (ii) The City Manager of each of the cities which are parties to this Agreement, or the designee thereof;

(iii) The Chief Administrative Officer of the County of Riverside, or the designee thereof; and

(iv) Such other persons as the foregoing membership may select, including, without limitation, representatives of private and governmental entities.

The TAC shall also involve in its discussion non-voting “ex-officio” members. These members may be changed from time-to-time, but at a minimum the Executive Director of the Western Riverside Council of Governments and the Base Transition Coordinator shall be considered as “ex-officio” members of the TAC.

The Chairperson of the Technical Advisory Committee shall be the Member of the United States House of Representatives or the designee of such Member.

The duties of the Technical Advisory Committee shall be:

- (i) To act as an advisory body to the JPC in matters relevant to the purposes of this Agreement; and
- (ii) To undertake such other duties as may be assigned to the Committee by the JPC.

Section 6. Achievement of Purposes. In order to achieve the purposes set forth in this Agreement, the JPC shall convene as a body and shall be charged with the responsibility of hearing and reviewing oral and written reports, analyzing documentary evidence, engaging in discussions, making inspections, examining all relevant data as is more specifically set forth in the specific action steps hereinafter provided:

(a) Short Term Action Steps.

(1) Identify available funding, in accordance with Section 5(j), from available federal, state and private grants to aid in the financing of the work associated with the purposes of this Agreement.

(2) Coordinate the actions and plans of the Authority with other governmental entities and interested organizations.

(3) Investigate and recommend interim and permanent finance programs in order to serve the best interests of the affected communities and the region and to accomplish the purposes of this Agreement.

(b) Long Term Action Steps.

(1) Develop a cohesive plan for use and reuse of March Air Force Base and its surrounding environs to the extent such plan does not conflict with federal, state or local law.

(2) Serve as the single, local representative organization in working with the office of Economic Adjustment of the United States Department of Defense.

The listing of the above acts is not intended to indicate any priority of one act over another, nor is such listing intended to be all inclusive. The JPC may authorize other acts to be done in the accomplishment of the purposes of this Agreement. One or several acts may take place concurrently or in sequence as the JPC shall direct.

Section 7. JPC a Separate Entity; Liability; Immunity. The JPC shall be a public entity separate and apart from the Parties to this Agreement. However, each Party to this Agreement shall defend, indemnify and hold harmless each other party from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs including litigation costs and attorney's fees arising out of, resulting from or in connection with the performance of this Agreement by any of its officers, employees or agents. Each Party's obligation to defend, indemnify and hold each of the other Parties to this Agreement harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property including the loss of use.

It is the intent of the Parties that, except as provided herein, the JPC cannot incur any debts, liabilities or obligations without the consent of the governing body of each Party to the Agreement; provided, however, any such debts, liabilities or obligations shall be shared, and otherwise apportioned, equally as among the Parties to this Agreement unless the JPC by unanimous vote of all the Members of the JPC directs otherwise.



However, to the extent such are established pursuant hereto or by the final judgment of a court of competent jurisdiction, they shall constitute the debts, liabilities and obligations of the Authority and shall not constitute the debts, liabilities or obligations of the Parties to this Agreement or of any of them.

As to the officers, agents, Representatives, Alternates, and employees, if any, of the JPC or the Parties to this Agreement, the provisions of California Government Code Section 6513 are hereby incorporated into this Agreement.

Section 8. Successor Agency, Allocation of Assets and Liabilities Upon Dissolution of the March Joint Powers Redevelopment Agency. Upon dissolution of the March Joint Powers Redevelopment Agency (the “Agency”), the Authority is hereby designated the successor agency with all authority, rights, powers, duties and obligations previously vested with the Agency. Any and all assets and liabilities in possession of the Agency shall be transferred to the Authority, as the successor agency, upon the Agency’s dissolution.

Section 9. Severability. If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable and the remainder of the Agreement or the application of such provisions to the other Party or to other persons or circumstances shall not be affected thereby.

Section 10. Notices. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to said respective Parties, as follows:

- (a) March Joint Powers Commission  
c/o Executive Director  
23555 Meyer Drive  
Riverside, CA 92518

- (b) City of Moreno Valley  
c/o City Manager  
P. O. Box 88005  
Moreno Valley, CA 92552-0805
  
- (c) City of Perris  
c/o City Manager  
135 N "D" St.  
Perris, CA 92570-1998
  
- (d) City of Riverside  
c/o City Manager  
3900 Main Street, 7<sup>th</sup> Floor  
Riverside, CA 92501
  
- (e) Riverside County Board of Supervisors  
c/o Clerk of the Board of Supervisors  
County Administrative Center  
4080 Lemon Street  
Riverside, CA 92501

Section 11. Other Obligations. The responsibilities and obligations of each Party to this Agreement shall be solely as provided in this Agreement, or as may be provided for in supplemental agreements to be executed by the Parties.

Section 12. Other Agreements Not Prohibited. Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.

Section 13. Powers Not Included in Agreement. It is contemplated that certain common powers of the Parties to this Agreement may be needed in the future, however, until such time as the Parties may deem otherwise and this Agreement is amended to specifically so provide, it shall not be construed or interpreted to mean that the Authority or the JPC possesses the power, right or authority to mandate the expenditure of funds by Parties to this Agreement, or to incur any obligation on behalf of any Party to this Agreement; provided further, however, in the event this Agreement is amended to provide for the regulation or control of land use, any Party may disapprove any proposed

regulation or control of land use affecting any real property which is within, or contiguous to, the jurisdiction of such Party.

Except as specifically provided to the contrary herein, this Agreement is not designed to, nor shall it be construed or interpreted to affect the rights of any Party to this Agreement. Furthermore, this Agreement shall not be construed to prohibit any Party from applying for or accepting any grants, funds or monies for any purpose when the obligations thereunder become the sole obligation of said Party.

Section 14. Non-Assignability. The rights, titles and interests of any Party to this Agreement shall not be assignable or transferable without the consent of the governing body of each Party hereto.

Section 15. Miscellaneous.

(a) Section Headings. The section headings herein are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

(b) Laws of California. This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.

(c) Construction of Language. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(d) Cooperation. The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement, including cooperation in matters relating to the public, accounting, litigation, public relations and the like.

(e) Future Amendments. To preserve a reasonable degree of flexibility, many parts of this Agreement are stated in general terms. It is understood that there may be

Amendments to this Agreement which will further define the rights and obligations of the Parties.

(f) Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.

(g) Duplication Rights. Each Party shall have the right to duplicate, at its own expense, any and all documents and reports created or acquired, in the joint exercise of powers hereunder by the JPC or by any other Party hereto pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized as of the date first above written.

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

**CITY OF MORENO VALLEY**

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM** this

\_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
City Attorney

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

**CITY OF PERRIS**

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

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM** this  
\_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
City Attorney

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

**CITY OF RIVERSIDE**

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM** this  
\_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
City Attorney

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

**COUNTY OF RIVERSIDE**

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

ATTEST:

\_\_\_\_\_  
Deputy

**APPROVED AS TO FORM** this  
\_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
County Counsel

**MINUTES - REGULAR MEETING OF FEBRUARY 22, 2011  
(Report of: City Clerk's Department)**

**Recommendation: Approve as submitted.**

**SEE AGENDA ITEM A.2**

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**MINUTES - REGULAR MEETING OF FEBRUARY 22, 2011  
(Report of: City Clerk's Department)**

**Recommendation: Approve as submitted.**

**SEE AGENDA ITEM A.2**

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APPROVE THE AGREEMENT TO REIMBURSE TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) FUNDS BETWEEN WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG) AND CITY OF MORENO VALLEY FOR CONSTRUCTION PHASE OF NASON/SR-60 INTERCHANGE OVERCROSSING PROJECT - PROJECT NO. 07-41570024 (ALSO LISTED AS AGENDA ITEM A.7) (Report of: Public Works Department)

SEE AGENDA ITEM A.7

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**MINUTES - REGULAR MEETING OF FEBRUARY 22, 2011  
(Report of: City Clerk's Department)**

**Recommendation: Approve as submitted.**

**SEE AGENDA ITEM A.2**

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## **CITY COUNCIL REPORTS ON REGIONAL ACTIVITIES**

- a. Mayor Richard A. Stewart report on  
March Joint Powers Commission (MJPC)**

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>RH</i>
CITY MANAGER	<i>MS</i>

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## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Jane Halstead, City Clerk, CMC

**AGENDA DATE:** March 8, 2011

**TITLE:** APPOINTMENTS TO THE PLANNING COMMISSION

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### **RECOMMENDED ACTION**

Staff recommends that the City Council, after reviewing the ballot provided by the City Clerk:

1. Appoint three (3) members for terms expiring March 31, 2015;
2. If the appointments are not made, authorize the City Clerk to re-notice the positions as vacant.

### **BACKGROUND**

On October 20, 2010, the City Clerk's Office posted a Notice of Openings for the Planning Commission three terms expiring March 31, 2015. Appropriate time frames with respect to noticing vacancies were followed. Members with expiring terms were notified and advised of the need to submit a new application to be considered for reappointment.

Eleven applications were submitted and reviewed by the City Council. The City Council interviewed seven applicants on February 23, 2011. In alphabetical order, the selected applicants for consideration of appointments are as follows:

Gary E. Baugh, Amber Crothers, Rick De Jong, Thomas Andrew Owings, and Mary E. "Meli" Van Natta.

**ALTERNATIVES**

The Planning Commissioners consider matters pertaining to development and zoning within the City and have decision-making authority pursuant to the Government Code of the State of California. Choosing not to appoint members to the Planning Commission would result in decreased participation from residents, and it would adversely affect the Commission's ability to function and to maintain a quorum at meetings. This option is not consistent with the City Council goal of creating a positive environment for the development of Moreno Valley's future. Therefore, staff recommends that the City Council make the recommended appointments.

**NOTIFICATION**

1. Posting of Notice of Openings
2. Publication of the agenda
3. Report mailed to final candidates

**ATTACHMENTS/EXHIBITS**

1. List of Planning Commission Applicants Selected for the Interviews

Prepared By: Ewa Lopez  
Deputy City Clerk, CMC

Department Head Approval: Jane Halstead  
City Clerk, CMC

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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3 22 2011.doc

**List of Planning Commission Applicants**  
**Selected for Interviews Held on February 23, 2011**

Gary E. Baugh

Amber Crothers

Rick De Jong\*

Alvin C. Horn

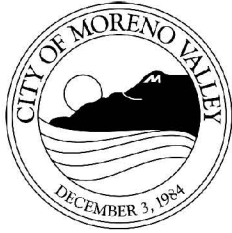
Thomas Andrew Owings

Carlos Ramirez

Mary E. "Meli" Van Natta

\* Incumbent

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>Rest</i>
CITY MANAGER	<i>ms</i>

## Report to City Council

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**TO:** Mayor and City Council Acting in their Capacity as the Legislative Body of Community Facilities District No. 4-Infrastructure

**FROM:** Chris A. Vogt, P.E., Public Works Director/City Engineer

**AGENDA DATE:** March 8, 2011

**TITLE:** RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS OF COMMUNITY FACILITIES DISTRICT NO. 4-INFRASTRUCTURE DESIGNATED 2011 SPECIAL TAX BONDS; APPOINTING THE FISCAL AGENT; APPROVING THE FORMS OF THE FISCAL AGENT AGREEMENT, PRELIMINARY OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT AND CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING NEGOTIATION OF TERMS OF THE SALE OF SAID BONDS; AND PREPARATION OF FINAL OFFICIAL STATEMENT. APPROVAL OF A THIRD AMENDMENT TO THE FIELDMAN, ROLAPP & ASSOCIATES, INC. AGREEMENT FOR PROFESSIONAL FINANCIAL ANALYST CONSULTANT SERVICES

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### **RECOMMENDED ACTION**

Staff recommends that the City Council, acting in its capacity as the legislative body of City of Moreno Valley Community Facilities District No. 4-Infrastructure:

1. Approve and adopt Resolution No. 2011-21, Authorizing the Issuance of Bonds of Community Facilities District No. 4-Infrastructure Designated 2011 Special Tax Bonds, in an Aggregate Principal Amount Not-to-Exceed \$10,000,000, Appointing a Fiscal Agent, Approving a Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Agreement, Authorizing Negotiation of Terms of the Sale of Said Bonds, and Authorizing Preparation of Final Official Statement; and
2. Approve the Third Amendment to the Agreement for Professional Financial Analyst Consultant Services for Community Facilities District No 4-Infrastructure and authorize the Mayor to execute said Amendment to the Agreement in the form attached.

**ADVISORY BOARD/COMMISSION RECOMMENDATION**

N/A

**BACKGROUND**

Ridge Property Trust submitted an application on May 13, 2004 to form a community facilities district to fund the acquisition and/or construction of public improvements for the proposed development of the Centerpointe Business Park through the payment of special taxes. Any bonds issued for the community facilities district shall be secured by those special taxes. The City approved the developer's request and on October 25, 2005 Community Facilities District No. 4—Infrastructure ("CFD No. 4-I" or "District") was formed. The District is generally located south of Alessandro Boulevard, east of Frederick Street, north of Cactus Avenue, and west of Heacock Street. The public improvements, to be financed through bonds, include: street improvements, traffic signals, street lighting, local drainage improvements, median landscaping, electric utility improvements, and appurtenant structures and facilities; to date all improvements have been constructed and accepted by the City. The District has been authorized by Resolution 2005-95 to issue up to \$16 million of bonds. Debt service for bond issuances shall be secured through the CFD No. 4-I annual special tax levy on properties within the District.

The developer's proposed ultimate plans are to construct twelve buildings within the Centerpointe Business Park. Five of the twelve buildings have been constructed and are occupied; buildings 4, 5, 6, 8, and 9 (see Attachment 7). Building 8 was sold to the United States Postal Service ("USPS") and the special tax obligation was prepaid. The USPS parcel still remains within the boundaries of the CFD but is not subject to the payment of any future special taxes.

Since 2004, consultants have been retained for a variety of services pertaining to the formation and/or issuance of bonds for the District. Bond issuance documents have been previously drafted; however, have required revisions due to modifications to the District, developer's construction financing, and changing market conditions. These efforts have increased the cost of issuance as well as the cost for consultants for this District.

Fieldman, Rolapp & Associates, Inc. was retained for Financial Analyst Services for CFD No 4-Infrastructure in 2005. The original contract consisted of Financial Services for the formation of and issuance of bonds for CFD No. 4-I and CFD No. 5 (Stoneridge). The First Amendment to the contract was entered into in August 2005, which modified the amount received for formation services for each district. The Second Amendment, entered into in September 2010, pertained solely to CFD No. 4-I. The Second Amendment, approved by the City Council on December 14, 2010, was for services for the modification of the existing rate and method of apportionment. Listed below is a summary of the prior amendments for this contract. While the contract amounts have been amended, not all monies have been expended to date.

**Contract Summary for Fieldman, Rolapp & Associates, Inc.**

	<b>Original Contract</b>		<b>First Amendment</b>		<b>Second Amendment</b>		<b>Subtotal</b>
<b>CFD No. 4-I</b>							
Formation	\$ 12,500	\$	12,500	\$	9,500	\$	34,500
Issuance	\$ 31,000					\$	31,000
						\$	<b>65,500</b>
<b>CFD No. 5</b>							
Formation	\$ 12,500	\$	10,000			\$	22,500
Issuance	\$ 31,000					\$	31,000
						\$	<b>53,500</b>

**DISCUSSION**

The City Council is being asked to approve and adopt the Resolution of Issuance to authorize the issuance of City of Moreno Valley CFD No. 4-I designated 2011 Special Tax Bonds (the "Bonds") Not-to-Exceed \$10,000,000 to finance the acquisition of the authorized improvements for the District. The Bonds will be secured solely from the proceeds of special taxes levied to the parcels within the District pursuant to the amended and restated rate and method of apportionment of special taxes. The issuance of bonds shall not constitute a general obligation of the City.

***Resolution of Issuance***

By adoption of the Resolution of Issuance, the City Council will:

1. Authorize the issuance of the Bonds in a principal amount not to exceed \$10,000,000
2. Appoint Wells Fargo Bank, National Association as the Fiscal Agent.
3. Approve the form of the following documents related to the issuance, sale and delivery of the Bonds:
  - a. Fiscal Agent Agreement by and between the City, for and on behalf of the District, and Wells Fargo Bank, National Association;
  - b. Preliminary Official Statement;
  - c. Bond Purchase Agreement by and between the City and E. J. De La Rosa & Co, Inc. (the "Underwriter"); and
  - d. Continuing Disclosure Agreement by and between the City, on behalf of itself and the District, and the Fiscal Agent, as dissemination agent.

4. Delegate the City Manager, Assistant City Manager and Financial & Administrative Services Director the authority to approve the final form of the foregoing documents (collectively, the "Bond Documents") with such additions therein or changes as the City Manager, Assistant City Manager, and Financial & Administrative Services Director may deem necessary and advisable and to execute the Bond Documents for and on behalf of the City and the District.
5. Authorize the negotiated sale of the Bonds to the Underwriter so long as the terms of such sale conform to the following financial parameters:
  - a. The aggregate principal amount of the Bonds shall not exceed \$10,000,000;
  - b. The fair market value of the taxable property in the District shall be more than 3 times (3:1) the principal amount of the Bonds. Bruce Hull and Associates (the "Appraiser") submitted an appraisal dated December 31, 2010, in which the Appraiser estimated the fair market value of the properties which are projected to be subject to the levy of the special taxes to pay the principal of and interest on the 2011 Bonds to be \$58,000,000;
  - c. The interest rate on any maturity of the Bonds shall not exceed 8.30%; and
  - d. The discount at which the Underwriter purchases all of the 2011 Bonds shall not be less than an amount equal to two percent (2.00%) (exclusive of original issue discount) of the aggregate principal amount of the 2011 Bonds. For example: if the par amount of the Bonds is \$10,000,000 and the original issue discount is \$200,000 then the Underwriter discount shall be equal to \$196,000 ( $[\$10,000,000 - 200,000] * 2\% = \$196,000$ ).
6. Authorize the preparation of the Final Official Statement.

***Description of the Bond Documents***

The following is a brief description of the Bond Documents:

Fiscal Agent Agreement. The Fiscal Agent Agreement between the City of Moreno Valley and Wells Fargo Bank, National Association, establishes the terms and conditions pursuant to which Bonds will be issued and subsequently administered. Among other terms and conditions, the Fiscal Agent Agreement:

- a. Sets forth the maturity schedule and interest rates applicable to the Bonds;
- b. Establishes various funds and accounts to be held by the Fiscal Agent into which the proceeds of the Bonds and the special taxes will be distributed.



The Agreement also establishes the terms and conditions pursuant to which such funds are to be transferred to pay; and

- c. Sets forth covenants of the City necessary to maintain the tax-exempt status of the Bonds and insure that adequate special taxes are levied annually to pay scheduled debt service on the Bonds.

Preliminary Official Statement. The Preliminary Official Statement is the offering document and is required to contain all relevant and material information necessary to enable a prospective purchaser to make a decision to purchase or not to purchase the Bonds. The Preliminary Official Statement contains information on the District, Developer, security for the Bonds, amended and restated rate and method of apportionment, and terms and conditions for issuing and administering the Bonds. If the Resolution of Issuance is approved a Final Official Statement will be prepared.

Bond Purchase Agreement. The Bond Purchase Agreement establishes the terms and conditions pursuant to which the City will offer to sell and the Underwriter will offer to purchase the Bonds. The City Manager, Assistant City Manager and Financial & Administrative Services Director are authorized to execute and deliver the Bond Purchase Agreement to the Underwriter on behalf of the City and the District.

Continuing Disclosure Agreement. The Continuing Disclosure Agreement contains the commitment by the City to comply with federal law by providing ongoing information to the municipal bond market regarding the Bonds and the District. The report is due annually no later than April 1.

To comply with federal laws the property owner is required to submit a Developer Continuing Disclosure Report annually no later than March 1. In addition, a semiannual report shall be submitted no later than September 1.

***Third Amendment to the Agreement for Professional Financial Analyst Consultant Services***

In addition to the resolution of issuance, this staff report contains the Third Amendment to the Agreement for Professional Financial Analyst Consultant Services for approval. Due to the numerous starts and stops regarding the issuance of bonds for this District, the consultant has submitted a request to revise the contract to recover costs incurred. The Third Amendment increases the cost of issuance from \$31,000 to \$65,000 and establishes a Not-to-Exceed amount for “Other Services” and “Expenses” in the amount of \$6,250. The Not-to-Exceed amount was necessary to be included in this agreement to ensure the final costs billed under the “Other Service” and “Expenses” categories remain at a reasonable level.

**ALTERNATIVES**

1. Approve:

- a. And adopt the resolution authorizing the issuance of bonds of CFD No. 4-I designated 2011 Special Tax Bonds in an aggregate principal amount not to exceed \$10,000,000; appointing a Fiscal Agent; approving the forms of a Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Agreement; authorizing negotiation of terms of the sale of said bonds; and authorizing the preparation of the Final Official Statement; and
- b. The Third Amendment to the Agreement for Professional Financial Analyst Consultant Services for Community Facilities District No 4-Infrastructure with Fieldman, Rolapp & Associates, Inc.

*Approval of the resolution and the documents supporting the bond sale will permit the bonds to be sold for CFD No. 4-I. Also, allowing the Third Amendment to the Agreement for Financial Services will allow the consultant to complete the work necessary for the bond issuance for the District.*

**2. Do not approve:**

- a. The resolution authorizing the issuance of bonds of CFD No. 4-I designated 2011 Special Tax Bonds in an aggregate principal amount not to exceed \$10,000,000; appointing a Fiscal Agent; approving the forms of a Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Agreement; authorizing negotiation of terms of the sale of said bonds; and authorizing the preparation of the Final Official Statement; and
- b. The Third Amendment to the Agreement for Professional Financial Analyst Consultant Services for Community Facilities District No 4-Infrastructure with Fieldman, Rolapp & Associates, Inc.

*This alternative may delay the sale of bonds for CFD No. 4-I. Not approving the Third Amendment to the Agreement for Financial Services shall halt necessary work to be performed by the consultant related to the bond issuance for the District.*

**FISCAL IMPACT**

The developer shall pay costs for all professional services, which include the contract for Fieldman, Rolapp & Associates, Inc. related to the sale of the bonds for CFD No. 4-I, with the exception of the cost of issuance fees for consultant services that are under contract to be paid through bond proceeds. Ongoing administrative services provided by Special Districts will be reimbursed annually from the special tax levy.

Acquisition of the public facilities in CFD No. 4-I shall be paid for through bond proceeds. The District has been authorized by Resolution 2005-95 to issue up to \$16 million of bonds. Debt service for any future bond issuances shall be secured through

an annual special tax levy on properties within the District. **The issuance of bonds shall not constitute a general obligation of the City.**

**CITY COUNCIL GOALS**

**Public Facilities and Capital Projects**

Once bonds are sold, the proceeds shall be used to acquire the approved public improvements.

**Revenue Diversification and Preservation**

The debt service on the bonds will be paid for through an annual special tax levied on properties within the District.

**SUMMARY**

The action before the City Council, acting in their capacity as the Legislative Body of CFD No. 4-I, is to adopt the resolution of issuance authorizing the sale of bonds for CFD No. 4-I designated as 2011 Special Tax Bonds; appoint the Fiscal Agent; approve the forms of the Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement, and Continuing Disclosure Agreement; authorize negotiation of terms of the sale of said bonds; and the preparation of the Final Official Statement. In addition, the Third Amendment to Agreement for Professional Financial Analyst Consultant Services for Community Facilities District No 4-Infrastructure with Fieldman, Rolapp & Associates, Inc. is being presented for approval.

**NOTIFICATION**

N/A

**ATTACHMENTS**

- Attachment 1: Resolution Authorizing the Issuance of Bonds of CFD No. 4-Infrastructure Designated 2011 Special Tax Bonds, in an Aggregate Principal Amount Not to Exceed \$10,000,000, Appointing a Fiscal Agent, Approving the Forms of a Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Agreement, Authorizing Negotiation of Terms of the Sale of said Bonds, and Authorizing the Preparation of the Final Official Statement
- Attachment 2: Fiscal Agent Agreement
- Attachment 3: Preliminary Official Statement
- Attachment 4: Bond Purchase Agreement
- Attachment 5: Continuing Disclosure Agreement
- Attachment 6: Third Amendment to the Agreement for Professional Financial Analyst Consultant Services for Community Facilities District No 4-Infrastructure with Fieldman, Rolapp & Associates, Inc.
- Attachment 7: Centerpointe Business Park Map

Prepared by:  
Jennifer A. Terry  
Management Analyst

Concurred By:  
Richard Teichert  
Financial & Administrative Services Director

Concurred by:  
Candace E. Cassel  
Special Districts Division Manager

Department Head Approval:  
Chris A. Vogt, P.E.  
Public Works Director/City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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RESOLUTION NO. 2011-21

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, ACTING AS THE LEGISLATIVE BODY OF THE CFD NO. 4 - INFRASTRUCTURE OF THE CITY OF MORENO VALLEY, AUTHORIZING THE ISSUANCE OF BONDS OF COMMUNITY FACILITIES DISTRICT NO. 4 - INFRASTRUCTURE DESIGNATED 2011 SPECIAL TAX BONDS, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$10,000,000, APPOINTING A FISCAL AGENT, APPROVING A FISCAL AGENT AGREEMENT, PRELIMINARY OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT AND CONTINUING DISCLOSURE AGREEMENT, AND AUTHORIZING NEGOTIATION OF TERMS OF THE SALE OF SAID BONDS, AND AUTHORIZING PREPARATION OF FINAL OFFICIAL STATEMENT

WHEREAS, Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley, County of Riverside, State of California (the "District") was established on October 25, 2005, by adoption by the City Council (the "City Council") of the City of Moreno Valley (the "City") of Resolution No. 2005-94; and

WHEREAS, on October 25, 2005, the City Council also adopted Resolution No. 2005-95 determining the necessity for the District to incur bonded indebtedness in an aggregate principal amount not to exceed \$16,000,000; and

WHEREAS, on October 25, 2005, a special election was held within the District and there was submitted to the qualified voters of District, among other propositions, the proposition of whether a bonded indebtedness in an aggregate principal amount not to exceed \$16,000,000 should be incurred by and for the District for the purpose of providing certain public facilities for the benefit of the District (the "Facilities"), and more than two-thirds of the votes cast in said special election was cast in favor of incurring such bonded indebtedness, and the District was thereby authorized to issue bonds in an amount not to exceed \$16,000,000 for the purposes set forth in said proposition; and

WHEREAS, the City Council has determined (i) that it is necessary that bonds of the District designated "Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds" be issued in an aggregate principal amount which shall not exceed \$10,000,000 (the "2011 Bonds") to finance the acquisition of the Facilities; and

WHEREAS, pursuant to Section 53345.8 of the California Government Code, the City Council, as the legislative body of the District, may sell the 2011 Bonds only if it determines prior to the award of the sale of such 2011 Bonds that the value of the real property within the District that would be subject to the special tax to pay debt service on the 2011 Bonds (the "Special Tax") will be at least three (3) times the sum of the principal amount of the 2011 Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Mello-Roos Community Facilities Act of 1982 (Section 53311, *et seq.*, of the California Government Code) (the "Act") on property within the District or a fixed lien special assessment levied on property

ATTACHMENT 1

1

Resolution 2011-21  
Adopted March 8, 2011

within the District based upon an appraisal of the subject property made in a manner consistent with the City's Special District Financing Policy (the "Policies") adopted pursuant to the Act; and

WHEREAS, the City and Ridge Property Trust, a Maryland real estate investment trust and the owner of the property within the District at the time the District was formed, entered into an Acquisition/Financing Agreement, effective on May 26, 2005 (the "Acquisition/Financing Agreement") to establish, among other provisions, the terms and conditions under which the bonds could be issued for the District; and

WHEREAS, the Acquisition/Financing Agreement provides that the 2011 Bonds may be issued if the following conditions precedent are satisfied:

A. The 2011 Bonds are sized so that:

1. as of the date of issuance of the 2011 Bonds the aggregate appraised value of all taxable properties within the District shall comply with the value-to-lien standards set forth in the Policies utilizing the appraised value determined by an independent appraisal undertaken for the City utilizing assumptions approved by the City; and

2. the maximum projected annual Special Tax revenues securing the 2011 Bonds equals at least (a) 110% of the projected annual gross debt service on all outstanding bonds of the District plus (b) Administrative Expenses (as such term is defined in the rate and method of apportionment of Special Taxes authorized to be levied within the District); and

B. The timing of the issuance of the 2011 Bonds, the method of sale of the 2011 Bonds and the pricing thereof shall be determined solely by the City and shall conform to the Policies and the Acquisition/Financing Agreement; and

WHEREAS, the Policies provide that the City Council may authorize the issuance and sale of the 2011 Bonds only if the City Council has determined that:

A. The aggregate value of the real property within the District that will be subject to the levy of the Special Tax to pay debt service on the 2011 Bonds will be at least three (3) times the applicable Public Lien Amount, i.e., the principal amount of the bonds proposed to be issued for the District, plus the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act or a fixed lien assessment levied on property within the District; and

B. For each common ownership of undeveloped property that will be subject to the Special Tax to pay debt service on the 2011 Bonds, the aggregate value of all such undeveloped property under such common ownership will be at least three (3) times the Public Lien Amount apportioned to such properties; and

C. The value of each parcel of undeveloped property that will be subject to the Special Tax to pay debt service on the 2011 Bonds will be at least two (2) times the Public Lien Amount apportioned to such parcel; and

WHEREAS, the fair market value of all taxable properties within the District that are projected to be subject to the levy of the Special Tax to pay debt service on the 2011 Bonds, i.e., the improved properties within the District, based upon an appraisal prepared by Bruce Hull & Associates, Inc. (the "Appraiser"), an independent appraiser retained by the City and utilizing assumptions approved by the City, and as set forth in the report of the Appraiser (the "Appraisal"), was determined to be \$58,000,000; and

WHEREAS, there has been presented to the City Council a form of Bond Purchase Agreement whereby E.J. De La Rosa & Co., Inc. (the "Underwriter") has offered to purchase the 2011 Bonds from the City and a form of Preliminary Official Statement relating to the 2011 Bonds and the District (the "Preliminary Official Statement"); and

WHEREAS, there has been made available to the City Council a form of Fiscal Agent Agreement with respect to the 2011 Bonds to be executed and delivered by the City for and on behalf of the District and Wells Fargo Bank, National Association, as Fiscal Agent (the "Fiscal Agent Agreement"), whereby the Fiscal Agent will authenticate and deliver the 2011 Bonds and perform certain other duties; and

WHEREAS, there has also been presented to the City Council a form of Continuing Disclosure Agreement to be executed and delivered by the City for and on behalf of the District and the Fiscal Agent, as Dissemination Agent (the "Continuing Disclosure Agreement"), for the benefit of the owners of the 2011 Bonds and in order to assist the Underwriter in complying with Rule 15c2-12(b)(5) of the Securities and Exchange Commission (the "Rule"); and

WHEREAS, there has also been presented to the City Council a form of Continuing Disclosure Agreement to be executed and delivered by the owners and developers of the property within the District and the Fiscal Agent, as Dissemination Agent (the "Developer Disclosure Agreement"), for the benefit of the owners of the 2011 Bonds and in order to assist the Underwriter in complying with the Rule; and

WHEREAS, the City Council has considered the forms of the Fiscal Agent Agreement, the Continuing Disclosure Agreement, the Bond Purchase Agreement and the Preliminary Official Statement and has determined that it is in the best interest of the owners of property in the District that the City Council authorize the issuance and sale of the 2011 Bonds and the execution and delivery of said agreements and approve and authorize the distribution of the Preliminary Official Statement subject to the conditions hereinafter contained.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, ACTING AS THE LEGISLATIVE BODY OF THE CFD NO. 4 - INFRASTRUCTURE OF THE CITY OF MORENO VALLEY, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Findings. The City Council finds that based upon the information provided in the staff report, the Appraisal and the Preliminary Official Statement:

- (a) the preceding recitals are true and correct; and
- (b) the sale of the 2011 Bonds at private sale, without advertising for bids, will result in a lower overall cost to the District; and
- (c) if the 2011 Bonds for the District are issued and sold in an aggregate principal amount that does not exceed \$10,000,000:
  - (1) the value of the parcels of real property within the District which are projected to be subject to the levy of the Special Taxes to pay the principal of and interest on the 2011 Bonds, i.e., the improved properties within the District, based on the fair market value of such parcels as determined by the Appraiser and as set forth in the Appraisal, i.e., \$58,000,000 will be more than three (3) times the sum of the principal amount of such 2011 Bonds; and
  - (2) for each common ownership of undeveloped property that will be subject to the Special Tax to pay debt service on the 2011 Bonds, the aggregate value of all such undeveloped property under such common ownership will be at least three (3) times the Public Lien Amount apportioned to such properties; and
  - (3) the value of each parcel of undeveloped property that will be subject to the Special Tax to pay debt service on the 2011 Bonds will be at least two (2) times the Public Lien Amount apportioned to such parcel; and
- (d) the maximum projected annual Special Tax revenues securing the 2011 Bonds will equal at least (a) 110% of the projected annual gross debt service on all outstanding 2011 Bonds of the District plus (b) Administrative Expenses.

SECTION 2. Authorization of the Issuance of the 2011 Bonds. The City Council authorizes the issuance and sale of the 2011 Bonds for the District in an aggregate principal amount which shall not exceed \$10,000,000. The City Manager, the Assistant City Manager and the Financial and Administrative Services Director are each authorized and directed to take all steps and actions which are necessary to accomplish the issuance, sale, and delivery of the 2011 Bonds pursuant to the authorization given by and the conditions specified in this resolution. The Mayor and the City Clerk are authorized to execute the 2011 Bonds for and on behalf of the City and the District by their manual or facsimile signatures. The 2011 Bonds shall be dated as of their date of delivery pursuant to the Bond Purchase Agreement.

SECTION 3. Approval of Fiscal Agent Agreement. The Fiscal Agent Agreement which provides generally for (i) the authentication and delivery by the Fiscal Agent of the 2011 Bonds; (ii) the creation and administration by the Fiscal Agent of certain funds and accounts for the benefit of the City and the owners of the 2011 Bonds; (iii) the payment by the Fiscal Agent of the principal of and interest on the 2011 Bonds from the Special Tax



Revenues (as defined therein); and (iv) the performance of other duties by the Fiscal Agent, is approved in the form made available to the City Council at the meeting at which this resolution is adopted, and the City Manager, the Assistant City Manager or the Financial and Administrative Services Director is, acting alone, authorized to consent to such modifications thereto as may be specified by Best Best & Krieger LLP, bond counsel to the City ("Bond Counsel"). The Mayor, the Mayor Pro Tem, the City Manager, the Assistant City Manager or the Financial and Administrative Services Director is authorized to execute and deliver said agreement on behalf of the City.

SECTION 4. Appointment of Fiscal Agent. Wells Fargo Bank, National Association is appointed as Fiscal Agent pursuant to the Fiscal Agent Agreement, to take any and all action provided therein to be taken by the Fiscal Agent.

SECTION 5. Approval of Preliminary Official Statement; Preparation of Final Official Statement. The Preliminary Official Statement is approved, and the City Manager, the Assistant City Manager or the Financial and Administrative Services Director is, acting alone, authorized to consent to and assist in the preparation of such modifications thereto as may be specified by Stradling, Yocca, Carlson & Rauth, disclosure counsel to the City ("Disclosure Counsel"). The City Manager, the Assistant City Manager, or the Financial and Administrative Services Director is, acting alone, authorized to determine, with the assistance of Disclosure Counsel, when the Preliminary Official Statement is to be deemed final within the meaning of the Rule and to deliver a certificate to that effect to the Underwriter. The Underwriter is authorized to distribute the Preliminary Official Statement as approved hereby, or as modified with the consent of the City Manager or the Assistant City Manager or the Financial and Administrative Director, to prospective purchasers of the 2011 Bonds. The City Manager, the Assistant City Manager, the Financial and Administrative Services Director, Disclosure Counsel and Fieldman, Rolapp & Associates, financial advisor to the City (the "Financial Advisor"), are authorized to participate in the preparation of the Final Official Statement, based on the Preliminary Official Statement, and such modifications thereto as may be agreed to by Disclosure Counsel, the Financial Advisor and the Underwriter. The City Manager, the Assistant City Manager, or the Financial and Administrative Services Director is authorized to sign the Final Official Statement on behalf of the City and the District.

SECTION 6. Sale of 2011 Bonds. The City Council approves and authorizes the issuance and sale of the 2011 Bonds by negotiation with the Underwriter pursuant to the Bond Purchase Agreement between the City and the Underwriter in the form presented to the City Council at the meeting at which this resolution is adopted, together with any changes therein or additions thereto which are deemed advisable by the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director upon consultation with Bond Counsel. The City Manager, the Assistant City Manager, or the Financial and Administrative Services Director is, acting alone, authorized and directed to execute and deliver the final form of the Bond Purchase Agreement on behalf of the City and the District upon the submission of an offer by the Underwriter to purchase the 2011 Bonds, which offer is acceptable to the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director and is consistent with the requirements of this resolution; provided that the interest rate on any maturity of the 2011 Bonds shall not

exceed eight and three tenths percent (8.30%) per annum and the discount at which the Underwriter purchases all of the 2011 Bonds shall not be less than an amount equal to two percent (2.00%) (exclusive of original issue discount) of the aggregate principal amount of the 2011 Bonds and the last maturity of the 2011 Bonds shall be paid and redeemed no later than September 1, 2041. When the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director has negotiated the Bond Purchase Agreement with the Underwriter within the parameters specified above and when the other terms and conditions of the Bond Purchase Agreement are satisfactory to the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director and the City Attorney, Disclosure Counsel and Bond Counsel, the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director is, acting alone, authorized to execute and deliver the Bond Purchase Agreement to the Underwriter on behalf of the City and the District.

SECTION 7. Accountability Measures. Pursuant to Section 53410 of the California Government Code, the issuance of and sale of the 2011 Bonds is subject to the following accountability measures:

(a) The proceeds of the 2011 Bonds shall be applied only for the specific purposes identified in the propositions regarding the authorization of the District incurring bonded indebtedness which the qualified electors of the District approved in the election held on October 25, 2005.

(b) Except as otherwise provided in the Fiscal Agent Agreement, the proceeds of the sale of the 2011 Bonds shall be deposited in the funds and accounts established pursuant to the Fiscal Agent Agreement and the proceeds deposited in each such fund or account shall be expended as provided in the Fiscal Agent Agreement with respect to each such fund or account.

(c) The Financial and Administrative Services Director shall file a report with the City Council no later than January 2, 2012, and annually thereafter, which shall contain the information required by Section 53411 of the California Government Code with respect to the expenditure of the proceeds of the sale of the 2011 Bonds and the status of the construction and acquisition of the public facilities comprising the Project (as defined in the Fiscal Agent Agreement).

SECTION 8. Findings Regarding the Levy and Rates of Special Taxes. The City Council finds that the City will covenant in the Fiscal Agent Agreement, for the benefit of the owners of the 2011 Bonds, that (a) to the extent it is legally permitted to do so, it will levy the Special Taxes for the payment of the Administrative Expenses (as defined in the Fiscal Agent Agreement) which are expected to be incurred in each fiscal year, and (b) it will not initiate proceedings under the Mello-Roos Community Facilities Act of 1982 to reduce the Maximum Special Tax rates (the "Maximum Rates") on taxable property in the District below the amounts which are necessary to provide Special Tax Revenues in an amount equal to estimated Administrative Expenses for the then current Fiscal Year plus an amount equal to one hundred ten percent (110%) of Maximum Annual Debt Service on the Outstanding 2011 Bonds. The City Council further finds and determines that any

reduction or limitation of the Special Tax rates below the Maximum Rates would interfere with the timely retirement of the 2011 Bonds.

SECTION 9. Approval of Continuing Disclosure Agreements. The Continuing Disclosure Agreement is approved in the form submitted to the City Council at the meeting at which this resolution is adopted, and the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director is, acting alone, authorized to execute and deliver said agreement on behalf of the City. The form of the Developer Disclosure Agreement to be entered into between the Fiscal Agent, as Dissemination Agent, and the owners and developers of the property within the District is also approved.

SECTION 10. Modifications. The approval of the Fiscal Agent Agreement, the Continuing Disclosure Agreement, the Bond Purchase Agreement and the form of the Developer Disclosure Agreement given by this resolution shall apply to any modification or amendment of any of said agreements which is agreed upon and approved by Bond Counsel, Disclosure Counsel, the Financial Advisor and the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director as being necessary to carry out the provisions thereof and the authorization and direction provided in this resolution.

SECTION 11. Further Action. The City Manager, the Assistant City Manager and the Financial and Administrative Services Director are authorized to take any and all action which is directed by Bond Counsel or Disclosure Counsel, as applicable, with respect to the execution and delivery of the Fiscal Agent Agreement, the Continuing Disclosure Agreement, and the Bond Purchase Agreement and the issuance, sale and delivery of the 2011 Bonds, which in the opinion of Bond Counsel or Disclosure Counsel is necessary in order for the authorization and direction provided in this resolution to be carried out.

SECTION 12. Conditions of Approval. The approvals, authorization, and direction given by this resolution are conditioned upon the satisfaction of the requirements of Section 6 hereof with respect to the issuance and sale of the 2011 Bonds. The officers of the City designated above shall not take any action with respect to the execution and delivery of the Fiscal Agent Agreement, the Continuing Disclosure Agreement, and the Bond Purchase Agreement or the issuance, sale and delivery of the 2011 Bonds unless and until such conditions are satisfied; provided, however, that upon satisfaction of such conditions, this resolution shall be fully effective and shall be carried out by such officers without further approval or action of the City Council. The approvals, authorization, and direction provided by this resolution shall continue, subject to the satisfaction of such conditions, until January 1, 2013, and the 2011 Bonds may be sold, and the 2011 Bonds, the Fiscal Agent Agreement, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Preliminary Official Statement, and the Final Official Statement may be dated, entered into, executed and delivered or distributed, as appropriate, on any date selected by the City Manager, the Assistant City Manager, or the Financial and Administrative Services Director and the Financial Advisor and the Underwriter prior to said date.

SECTION 13. Effective Date. This resolution shall take effect upon adoption and shall remain in effect until January 1, 2013, or if the 2011 Bonds are issued prior to said date, until all of the 2011 Bonds are paid at or redeemed prior to maturity.

APPROVED AND ADOPTED this 8th day of March, 2011.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**RESOLUTION JURAT**

STATE OF CALIFORNIA        )  
COUNTY OF RIVERSIDE       ) ss.  
CITY OF MORENO VALLEY     )

I, \_\_\_\_\_, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. \_\_\_\_\_ was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
CITY CLERK

(SEAL)

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FISCAL AGENT AGREEMENT

by and between

THE CITY OF MORENO VALLEY

and

WELLS FARGO BANK, NATIONAL ASSOCIATION  
as Fiscal Agent

Dated as of April 1, 2011

Relating to

Community Facilities District No. 4 – Infrastructure  
of the City of Moreno Valley  
County of Riverside  
State of California

\$ \_\_\_\_\_  
2011 Special Tax Bonds

FISCAL AGENT AGREEMENT

THIS AGREEMENT (the “Agreement”) is dated as of April 1, 2011, by and between the City of Moreno Valley, a municipal corporation duly organized and validly existing under the constitution and laws of the State of California (the “City”), for and on behalf of Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley, County of Riverside, State of California (the “District”), and Wells Fargo Bank, National Association, a national banking association duly formed and existing under the laws of the United States of America, as fiscal agent (the “Fiscal Agent”).

WITNESSETH:

WHEREAS, the City Council of the City (the “City Council”) has established the District pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the “Act”); and

WHEREAS, the District is authorized to incur bonded indebtedness and issue bonds in the aggregate principal amount of \$16,000,000 for the purpose of financing for the District the acquisition of certain public facilities (the “Bonds”); and

WHEREAS, the City, on behalf of the District, has by the adoption of the Resolution (as hereinafter defined) authorized the issuance of the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the “2011 Bonds”) in an aggregate principal amount of \$\_\_\_\_\_; and

WHEREAS, all things necessary to cause the 2011 Bonds, when executed by the City and authenticated by the Fiscal Agent for the District and issued as in the Act, the Resolution and this Agreement provided, to be legal, valid and binding special obligations of the District in accordance with their terms, and all things necessary to cause the authorization, execution and delivery of this Agreement and the authorization, execution, authentication and delivery of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I  
AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement. This Agreement is entered into pursuant to the provisions of the Act and the Resolution.

Section 1.02. Agreement for Benefit of Bondowners. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City and/or the District shall be for the equal benefit, protection and security of the Owners. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in



or permitted by this Agreement. The Fiscal Agent may become the owner of any of the Bonds with the same rights it would have if it were not Fiscal Agent.

Section 1.03. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.03 shall, for all purposes of this Agreement, of any Supplemental Agreement, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

“2011 Bonds” means the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds.

“Acquisition/Financing Agreement” means the Acquisition/Financing Agreement made and entered into by and between the City and Ridge Property Trust and effective as of May 26, 2005, relating to the District, as such agreement has been amended by the First Amendment to Acquisition/Financing Agreement by and between the City and Ridge Property Trust effective as of October 13, 2005, the Second Amendment to Acquisition/Financing Agreement by and between the City and Ridge Property Trust effective as of July 20, 2006, and the Third Amendment to Acquisition/Financing Agreement by and between the City and Ridge Property Trust effective as of March 25, 2008, and as such agreement may be further amended from time to time.

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code.

“Additional Bonds” means any Series of the Bonds issued pursuant to Section 2.12.

“Additional Bonds Reserve Fund” means a reserve fund established pursuant to a Supplemental Agreement with respect to the issuance of a Series of Additional Bonds.

“Administrative Expenses” means any or all of the following actual or reasonably estimated costs directly related to the administration of the District: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs of remitting the Special Taxes to the Fiscal Agent; the costs of the Fiscal Agent (including its legal counsel) in the discharge of the duties required of it under this Agreement; the costs to the City, the District or any designee thereof of complying with arbitrage rebate requirements, including but not limited to, any rebate obligation; the costs to the City, the District or any designee thereof of complying with disclosure requirements of the City and/or, the District associated with applicable federal and state securities laws and the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs to the City, the District or any designee thereof related to any appeal of the Special Tax; the costs associated with the release of funds from an escrow or appeals account, including appraisal costs; and the other fees and expenses of the City in carrying out its duties hereunder and in any way related to the administration of the District, an allocable share of the salaries of City staff directly related thereto and a proportionate amount of

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City general administrative overhead related thereto and any amounts paid by the City from its general fund or other fund pursuant to Section 6.02 hereof. Administrative Expenses shall also include amounts estimated by the City or advanced by the City or the District for any other administrative purposes of the District, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Administrative Expense Fund" means the fund by that name established by Section 3.05(A) hereof.

"Advance Funding and Reimbursement Agreement" means that certain Advance Funding and Reimbursement Agreement made and entered into July 6, 2004 by and between the City and Ridge Property Trust, a Maryland real estate investment trust.

"Agreement" means this Fiscal Agent Agreement, dated as of April 1, 2011, by and between the City, for and on behalf of the District, and the Fiscal Agent, as it may be amended or supplemented from time to time by any Supplemental Agreement adopted pursuant to the provisions hereof.

"Annual Debt Service" means with respect to the Bonds or any Series of the Bonds, for each applicable Bond Year, the sum of (i) the interest due in such Bond Year on the Outstanding Bonds or the Outstanding Bonds of such Series, as applicable, assuming that such Outstanding Bonds or the Outstanding Bonds of such Series, as applicable, are retired as scheduled; and (ii) the principal amount of such Outstanding Bonds or the Outstanding Bonds of such Series, as applicable, scheduled to be paid.

"Appraisal" means an appraisal prepared by the Appraiser or an MAI appraiser who is also a state certified appraiser, as defined in California Business and Professions Code Section 11340(c) appointed and retained by the City. Such appraisal shall be substantially based upon the then applicable assumptions of and subject to the then applicable qualifications and limitations contained in the appraisal prepared by the Appraiser and dated \_\_\_\_\_, 2010.

"Appraiser" means Bruce W. Hull & Associates.

"Assessor's Parcel" shall have the meaning given such term in the Special Tax Rate and Method.

"Auditor" means the Auditor-Controller of the County of Riverside.

"Authorized Officer" means the City Manager, the Assistant City Manager, the Financial and Administrative Services Director, and any other officer or employee of the City authorized by the City Council or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

"Bond Counsel" means any attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond Fund" means the fund by that name established by Section 4.02(A) hereof.

“Bond Year” means, as to any Series of Bonds, the period beginning on the Closing Date and ending on the following September 1 and thereafter the period beginning on each September 2 and ending on the following September 1. The initial Bond Year for the 2011 Bonds shall end on September 1, 2011.

“Bonds” means, unless otherwise expressly provided, the 2011 Bonds authorized by and at any time Outstanding pursuant to the Act, the Resolution and this Agreement and any Additional Bonds authorized by and at any time Outstanding pursuant to the Act, the resolution providing for the issuance of such Additional Bonds and this Agreement as supplemented by any Supplemental Agreement to provide for the issuance of such Additional Bonds.

“Building Permit” shall have the meaning given such term in the Special Tax Rate and Method.

“Business Day” means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the State of California or in any state in which the Fiscal Agent has its Principal Office are authorized or obligated by law or executive order to be closed.

“City” means the City of Moreno Valley.

“City Attorney” means the City Attorney of the City.

“City Council” means the City Council of the City.

“Closing Date” means the date upon which there is an exchange of any Series of the Bonds for the proceeds representing payment of the purchase price of the Bonds by the Original Purchaser. The Closing Date for the 2011 Bonds shall be \_\_\_\_\_, 2011.

“Code” means the Internal Revenue Code of 1986, as amended.

“Completion Date” shall mean the earlier of a date that is three years after the Closing Date of the 2011 Bonds or a date upon which the City gives notice to the Fiscal Agent that the acquisition of the Project is complete.

“Continuing Disclosure Agreement” means, as to the 2011 Bonds, the Continuing Disclosure Agreement between the City and the Fiscal Agent, as Dissemination Agent thereunder, dated as of the Closing Date for the 2011 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Costs of Issuance” means, as to each Series of the Bonds, items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of such Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, including but not limited to the preliminary official statement and official statement regarding such Bonds, closing costs, filing and recording fees, initial fees and charges of the Fiscal Agent including its first annual administration fee and the fees of its counsel, expenses incurred by the City in connection with the issuance of such Bonds and, as to the 2011 Bonds, the formation of the District, the proceedings to annex certain territory to the District and the proceedings to modify the rate and method of apportionment of the Special Taxes not paid for by advances from Ridge Property Trust, Ridge Moreno Valley,

LLC or Ridge Moreno Valley II, LLC, Bond (underwriter's) discount, legal fees and charges, including the fees of Bond Counsel, disclosure counsel and counsel to the Underwriter, if any, Financial Advisor's fees, absorption consultant's and appraiser's fees and costs, Tax Consultant's fees and costs, charges for authentication, transportation and safekeeping of the Bonds, reimbursement of advances made to the City (i) by Ridge Property Trust pursuant to the Advance Funding Reimbursement Agreement and which advances were expended by the City to pay costs and expenses related to the formation of the District and (ii) by Ridge Moreno Valley, LLC and Ridge Moreno Valley II, LLC pursuant to the Supplemental Advance Funding Reimbursement Agreement and which advances were expended by the City to pay Modification Proceeding Costs (as defined in such agreement), and other costs, charges and fees in connection with the foregoing.

"Costs of Issuance Fund" means the fund by that name established by Section 3.06(A) hereof.

"Debt Service" means, with respect to the Bonds or any Series of the Bonds, the amount of interest and principal payable on the Bonds or such Series of the Bonds, as applicable, scheduled to be paid during the period of computation, excluding amounts payable during such period which relate to principal of the Bonds or such Series of the Bonds, as applicable, which are scheduled to be retired and paid before the beginning of such period.

"Defeasance Securities" means, for purposes of Section 9.03(C) hereof, the following:

(i) United States Treasury Certificates, Notes and Bonds (including State and Local Government Series - "SLGs");

(ii) Direct obligations of the United States Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities;

(iii) Resolution Funding Corporation (REFCORP) obligations; provided that only the interest component of REFCORP strips which have been stripped by request of the Federal Reserve Bank of New York in book-entry form are acceptable;

(iv) Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by Standard & Poor's; provided, however, that if the issue is only rated by Standard & Poor's (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct United States or United States guaranteed obligations, or "AAA" rated pre-refunded municipal bonds; and

(v) Obligations issued by the following agencies which are backed by the full faith and credit of the United States of America:

(a) U.S. Export-Import Bank  
Direct obligations or fully guaranteed certificates of beneficial ownership

(b) Farmers Home Administration  
Certificates of beneficial ownership

- (c) Federal Financing Bank
- (d) General Services Administration  
Participation certificates
- (e) United States Maritime Administration  
Guaranteed Title XI financing
- (f) United States Department of Housing and Urban Development  
Project notes  
Local Authority Bonds  
New Communities Debentures - United States government  
guaranteed debentures  
United States Public Housing Notes and Bonds - United States  
government guaranteed public housing notes and bonds.

“Developed Property” has the meaning given to such term in the Special Tax Rate and Method.

“District” means Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley, County of Riverside, State of California.

“Federal Securities” means any of the following which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

- (i) Cash; and
- (ii) Direct general obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America and CATS and TIGRS), or obligations, the payment of principal of and interest on which is unconditionally guaranteed by the United States of America.

“Financial and Administrative Services Director” means the Financial and Administrative Services Director of the City of Moreno Valley.

“Financial Advisor” means an independent financial consulting firm appointed by the City to advise the City as to financial matters relating to the Bonds.

“Fiscal Agent” means Wells Fargo Bank, National Association, the Fiscal Agent appointed by the City, acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01 hereof.

“Fiscal Year” means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

“Improvement Fund” means the fund by that name established by Section 3.03(A) hereof.

“Independent Financial Consultant” means a firm of certified public accountants, a financial consulting firm, a consulting engineering firm or engineer which is not an employee of, or otherwise controlled by, the City.

“Independent CPA” means a firm of certified public accountants which is not an employee of, or otherwise controlled by, the City.

“Information Services” means the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board (at <http://emma.msrb.org>); and, in accordance with then current guidelines of the Securities and Exchange Commission, such other services providing information with respect to called bonds as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

“Interest Account” means the account by that name established in the Bond Fund by Section 4.02 (A).

“Interest Payment Dates” means March 1 and September 1 of each year, commencing September 1, 2011 as to the 2011 Bonds, until the maturity or redemption of all Outstanding Bonds.

“Investment Earnings” means all interest earned and any gains and losses on the investment of moneys in any fund or account created by this Agreement, excluding interest earned and gains and losses on the investment of moneys in the Rebate Fund.

“Maximum Annual Debt Service” means, with respect to the Bonds or any Series of the Bonds, the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds or any Outstanding Bonds of such Series, as applicable.

“Minimum Annual Administrative Expense Requirement” means an amount equal to \$30,000, to be allocated annually as the first priority of Special Taxes received each Fiscal Year that shall be transferred to the Administrative Expense Fund pursuant to Section 3.04(B).

“Moody’s” shall mean Moody’s Investors Service, a national rating service with offices in New York, New York.

“Officer’s Certificate” means a written certificate of the City signed by an Authorized Officer of the City.

“Ordinance” means any ordinance of the City or resolution of the City Council levying the Special Taxes.

“Original Purchaser” means the first purchaser of the Bonds from the City.

“Outstanding,” when used as of any particular time with reference to the Bonds, means (subject to the provisions of Section 8.04 hereof) all such Bonds, except:

- (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation;

(ii) Bonds called for redemption which, for the reasons specified in Section 2.03 (G) hereof, are no longer entitled to any benefit under this Agreement other than the right to receive payment of the redemption price therefor;

(iii) Bonds paid or deemed to have been paid within the meaning of Section 9.03 hereof; and

(iv) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City and authenticated by the Fiscal Agent pursuant to this Agreement or any Supplemental Agreement.

“Owner” means any person who shall be the registered owner of any Outstanding Bond.

“Permitted Investments” means:

(i) Federal Securities;

(ii) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

- (a) U.S. Export-Import Bank  
Direct obligations or fully guaranteed certificates of beneficial ownership
- (b) Farmers Home Administration  
Certificates of beneficial ownership
- (c) Federal Financing Bank
- (d) Federal Housing Administration Debentures
- (e) General Services Administration  
Participation certificates
- (f) Government National Mortgage Association (GNMA)  
GNMA - guaranteed mortgage-backed bonds  
GNMA - guaranteed pass-through obligations
- (g) U.S. Maritime Administration  
Guaranteed Title XI financing
- (h) U.S. Department of Housing and Urban Development  
Project Notes  
Local Authority Bonds  
New Communities Debentures - United States government guaranteed debentures  
U.S. Public Housing Notes and Bonds - United States government guaranteed public housing notes and bonds;

(iii) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit United States government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

- (a) Federal Home Loan Bank System  
Senior debt obligations
- (b) Student Loan Marketing Association  
Senior debt obligations
- (c) Resolution Funding Corporation  
(REFCORP) obligations
- (d) Farm Credit System  
Consolidated systemwide bonds and notes;

(iv) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard & Poor's of "AAAm-G," "AAA-m" or "AA-m" and, if rated by Moody's, rated "Aaa," "Aa1" or "Aa2" by Moody's, including funds for which the Fiscal Agent, its parent holding company, if any, or any affiliates or subsidiaries of the Fiscal Agent or such holding company provide investment management or other management services;

(v) Certificates of deposit secured at all times by collateral described in clauses (i) and/or (ii) above. Such certificates must be issued by commercial banks, including the Fiscal Agent and its affiliates, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the Fiscal Agent on behalf of the Owners of the Bonds must have a perfected first security interest in the collateral;

(vi) Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF including those that may be issued or provided by the Fiscal Agent and its affiliates;

(vii) Investment agreements with domestic or foreign banks, insurance companies or corporations the long-term debt or claims paying ability of which or, in the case of a guaranteed corporation, the long-term debt of the guarantor, or, in the case of a monoline financial guaranty insurance company, the claims paying ability or financial strength, of the guarantor is rated in at least the double A category by Standard & Poor's and Moody's; provided that, by the terms of the investment agreement:

- (a) interest payments are to be made to the Fiscal Agent at times and in amounts as necessary to pay Debt Service on the Bonds (if the funds invested pursuant to the investment agreement are from the Reserve Fund and/or any Additional Bonds Reserve Fund or Additional Bonds Reserve Funds);



(b) the investment agreement shall provide that the invested funds are available for withdrawal without penalty or premium at any time upon not more than seven (7) days' prior notice (The City and the Fiscal Agent shall give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium payable.);

(c) the investment agreement shall provide that it is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof;

(d) the City and the Fiscal Agent receive the opinion of domestic counsel (which opinion shall be addressed to the City and the Fiscal Agent) that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) in form and substance acceptable, and addressed to, the City and the Fiscal Agent;

(e) the investment agreement shall provide that if during its term:

(1) the provider's (or its guarantor's) rating by either Standard & Poor's or Moody's falls below "AA-" or "Aa3", respectively, the provider shall, at its option, within ten (10) days of receipt of publication of such downgrade, either (i) collateralize the investment agreement by delivering or transferring in accordance with the applicable state and federal laws (other than by means of entries on the provider's books) to the City, the Fiscal Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") collateral free and clear of any third-party liens or claims, the market value of which collateral is maintained at one hundred four percent (104%) of securities identified in clauses (i) and (ii) of this definition; or (ii) assign the investment agreement and all of its obligations thereunder to a financial institution mutually acceptable to the Provider, the City and the Fiscal Agent which is rated either in the first or second highest category by Standard & Poor's and Moody's; and

(2) the provider's (or its guarantor's) rating by either Standard & Poor's or Moody's is withdrawn or suspended or falls below "A-" or "A3", respectively, the provider must, at the direction of the City or the Fiscal Agent, within ten (10) days of receipt of such direction, repay the principal of and accrued but unpaid interest on the invested funds, in either case with no penalty or premium to the City or the Fiscal Agent; and

(f) the investment agreement shall provide and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement at the time such collateral is delivered, that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this shall mean the Holder of the Collateral is in possession of such collateral); and

(g) the investment agreement shall provide that if during its term

(1) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the City or the Fiscal Agent, be accelerated and amounts invested and accrued but unpaid interest thereon shall be paid to the City or the Fiscal Agent, as appropriate; and

(2) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be paid to the City or the Fiscal Agent, as appropriate;

(viii) Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by Standard & Poor's;

(ix) Bonds or notes issued by any state or municipality which are rated by Moody's or Standard & Poor's in one of the two highest rating categories assigned by them;

(x) Federal funds or bankers acceptances with a maximum term of one year of any bank, including the Fiscal Agent and its affiliates, which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or better by Standard & Poor's;

(xi) Repurchase agreements which satisfy the following criteria:

(a) Repurchase agreements must be between the City or the Fiscal Agent and an entity which is:

(1) A primary dealer on the Federal Reserve reporting dealer list which is rated "A" or better by Standard & Poor's and Moody's; or

(2) A bank rated "A" or above by Standard & Poor's and Moody's; or

(3) A corporation the long-term debt or claims paying ability of which, or in the case of a guaranteed corporation, the long-term debt of the guarantor, or, in the case of a monoline financial guaranty insurance company, the claims paying ability or financial strength of the guarantor, is rated in at least the double A category by Standard & Poor's and Moody's.

(b) The written agreement must include the following:

(1) securities which are acceptable for transfer are:

(A) direct obligations of the United States government,  
or

(B) obligations of federal agencies backed by the full faith and credit of the United States of America;

(2) the collateral must be delivered to the City or the Fiscal Agent (if the Fiscal Agent is not supplying the collateral) or a third party acting as agent for the Fiscal Agent (if the Fiscal Agent is supplying the collateral) before or simultaneous with payment (perfection by possession of certificated securities);

(3) (A) the securities must be valued weekly, marked-to-market at current market price plus accrued interest; and

(B) the value of the collateral must be at least equal to one hundred four percent (104%) of the amount of money transferred by the Fiscal Agent to the dealer, bank or corporation under the agreement plus accrued interest. If the value of the securities held as collateral is reduced below one hundred four percent (104%) of the value of the amount of money transferred by the Fiscal Agent, then additional acceptable securities and/or cash must be provided as collateral to bring the value of the collateral to one hundred four percent (104%);

(xii) forward delivery agreements (FDA) or forward purchase and sale agreements (FPSA) having as the underlying investment property investments of the type which are identified in clauses (i), (ii), (iii) or (viii) of this Section; and

(xiii) the Local Agency Investment Fund in the State Treasury of the State of California as permitted by the State Treasurer pursuant to Section 16429.1 of the California Government Code.

“Principal Account” means the account by that name established in the Bond Fund by Section 4.02 (A).

“Principal Office” means the principal corporate trust office of the Fiscal Agent at MAC E2818-176, 707 Wilshire Blvd., 17<sup>th</sup> floor, Los Angeles CA 90017, or such other addresses as may be specified in writing by the Fiscal Agent; provided, however, that for purposes of the transfer, registration, exchange, payment and surrender of Bonds “Principal Office” means the office or agency of the Fiscal Agent at which, at any time, its corporate trust agency business shall be conducted or such other office or address as may be specified in writing by the Fiscal Agent.

“Proceeds,” when used with reference to any Series of the Bonds, means the aggregate principal amount of such Series of the Bonds, as applicable, plus accrued interest and premium, if any, less original issue discount, if any.

“Project” means the public facilities which are authorized to be financed with the proceeds of the Special Taxes and the sale of the Bonds of the District, as described in Resolution No. 2005-94 adopted by the City Council on October 25, 2005.

“Public Lien Amount” means, as used in paragraph (D)(4) of Section 2.12 herein, the principal amount of the Additional Bonds proposed to be issued, plus the principal amount of all other bonds outstanding, including but not limited to any Outstanding Bonds, that are secured by a special tax levied pursuant to the Act or a fixed lien assessment levied on property within the District.

“Rebate Fund” means the fund by that name established by Section 6.02 hereof.

“Record Date” means the fifteenth (15th) day of the month next preceding the applicable Interest Payment Date whether or not such day is a Business Day.

“Regulations” means the temporary and permanent regulations of the United States Department of the Treasury promulgated under the Code.

“Representation Letter” means the representation letter which the City has delivered to The Depository Trust Company (“DTC”) with respect to the utilization of the book-entry system maintained by DTC for the issuance and registration of bonds.

“Reserve Fund” means the fund by that name established by Section 4.03(A) hereof.

“Reserve Requirement” means, with respect to each Series of the Bonds and as of the date of calculation, the lesser of (i) ten percent (10%) of the Proceeds of the sale of such Series of the Bonds; (ii) Maximum Annual Debt Service on such Series of the Bonds; or (iii) 125 percent of average Annual Debt Service on such Series of the Bonds, as determined by the City.

“Resolution” means, as to the 2011 Bonds, Resolution No. 2011-\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2011.

“Series” means any series of the Bonds issued pursuant to this Agreement or any Supplemental Agreement.

“Securities Depositories” means The Depository Trust Company, 55 Water Street, 50<sup>th</sup> Floor, New York, New York, 10041-0099, Call Notification Department, Fax (212) 855-7232, and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

“Special Taxes” or “Special Tax” means the special taxes levied by the City Council in any Fiscal Year on parcels of taxable property within the District pursuant to the Act and this Agreement.

“Special Tax Fund” means the fund by that name established by Section 3.04(A) hereof.

“Special Tax Prepayments” means amounts received by the City as prepayments of all or a portion of the Special Tax obligation of a parcel of property in the District.

“Special Tax Prepayments Account” means the account by that name established by the Fiscal Agent in the Bond Fund pursuant to Section 4.02(A) hereof.

“Special Tax Rate and Method” means the amended and restated rate and method of apportionment of the Special Tax approved at the special election held in the District on December 14, 2010, as may be modified from time to time in accordance with the Act.

“Special Tax Revenues” means the proceeds of the Special Taxes received by the City, including any scheduled payments, interest and penalties thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes in the amount of said lien and interest and penalties thereon.

“Standard & Poor’s” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., a national rating service with offices in New York, New York.

“Supplemental Advance Funding Reimbursement Agreement” made and entered into \_\_\_\_\_, 20\_\_ by and between the City, Ridge Property Trust, a Maryland real estate investment trust, Ridge Moreno Valley, LLC, a Delaware limited liability company doing business in California as Ridge Moreno Valley Property, LLC and Ridge Moreno Valley II, LLC, a Delaware limited liability company.

“Supplemental Agreement” means an agreement entered into by and between the City and the Fiscal Agent amending and supplementing this Agreement as permitted by this Agreement.

“Taxable Property” shall have the meaning given such term in the Special Tax Rate and Method.

“Tax Certificate” means the certificate delivered by the City upon the delivery of each Series of the Bonds relating to Section 148 of the Code, or any functionally similar replacement certificate.

“Tax Consultant” means an engineer or financial consultant or other such person or firm with expertise in the apportionment and levy of special taxes in community facilities districts which is employed by the City to assist the City in levying the Special Taxes.

“Updated Property” means, as used in paragraph D(4) of Section 2.12, any Assessor’s Parcel of Taxable Property for which a Building Permit was issued after June 1 preceding the first Fiscal Year required to be included in the calculations made pursuant to paragraphs D(4)(a) and D(4)(b) of Section 2.12 pertaining to any proposed Series of Additional Bonds.

## ARTICLE II THE BONDS

Section 2.01. Principal Amount; Designation. The Bonds in the aggregate principal amount of \$16,000,000 are hereby authorized to be issued by the City for the District under and subject to the terms of this Agreement, the Act and other applicable laws of the State of California and the 2011 Bonds in the aggregate principal amount of \$\_\_\_\_\_ are hereby authorized to be issued by the City for the District subject to the additional terms of the Resolution. The 2011 Bonds shall be designated “Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds.” The 2011 Bonds shall be issued in the applicable form attached hereto as Exhibit A.

Section 2.02. Terms of Bonds.

(A) The Bonds. The Bonds shall be issued as fully registered bonds, without coupons, in the denominations of \$5,000 or any integral multiple thereof. The Bonds shall be lettered and numbered in a customary manner as determined by the Fiscal Agent. The Bonds shall be dated as of the Closing Date of such Bonds.

(B) Maturities. Each Series of the Bonds shall mature and become payable on September 1 of each year, as provided for herein as to the 2011 Bonds or in the Supplemental Agreement providing for the issuance of any other Series of the Bonds. The 2011 Bonds shall mature and become payable as follows:

<b><u>Maturity Dates</u></b> <b><u>(September 1)</u></b>	<b><u>Principal</u></b> <b><u>Amounts</u></b>	<b><u>Interest</u></b> <b><u>Rates</u></b>
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Total \$

(C) Interest. The Bonds shall bear interest at the rates set forth in subsection (B) above payable on the Interest Payment Dates in each year. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless (i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Closing Date; provided, however, that if at the time of authentication of a Bond, interest is in default thereon, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon or from the Closing Date, if no interest has previously been paid or made available for payment thereon.

(D) Method of Payment. Interest on the Bonds is payable by check of the Fiscal Agent mailed by first class mail, postage prepaid, on each Interest Payment Date, to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America by check of the Fiscal Agent upon surrender of such Bonds at the Principal Office of the Fiscal Agent; provided, however, that at the written request of the Owner of at least \$1,000,000 in aggregate principal amount of Outstanding Bonds filed with the Fiscal Agent prior to any Record Date, interest on such Bonds shall be paid to such Owner on each succeeding Interest Payment Date by wire transfer of immediately available funds to an account in the United States of America designated in such written request.

(E) CUSIP Identification Numbers. "CUSIP" identification numbers shall be imprinted on the Bonds, but such numbers shall not constitute a part of the contract evidenced by the Bonds. In addition, failure on the part of the City or the Fiscal Agent to use such CUSIP numbers in any notice to the Owners shall not constitute an event of default or any violation of the City's contract with the Owners and shall not impair the effectiveness of any such notice.

Section 2.03. Redemption.

(A) Optional Redemption of the 2011 Bonds. The 2011 Bonds are subject to redemption prior to their stated maturity dates on any Interest Payment Date, and as selected among maturities by the District (and by lot within any one maturity), in integral multiples of \$5,000, at the option of the District from moneys derived by the District from any source, at a redemption price expressed as a percentage of the principal amount of 2011 Bonds to be redeemed, together with accrued interest to the date of redemption, as follows:

<u>Redemption Dates</u>	<u>Redemption Price</u>
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ and any Interest Payment Date thereafter	%

(B) Mandatory Redemption of the 2011 Bonds From Special Tax Prepayments Transferred to the Special Tax Prepayment Account. The 2011 Bonds are subject to mandatory redemption prior to their stated maturity dates on any Interest Payment Date, as selected among maturities by the District (and by lot within any one maturity), in integral multiples of \$5,000, from moneys derived by the District from Special Tax Prepayments, at a redemption price expressed as a percentage of the principal amount of the 2011 Bonds to be redeemed, together with accrued interest to the date of redemption, as follows:

<u>Redemption Dates</u>	<u>Redemption Price</u>
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ and any Interest Payment Date thereafter	%

In the event that Bonds are subject to extraordinary mandatory redemption from proceeds of Special Tax Prepayments pursuant to this Agreement or any Supplemental Agreement, such Special Tax Prepayments and any amounts transferred from the Reserve Fund or any Additional Bonds Reserve Fund to the Redemption Fund as a result of such Special Tax Prepayments shall be allocated to the redemption of each Series of the Bonds as nearly as practicable on a proportionate basis based upon the Outstanding principal amount of each Series of the Bonds.

(C) Mandatory Sinking Fund Redemption of 2011 Bonds. The Outstanding 2011 Bonds maturing on September 1, 20\_\_, and September 1, 20\_\_ are subject to mandatory sinking fund redemption, in part, on September 1, 20\_\_, and September 1, 20\_\_, respectively, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date of redemption, without premium, and from sinking payments as follows:

2011 Bonds Maturing on September 1, 20\_\_

<u>Redemption Date</u>	<u>Sinking Payment</u>
20__	\$
20__	
20__	
20__	
20__ (maturity)	

2011 Bonds Maturing on September 1, 20\_\_

<u>Redemption Date</u>	<u>Sinking Payment</u>
20__	\$
20__	
20__	
20__	
20__	
20__	
20__	
20__	
20__ (maturity)	



The amounts in the foregoing schedules shall be reduced by the City pro rata among redemption dates, in order to maintain substantially level Debt Service on the 2011 Bonds, as a result of any prior or partial redemption of such Bonds pursuant to subsection (A) or subsection (B) above.

(D) Purchase of Bonds. In lieu of payment at maturity or redemption under this Section 2.03, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase. In such event, the City shall, as may be appropriate, provide to the Fiscal Agent a revised maturity schedule or a revised mandatory sinking fund schedule for the Bonds, or both.

(E) Notice to Fiscal Agent. An Authorized Officer shall give the Fiscal Agent written notice of the City's intention to redeem Bonds not less than forty-five (45) days prior to the applicable redemption date specifying the principal amounts and maturities of the Bonds to be redeemed. The provisions of this subsection (E) shall not apply to the redemption of the Bonds pursuant to Section 2.03(C) hereof.

(F) Redemption Procedure by Fiscal Agent. The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Securities Depositories and to the Information Services, and to the respective registered Owners of any Bonds designated for redemption, at their addresses appearing on the Bond registration books maintained by the Fiscal Agent at its Principal Office; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such Bonds.

Such notice shall state the date of such notice, the date of issue of the Bonds, the place or places of redemption, the redemption date, the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, shall designate the CUSIP numbers and Bond numbers of the Bonds to be redeemed, by giving the individual CUSIP number and Bond number of each Bond to be redeemed, or shall state that all Bonds between two stated Bond numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption, shall state as to any Bond called for redemption in part the portion of the principal of the Bond to be redeemed, shall require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such Bonds will not accrue from and after the redemption date. The cost of the mailing and publication of any such redemption notice shall be paid by the District.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

With respect to any notice of optional redemption of Bonds, such notice may state that such redemption shall be conditional upon the receipt by the Fiscal Agent on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, premium, if any, and interest due on such Bonds to be redeemed and that, if such moneys shall not have been so received, said notice shall be of no force and effect and the Fiscal Agent shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not received, the redemption shall not be made, and the Fiscal Agent shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

If less than all the Bonds Outstanding are to be redeemed, the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or a multiple thereof, and, in selecting portions of such Bonds for redemption, the Fiscal Agent shall treat each such Bond as representing the number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond to be redeemed in part by \$5,000.

As to any Series of the Bonds, whenever provision is made in this Agreement for the redemption of less than all of such Bonds of a maturity or any given portion thereof, the Fiscal Agent shall select such Bonds of such maturity to be redeemed, from all such Bonds of such maturity or such given portion thereof not previously called for redemption, by lot within a maturity in any manner which the Fiscal Agent in its sole discretion shall deem appropriate.

Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the Owner, at the expense of the District, a new Bond or Bonds, of the same Series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of such Bond or Bonds.

(G) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the redemption prices of the Bonds called for redemption shall have been deposited in the Bond Fund, such Bonds shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and interest shall cease to accrue on the Bonds to be redeemed on the redemption date specified in the notice of redemption.

All Bonds redeemed and purchased by the Fiscal Agent pursuant to this Section 2.03 shall be canceled by the Fiscal Agent.

Section 2.04. Form of 2011 Bonds. The 2011 Bonds, including the Fiscal Agent's certificate of authentication and the assignment to appear thereon, shall be substantially in the form set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions as permitted or required by this Agreement.

Section 2.05. Execution of Bonds. The Bonds shall be executed on behalf of the District by the facsimile signatures of the Mayor and City Clerk of the City, who are in office on the date of this Agreement or the Supplemental Agreement providing for the issuance of such Bonds or at any time thereafter. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bond to the Owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bond to the Owner. Any Bond may be

signed and attested on behalf of the District by such persons as at the actual date of the execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City.

Only such Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A hereto, as appropriate, manually executed and dated by the Fiscal Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such certificate of authentication of the Fiscal Agent shall be conclusive evidence that such Bonds have been duly authenticated, registered and delivered hereunder, and are entitled to the benefits of this Agreement.

Section 2.06. Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.08 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office of the Fiscal Agent, accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Fiscal Agent. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer shall be paid by the District. The Fiscal Agent shall collect from the Owner requesting transfer of a Bond any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds of like aggregate principal amount.

No transfers of Bonds shall be required to be made (i) during the fifteen (15) days preceding the date established by the Fiscal Agent for selection of Bonds for redemption, or (ii) with respect to Bonds which have been selected for redemption.

Section 2.07. Exchange of Bonds. Bonds may be exchanged at the Principal Office of the Fiscal Agent only for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity and interest rate. The cost for any services rendered or any expense incurred by the Fiscal Agent in connection with any such exchange shall be paid by the District. The Fiscal Agent shall collect from the Owner requesting exchange of a Bond any tax or other governmental charge required to be paid with respect to such exchange.

No exchanges of Bonds shall be required to be made (i) during the fifteen (15) days preceding the date established by the Fiscal Agent for selection of Bonds for redemption, or (ii) with respect to Bonds which have been selected for redemption.

Section 2.08. Bond Register. The Fiscal Agent shall keep, or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds which books shall show the series, number, CUSIP identification number, date of issuance, amount, rate of interest and Owner of each Bond and shall at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided.

Section 2.09. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Agreement as definitive Bonds authenticated and delivered hereunder.

Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the City, at the expense of the Owner of said Bond, shall execute, and the Fiscal Agent shall authenticate and deliver, a replacement Bond of like Series, tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled and destroyed by the Fiscal Agent. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Fiscal Agent and, if such evidence be satisfactory to it and indemnity satisfactory to it shall be given, the City, at the expense of the Owner, shall execute, and the Fiscal Agent shall authenticate and deliver, a replacement Bond of like Series, tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen. The City or Fiscal Agent may require payment of a sum not exceeding the actual cost of preparing each replacement Bond delivered under this Section 2.10 and of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery thereof. Any Bond delivered under the provisions of this Section 2.10 in replacement of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation of the District whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued pursuant to this Agreement.

Section 2.11. Special Obligation. All obligations of the City and the District under this Agreement and the Bonds shall be special obligations of the City and the District, payable solely from the Special Tax Revenues and the funds pledged therefor pursuant hereto. Neither the faith and credit nor the taxing power of the City, the District (except to the limited extent set forth herein) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Section 2.12. Additional Bonds. The City may on behalf of the District at any time after the issuance and delivery of the 2011 Bonds hereunder issue Additional Bonds payable from the Special Taxes and secured by a lien and charge upon the Special Taxes equal to the lien and charge securing the Outstanding Bonds theretofore issued hereunder, but only subject to the following specific conditions, which are hereby made conditions precedent to the issuance of any such Additional Bonds:

(A) The aggregate principal amount of the 2011 Bonds and all Additional Bonds issued may not exceed \$16,000,000; provided, however, that, notwithstanding the foregoing, Additional Bonds may be issued at any time to refund Outstanding Bonds where the issuance of such Additional Bonds results in a reduction of Annual Debt Service on all Outstanding Bonds.

(B) The City and the District shall be in compliance with all covenants set forth in the Resolution and this Agreement, and a certificate of an Authorized Officer to that effect shall have been filed with the Fiscal Agent.

(C) The issuance of such Additional Bonds shall have been duly authorized pursuant to the Act and all applicable laws, and the issuance of such Additional Bonds shall have been provided for by a Supplemental Agreement which shall specify the following:

(1) The purpose for which such Additional Bonds are to be issued and the fund or funds into which the proceed thereof are to be deposited, including a provision requiring the proceeds of such Additional Bonds to be applied solely for (a) the purpose of financing the Project, including payment of all costs incidental to or connected with such financing, and/or (b) the purpose of refunding any Outstanding Bonds, including payment of all costs incidental to or connected with such refunding to the extent permitted by law;

(2) The authorized principal amount of such Additional Bonds;

(3) The date and maturity date or dates of such Additional Bonds; provided that (a) each maturity date shall be September 1 of each year such Additional Bonds are due, (b) all such Additional Bonds of like maturity shall be identical in all respects, except as to number, and (c) fixed serial maturities or mandatory sinking payments, or any combination thereof, shall be established to provide for the retirement of all such Additional Bonds on or before their respective maturity dates;

(4) The interest payment dates for such Additional Bonds; provided that interest payment dates shall be on the same semiannual dates as the Interest Payment Dates for the Bonds unless the City determines that interest payment dates other than those for the Bonds will not adversely affect the interests of the owners of the Outstanding Bonds;

(5) The denomination and method of numbering of such Additional Bonds;

(6) The redemption premiums, if any, and the redemption terms, if any, for such Additional Bonds;

(7) The amount and due date of each mandatory sinking payment, if any, for such Additional Bonds;

(8) The amount, if any, to be deposited from the proceeds of such Additional Bonds in any interest account;

(9) The amount, if any, to be deposited from the proceeds of such Additional Bonds in an Additional Bonds Reserve Fund established by Supplemental Agreement

with respect to such Additional Bonds in an amount equal to the Reserve Requirement applicable to such Additional Bonds;

(10) The form of such Additional Bonds; and

(11) Such other provisions as are necessary or appropriate and not inconsistent with this Agreement.

In addition to the specific terms described above, the City may, by such Supplemental Agreement, establish such additional funds and/or accounts as may be necessary to provide for the administration of such Additional Bonds.

(D) The Fiscal Agent shall have received the following documents, all of such documents dated or certified, as the case may be, as of the date of delivery of such Additional Bonds by the Fiscal Agent:

(1) a certified copy of the resolution authorizing the issuance of such Additional Bonds and the approval of the Supplemental Agreement pursuant to which such Additional Bonds are to be issued;

(2) an Officer's Certificate of the City on behalf of the District authorizing the authentication and delivery of such Additional Bonds;

(3) an opinion of Bond Counsel to the effect that (a) the District has the right and power under the Act to execute and deliver this Agreement and all Supplemental Agreements thereto, and this Agreement and all such Supplemental Agreements have been duly and lawfully approved, executed and delivered by the District, are in full force and effect and are valid and binding upon the District and enforceable in accordance with their terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization and other similar laws relating to the enforcement of creditors' rights), and no other authorization for this Agreement or such Supplemental Agreement is required; (b) this Agreement and such Supplemental Agreement create the valid pledge which they purport to create of the Special Taxes as provided in this Agreement and such Supplemental Agreement, subject to the application thereof to the purposes and on the conditions permitted by this Agreement and such Supplemental Agreement; (c) such Additional Bonds are valid and binding special obligations of the District, enforceable in accordance with their terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization and other similar laws relating to the enforcement of creditors' rights) and the terms of this Agreement and all Supplemental Agreements thereto and entitled to the benefits of this Agreement and all such Supplemental Agreements, and such Additional Bonds have been duly and validly authorized and issued in accordance with the Act (or other applicable laws) and this Agreement and all such Supplemental Agreements; and (d) the issuance of the Additional Bonds will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds and, if then applicable, the Bonds or the exemption from State of California personal income taxation of interest on the Bonds;

(4) an Officer's Certificate certifying that:

(a) The City has received a certificate from one or more Tax Consultants which, when taken together, certify that as of the date of calculation which shall be no earlier than 60 days prior to the Closing Date of such Additional Bonds the aggregate Maximum Annual Special Tax that may be levied on all Developed Property and Updated Property within the District (excluding any Assessor's Parcel of Developed Property or Updated Property for which the payment of Special Taxes as of the date of calculation are delinquent) in any Fiscal Year by the District pursuant to the Act and the applicable resolutions and ordinances of the District equals (y) at least 1.10 times the amount required to pay Debt Service during the Bond Year commencing during such Fiscal Year on all Outstanding Bonds and the proposed Additional Bonds, plus (z) the Administrative Expenses in an amount equal to the Minimum Annual Administrative Expense Requirement for such Bond Year; provided that for purposes of making the certifications required by this subsection 2.12(C)(4)(a), the Tax Consultant may rely on reports or certificates of such other persons or entities as may be acceptable to the City, Bond Counsel and the underwriter of the proposed Additional Bonds; and

(b) the City has received an Appraisal with a date of value no earlier than 90 days preceding the Closing Date of the Additional Bonds indicating that following the issuance of the Additional Bonds:

(i) the aggregate value of all Developed Property and Updated Property within the District will be at least three (3) times the Public Lien Amount;

(ii) for each common ownership of Undeveloped Property that will be subject to the Special Tax to pay debt service on the Bonds, the aggregate value of all such Undeveloped Property under such common ownership will be at least three (3) times the Public Lien Amount apportioned to such properties

(iii) the value of each Assessor's Parcel of Undeveloped Property that will be subject to the Special Tax to pay debt service on the Bonds will be at least two (2) times the Public Lien Amount apportioned to such parcel;

(for purposes of paragraph (b)(ii) and (iii) above, no principal amount of the Additional Bonds shall be included in the Public Lien Amount applicable to Undeveloped Property or deemed to be apportioned to Undeveloped Property if the City has received the certificate required pursuant to paragraph (a) above);and

(5) an Officer's Certificate of the City containing such additional statements as may be reasonably necessary to show compliance with the requirements of this Agreement; and

(6) such further documents as are required by the provisions of this Agreement and the Supplemental Agreement providing for the issuance of such Additional Bonds.

Section 2.13. Book-Entry. The Bonds shall be initially issued in the form of a single, fully registered Bond for each maturity (which may be typewritten). Upon initial issuance, the ownership of such Bonds shall be registered in the name of the Nominee identified below as nominee of The Depository Trust Company, New York, New York and its successors and assigns (the “Depository” or “DTC”). Except as hereinafter provided, all of the Outstanding Bonds shall be registered in the name of the nominee of the Depository, which may be the Depository, as determined from time to time pursuant to this Section 2.13 (the “Nominee”).

With respect to the Bonds registered in the name of the Nominee, neither the City nor the Fiscal Agent shall have any responsibility or obligation to any broker-dealers, banks and other financial institutions from time to time for which the Depository holds Bonds as securities depository (the “Participant”) or to any person on behalf of which such a Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, neither the City nor the Fiscal Agent shall have any responsibility, liability or obligation whatsoever with respect to (i) the accuracy of the records of the Depository, the Nominee, or any Participant with respect to any ownership interest in the Bonds; (ii) the delivery to any Participant or any other person, other than an Owner of a Bond as shown in the registration books maintained by the Fiscal Agent pursuant to Section 2.08 hereof (the “Registration Books”), of any notice with respect to the Bonds, including any notice of redemption; (iii) the selection by the Depository and its Participants of the beneficial interests in the Bonds to be redeemed in the event the City redeems the Bonds in part; or (iv) the payment to any Participant or any other person, other than an Owner of a Bond as shown in the Registration Books, of any amount with respect to principal of or interest on the Bonds. The City and the Fiscal Agent may treat and consider conclusively the person in whose name each Bond is registered as the holder and absolute Owner of such Bond for the purpose of payment of principal and interest with respect to such Bond, for the purpose of giving notices of redemption, if applicable, and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The City shall pay all principal of and interest on the Bonds only to or upon the order of the respective Owner of a Bond, as shown in the Registration Books, or his or her attorney duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner of a Bond, as shown in the Registration Books, shall receive a Bond evidencing the obligation of the City to make payments of principal and interest pursuant to this Agreement. Upon delivery by the Depository to the Owners of the Bond, and the City of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word Nominee in this Agreement shall refer to such nominee of the Depository.

In the event (i) the Depository determines not to continue to act as securities depository for the Bonds, or (ii) the Depository shall no longer so act and gives notice to the City of such determination, then the City will discontinue the book-entry system with the Depository. If the City determines to replace the Depository with another qualified securities depository, the City shall prepare or direct the preparation of a new, single, separate, fully registered Bond, per maturity, registered in the name of such successor or substitute qualified securities depository or its nominee. If the City fails to identify another qualified securities depository to replace the Depository, then the Bonds shall no longer be restricted to being registered in the Registration



Books in the name of the Nominee, but shall be registered in whatever name or names Owners of the Bonds transferring or exchanging Bonds shall designate, in accordance with the provisions of Sections 2.06 and 2.07 hereof, and the City shall prepare and deliver Bonds to the Fiscal Agent for authentication and delivery to the Owners thereof for such purpose.

In the event of a reduction in aggregate principal amount of Bonds Outstanding or an advance refunding of part of the Bonds Outstanding, the Depository, in its discretion, (i) may request the City to prepare and issue a new Bond or (ii) may make an appropriate notation on a Bond indicating the date and amounts of such reduction in principal, but in such event the Registration Books maintained by the Fiscal Agent shall be conclusive as to what amounts are Outstanding with respect to the Bond, except in the case of final maturity, in which case the Bond must be presented to the Fiscal Agent prior to payment.

Notwithstanding any other provision of this Agreement to the contrary, so long as any Bond is registered in the name of the Nominee, all payments of principal and interest with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed by the Depository and acceptable to the City.

The initial Nominee shall be Cede & Co., as Nominee of DTC.

ARTICLE III  
ISSUANCE OF 2011 BONDS; APPLICATION OF PROCEEDS OF 2011 BONDS;  
IMPROVEMENT FUND; SPECIAL TAX FUND; ADMINISTRATIVE EXPENSE FUND;  
COSTS OF ISSUANCE FUND

Section 3.01. Issuance and Delivery of 2011 Bonds. At any time after the execution of this Agreement, the City may issue the 2011 Bonds for the District in the aggregate principal amounts set forth in Section 2.01 hereof and deliver such Bonds to the Original Purchaser. The Authorized Officers of the City are hereby authorized and directed to deliver any and all documents and instruments necessary to cause the issuance of such Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance by the Fiscal Agent from the proceeds of such Bonds, and to do and cause to be done any and all acts and things necessary or convenient for delivery of such Bonds to the Original Purchaser.

Section 3.02. Application of Proceeds of Sale of 2011 Bonds.

The Proceeds of the sale of the 2011 Bonds to the Original Purchaser shall be paid to the Fiscal Agent, who shall forthwith set aside, pay over and deposit such Proceeds on the Closing Date as follows:

- (A) deposit in the Reserve Fund the amount of \$\_\_\_\_\_;
- (B) deposit in the Costs of Issuance Fund the amount of \$\_\_\_\_\_;
- (C) deposit in the Improvement Fund the amount of \$\_\_\_\_\_;

- (D) deposit in the Administrative Expense Fund the amount of \$30,000.00 which is equal to the Minimum Annual Administrative Expense Requirement for Fiscal Year 2010-2011; and
- (E) deposit in the Interest Account of the Bond Fund the amount of \$\_\_\_\_\_ representing capitalized interest on the 2011 Bonds through September 1, 2011.

Section 3.03. Improvement Fund.

(A) Establishment of Improvement Fund. There is hereby established, as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley Special Tax Bonds “Improvement Fund,” to the credit of which deposits shall be made as required by Section 3.02(C) hereof.

Moneys in the Improvement Fund shall be held by the Fiscal Agent for the benefit of the City, and shall be disbursed, except as otherwise provided in subsection (B) of this Section 3.03, for the payment or reimbursement of the costs of the design, acquisition and construction of the Project.

(B) Procedure for Disbursement from Improvement Fund.

(1) Disbursements from the Improvement Fund shall be made by the Fiscal Agent in accordance with the Acquisition/Financing Agreement and upon receipt of an Officer’s Certificate which shall:

(a) set forth the amount required to be disbursed from the Improvement Fund, the purpose for which the disbursement is to be made, including the identification of the facility of the Project for which such disbursement is being made, and the person to which the disbursement is to be paid; and

(b) certify that no portion of the amount then being requested to be disbursed was set forth in any Officer’s Certificate previously filed with the Fiscal Agent requesting disbursement, and that the amount being requested is an appropriate disbursement from the Improvement Fund.

(C) Investment. Moneys in the Improvement Fund shall be invested and deposited in accordance with Section 6.01 hereof. Investment Earnings with respect to the Improvement Fund shall be retained by the Fiscal Agent in such fund to be used for the purposes of such fund.

(D) Closing of the Improvement Fund. Upon the filing of an Officer’s Certificate stating that the construction and acquisition of the Project have been completed in accordance with the Acquisition/Financing Agreement and that all costs of the Project have been paid or are not required to be paid from the Improvement Fund, and further stating that moneys on deposit in the Improvement Fund are not needed to complete the Project or reimburse the cost thereof, the Fiscal Agent shall transfer the amount, if any, remaining in the Improvement Fund to the Special Tax Fund and the Improvement Fund shall be closed. Notwithstanding the preceding provisions

of this subsection, the Improvement Fund shall be closed if all amounts on deposit therein are disbursed pursuant to Section 3.03(B)(1) above.

(E) Officer's Certificate. Upon receipt of an Officer's Certificate delivered pursuant to this Section 3.03, the Fiscal Agent is authorized to act thereon without further inquiry and shall not be responsible for the accuracy of the statements made in such Officer's Certificate or the application of the funds disbursed pursuant thereto, and shall be absolutely protected and incur no liability in relying on such Officer's Certificate.

Section 3.04. Special Tax Fund.

(A) Establishment of Special Tax Fund. There is hereby established, as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley Special Tax Bonds “Special Tax Fund” to the credit of which the City shall deposit, as hereinafter provided, not later than ten (10) Business Days after receipt, all Special Tax Revenues received by the City. Moneys in the Special Tax Fund, and all accounts therein, shall be held in trust by the Fiscal Agent for the benefit of the City and the Owners of the Bonds, shall be disbursed as provided below and, pending disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

Notwithstanding the foregoing, any amounts received by the City which constitute Special Tax Prepayments shall be transferred by the City not later than ten (10) Business Days after receipt to the Fiscal Agent for deposit by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to Section 4.02(A) hereof.

(B) Disbursements. As soon as practicable after the receipt from the City of any Special Tax Revenues, but no later than ten (10) Business Days after such receipt, the Fiscal Agent shall withdraw from the Special Tax Fund and deposit in the Administrative Expense Fund, an amount which is estimated by the City, in a written communication from an Authorized Officer delivered to the Fiscal Agent (upon which the Fiscal Agent may conclusively rely) to be sufficient, together with the amount then on deposit in the Administrative Expense Fund, to pay the Administrative Expenses during the current Fiscal Year; provided, however, that the amount deposited in the Administrative Expense Fund prior to the deposits to the Interest Account and the Principal Account of the Bond Fund, as provided below in Section 4.02(B)(1) and (2), shall not exceed the Minimum Annual Administrative Expense Requirement for any Fiscal Year. The amount necessary to repay Administrative Expenses incurred in any Fiscal Year in excess of the Minimum Annual Administrative Expense Requirement shall be deposited to the Administrative Expense Fund as described later in this Section. From the amount then remaining on deposit in the Special Tax Fund, the Fiscal Agent shall, concurrently with the foregoing deposit, deposit in the Reserve Fund and any Additional Bonds Reserve Fund the amount, if any, which the City shall direct in an Officer's Certificate delivered to the Fiscal Agent (upon which the Fiscal Agent may conclusively rely), to be withdrawn from the Special Tax Fund to make the amount on deposit in the Reserve Fund and such Additional Bonds Reserve Fund equal to the Reserve Requirement for the 2011 Bonds or the Additional Bonds, as applicable. Thereafter, the Fiscal Agent shall deposit in the Interest Account and the Principal Account of the Bond Fund, as provided in Section 4.02(B)(1) and (2) hereof, the entire remaining balance of the amount then on deposit in the Special Tax Fund. Notwithstanding the preceding provisions of this paragraph, if the amount of the Special Tax Revenues collected by the City for any Fiscal Year is less than the total amount of the Special Taxes which were levied on parcels of taxable property in the

District, the City shall not direct the Fiscal Agent to transfer any amount from the Special Tax Fund for deposit in the Reserve Fund or such Additional Bonds Reserve Fund but shall instead direct the Fiscal Agent to deposit such portion of the amount remaining in the Special Tax Fund, after the appropriate transfer to the Administrative Expense Fund, to make the deposits to the Interest Account and the Principal Account as hereinafter provided in Section 4.02(B)(1) and (2). If after such deposits are made to the Administrative Expense Fund, the Interest Account and the Principal Account there are funds remaining on deposit in the Special Tax Fund, the City shall instruct the Fiscal Agent by an Officer's Certificate (upon which the Fiscal Agent may conclusively rely) to transfer such amount from the Special Tax Fund to and deposit it in the Reserve Fund and such Additional Bonds Reserve Fund to the extent that the amount on deposit in any such fund is less than the Reserve Requirement for the 2011 Bonds or the Additional Bonds, as applicable. Such Officer's Certificate shall specify the amount which is to be transferred from the Special Tax Fund and deposited in such Reserve Fund and/or such Additional Bonds Reserve Fund.

Notwithstanding the preceding provisions of this subsection, if prior to the September 1 Interest Payment Date in any Bond Year the City determines that Special Tax Revenues will be sufficient to enable the Fiscal Agent to deposit in the Reserve Fund for the 2011 Bonds and the Additional Bonds Reserve Fund or Additional Bonds Reserve Funds established for any Additional Bonds the amounts, if any, which are necessary to make the amount on deposit in the Reserve Fund or any such Additional Bonds Reserve Fund equal to the Reserve Requirement for the 2011 Bonds or the Additional Bonds, as applicable, and deposit in the Bond Fund the full amount required for deposit to the Interest Account and the Principal Account to pay the interest on and principal of the Bonds on such Interest Payment Date, the City may instruct the Fiscal Agent in an Officer's Certificate, upon which the Fiscal Agent may conclusively rely, to deposit an additional amount in the Administrative Expense Fund before making the required deposit to the Bond Fund, and the Fiscal Agent shall deposit such additional amount in the Administrative Expense Fund before depositing any amount to the Reserve Fund, any such Additional Bonds Reserve Fund or the Bond Fund.

Prior to the Completion Date for the Project, at the end of each Bond Year any remaining funds in the Special Tax Fund, which are not required to cure a delinquency in the payment of principal and interest on the Bonds, to restore the accounts within the Reserve Fund and any such Additional Bonds Reserve Funds or to pay current and pending Administrative Expenses as set forth in the above referenced paragraph ("Excess Amounts"), shall be deposited in the Improvement Fund and used in accordance with Section 3.03 hereof and shall be free and clear of any lien thereon or pledge hereunder; provided, any funds which are required to cure any delinquency described above shall be retained in the Special Tax Fund and expended or transferred, at the earliest possible date, for such purpose. After the Completion Date for the Project, all Excess Amounts shall be deposited to the Bond Fund.

At the date of the redemption, defeasance, or maturity of the last Bonds and after all principal and interest then due on any Bonds has been paid or provided for, all other covenants are complied with and all fees and expenses of the Fiscal Agent have been paid, moneys in the Special Tax Fund, if any, will be transferred by the Fiscal Agent to the City, for and on behalf of the District, and may be used to fund the acquisition or construction of any authorized improvements authorized by the District.

On September 2 of each year, beginning on September 2, 2011, the amount, if any, on deposit in the Special Tax Fund, together with the amount then on deposit in the Bond Fund (including the Principal Account therein but not including, however, the Interest Account or the Special Tax Prepayments Account), as determined by the City, shall not exceed the greater of (i) one year's earnings on such amounts, or (ii) one-twelfth (1/12th) of Annual Debt Service for the then current Bond Year. If on September 2 of any year the amount on deposit in the Special Tax Fund, together with the amount then on deposit in the Bond Fund (other than such excluded amounts), exceeds the maximum amount allowable pursuant to the preceding sentence, as determined by the City and communicated in writing by an Authorized Officer to the Fiscal Agent (upon which the Fiscal Agent may conclusively rely), shall be transferred from the Special Tax Fund to and deposited in the Reserve Fund or any such Additional Bonds Reserve Fund to the extent that the amount on deposit therein is less than the Reserve Requirement for the 2011 Bonds or the Additional Bonds, as applicable. Any such excess remaining in the Special Tax Fund after any such amount is transferred from the Reserve Fund and any such Additional Bonds Reserve Fund shall be transferred from the Special Tax Fund to and deposited in the Administrative Expense Fund. On September 2 of each year, after any such excess amount has been transferred as hereinabove provided, the amount on deposit in the Special Tax Fund, together with the amount then on deposit in the Bond Fund (other than such excluded amounts), shall not exceed in the aggregate the greater of (i) one year's earnings thereon, or (ii) one-twelfth (1/12th) of Annual Debt Service for the then current Bond Year. The Fiscal Agent shall have no obligation to monitor the City's obligations as set forth in this paragraph.

(C) Investment. Moneys in the Special Tax Fund shall be invested and deposited in accordance with Section 6.01 hereof. Investment Earnings shall be retained in the Special Tax Fund to be used for the purposes of such fund.

#### Section 3.05. Administrative Expense Fund.

(A) Establishment of Administrative Expense Fund. There is hereby established, as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley Special Tax Bonds “Administrative Expense Fund” to the credit of which deposits shall be made as required by Section 3.02(D) and Section 3.04(B) hereof. Moneys in the Administrative Expense Fund shall be held in trust by the Fiscal Agent for the benefit of the City, and shall be disbursed as provided below.

(B) Disbursement. Amounts in the Administrative Expense Fund shall be withdrawn by the Fiscal Agent and paid to the City or its order upon receipt by the Fiscal Agent of an Officer's Certificate stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense and the nature of such Administrative Expense.

(C) Investment. Subject to the provisions of Section 3.05(B) above, moneys in the Administrative Expense Fund shall be invested and deposited in accordance with Section 6.01 hereof. Investment Earnings shall be retained by the Fiscal Agent in the Administrative Expense Fund to be used for the purposes of such fund.

#### Section 3.06. Costs of Issuance Fund.

(A) Establishment of Costs of Issuance Fund. There is hereby established, as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley Special Tax Bonds “Costs of Issuance Fund” to the credit of which a deposit shall be made as required by Section 3.02(B) hereof. Moneys in the Costs of Issuance Fund shall be held in trust by the Fiscal Agent and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance.

(B) Disbursement. Amounts in the Costs of Issuance Fund shall be disbursed to pay Costs of Issuance for any Series of the Bonds, as set forth in a requisition containing respective amounts to be paid to the designated payees, signed by an Authorized Officer and delivered to the Fiscal Agent concurrently with the delivery of such Bonds. The Fiscal Agent shall pay all Costs of Issuance upon receipt of an invoice from any such payee which requests payment in an amount which is less than or equal to the amount set forth with respect to such payee in such requisition, or upon receipt of an Officer’s Certificate requesting payment of a Cost of Issuance not listed on the initial requisition delivered to the Fiscal Agent on the Closing Date. The Fiscal Agent shall maintain proceeds of any Series of the Bonds deposited in the Costs of Issuance Fund for a period of ninety (90) days from the Closing Date and shall then transfer and deposit any moneys remaining therein, including any Investment Earnings thereon, to the Improvement Fund.

(C) Investment. Moneys in the Costs of Issuance Fund shall be invested and deposited in accordance with Section 6.01 hereof. Investment Earnings shall be retained by the Fiscal Agent in the Costs of Issuance Fund to be used for the purposes of such fund.

#### ARTICLE IV SPECIAL TAX REVENUES; BOND FUND; RESERVE FUND

Section 4.01. Pledge of Special Tax Revenues. The Bonds shall be secured by a pledge of and lien upon (which shall be effected in the manner and to the extent herein provided) all of the Special Tax Revenues (except an amount equal to the Minimum Annual Administrative Expense Requirement which will be deposited in the Administrative Expense Fund for each Fiscal Year pursuant to Section 3.04(B) hereof) and all moneys deposited in the Bond Fund and all moneys deposited in the Reserve Fund and any Additional Bonds Reserve Fund. The Bonds shall be equally secured by a pledge of and lien upon the Special Tax Revenues and such moneys without priority for number, date of Bond, date of execution or date of delivery; and the payment of the interest on and principal of the Bonds and any premium upon the redemption of any thereof shall be and is secured by a pledge of and lien upon the Special Tax Revenues and such moneys. The Special Tax Revenues (except an amount equal to the Minimum Annual Administrative Expense Requirement) and all moneys deposited into the Bond Fund and the Reserve Fund, with respect to the 2011 Bonds, and any Additional Bonds Reserve Fund with respect to any Series of Additional Bonds (including all accounts within such funds) are hereby dedicated in their entirety to the payment of the principal of the Bonds, and interest and any premium on, the Bonds, as provided herein and in the Act, until all of the Bonds have been paid and retired or until moneys or Defeasance Securities have been set aside irrevocably for that purpose in accordance with Section 9.03 hereof.

Section 4.02. Bond Fund.

(A) Deposits. There is hereby established, as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds “Bond Fund” to the credit of which deposits shall be made as required by Section 3.02(E), Section 3.04(B) and Section 4.03(D) hereof and any other provision of this Agreement or the Act. There are hereby established in the Bond Fund, as separate accounts to be held by the Fiscal Agent, the “Interest Account” and the “Principal Account.” There is hereby also established in the Bond Fund, as a separate account to be held by the Fiscal Agent, the “Special Tax Prepayments Account” to the credit of which deposits shall be made as required by Section 3.04(B) hereof. Moneys in the Bond Fund shall be held, in trust, by the Fiscal Agent for the benefit of the Owners of the Bonds, shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below, and, pending such disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

(B) Disbursements. On or before each Interest Payment Date, the Fiscal Agent shall transfer from the Special Tax Fund and deposit into the following respective accounts in the Bond Fund, the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Special Tax Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(1) Interest Account. On or before each Interest Payment Date, except the Interest Payment Date which occurs on September 1, 2011, the Fiscal Agent shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on the Bonds on such date. No deposit need be made into the Interest Account on any Interest Payment Date if the amount on deposit therein is at least equal to the interest becoming due and payable on the Bonds on such date. All moneys in the Interest Account shall be used and withdrawn by the Fiscal Agent solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity). All amounts on deposit in the Interest Account on the first day of any Bond Year with the exception of the Bond Year ending September 1, 2011, to the extent not required to pay any interest then having become due and payable on the Outstanding Bonds shall be withdrawn therefrom by the Fiscal Agent and transferred to the Special Tax Fund.

(2) Principal Account. On or before each Interest Payment Date which occurs on September 1, the Fiscal Agent shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds becoming due and payable on such date pursuant to Section 2.02 hereof, or the redemption price of the Bonds (consisting of the principal amount thereof and any applicable redemption premium) required to be redeemed on such date pursuant to any of the provisions of Section 2.03 hereof. Except as hereinafter provided, all moneys in the Principal Account shall be used and withdrawn by the Fiscal Agent solely for the purpose of (i) paying the principal of the Bonds at the maturity thereof, or (ii) paying the principal of and premium (if any) on any Bonds upon the redemption thereof pursuant to Section 2.03 hereof. All amounts on deposit in the Principal Account on the first day of any Bond Year, to the extent not required to pay the

principal of any Outstanding Bonds then having become due and payable, shall be withdrawn therefrom by the Fiscal Agent and transferred to the Special Tax Fund.

On the first Business Day following each Interest Payment Date, the Fiscal Agent shall transfer any moneys remaining on deposit in the Bond Fund (including the Interest Account and the Principal Account) other than moneys on deposit in the Special Tax Prepayments Account and moneys representing capitalized interest on the Bonds in the Interest Account, as directed in writing by an Authorized Officer (upon which direction the Fiscal Agent may conclusively rely), to the Special Tax Fund.

In the event that moneys on deposit in the Special Tax Fund will be insufficient on any Interest Payment Date for the Fiscal Agent to deposit the required amounts in the Interest Account and the Principal Account, as provided above, the Fiscal Agent shall deposit the available funds first to the Interest Account up to the full amount required to cause the aggregate amount on deposit therein to equal the amount of interest becoming due and payable on the Bonds on the Interest Payment Date, and shall then deposit the remaining available funds in the Special Tax Fund to the Principal Account up to the full amount required to cause the aggregate amount on deposit therein to equal the amount, if any, of principal becoming due and payable on the Bonds on the Interest Payment Date. If, after making such deposits to the Interest Account and the Principal Account, and after transferring moneys from the Reserve Fund and any Additional Bonds Reserve Fund to such accounts, as provided in Section 4.03(B) hereof, the amount on deposit in the Principal Account is insufficient to pay the full amount of the principal of each of the Bonds which is to be redeemed on the Interest Payment Date, the Fiscal Agent shall make a prorated payment of the principal of each of such Bonds as specified in an Officer's Certificate provided to the Fiscal Agent.

On September 2 of each year, beginning on September 2, 2011, the amount, if any, on deposit in the Bond Fund (including the amount on deposit in the Principal Account but not including, however, the amounts on deposit in the Interest Account and the Special Tax Prepayments Account) as determined by the City, together with the amount then on deposit in the Special Tax Fund, shall not exceed the greater of (i) one year's earnings on such amounts, or (ii) one-twelfth (1/12th) of Annual Debt Service for the then current Bond Year. If on September 2 of any year the amount on deposit in the Bond Fund (other than such excluded amounts), together with the amounts then on deposit in the Special Tax Fund, exceeds the maximum amount allowable pursuant to the preceding sentence, the excess shall be transferred by the Fiscal Agent, as directed in writing by the City (upon which the Fiscal Agent may conclusively rely), to the Reserve Fund and to any Additional Bonds Reserve Fund to the extent that the amount on deposit in the Reserve Fund or such Additional Bonds Reserve Fund is less than the Reserve Requirement for the 2011 Bonds or the Additional Bonds, as applicable, and any such excess remaining thereafter shall be transferred by the Fiscal Agent to the Administrative Expense Fund. On September 2 of each year, after any such excess amount has been transferred as hereinabove provided, the amount on deposit in the Bond Fund (other than such excluded amounts), together with the amount then on deposit in the Special Tax Fund, shall not exceed the greater of (i) one year's earnings thereon, or (ii) one-twelfth (1/12th) of Annual Debt Service for the then current Bond Year. The Fiscal Agent shall have no obligation to monitor the City's obligations as set forth in this paragraph.

(C) Special Tax Prepayments Account Deposits and Disbursements. Within ten (10) Business Days after receiving a Special Tax Prepayment the City shall deliver the amount



thereof to the Fiscal Agent, together with an Officer's Certificate notifying the Fiscal Agent that the amount being delivered is a Special Tax Prepayment which is to be deposited in the Special Tax Prepayments Account. Upon receiving a Special Tax Prepayment from the City and such an Officer's Certificate, the Fiscal Agent shall deposit the amount of the Special Tax Prepayment in the Special Tax Prepayments Account. Such an Officer's Certificate may be combined with the Officer's Certificate which the City is required to deliver to the Fiscal Agent pursuant to Section 4.03(F) hereof. Moneys on deposit in the Special Tax Prepayments Account shall be transferred by the Fiscal Agent to the Principal Account on the next date for which notice of the redemption of the Bonds can timely be given under Section 2.03(F) hereof and shall be used to redeem the Bonds on the redemption date selected in accordance with Section 2.03(B) hereof. Pending such transfer, the moneys on deposit in the Special Tax Prepayments Account shall be invested in Defeasance Securities at such yield as Bond Counsel shall determine is necessary to preserve the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. Investment earnings on the moneys on deposit in the Special Tax Prepayments Account shall be retained in such account.

(D) Investment. Except as provided in Section 4.02(C) above, moneys in the Bond Fund, including all accounts therein, shall be invested and deposited in accordance with Section 6.01 hereof. Investment Earnings shall be retained in the Bond Fund, except to the extent they are required to be deposited by the Fiscal Agent in the Rebate Fund in accordance with Section 6.02 hereof.

Amounts in the Bond Fund, including all accounts therein, shall also be withdrawn and deposited in the Rebate Fund as provided in Section 6.02 hereof.

#### Section 4.03. Reserve Fund.

(A) Establishment of Fund. There is hereby established, as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds "Reserve Fund" to the credit of which deposits shall be made as required by Section 3.02(A) hereof, which deposit is equal to the Reserve Requirement applicable to the 2011 Bonds, and to which deposits shall be made as provided in Section 3.04(B) hereof. Moneys in the Reserve Fund shall be held, in trust, by the Fiscal Agent for the benefit of the Owners of the 2011 Bonds as a reserve for the payment of the principal of and interest and any premium on the 2011 Bonds and shall be subject to a lien in favor of the Owners of the 2011 Bonds.

(B) Use of Funds. Except as otherwise provided in this Section, all amounts on deposit in the Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Interest Account and the Principal Account of the Bond Fund in the event of any deficiency at any time in either of such accounts of the amount then required for payment of the principal of and interest and any premium on the 2011 Bonds or, in accordance with the provisions of Section 4.03(E), for the purpose of redeeming the 2011 Bonds.

(C) Transfer Due to Deficiency in Interest and Principal Accounts. Whenever transfer is made from the Reserve Fund to the Interest Account or the Principal Account due to a deficiency in either such account, the Fiscal Agent shall provide written notice thereof to the City.

(D) Transfer of Excess of Reserve Requirement. Whenever, on any September 2, the amount in the Reserve Fund, less Investment Earnings resulting from the investment of the funds therein which pursuant to Section 6.02 hereof must be rebated to the United States, exceeds the Reserve Requirement, the Fiscal Agent shall provide written notice to the City of the amount of the excess. Upon receiving written direction from an Authorized Officer (upon which the Fiscal Agent may conclusively rely), the Fiscal Agent shall, subject to the requirements of Section 6.02 hereof, transfer an amount from the Reserve Fund which will reduce the amount on deposit therein to an amount equal to the Reserve Requirement to the Interest Account and the Principal Account, in the priority specified in Section 4.02(B)(1) and (2) hereof, to be used for the payment of the interest on and principal of the 2011 Bonds on the next succeeding Interest Payment Date in accordance with Section 4.02 hereof.

(E) Transfer When Balance Exceeds Outstanding 2011 Bonds. Whenever the balance in the Reserve Fund is equal to or exceeds the amount required to redeem or pay the Outstanding 2011 Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon receiving written direction from an Authorized Officer (upon which the Fiscal Agent may conclusively rely), transfer the amount in the Reserve Fund to the Interest Account and the Principal Account, in the priority specified in Section 4.02(B) hereof, together with written instructions to the Fiscal Agent that such amount is to be applied, on the next succeeding Interest Payment Date, to the payment and redemption, in accordance with Section 2.03 and Section 4.02 hereof of all of the Outstanding 2011 Bonds. In the event that the amount available to be so transferred from the Reserve Fund to the Interest Account and the Principal Account exceeds the amount required to pay and redeem the Outstanding 2011 Bonds, the excess shall be transferred to the City to be used for any lawful purpose of the City.

(F) Transfers on Payment of Special Tax Obligations. Whenever the City receives a Special Tax Prepayment for a lot or parcel of property within the District, the City shall by an Officer's Certificate notify the Fiscal Agent thereof and of the amount by which the Reserve Fund is to be reduced and which is transferable from such accounts to the Principal Account of the Bond Fund, which amount shall be specified in the Officer's Certificate. Each such Officer's Certificate shall be accompanied by a report of an Independent Financial Consultant verifying the accuracy of the calculation of the amount to be transferred from the Reserve Fund to the Principal Account ("Verification"). Upon receipt of each such Officer's Certificate and Verification, upon which the Fiscal Agent may conclusively rely, the Fiscal Agent shall at such time as the amount of such Special Tax Prepayment allocated to the 2011 Bonds will be used to redeem 2011 Bonds, as provided in Section 4.02(B)(2) hereof, transfer the amount specified in such Officer's Certificate to the Principal Account and use such amount, together with the amount of such Special Tax Prepayment, to redeem 2011 Bonds, as provided in Section 4.02(B)(2) hereof. Notwithstanding the preceding provisions of this subsection, no amount shall be transferred from the Reserve Fund to the Principal Account if the amount on deposit in the Reserve Fund is, or as a result of such transfer would be, less than the Reserve Requirement applicable to the 2011 Bonds.

(G) Investment. Moneys on deposit in each account within the Reserve Fund shall be invested in Permitted Investments which do not have maturities extending beyond five (5) years; provided, however, if such moneys are invested in an investment agreement (as defined in clause (vii) of the definition of Permitted Investments in Section 1.03 hereof) or a repurchase agreement

(as defined in clause (xi) of such definition) such agreement may have a maturity longer than five (5) years if the Fiscal Agent is authorized by the provisions of such agreement to draw the full amount thereof, without penalty, if required for the purposes of the Reserve Fund. The City shall cause the Permitted Investments, other than such investment agreements, in which moneys on deposit in the Reserve Fund are invested to be valued at fair market value and marked-to-market at least once in each Fiscal Year.

## ARTICLE V OTHER COVENANTS OF THE CITY

Section 5.01. Punctual Payment. The City will punctually pay or cause to be paid the principal of and interest and any premium on the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement to the extent that the Special Tax Revenues are available therefor, and it will faithfully observe and perform all of the conditions, covenants, and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

Section 5.02. Special Obligation. The Bonds are special obligations of the City and the District and are payable solely from and secured solely by the Special Tax Revenues and the amounts in the Bond Fund, the Special Tax Fund, and the Reserve Fund with respect to the 2011 Bonds and any Additional Bonds Reserve Fund with respect to any Series of Additional Bonds.

Section 5.03. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

Section 5.04. Against Encumbrances. The City shall not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, except as permitted by this Agreement. Nothing in this Agreement shall prevent the City from issuing and selling, pursuant to law, refunding bonds or other refunding obligations payable from and having a first lien upon the Special Taxes Revenues on a parity with the Outstanding Bonds so long as the issuance of such refunding bonds or other refunding obligations results in a reduction in each Bond Year on the Annual Debt Service on the Bonds when combined with the annual debt service on such refunding bonds or other refunding obligations following the issuance thereof.

Section 5.05. Books and Accounts. The City shall keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Administrative Expense Fund. Such books of record and accounts shall at all times during business hours, upon reasonable notice, be subject to the inspection of

the Owners of not less than ten percent (10%) of the aggregate principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

Section 5.06. Protection of Security and Rights of Owners. The City will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

Section 5.07. Collection of Special Tax Revenues. The City shall comply with all requirements of the Act, including the enactment of necessary Ordinances, so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of the payment or collection of delinquent Special Taxes.

On or within five (5) Business Days of May 1 of each year, the Fiscal Agent shall provide the City with a notice stating the amount then on deposit in the Special Tax Fund, the Bond Fund and the Reserve Fund with respect to the 2011 Bonds and any Additional Bonds Reserve Fund with respect to any Series of Additional Bonds (including all accounts and sub-accounts therein), and informing the City that the Special Taxes are to be levied by Ordinance as necessary to provide for Annual Debt Service and Administrative Expenses and replenishment (if necessary) of the Reserve Fund or such Additional Bonds Reserve Funds so that the balance therein equals the Reserve Requirement for the 2011 Bonds or the Additional Bonds, as applicable. The receipt of such notice by the City or the failure of the Fiscal Agent to give such notice shall in no way affect the obligations of the City under the following two paragraphs. The Fiscal Agent shall have no liability if it does not provide such notice to the City. Upon receipt of such notice, the City shall communicate with the Auditor to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits during the preceding and then current Fiscal Year.

The City shall effect the levy of the Special Taxes each Fiscal Year in accordance with the Act and the Special Tax Rate and Method by August 10 of each year (or such later date as may be authorized by the Act or any amendment thereof) that the Bonds are Outstanding, such that the computation of the levy is complete before the final date on which the Auditor will accept the transmission of the Special Tax amounts for the parcels within the District for inclusion on the tax roll for the Fiscal Year then beginning. Upon the completion of the computation of the amounts of the levy of the Special Taxes, the City shall prepare or cause to be prepared, and shall transmit to the Auditor, such data as the Auditor requires to include the levy of the Special Taxes on the tax roll. Notwithstanding the preceding provisions of this paragraph, the City Council may elect, as permitted by the Act, to collect the Special Taxes to be levied for any Fiscal Year directly from the owners of the parcels of taxable property upon which the Special Taxes are levied rather than by transmitting the Special Taxes to the Auditor for collection on the tax roll; provided that, in such event, the City shall otherwise comply with the provisions of this Section 5.07.

The City shall fix and levy the amount of Special Taxes within the District required for the payment of the principal of and interest on any Outstanding Bonds becoming due and payable during the ensuing calendar year, including any necessary replenishment of the Reserve Fund with respect to the 2011 Bonds and any Additional Bonds Reserve Fund with respect to any Series of Additional Bonds, and the amount estimated to be sufficient to pay the Administrative Expenses during such calendar year. The Special Taxes so levied shall not

exceed the authorized amounts for the District as provided in the proceedings for the establishment of the District and the Special Tax Rate and Method. In computing the levy of the Special Tax to be levied within any Fiscal Year, the City shall, pursuant to the Special Tax Rate and Method, give credit for funds available to reduce the Special Tax levy, including but not limited to funds projected by and in the sole and absolute judgment of the City to remain on deposit in the Special Tax Fund and the Bond Fund on September 3rd of each Bond Year following all transfers on the preceding September 2nd as required pursuant to Section 3.04(B) and paragraph (B) of Section 4.01.

The Special Taxes shall be payable and be collected (except in the event of judicial foreclosure proceedings pursuant to Section 5.11 hereof) in the same manner and at the same time and in the same installments as the general taxes on real property are payable, and have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general taxes on real property.

The City will not, in collecting the Special Taxes or in processing any such judicial foreclosure proceedings, exercise any authority which it has pursuant to Sections 53340, 53344.1, 53344.2, 53356.1 and 53356.5 of the California Government Code in any manner which would materially and adversely affect the interests of the Owners and, in particular, will not permit the tender of Bonds in full or partial payment of any Special Taxes except upon receipt of a certificate of an Tax Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds remaining Outstanding following such tender.

Section 5.08. Levy of Special Taxes for Administrative Expenses. The City covenants that, (i) to the extent that it is legally permitted to do so, it will levy the Special Taxes for the payment of the Administrative Expenses which are expected to be incurred in each Fiscal Year; and (ii) it will not initiate proceedings under the Act to reduce the Maximum Annual Special Tax rates (the “Maximum Rates”) on then existing Developed Property in the District below the amounts which are necessary to provide Special Tax Revenues in an amount equal to one hundred ten percent (110%) of Maximum Annual Debt Service on the Outstanding Bonds plus the Minimum Annual Administrative Expense Requirement.

The City further covenants that in the event an ordinance is adopted by initiative pursuant to Section 3 of Article XIII C of the California Constitution, which purports to reduce or otherwise alter the Maximum Rates, it will commence and pursue legal action seeking to preserve its ability to comply with its covenant contained in the preceding paragraph.

Section 5.09. Further Assurances. The City will adopt, make, execute and deliver any and all such further ordinances, resolutions, instruments, and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Agreement.

Section 5.10. Tax Covenants. The City covenants that:

(A) it will not take any action or omit to take any action, which action or omission, if reasonably expected on the date of the initial issuance and delivery of the Bonds, would have caused any of the Bonds to be “arbitrage bonds” within the meaning of Section 103(b) and Section 148 of the Code;

(B) it will not take any action or omit to take any action, which action or omission, if reasonably expected on the date of initial issuance and delivery of the Bonds, would result in loss of exclusion from gross income for purposes of federal income taxation under Section 103(a) of the Code of interest paid with respect to the Bonds;

(C) it will not take any action or omit to take any action, which action or omission, if reasonably expected on the date of initial issuance and delivery of the Bonds, would have caused any of the Bonds to be “private activity bonds” within the meaning of Section 141 of the Code;

(D) it will comply with the Tax Certificate as a source of guidance for achieving compliance with the Code; and

(E) in order to maintain the exclusion from gross income for purposes of federal income taxation of interest paid with respect to the Bonds, it will comply with each applicable requirement of Section 103 and Sections 141 through 150 of the Code.

The covenants of the City contained in this Section 5.10 shall survive the payment, redemption or defeasance of Bonds pursuant to Section 9.03 hereof.

Section 5.11. Covenant to Foreclose. The City hereby covenants with and for the benefit of the Owners of the Bonds that, within sixty (60) days after each Interest Payment Date, it will cause to be commenced, as hereinafter provided, and (unless delinquent Special Taxes are paid) diligently prosecute to judgment, an action in the superior court to foreclose the lien of any Special Taxes, or any installments thereof, which were not paid by the statutory delinquency date (i.e., December 10 or April 10). In furtherance of this covenant, within five (5) Business Days after each Interest Payment Date, the Financial and Administrative Services Director, or his or her designee, shall review the public records of the County of Riverside regarding unpaid property taxes to determine if there are any delinquent installments of Special Taxes levied on property in the District. If there are any such delinquent Special Tax installments, the Financial and Administrative Services Director, or his or her designee, shall notify the City Attorney of such delinquencies and, within the previously mentioned sixty (60) days, the City Attorney shall commence, or cause to be commenced, and diligently prosecute such a superior court foreclosure action or actions to collect such delinquent Special Taxes.

Section 5.12. Prepayment of Special Taxes. The City shall cause all applications of owners of property in the District to prepay and satisfy the Special Tax obligation for their property to be reviewed by the Tax Consultant and shall not accept any such prepayment unless such consultant certifies in writing that the Special Tax Prepayment amount has been determined in accordance with the Special Tax Rate and Method.

Section 5.13. Calculation of Prepayments. The City will cause all Special Tax Prepayments to be calculated to include the amount of the premium on the Outstanding Bonds that will be redeemed with the Special Tax Prepayment and negative arbitrage on the investment of the Special Tax Prepayment from the date of receipt until the Interest Payment Date upon

which the Special Tax Prepayment and the amount to be transferred from the Reserve Fund with respect to the 2011 Bonds and any Additional Bonds Reserve Fund established by Supplemental Agreement with respect to any Series of Additional Bonds to the Principal Account pursuant to Section 4.03(F) hereof will be used to redeem Outstanding Bonds pursuant to Section 2.03(B) hereof. The City will not include in any calculation of the amount of any Special Tax Prepayment for any parcel of taxable property in the District a proportionate amount of the amount then on deposit in the Reserve Fund and any Additional Bonds Reserve Fund, if at the time of such calculation the amount on deposit in such account is less than the Reserve Requirement for the 2011 Bonds or the Additional Bonds, as applicable.

Section 5.14. Continuing Disclosure. The City and the Fiscal Agent, as Dissemination Agent, hereby covenant and agree that they will comply with and carry out all of the provisions of the Continuing Disclosure Agreement which are specifically applicable to each of them.

Section 5.15. Accountability Measures. The City shall comply with the requirements of Section 53410 of the California Government Code with respect to the deposit and expenditure of the Proceeds of the sale of the Bonds and shall cause the appropriate officer of the City to file a report with the City Council no later than January 1, 2012, and annually thereafter, which shall contain the information required by Section 53411 of the California Government Code with respect to the expenditure of the Proceeds and the status of the construction and acquisition of the Project.

ARTICLE VI  
INVESTMENTS; DISPOSITION OF INVESTMENT PROCEEDS;  
LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds. Subject in all respects to the provisions of Section 6.02 hereof, moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent shall be invested by the Fiscal Agent in Permitted Investments, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent shall invest any such moneys in Permitted Investments described in clause (iv) of the definition of Permitted Investments in Section 1.03 hereof. The Fiscal Agent shall not have any responsibility for determining the legality of any Permitted Investments. The Fiscal Agent shall have no obligation to pay additional interest or maximize investment income on any funds held by it. Neither the City nor the Owners of the Bonds shall have any claim of any kind against the Fiscal Agent in connection with investments properly made pursuant to this Section 6.01. Obligations purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of Investment Earnings in funds and accounts.

The Fiscal Agent and its affiliates may act as sponsor, advisor, depository, principal or agent in the holding, acquisition, or disposition of any investment. The Fiscal Agent shall not incur any liability for losses arising from any investments made pursuant to this Section 6.01. For purposes of determining the amount on deposit in any fund or account held hereunder, all Permitted Investments or investments credited to such fund or account shall be valued at the cost thereof (excluding accrued interest and brokerage commissions, if any).

Subject in all respects to the provisions of Section 6.02 hereof, investments in any and all funds and accounts may be commingled in a single fund for purposes of making, holding, and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent hereunder, provided that the Fiscal Agent shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

The Fiscal Agent shall sell or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal, or disbursement from the fund or account to which such investment security is credited, and the Fiscal Agent shall not be liable or responsible for any loss resulting from the acquisition or disposition of any such investment security in accordance herewith.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City or the District the right to receive brokerage confirmations of securities transactions as they occur, the City for itself and the District specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent shall furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Fiscal Agent hereunder.

The Fiscal Agent may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate.

Section 6.02. Rebate Fund; Rebate to the United States. There is hereby created, to be held by the Fiscal Agent, as a separate fund distinct from all other funds and accounts held by the Fiscal Agent under this Agreement, the Rebate Fund. The Fiscal Agent shall, in accordance with written directions received from an Authorized Officer, deposit into the Rebate Fund moneys transferred by the City to the Fiscal Agent pursuant to the Tax Certificate or moneys transferred by the Fiscal Agent from the Reserve Fund with respect to the 2011 Bonds or and any Additional Bonds Reserve Fund established by Supplemental Agreement with respect to any Series of Additional Bonds. The Rebate Fund shall be held either uninvested or invested only in Federal Securities at the written direction of the City. Moneys on deposit in the Rebate Fund shall be applied only to payments made to the United States, to the extent such payments are required by the Tax Certificate. The Fiscal Agent shall, upon written request and direction of the City, make such payments to the United States.

The Fiscal Agent may rely conclusively upon the City's determinations, calculations and certifications required by this Section. The Fiscal Agent shall have no responsibility to independently make any calculation or determination or to review the City's calculations hereunder. The Fiscal Agent's sole responsibilities under this Section 6.02 are to follow the written instructions of the City pertaining hereto. The District shall be responsible for any fees and expenses incurred by the Fiscal Agent pursuant to this Section 6.02.

The Fiscal Agent shall, upon written request and direction from the City, transfer to or upon the order of the City any moneys on deposit in the Rebate Fund in excess of the amount, if any, required to be maintained or held therein in accordance with the Tax Certificate.



Section 6.03. Liability of City. The City shall not incur any responsibility in respect of the Bonds or this Agreement other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants, or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds.

In the absence of bad faith, the City may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Agreement. The City shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Special Tax Revenues) in the performance of any of its obligations hereunder, or in the exercise of and of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The City may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, Bond, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel, who may be counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Agreement the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Fiscal Agent, and such certificate shall be full warranty to the City for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 6.04. Employment of Agents by City. In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations, and directions of such persons or entities.

ARTICLE VII  
THE FISCAL AGENT

Section 7.01. Appointment of Fiscal Agent. Wells Fargo Bank, National Association is hereby appointed Fiscal Agent, registrar and paying agent for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Fiscal Agent.

Any company into which the Fiscal Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the following paragraph of this Section 7.01, shall be the successor to the Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

The City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, corporation or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank, corporation or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Fiscal Agent may at any time resign by giving written notice to the City and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section 7.01 within forty-five (45) days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent, at the expense of the City, or any Owner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

Section 7.02. Liability of Fiscal Agent. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City and the District, and the Fiscal Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, nor shall the Fiscal Agent incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

In the absence of bad faith, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement. Except as provided above in this paragraph, the Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

The Fiscal Agent shall not be liable for any error of judgment made in good faith by the Fiscal Agent unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

The Fiscal Agent shall not be responsible for accounting for, or paying to, any party to this Agreement, including, but not limited to the City and the Owners, any returns on or benefit from funds held for payment of unredeemed Bonds or outstanding checks and no calculation of the same shall affect, or result in any offset against, fees due to the Fiscal Agent under this Agreement.

The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Owners pursuant to this Agreement unless such Owners shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

All indemnification and releases from liability granted herein to the Fiscal Agent shall extend to the directors, officers, and employees of the Fiscal Agent.

The Fiscal Agent may rely upon a facsimile transmission with regard to any instruction for any transfer, disbursement, or investment of funds held by the Fiscal Agent. The City shall confirm such transmission promptly in writing by mail.

Section 7.03. Information. The Fiscal Agent shall provide to the City such information relating to the Bonds and the funds and accounts maintained by the Fiscal Agent hereunder as the City shall reasonably request, including, but not limited to, quarterly statements reporting funds held and transactions by the Fiscal Agent.

Section 7.04. Notice to Fiscal Agent. The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order,

certificate, report, warrant, Bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be counsel to the City, with regard to legal questions, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Fiscal Agent hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of the City, and such certificate shall be full warranty to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 7.05. Compensation, Indemnification. The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Agreement, and the Fiscal Agent shall have a first priority lien therefor on any funds at any time held by it in the Administrative Expense Fund, and the Fiscal Agent shall pay and reimburse all expenses, charges, fees and other disbursements, including those of its attorneys, agents and employees, incurred in connection therewith from the funds held by it in the Administrative Expense Fund. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents, harmless against any liabilities, costs, claims, expenses or charges of any kind whatsoever (including fees and expenses of its attorneys) which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligation of the City under this Section 7.05 shall survive resignation or removal of the Fiscal Agent under this Agreement and payment of the Bonds and discharge of this Agreement.

Section 7.06. Books and Accounts. The Fiscal Agent shall keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions made by it to the expenditure of amounts disbursed from the Bond Fund, the Special Tax Fund, the Administrative Expense Fund, the Reserve Fund and any Additional Bonds Reserve Fund and the Costs of Issuance Fund. Such books of record and accounts shall, upon reasonable notice, at all times during business hours be subject to the inspection of the City and the Owners of not less than ten percent (10%) of the aggregate principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

## ARTICLE VIII MODIFICATION OR AMENDMENT OF THIS AGREEMENT

Section 8.01. Amendments Permitted.

(A) This Agreement and the rights and obligations of the District and the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of the Owners, or with the written consent, without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04 hereof. No such modification or amendment shall (i) extend the maturity of any Bond or the time for paying interest thereon, or otherwise alter or impair the obligation of the City on behalf of the District to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond; or (ii) permit the creation of any pledge of or lien upon the Special Tax Revenues, or the moneys on deposit in the Special Tax Fund, the Bond Fund or the Reserve Fund with respect to the 2011 Bonds or and any Additional Bonds Reserve Fund established by Supplemental Agreement with respect to any Series of Additional Bonds, superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement); (iii) reduce the percentage of Bonds required for the amendment hereof; or (iv) reduce the principal amount of or redemption premium on any Bond or reduce the interest rate thereon. Any such amendment may not modify any of the rights or obligations of the Fiscal Agent without its written consent. The Fiscal Agent shall be furnished an opinion of counsel that any such Supplemental Agreement entered into by the City and the Fiscal Agent complies with the provisions of this Section 8.01 and the Fiscal Agent may conclusively rely on such opinion.

(B) This Agreement and the rights and obligations of the District and the City and the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the City in this Agreement contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(2) to make modifications not adversely affecting any Outstanding series of Bonds of the District in any material respect;

(3) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provisions of this Agreement, or in regard to questions arising under this Agreement, as the City and the Fiscal Agent may deem necessary or desirable and not inconsistent with this Agreement, and which shall not adversely affect the rights of the Owners; or

(4) to make such additions, deletions or modifications as may be necessary or desirable to assure compliance with Section 148 of the Code relating to required rebate of moneys to the United States or otherwise as may be necessary to assure exclusion from gross income for federal income tax purposes of interest on the Bonds or to conform with the Regulations.

Section 8.02. Owners' Meetings. The City may at any time call a meeting of the Owners. In such event, the City is authorized to fix the time and place of any such meeting and to provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of the meeting.

Section 8.03. Procedure for Amendment with Written Consent of Owners. The City and the Fiscal Agent may at any time enter into a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01(A) hereof, to take effect when and as provided in this Section 8.03. A copy of the Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, postage prepaid, by the Fiscal Agent to each Owner of Bonds Outstanding, but failure to mail copies of the Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section provided.

Such a Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04 hereof. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the documents required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article VIII) upon the City, the District and the Owners of all Bonds then Outstanding at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty (60)-day period.

Section 8.04. Disqualified Bonds. Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or participate in any action provided for in this Article VIII. Upon request of the Fiscal Agent, the City shall specify to the Fiscal Agent those Bonds disqualified pursuant to this Section and the Fiscal Agent may conclusively rely on such certificate.

Section 8.05. Effect of Supplemental Agreement. From and after the time any Supplemental Agreement becomes effective pursuant to this Article VIII, this Agreement shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties

and obligations under this Agreement of the City and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments. The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City as necessary to conform to such action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for like Bonds then Outstanding, upon surrender of such Bonds.

Section 8.07. Amendatory Endorsement of Bonds. The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

## ARTICLE IX MISCELLANEOUS

Section 9.01. Benefits of Agreement Limited to Parties. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy or claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

Section 9.02. Successor is Deemed Included in All References to Predecessor. Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 9.03. Discharge of Agreement. If the City shall pay and discharge the indebtedness on all or a portion (a "Partial Discharge") of the Outstanding Bonds in any one or more of the following ways:

(A) by well and truly paying or causing to be paid the principal of and interest and any premium on such Bonds, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent, at or before maturity, an amount of money which, together with the amounts then on deposit in the Bond Fund (including all accounts therein), the Special Tax Fund and the Reserve Fund with respect to the 2011 Bonds or any Additional Bonds Reserve Fund with respect to any Series of Additional

Bonds, or in the event of a Partial Discharge, the appropriate portion of such amounts, as determined by the City and confirmed by an Independent CPA, is fully sufficient to pay such Bonds, including all principal, interest and redemption premiums, if any; or

(C) by irrevocably depositing with the Fiscal Agent, cash or non-callable Defeasance Securities in such amount as the City shall determine, as confirmed by an Independent CPA, will, together with the interest to accrue thereon and amounts then on deposit in the Bond Fund (including all accounts therein), the Special Tax Fund and the Reserve Fund with respect to the 2011 Bonds or any Additional Bonds Reserve Fund with respect to any Series of Additional Bonds, or in the event of a Partial Discharge, the appropriate portion of such amounts, as determined by the City and confirmed by an Independent CPA, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates;

and if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any such Bonds shall not have been surrendered for payment, the pledge of the Special Tax Revenues and other funds provided for in this Agreement and all other obligations of the City and the District under this Agreement with respect to such Bonds shall cease and terminate, except the obligation of the City to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon, the obligation of the City to pay all amounts owing to the Fiscal Agent pursuant to Section 7.05 hereof, and the obligations of the City pursuant to the covenants contained in Section 5.10 hereof; and thereafter Special Taxes shall not be payable to the Fiscal Agent. Notice of such election shall be filed with the Fiscal Agent. The satisfaction and discharge of this Agreement as to all of the Outstanding Bonds shall be without prejudice to the rights of the Fiscal Agent to charge and be reimbursed by the City for the expenses which it shall thereafter incur in connection herewith.

Any funds held by the Fiscal Agent to pay and discharge the indebtedness on such Bonds, upon payment of all fees and expenses of the Fiscal Agent, which are not required for such purpose, shall be paid over to the City.

Section 9.04. Execution of Documents and Proof of Ownership by Owners. Any request, declaration or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such a request, declaration or other instrument, or of a writing appointing such an attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such a notary public or other officer.



Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registration books maintained by the Fiscal Agent pursuant to Section 2.08 hereof.

Any request, declaration, or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

Section 9.05. Waiver of Personal Liability. No member, officer, agent or employee of the City or the District shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 9.06. Notices to and Demands on City and Fiscal Agent. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by being deposited postage prepaid (first class, registered or certified) in a post office letter box addressed (until another address is filed by the City with the Fiscal Agent) as follows:

City of Moreno Valley  
14177 Frederick Street  
P.O. Box 88005  
Moreno Valley, CA 92552-0805  
Attn: City Manager

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by being deposited postage prepaid (first class, registered or certified) in a post office letter box addressed (until another address is filed by the Fiscal Agent with the City) as follows:

Wells Fargo Bank, National Association  
MAC E2818-176  
707 Wilshire Blvd., 17<sup>th</sup> floor  
Los Angeles, CA 90017  
Attn: Corporate Trust Services

Section 9.07. Partial Invalidity. If any section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held by a court of competent jurisdiction to be illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have executed and delivered this Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid, or unenforceable.

Section 9.08. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become

payable, if such moneys were held by the Fiscal Agent at such date, shall be paid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to the City for the payment of the principal of, and interest and any premium on, their Bonds.

Section 9.09. Applicable Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of California applicable to contracts made and performed in the State of California.

Section 9.10. Conflict with Act. In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

Section 9.11. Conclusive Evidence of Regularity. Bonds issued pursuant to this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

Section 9.12. Payment on Business Day. In any case where the date of the payment of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption is other than a Business Day, the payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required, and no interest shall accrue for the period from and after such date.

Section 9.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name on behalf of the District and attested, and the Fiscal Agent, in acknowledgment of its acceptance of the trusts created hereunder, has caused this Agreement to be executed in its name, all as of \_\_\_\_\_, 2011.

CITY OF MORENO VALLEY, for and on behalf  
of COMMUNITY FACILITIES DISTRICT NO. 4  
– INFRASTRUCTURE OF THE CITY OF  
MORENO VALLEY, COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA

By: \_\_\_\_\_  
Financial and Administrative Services  
Director

WELLS FARGO BANK, NATIONAL  
ASSOCIATION,  
as Fiscal Agent

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT A  
FORM OF BOND

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE FISCAL AGENT AGREEMENT) TO THE FISCAL AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND AUTHENTICATED AND DELIVERED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

No. \_\_\_\_\_ \$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

COMMUNITY FACILITIES DISTRICT NO. 4 – INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY  
2011 SPECIAL TAX BOND

INTEREST RATE      MATURITY DATE      DATED DATE      CUSIP NO.

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The City of Moreno Valley (the “City”), for and on behalf of Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley, County of Riverside, State of California (the “District”), for value received, hereby promises to pay, from the Special Taxes (as hereinafter defined) to be collected in the District or amounts in certain of the funds and accounts held under the Agreement (as hereinafter defined) to the registered owner named above, or registered assigns, on the maturity date specified above, the principal amount specified above, and to pay interest on such principal amount from the Closing Date, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on March 1 and September 1, commencing September 1, 2011 (“Interest Payment Dates”), at the interest rate specified above, until the principal amount hereof is paid or made available for payment. The principal of this 2011 Bond is payable by check to the registered owner hereof in lawful money of the United States of America upon presentation and surrender of this 2011 Bond at the Principal Office of Wells Fargo Bank, National Association (the “Fiscal Agent”). Interest on this 2011 Bond shall be paid by check of the Fiscal Agent mailed by first class mail, postage prepaid, on each Interest Payment Date to the registered owner hereof as of the close of business on the fifteenth (15th) day of the month preceding the month in which the Interest Payment Date occurs (the “Record Date”) at such registered owner’s address as it appears on the

registration books maintained by the Fiscal Agent; except that at the written request of the owner of at least \$1,000,000 in aggregate principal amount of outstanding 2011 Bonds filed with the Fiscal Agent prior to the Record Date preceding any Interest Payment Date, interest on such Bonds shall be paid to such owner on such Interest Payment Date by wire transfer of immediately available funds to an account in the United States of America designated in such written request.

This 2011 Bond is one of a duly authorized issue of bonds approved by the qualified electors of the District pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the "Mello-Roos Act"), for the purpose, among others, of financing the acquisition of certain public facilities within and for the District, and is one of the series of Bonds designated "Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the "2011 Bonds")", in the aggregate principal amount of \$ \_\_\_\_\_. The issuance of the 2011 Bonds and the terms and conditions thereof are provided for by a resolution adopted by the City Council of the City on \_\_\_\_\_, 2010 (the "Resolution"), and the Fiscal Agent Agreement, dated as of April 1, 2011, between the City and the Fiscal Agent (the "Agreement") and this reference incorporates the Resolution and the Agreement herein, and by acceptance hereof the owner of this 2011 Bond assents to the terms and conditions of the Resolution and the Agreement. All capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Agreement. The Resolution is adopted under, the Agreement is executed under, this 2011 Bond is issued under, and all are to be construed in accordance with, the laws of the State of California.

Pursuant to the Mello-Roos Act, the Agreement and the Resolution, the principal of and interest on the 2011 Bonds are payable from the annual levy of Special Taxes authorized under the Mello-Roos Act to be collected within the District (the "Special Taxes") and are secured by a pledge of and first lien upon the revenues derived therefrom minus an amount equal to the Annual Administrative Expense Requirement (as defined in the Agreement) and certain funds held by the Fiscal Agent pursuant to the Agreement. The City may issue Additional Bonds on a parity with the 2011 Bonds in accordance with the provisions of the Agreement and the Act.

Interest on this 2011 Bond shall be payable from the Interest Payment Date next preceding the date of its authentication, unless (i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Closing Date; provided, however, that if at the time of authentication of this 2011 Bond, interest is in default hereon, this 2011 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment hereon, or from the Closing Date if no interest has previously been paid or made available for payment hereon.

Any tax for the payment hereof shall be limited to the Special Taxes, except to the extent that provision for payment has been made by the City as may be permitted by law. The 2011 Bonds do not constitute obligations of the City for which the City is obligated to levy or pledge, or has levied or pledged, general or special taxation other than as described hereinabove.

The City has covenanted for the benefit of the owners of the 2011 Bonds that, within sixty (60) days after each Interest Payment Date, it will cause to be commenced, as hereinafter provided, and (unless delinquent Special Taxes are paid) diligently prosecute to judgment, an action in the superior court to foreclose the lien of any Special Taxes, or any installments thereof, which were not paid by the statutory delinquency date (i.e., December 10 or April 10). In furtherance of this covenant, within five (5) Business Days after each Interest Payment Date, the Financial and Administrative Services Director, or his or her designee, shall review the most recent Fixed Charge Unpaid List received from the Auditor-Controller of the County of Riverside regarding unpaid property taxes to determine if there are any delinquent installments of Special Taxes levied on property in the District. If there are any such delinquent Special Tax installments, the Financial and Administrative Services Director, or his or her designee, shall notify the City Attorney of such delinquencies and, within the previously mentioned sixty (60) days, the City Attorney shall commence, or cause to be commenced, and diligently prosecute such a superior court foreclosure action or actions to collect such delinquent Special Taxes.

The 2011 Bonds are subject to redemption prior to their stated maturity dates on any Interest Payment Date, as selected pro rata among maturities by the District (and by lot within any one maturity), in integral multiples of \$5,000, at the option of the District from moneys derived by the District from any source, at a redemption price expressed as a percentage of the principal amount of 2011 Bonds to be redeemed, together with accrued interest to the date of redemption.

<u>Redemption Dates</u>	<u>Redemption Price</u>
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ through _____ 1, 20__	
_____ 1, 20__ and any Interest Payment Date thereafter	

The 2011 Bonds are subject to mandatory redemption prior to their stated maturity dates on any Interest Payment Date, as selected among maturities by the District (and by lot within any one maturity), in integral multiples of \$5,000, from moneys derived by the District from Special Tax Prepayments or from moneys deposited to the Special Tax Prepayment Account under the Fiscal Agent Agreement, at a redemption price expressed as a percentage of the principal amount of the Bonds to be redeemed, together with accrued interest to the date of redemption as follows:

<u>Redemption Dates</u>	<u>Redemption Price</u>
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ through _____ 1, 20__	
_____ 1, 20__ and any Interest Payment Date thereafter	

The outstanding 2011 Bonds maturing on September 1, 20\_\_, and September 1, 20\_\_ are subject to mandatory sinking fund redemption, in part, without premium, on September 1, 20\_\_, and September 1, 20\_\_, respectively, and on each September 1 thereafter to maturity as provided in the Agreement.

Notice of redemption with respect to the 2011 Bonds to be redeemed shall be given to the registered owners thereof, in the manner and to the extent provided in the Agreement.

From and after the date fixed for redemption, if funds available for the payment of the redemption prices of the 2011 Bonds selected for redemption shall have been deposited in the Bond Fund, such 2011 Bonds shall cease to be entitled to any benefit under the Agreement other than the right to receive payment of the redemption price, and interest shall cease to accrue on the 2011 Bonds to be redeemed on the redemption date specified in the notice of redemption.

This 2011 Bond shall be registered in the name of the owner hereof, as to both principal and interest.

Each registration and transfer of registration of this 2011 Bond shall be entered by the Fiscal Agent in books kept by it for that purpose and authenticated by the manual signature of an authorized signatory of the Fiscal Agent upon the certificate of authentication endorsed hereon.

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner or his duly authorized attorney, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof and interest hereon shall be payable only to the registered owner or to such owner's order.

The Fiscal Agent shall require the registered owner requesting transfer or exchange hereof to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange.

The Agreement and the rights and obligations of the City and the District thereunder may be modified or amended as set forth therein.

This Bond shall not become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been dated and manually signed on behalf of the Fiscal Agent.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this 2011 Bond have existed, happened and been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the City of Moreno Valley, for Community Facilities District No. 4 – Infrastructure thereof, has caused this 2011 Bond to be dated as of \_\_\_\_\_, 2011, and to be signed by the facsimile signature of the Mayor of the City and countersigned by the facsimile signature of the City Clerk.

CITY OF MORENO VALLEY for and on behalf of  
COMMUNITY FACILITIES DISTRICT NO. 4 –  
INFRASTRUCTURE OF THE CITY OF  
MORENO VALLEY, COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Moreno Valley

\_\_\_\_\_  
Mayor of the City of Moreno Valley



CERTIFICATE OF AUTHENTICATION

This is one of the 2011 Bonds described in the within-defined Agreement.

Dated: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, Fiscal Agent

By: \_\_\_\_\_  
Authorized Signatory

ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
(Name, Address and Tax Identification or

\_\_\_\_\_  
Social Security Number of Assignee)

the within registered 2011 Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer said 2011 Bond on the books of the Fiscal Agent, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTE: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
NOTE: Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in another guarantee program acceptable to the Fiscal Agent.

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This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold, nor may offers to buy them be accepted, prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration, qualification or filing under the securities laws of any such jurisdiction.

**PRELIMINARY OFFICIAL STATEMENT DATED MARCH \_\_, 2011**  
**NEW ISSUE—BOOK-ENTRY-ONLY**

**NO RATING**

*In the opinion of Best Best & Krieger LLP, San Diego, California (“Bond Counsel”), subject to certain qualifications described herein, under existing statutes, regulations, rulings and judicial decisions interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations. In the further opinion of Bond Counsel, such interest is exempt from California personal income tax. See “TAX MATTERS” herein.*

**\$8,060,000\***

**COMMUNITY FACILITIES DISTRICT NO. 4 — INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY  
2011 SPECIAL TAX BONDS**

**Dated: Date of Delivery**

**Due: September 1, as shown on the inside page**

The Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the “Bonds”) are being issued and delivered to finance various public improvements needed for property located within Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley (the “District”). The District is located in the City of Moreno Valley (the “City”), County of Riverside, California.

The Bonds are authorized to be issued pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (Sections 53311 *et seq.* of the Government Code of the State of California), and pursuant to a Fiscal Agent Agreement, dated as of April 1, 2011 (the “Fiscal Agent Agreement”), by and between the City for and on behalf of the District and Wells Fargo Bank, National Association, as fiscal agent (the “Fiscal Agent”). The Bonds are special limited obligations of the District and are payable solely from revenues derived from certain annual Special Taxes (as defined herein) to be levied on and collected from the owners of the taxable land within the District and from certain other funds pledged under the Fiscal Agent Agreement, all as further described herein. The Special Taxes are to be levied according to the amended and restated rate and method of apportionment approved by the City Council of the City and the qualified electors within the District. See “SOURCES OF PAYMENT FOR THE BONDS — Rate and Method of Apportionment.” The City Council of the City is the legislative body of the District.

The Bonds are issuable in fully registered form and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). Individual purchases may be made in principal amounts of \$5,000 and integral multiples thereof and will be in book-entry form only. Purchasers of Bonds will not receive certificates representing their beneficial ownership of the Bonds but will receive credit balances on the books of their respective nominees. The Bonds will not be transferable or exchangeable except for transfer to another nominee of DTC or as otherwise described herein. Interest on the Bonds will be payable on September 1, 2011 and semiannually thereafter on each September 1 and March 1. Debt service on the Bonds will be capitalized through September 1, 2011. Principal of and interest on the Bonds will be paid by the Fiscal Agent to DTC for subsequent disbursement to DTC Participants who are obligated to remit such payments to the Beneficial Owners of the Bonds. See “THE BONDS — Description of the Bonds” and APPENDIX G — “BOOK-ENTRY-ONLY SYSTEM” herein.

*Neither the faith and credit nor the taxing power of the City, the County of Riverside, the State of California or any political subdivision thereof is pledged to the payment of the Bonds. Except for the Special Taxes, no other taxes are pledged to the payment of the Bonds. The Bonds are special limited tax obligations of the District payable solely from Special Taxes and other amounts held under the Fiscal Agent Agreement as more fully described herein.*

The Bonds are subject to optional redemption, mandatory redemption from Special Tax Prepayments and mandatory sinking fund redemption prior to maturity as set forth herein. See “THE BONDS — Redemption” herein.

**CERTAIN EVENTS COULD AFFECT THE ABILITY OF THE DISTRICT TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS WHEN DUE. AS A RESULT, THE BONDS INVOLVE SIGNIFICANT RISKS, AND THE BONDS ARE NOT SUITABLE INVESTMENTS FOR ALL INVESTORS. SEE THE SECTION OF THIS OFFICIAL STATEMENT ENTITLED “SPECIAL RISK FACTORS” FOR A DISCUSSION OF CERTAIN RISK FACTORS THAT SHOULD BE CONSIDERED, IN ADDITION TO THE OTHER MATTERS SET FORTH HEREIN, IN EVALUATING THE INVESTMENT QUALITY OF THE BONDS.**

This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision.

\_\_\_\_\_  
MATURITY SCHEDULE  
(See Inside Cover Page)

The Bonds are offered when, as and if issued and accepted by the Underwriter, subject to approval as to their legality by Best Best & Krieger LLP, San Diego, California, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed on for the City and the District by the City Attorney. Certain legal matters will be passed on by Stradling Yocca Carlson & Rauth, a Professional Corporation, as Disclosure Counsel. It is anticipated that the Bonds in book-entry form will be available for delivery to DTC in New York, New York, on or about April \_\_, 2011.

**De La Rosa & Co.**

Dated: March \_\_, 2011

\* Preliminary, subject to change.

ATTACHMENT 3

1

-235-

Item No. G.3

\$ \_\_\_\_\_ \*

**COMMUNITY FACILITIES DISTRICT NO. 4 — INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY  
2011 SPECIAL TAX BONDS**

**MATURITY SCHEDULE  
(Base CUSIP<sup>†</sup>: \_\_\_\_\_)**

<i>Maturity Date (September 1)</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Yield</i>	<i>CUSIP<sup>†</sup></i>	<i>Maturity Date (September 1)</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Yield</i>	<i>CUSIP<sup>†</sup></i>
	\$	%	%			\$	%	%	

\$ \_\_\_\_\_ % Term Bonds due September 1, 20\_\_ Yield: \_\_\_\_%, CUSIP: \_\_\_\_<sup>†</sup>

\$ \_\_\_\_\_ % Term Bonds due September 1, 20\_\_ Yield: \_\_\_\_%, CUSIP: \_\_\_\_<sup>†</sup>

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\* Preliminary, subject to change.

<sup>†</sup> CUSIP® is a registered trademark of the American Bankers Association. Copyright© 2011 Standard & Poor's, a Division of The McGraw Hill Companies, Inc. CUSIP® data herein is provided by Standard & Poor's CUSIP Service Bureau. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Service Bureau. CUSIP® numbers are provided for convenience of reference only. Neither the City nor the Underwriter take any responsibility for the accuracy of such numbers.



**CITY OF MORENO VALLEY  
COUNTY OF RIVERSIDE  
STATE OF CALIFORNIA**

**CITY COUNCIL**

Richard A. Stewart, Mayor  
Jesse L. Molina, Mayor Pro Tem  
Robin N. Hastings, Council Member  
Marcelo Co, Council Member  
William H. Batey II, Council Member

**CITY OFFICIALS**

Henry T. Garcia, City Manager  
Michelle Dawson, Acting Assistant City Manager  
Richard Teichert, Financial and Administrative Services Director  
Chris A. Vogt, P.E., Public Works Director/City Engineer  
Candace E. Cassel, Special Districts Division Manager  
Barry Foster, Community and Economic Development Director  
Jane Halstead, City Clerk  
Robert L. Hansen, City Attorney

**BOND COUNSEL**

Best Best & Krieger LLP  
San Diego, California

**DISCLOSURE COUNSEL**

Stradling Yocca Carlson & Rauth,  
a Professional Corporation  
Newport Beach, California

**SPECIAL TAX CONSULTANT**

Harris & Associates  
Irvine, California

**FINANCIAL ADVISOR**

Fieldman, Rolapp & Associates  
Irvine, California

**FISCAL AGENT**

Wells Fargo Bank, National Association  
Los Angeles, California

**REAL ESTATE APPRAISER**

Bruce W. Hull & Associates  
Ventura, California

**MARKET ABSORPTION CONSULTANT**

Empire Economics, Inc.  
Capistrano Beach, California

Except where otherwise indicated, all information contained in this Official Statement has been provided by the City and the District. No dealer, broker, salesperson or other person has been authorized by the City, the District, the Fiscal Agent or the Underwriter to give any information or to make any representations in connection with the offer or sale of the Bonds other than those contained herein and, if given or made, such other information or representations must not be relied upon as having been authorized by the City, the District, the Fiscal Agent or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers or Owners of the Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of fact. This Official Statement, including any supplement or amendment hereto, is intended to be deposited with a nationally recognized municipal securities depository.

The Underwriter has provided the following sentence for inclusion in this Official Statement:

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The information set forth herein has been obtained from sources which are believed to be reliable but is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by the City, the District, the Fiscal Agent or the Underwriter. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or the District or any other parties described herein since the date hereof. All summaries of the Fiscal Agent Agreement or other documents are made subject to the provisions of such documents respectively and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents on file with the City for further information in connection therewith.

All information considered material to the making of an informed investment decision with respect to the Bonds is contained in this Official Statement. While the City maintains an internet website for various purposes, none of the information on its website is incorporated by reference into this Official Statement. Any such information that is inconsistent with the information set forth in this Official Statement should be disregarded.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "project," "budget" or other similar words. Such forward-looking statements include, but are not limited to, certain statements contained in the information under the captions "THE COMMUNITY FACILITIES DISTRICT" and "THE DEVELOPMENT AND PROPERTY OWNERSHIP."

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE DISTRICT DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THE FORWARD-LOOKING STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.

**IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF SUCH BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

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[INSERT VICINITY MAP]

**\$8,060,000\***  
**COMMUNITY FACILITIES DISTRICT NO. 4 — INFRASTRUCTURE**  
**OF THE CITY OF MORENO VALLEY**  
**2011 SPECIAL TAX BONDS**

**INTRODUCTION**

The purpose of this Official Statement, which includes the cover page, the table of contents and the attached appendices (collectively, the “Official Statement”), is to provide certain information concerning the issuance by the City of Moreno Valley (the “City”), acting for and on behalf of Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley (the “District”), of the \$8,060,000\* Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the “Bonds”). The proceeds of the Bonds will be used to acquire various public improvements needed with respect to the development within the District, to fund the Reserve Fund securing the Bonds, to fund capitalized interest on the Bonds through September 1, 2011 and to pay costs of issuance of the Bonds.

The Bonds are authorized to be issued pursuant to the Act (as defined herein), and pursuant to a Fiscal Agent Agreement (the “Fiscal Agent Agreement”), dated as of April 1, 2011, by and between the City, for and on behalf of the District, and Wells Fargo Bank, National Association, as fiscal agent (the “Fiscal Agent”). The Bonds are secured under the Fiscal Agent Agreement by a pledge of and lien upon Special Tax Revenues (as described below under the heading “SOURCES OF PAYMENT FOR THE BONDS”) and all moneys deposited in the Bond Fund and the Reserve Fund.

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement and the documents summarized or described herein. A full review should be made of the entire Official Statement. The sale and delivery of the Bonds to potential investors is made only by means of the entire Official Statement. All capitalized terms used in this Official Statement and not defined shall have the meaning set forth in APPENDIX C — “SUMMARY OF FISCAL AGENT AGREEMENT” herein.

The District was formed on October 25, 2005 and additional territory was annexed thereto on January 8, 2008 pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311 *et seq.* of the Government Code of the State of California (the “Act”). The Act was enacted by the California legislature to provide an alternative method of financing certain public capital facilities and services, especially in developing areas of the State. Any local agency (as defined in the Act) may establish a community facilities district to provide for and finance the cost of eligible public facilities and services. Generally, the legislative body of the local agency which forms a community facilities district acts on behalf of such district as its legislative body. Subject to approval by two-thirds of the votes cast at an election and compliance with the other provisions of the Act, a legislative body of a local agency may issue bonds for a community facilities district and may levy and collect a special tax within such district to repay such indebtedness.

The District consists of approximately 162 gross acres, of which approximately 128.87 acres are expected to be net developable (excluding Building 8 located on 11.03 acres and an adjoining parking lot parcel located on 1.37 acres for which Special Taxes have been prepaid). The District is located in the City, roughly bounded by Alessandro Boulevard to the north, Cactus Avenue to the south, Frederick Street to the west and Heacock Street to the east. The District consists of the partially developed Centerpointe Business Park, which, based on current land use approvals and projections, is being developed with approximately 2,810,282 square feet of space for industrial and warehouse/distribution uses. One building (Building 8) located on 11.03 acres and an adjoining unimproved parcel (APN No. 297-170-079) located on 1.37 acres was

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\* Preliminary, subject to change.

purchased by the U.S. Postal Service (collectively, the “USPS Parcels”), which prepaid the special tax lien encumbering such property. The USPS Parcels, which collectively consist of approximately 12.40 acres, are no longer subject to the special tax levy and is not collateral for the bond issue.

Bruce W. Hull & Associates, Ventura, California (the “Appraiser”) has conducted an appraisal (the “Appraisal”) of the taxable land within the District and has concluded, based upon the assumptions and limiting conditions contained in the Appraisal, that, as of December 31, 2010, the bulk sales value of land and buildings within the District subject to the Special Taxes was estimated to be \$65,500,000. See the subcaption “THE DEVELOPMENT AND PROPERTY OWNERSHIP — Appraisal” and APPENDIX B — “APPRAISAL REPORT.”

Empire Economics, Inc., Capistrano Beach, California (the “Market Absorption Consultant”) has prepared a Market Absorption Study (the “Market Absorption Study”) for light industrial and warehouse/distribution uses planned in the District. The Market Absorption Study concludes that, based on development plans as of November 3, 2010, the date of the Market Absorption Study, the estimated remaining approximately 57.8 net acres of light industrial and warehouse/distribution facility space within the District should be occupied by end users by 2016. Since there is not any current construction activity, and the Developer (defined below) does not presently have any definitive plans for commencing new construction, the Market Absorption Consultant estimated the market-entry date for the undeveloped property within the District based upon the Market Absorption Consultant’s expectations regarding future economic and industrial market conditions. The Developer may add or delete additional space in the future based on changes to the development plan at the time of construction. See the subcaptions “THE DEVELOPMENT AND PROPERTY OWNERSHIP — Appraisal” and “— Market Absorption Study,” and APPENDIX B — “APPRAISAL REPORT.”

### **Property Ownership and Development Status**

All taxable property within the District (excluding the USPS Parcels for which Special Taxes have been prepaid) is currently owned by Ridge Moreno Valley, LLC, a Delaware limited liability company (“Ridge Moreno Valley”) and one parcel (Building 6, APN No. 297-170-069) is owned by an entity affiliated with the Developer, Ridge Moreno Valley II, LLC, a Delaware limited liability company (“Ridge Moreno Valley II,” and, together with Ridge Moreno Valley, the “Developer”). The Developer’s current business plan anticipates retaining ownership of all taxable property within the District and leasing such property to industrial tenants. As of December 31, 2010, there were four completed buildings (Buildings 4, 5, 6 and 9) within the District (not including the USPS Parcels for which Special Taxes have been prepaid), and the Developer had signed leases totaling approximately 1,621,987 square feet, consisting of 100% of the available space within the completed four buildings in the District. (The Developer will not receive lease payments with respect to approximately 30,000 square feet of the Frazee Industries lease for the first 36 months of that lease; See Table 5 herein.) The four completed buildings in the District comprise Phases I and II of the Developer’s four Phase development plan. Phases III and IV are not currently under construction and none of the space within Phases III and IV has been leased. However, one undeveloped parcel in Phase III is being leased to Harbor Freight Tools for trailer storage. See the subcaption “THE DEVELOPMENT AND PROPERTY OWNERSHIP — The Development Plan.”

Pursuant to the Act, the City Council adopted the necessary resolutions stating its intent to establish the District, to authorize the levy of Special Taxes on taxable property within the boundaries of the District, and to have the District incur bonded indebtedness. Following a public hearing conducted pursuant to the provisions of the Act, the City Council adopted resolutions establishing the District and calling a special election to submit the levy of the Special Taxes and the incurring of bonded indebtedness to the qualified voters of the District. On October 25, 2005, at an election held pursuant to the Act, the Developer, who was the sole landowner and qualified voter within the District, authorized the District to incur bonded indebtedness in the aggregate principal amount not to exceed \$16,000,000 and approved a rate and method of apportionment

for the District to pay the principal of and interest on the bonds of the District. Pursuant to the Act, the City Council also adopted the necessary resolutions stating its intent to authorize the annexation of territory (the “Annexed Territory”) and the submittal of the levy of Special Taxes to the qualified voters of the Annexed Territory. Following a public hearing conducted pursuant to the Act, the City Council adopted a resolution making certain determinations authorizing submittal of the levy of Special Taxes to the qualified electors of the territory proposed to be annexed. On January 8, 2008, at an election held pursuant to the Act, the qualified electors authorized the annexation of the Annexed Territory into the District and approved a rate and method of apportionment for the Annexed Territory. On December 14, 2010, the qualified electors within the District, including the Annexed Territory, approved an amended and restated rate and method of apportionment for the District. The amended and restated rate and method of apportionment is referred to herein as the “Rate and Method.” A copy of the Rate and Method is set forth in Appendix A hereto. Additionally, all references herein to the District shall include the Annexed Territory unless otherwise specified. The City Council of the City acts as the legislative body of the District.

### **Sources of Payment for the Bonds**

As used in this Official Statement, the term “Special Tax” is that tax which has been authorized pursuant to the Act to be levied against certain land within the District pursuant to the Act and in accordance with the Rate and Method. See the subcaption “SOURCES OF PAYMENT FOR THE BONDS — Special Taxes” and APPENDIX A — “RATE AND METHOD OF APPORTIONMENT.” Under the Fiscal Agent Agreement, the City has pledged to repay the Bonds from the Special Tax Revenues and amounts on deposit in the Bond Fund and the Reserve Fund established under the Fiscal Agent Agreement. Special Taxes are defined in the Fiscal Agent Agreement as the special taxes levied by the City Council in any Fiscal Year on parcels of taxable property within the District pursuant to the Act and the Fiscal Agent Agreement. Special Tax Revenues are defined in the Fiscal Agent Agreement to include the proceeds of the Special Taxes received by the City, including any scheduled payments, interest and penalties thereon and the proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes in the amount of said lien and interest and penalties thereon.

The Special Taxes are the primary security for the repayment of the Bonds. In the event that the Special Taxes are not paid when due, the only sources of funds available to pay the debt service on the Bonds are amounts held by the Fiscal Agent, including amounts held in the Reserve Fund. Debt service on the Bonds will be capitalized through September 1, 2011. The City has covenanted for the benefit of the owners of the Bonds that it will commence, and diligently pursue to completion, judicial foreclosure proceedings against Assessor’s Parcels with delinquent Special Taxes within 60 days after each Interest Payment Date. See the subcaption “SOURCES OF PAYMENT FOR THE BONDS — Proceeds of Foreclosure Sales” herein.”

The Appraisal provides an estimate of the market value of the fee simple interest in the taxable parcels within the District (excluding the USPS Parcels). The Appraiser utilized the sales comparison approach, the cost approach, income capitalization approach and a discounted cash flow analysis to arrive at the values set forth in the Appraisal. Based upon the assumptions set forth in the Appraisal, including the extraordinary assumption that the construction cost and allocation information, as well as miscellaneous parcel information provided by the Developer is correct and viable information, and the current development plan being undertaken by the Developer, the Appraiser is of the opinion that the market value of the property in the District subject to the Special Taxes as of December 31, 2010 was \$65,500,000. This estimate of bulk sales value results in an estimated appraised value-to-lien ratio of approximately 8.13\*-to-1 for the District as a whole based on the estimated principal amount of the Bonds. See the subcaption “THE COMMUNITY FACILITIES DISTRICT — Estimated Appraised Value-to-Lien Ratios” and APPENDIX B — “APPRAISAL REPORT” herein.

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\* Preliminary, subject to change.



There is no assurance that the property within the District can be sold for the appraised value or for a price sufficient to pay the principal of and interest on the Bonds in the event of a default in payment of Special Taxes by the current or future landowners within the District. See the subcaption “SPECIAL RISK FACTORS — Land Value” and APPENDIX B — “APPRAISAL REPORT” herein. Other taxes and/or special assessments with liens equal in priority to the continuing lien of the Special Taxes may also be levied on the property within the District. See “the subcaption SPECIAL RISK FACTORS — Parity Taxes, Special Assessments and Land Development Costs” herein.

**EXCEPT FOR THE SPECIAL TAXES, NO OTHER TAXES ARE PLEDGED TO THE PAYMENT OF THE BONDS. THE BONDS ARE NOT GENERAL OR SPECIAL OBLIGATIONS OF THE CITY NOR GENERAL OBLIGATIONS OF THE DISTRICT, BUT ARE SPECIAL OBLIGATIONS OF THE DISTRICT PAYABLE SOLELY FROM SPECIAL TAXES AND AMOUNTS HELD UNDER THE FISCAL AGENT AGREEMENT AS MORE FULLY DESCRIBED HEREIN.**

### **Parity Bonds**

The District may issue additional bonds (“Additional Bonds” or “Parity Bonds”) payable from Special Tax Revenues and other amounts deposited in the Special Tax Fund and secured by a lien and charge upon such amounts equal to the lien and charge securing the Bonds and any other Parity Bonds theretofore issued for any purposes authorized under the Act. Parity Bonds may be issued subject to certain specific conditions set forth in the Fiscal Agent Agreement, which are made conditions precedent to the issuance of any such Parity Bonds. See “SOURCES OF PAYMENT FOR THE BONDS — Parity Bonds” and APPENDIX C — “SUMMARY OF FISCAL AGENT AGREEMENT” herein.

Additionally, nothing in the Fiscal Agent Agreement prevents the City from issuing and selling, pursuant to law, refunding bonds or other refunding obligations payable from and having a first lien upon the Special Taxes Revenues on a parity with the outstanding Bonds and Parity Bonds so long as the issuance of such refunding bonds or other refunding obligations results in a reduction in each Bond Year on the Annual Debt Service on the Bonds when combined with the annual debt service on such refunding bonds or other refunding obligations following the issuance thereof. See “SOURCES OF PAYMENT FOR THE BONDS — Parity Bonds” and APPENDIX C — “SUMMARY OF FISCAL AGENT AGREEMENT” herein.

### **Description of the Bonds**

The Bonds will be issued and delivered as fully registered Bonds, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“DTC”), and will be available to actual purchasers of the Bonds (the “Beneficial Owners”) in the denominations of \$5,000 or any integral multiple thereof, under the book-entry system maintained by DTC, only through brokers and dealers who are or act through DTC Participants as described herein. Beneficial Owners will not be entitled to receive physical delivery of the Bonds. In the event that the book-entry-only system described herein is no longer used with respect to the Bonds, the Bonds will be registered and transferred in accordance with the Fiscal Agent Agreement. See APPENDIX G — “BOOK-ENTRY-ONLY SYSTEM” herein.

Principal of, premium, if any, and interest on the Bonds is payable by the Fiscal Agent to DTC. Disbursement of such payments to the DTC Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of the DTC Participants. In the event that the book-entry-only system is no longer used with respect to the Bonds, the Beneficial Owners will become the registered owners of the Bonds and will be paid principal and interest by the Fiscal Agent, all as described herein. See APPENDIX G — “BOOK-ENTRY-ONLY SYSTEM” herein.

The Bonds are subject to optional redemption, mandatory redemption from Special Tax Prepayments or from other amounts transferred to the Special Tax Prepayment Account and mandatory sinking fund redemption as described herein. For a more complete descriptions of the Bonds and the basic documentation pursuant to which they are being sold and delivered, see the caption “THE BONDS” and APPENDIX C — “SUMMARY OF FISCAL AGENT AGREEMENT” herein.

### **Tax Matters**

In the opinion of Best Best & Krieger LLP, San Diego, California (“Bond Counsel”), under existing laws, regulations, rulings and court decisions, the interest on the Bonds is exempt from personal income taxes of the State of California and, assuming compliance with certain covenants described herein, is excluded from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax. Set forth in APPENDIX F — “FORM OF OPINION OF BOND COUNSEL” is the form of the opinion of Bond Counsel expected to be delivered in connection with the issuance of the Bonds. For a more complete discussion of such opinion and certain other tax consequences incident to the ownership of the Bonds, including certain exceptions to the tax treatment of interest, see the caption “TAX MATTERS” herein.

### **Professionals Involved in the Offering**

Wells Fargo Bank, National Association, Los Angeles, California, will act as Fiscal Agent under the Fiscal Agent Agreement and as the initial Dissemination Agent under the Continuing Disclosure Agreements to be entered into by the City and the Developer. De La Rosa & Co. is the Underwriter of the Bonds. Best Best & Krieger LLP, San Diego, California, is acting as Bond Counsel. All proceedings in connection with the issuance and delivery of the Bonds are subject to the approval of Bond Counsel. Certain legal matters will be passed upon for the Developer by Rutan & Tucker, LLP, Costa Mesa, California, as counsel to the Developer. Fieldman, Rolapp & Associates, Irvine, California, is acting as Financial Advisor for the City in connection with the Bonds. Certain legal matters will be passed on for the City and the District by the City Attorney. Other professional services have been performed by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, as Disclosure Counsel, Harris & Associates, Irvine, California, as Special Tax Consultant, Bruce W. Hull & Associates, Ventura, California, as Appraiser and Empire Economics, Inc., Capistrano Beach, California, as Market Absorption Consultant.

For information with respect to which the above-mentioned professionals, advisors, counsel and agents have a financial or other interest in the offering of the Bonds, see the caption “FINANCIAL INTERESTS” herein.

### **Continuing Disclosure**

Each of the City, for and on behalf of the District, and the Developer has agreed to provide, or cause to be provided, to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System for municipal securities disclosures, maintained on the Internet at <http://emma.msrb.org/> (“EMMA”) for purposes of Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission certain annual financial information and operating data. The City’s obligation commences April 1, 2012. The City has further agreed to provide, in a timely manner, certain annual financial information and operating data and notice of certain material events. The Developer is obligated to file annual reports commencing March 1, 2012 and semi-annual reports commencing September 1, 2011. These covenants have been made in order to assist the Underwriter in complying with Rule 15c2-12(b)(5) of the Securities and Exchange Commission. See the caption “CONTINUING DISCLOSURE” herein, APPENDIX D — “FORM OF CONTINUING DISCLOSURE AGREEMENT OF THE CITY OF MORENO VALLEY” and APPENDIX E — “FORM OF CONTINUING DISCLOSURE AGREEMENT OF THE DEVELOPER” hereto for a description of the specific nature of the annual reports to be filed by the City, and the semi-annual reports to be filed by the

Developer and notices of material events and a summary description of the terms of the continuing disclosure agreement pursuant to which such annual reports are to be made.

**Bond Owners’ Risks**

Certain events could affect the timely repayment of the principal of and interest on the Bonds when due. See the section of this Official Statement entitled “SPECIAL RISK FACTORS” for a discussion of certain factors which should be considered, in addition to other matters set forth herein, in evaluating the investment quality of the Bonds. The Bonds are not rated by any nationally recognized rating agency. The purchase of the Bonds involves risks, and the Bonds may not be appropriate investments for some types of investors. See the caption “SPECIAL RISK FACTORS” herein.

**Other Information**

This Official Statement speaks only as of its date, and the information contained herein is subject to change.

Brief descriptions of the Bonds and the Fiscal Agent Agreement are included in this Official Statement. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Fiscal Agent Agreement, the Bonds and the constitution and laws of the State as well as the proceedings of the City, acting as the legislative body of the District, are qualified in their entirety by references to such documents, laws and proceedings, and with respect to the Bonds, by reference to the Fiscal Agent Agreement. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Fiscal Agent Agreement.

Copies of the Fiscal Agent Agreement, the Continuing Disclosure Agreement of the City (defined herein), the Continuing Disclosure Agreement of the Developer (defined herein) and other documents and information referred to herein are available for inspection and (upon request and payment to the City of a charge for copying, mailing and handling) for delivery from the City at 14177 Frederick Street, Moreno Valley, California 92553, Attention: Financial and Administrative Services Director.

**ESTIMATED SOURCES AND USES OF FUNDS**

The following table sets forth the expected uses of Bond proceeds:

<b><u>Sources of Funds</u></b>	
Bond Par Amount	\$
Plus Original Issue Premium/(Less Original Issue Discount)	_____
<b>TOTAL SOURCES</b>	<b>\$ _____</b>
<b><u>Uses of Funds</u></b>	
Improvement Fund	\$
Reserve Fund	
Cost of Issuance Fund <sup>(1)</sup>	
Interest Account <sup>(2)</sup>	
Administrative Expense Fund	_____
<b>TOTAL USES</b>	<b>\$ _____</b>

<sup>(1)</sup> Includes Underwriter’s discount, legal, financing and consulting fees, printing costs, Fiscal Agent fees and other miscellaneous expenses.

<sup>(2)</sup> Interest on the Bonds is capitalized through September 1, 2011.

## THE BONDS

### Authority for Issuance

**Resolutions of Intention:** On September 13, 2005, the City Council of the City adopted a resolution stating its intention to establish the District and to authorize the levy of special taxes.

**Resolutions of Formation:** On October 25, 2005, the City Council of the City, adopted resolutions which established the District, approved a rate and method of apportionment (“Original RMA”), authorized the submittal of the levy of special taxes within the District to qualified electors, and determined the necessity to incur bonded indebtedness within the District, in the amount not to exceed \$16,000,000.

**Resolution Calling Election:** The resolutions adopted by the City Council of the City on October 25, 2005 also called for an election by the landowners in the District for the same date on the issues of the levy of the Special Tax, the incurring of bonded indebtedness in the District, and the establishment of an appropriations limit.

**Landowner Election and Declaration of Results:** On October 25, 2005, an election was held at which the Developer, as the sole landowner and qualified voter within the District approved a ballot proposition authorizing the issuance of up to \$16,000,000 of bonds to finance the acquisition and construction of various public facilities, the levy of the Special Tax and the establishment of an appropriations limit for the District. On October 25, 2005, the City Council adopted a resolution approving the canvass of the votes and declaring the District to be fully formed with the authority to levy the Special Taxes, to incur the bonded indebtedness, and to have the established appropriations limit.

**Special Tax Lien and Levy:** A Notice of Special Tax Lien for the District was recorded in the real property records of the County of Riverside, California (the “County”) on November 8, 2005, as a continuing lien against the property in the District. On November 8, 2005, the City Council of the City, acting as the legislative body of the District, enacted Ordinance No. 696 authorizing the levy of the Special Tax within the District.

**Resolution Adopting Annexation Map:** On November 27, 2007, the City Council adopted a resolution adopting an annexation map showing territory proposed to be annexed to the District. The City Council also undertook proceedings to annex certain territory into the District.

**Resolution of Intention:** On November 27, 2007, the City Council of the City adopted a resolution stating its intent to authorize the annexation of territory.

**Resolutions of Annexation:** On January 8, 2008, the City Council of the City adopted resolutions which made certain determinations, approved a rate and method of apportionment (“Annexation RMA”) and authorized submittal of the levy of special taxes to the qualified electors within the Annexed Territory.

**Election and Declaration of Results:** On January 8, 2008, an election was held at which the qualified electors approved the addition of territory into the District. On January 8, 2008, the City Council adopted a resolution determining that the annexed territory was added to the District and that the City Council was authorized to levy Special Taxes within the added territory.

**Amendment to Special Tax Lien and Levy:** An Amendment to Notice of Special Tax Lien for the District was recorded in the real property records of the County incorporated on January 17, 2008, which provided a rate and method of apportionment that applied only to the added territory. On January 22, 2008, the City Council of the City, acting as legislative body of the District, enacted Ordinance No. 765 authorizing the levy of special tax within the added territory.

**Resolution of Reconsideration:** On November 27, 2007, the City Council of the City adopted a resolution stating its intent to authorize the annexation of territory.

**Election and Declaration of Results:** On January 8, 2008, an election was held at which the qualified electors approved the addition of territory into the District. On January 8, 2008, the City Council adopted a resolution determining that the annexed territory was added to the District and that the City Council was authorized to levy Special Taxes within the added territory.

**Amended and Restated Rate and Method of Apportionment.** On November 9, 2010 the City Council of the City adopted a resolution to consider amending and restating the rate and method of apportionment for the District. On December 14, 2010, the qualified electors within the District, including the Annexed Territory, approved an amended and restated rate and method of apportionment for the District which replaced the Original RMA and the Annexation RMA. References to the “Rate and Method” in this Official Statement refer to the amended and restated rate and method of apportionment for the District. See APPENDIX A — “RATE AND METHOD OF APPORTIONMENT.” On December 14, 2010, the City Council also had the first reading of Ordinance No. \_\_\_ authorizing the levy of special taxes under the Rate and Method, and the second reading and adoption was on January 11, 2011.

**Resolution Authorizing Issuance of the Bonds:** On March 8, 2011, the City Council adopted a resolution approving the issuance of the Bonds.

### **Purpose of the Bonds**

The Bonds are being issued to provide funds to: (i) finance the costs of acquiring certain public facilities within the District (see “THE COMMUNITY FACILITIES DISTRICT—Description of Authorized Facilities”); (ii) pay costs related to the issuance of the Bonds; (iii) fund the interest on the Bonds capitalized through September 1, 2011 and (iv) fund the Reserve Fund for the Bonds. See the caption “ESTIMATED SOURCES AND USES OF FUNDS.”

### **Description of the Bonds**

The Bonds will be issued as fully registered bonds in denominations of \$5,000 and any integral multiple thereof (not exceeding the principal amount maturing at any one time), and shall be dated the date of delivery thereof. The Bonds will be issued in book-entry only form and DTC will act as securities depository for the Bonds. So long as the Bonds are held in book-entry only form, principal of, premium, if any, and interest on the Bonds will be paid directly to DTC for distribution to the Beneficial Owners of the Bonds in accordance with the procedures adopted by DTC. See APPENDIX G — “BOOK-ENTRY-ONLY SYSTEM” herein. The Bonds will mature on September 1, in the years and principal amounts, and bearing rates of interest, as shown on the inside cover of this Official Statement.

Interest on the Bonds will be payable semiannually on March 1 and September 1 of each year, commencing September 1, 2011 (each, an “Interest Payment Date”) and will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each Bond will bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date in which event it shall bear interest from its dated date; provided, that if at the time of authentication of a Bond, interest is then in default thereon, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon, or from its dated date, if no interest has previously been paid or made available for payment thereon.

Interest on the Bonds is payable by check of the Fiscal Agent mailed by first class mail, postage prepaid, on each Interest Payment Date, to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America by check of the Fiscal Agent upon surrender of such Bonds at the Principal Office of the Fiscal Agent; provided, however, that at the written request of the Owner of at least \$1,000,000 in aggregate principal amount of Outstanding Bonds filed with the Fiscal Agent prior to any Record Date, interest on such Bonds will be paid to such Owner on each succeeding Interest Payment Date by wire transfer of immediately available funds to an account in the United States of America designated in such written request. All Bonds redeemed and purchased by the Fiscal Agent will be canceled by the Fiscal Agent.

**Redemption**

**Optional Redemption.** The Bonds are subject to redemption prior to their stated maturity dates on any Interest Payment Date, as selected among maturities by the District (and by lot within any one maturity), in integral multiples of \$5,000, at the option of the District from moneys derived by the District from any source, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed), together with accrued interest to the date of redemption, as follows.

<i>Redemption Dates</i>	<i>Redemption Price</i>
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ through _____ 1, 20__	
_____ 1, 20__ through any Interest Payment Date thereafter	

**Mandatory Redemption From Special Tax Prepayments Transferred to the Special Tax Prepayment Account.** The Bonds are subject to mandatory redemption prior to their stated maturity dates on any Interest Payment Date, as selected among maturities by the District (and by lot within any one maturity), in integral multiples of \$5,000, from moneys derived by the District from Special Tax Prepayments, at a redemption price expressed as percentages of the principal amounts of the Bonds to be redeemed, together with accrued interest to the date of redemption as follows:

<i>Redemption Dates</i>	<i>Redemption Price</i>
_____ 1, 20__ through _____ 1, 20__	%
_____ 1, 20__ through _____ 1, 20__	
_____ 1, 20__ through any Interest Payment Date thereafter	

In the event that Bonds are subject to extraordinary mandatory redemption from proceeds of Special Tax Prepayments pursuant to the Fiscal Agent Agreement, such Special Tax Prepayments and any amounts transferred from the Reserve Fund or any Additional Bonds Reserve Fund to the Redemption Fund as a result of such Special Tax Prepayments shall be allocated to the redemption of each series of Bonds and any Parity Bonds as nearly as practicable on a proportionate basis based upon the outstanding principal amount of each series of Bonds and any Parity Bonds.

**Mandatory Sinking Fund Redemption.** The Outstanding Bonds maturing on September 1, 20\_\_ and September 1, 20\_\_ are subject to mandatory sinking fund redemption, in part, on September 1, 20\_\_ and September 1, 20\_\_, respectively, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date of redemption, without premium, and from sinking payments as follows:

**Bonds Maturing on September 1, 20\_\_**

***Redemption Date***  
***(September 1)***

***Sinking Payment***

\$

(Maturity)

**Bonds Maturing on September 1, 20\_\_**

***Redemption Date***  
***(September 1)***

***Sinking Payment***

\$

(Maturity)

The amount of Outstanding Bonds to be redeemed pursuant to the foregoing schedule shall be reduced by the City pro rata among redemption dates, in order to maintain substantially level debt service as a result of any prior or partial optional redemption or mandatory redemption from Special Tax Prepayments of the Bonds or from other amounts transferred to the Special Tax Prepayment Account.

***Purchase of Bonds.*** In lieu of payment at maturity or redemption, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at a public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event will Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase. In such event, the City shall, as may be appropriate, provide to the Fiscal Agent a revised maturity schedule or a revised mandatory sinking fund schedule for the Bonds, or both.

#### **Redemption Procedure by Fiscal Agent**

The Fiscal Agent Agreement requires the Fiscal Agent to cause notice of any redemption to be mailed by first class mail, postage prepaid, at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Securities Depositories and to one or more Information Services, and to the respective registered Owners of any Bonds designated for redemption, at their addresses appearing on the Bond registration books maintained by the Fiscal Agent at its Principal Office; but such mailing will not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, will not affect the validity of the proceedings for the redemption of such Bonds.

Such notice will state the date of such notice, the date of issue of the Bonds, the place or places of redemption, the redemption date, the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, will designate the CUSIP numbers and Bond numbers of the Bonds to be redeemed, by giving the individual CUSIP number and Bond number of each Bond to be redeemed, or will state that all Bonds between two stated Bond numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption, will state as to any Bond called for redemption in part the portion of the principal of the Bond to be redeemed, will require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption as the said redemption price, and will state that further interest on such Bonds will not accrue from and after the redemption date. The cost of the mailing and publication of any such redemption notice will be paid by the District.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose will, to the extent practicable, bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

With respect to any notice of optional redemption of Bonds, such notice may state that such redemption shall be conditional upon the receipt by the Fiscal Agent on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, premium, if any, and interest due on such Bonds to be redeemed and that, if such moneys shall not have been so received, said notice shall be of no force and effect and the Fiscal Agent shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption shall not be made, and the Fiscal Agent shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

In the event of an optional redemption or a mandatory redemption from a Special Tax Prepayment, the City will transfer or cause to be transferred to the Fiscal Agent for deposit in the Bond Fund moneys in an amount equal to the redemption price of the Bonds being redeemed on or before the fifteenth (15th) day of the month preceding the Interest Payment Date upon which such Bonds are to be redeemed.

If less than all the Bonds Outstanding are to be redeemed, the portion of any Bond of a denomination of more than \$5,000 to be redeemed will be in the principal amount of \$5,000 or a multiple thereof, and, in selecting portions of such Bonds for redemption, the Fiscal Agent will treat each such Bond as representing the number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond to be redeemed in part by \$5,000.

As to any series of Bonds and Parity Bonds, whenever provision is made in the Fiscal Agent Agreement for the redemption of less than all of the Bonds of a maturity or any given portion thereof, the Fiscal Agent shall select the Bonds of such maturity to be redeemed, from all Bonds of such maturity or such given portion thereof not previously called for redemption, by lot within a maturity, in any manner which the Fiscal Agent in its sole discretion shall deem appropriate.

Upon surrender of Bonds redeemed in part only, the City will execute and the Fiscal Agent will authenticate and deliver to the Owner, at the expense of the District, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of such Bond or Bonds.

### **Effect of Redemption**

From and after the date fixed for redemption, if funds available for the payment of the redemption prices of the Bonds called for redemption have been deposited in the Bond Fund, such Bonds will cease to be entitled to any benefit under the Fiscal Agent Agreement other than the right to receive payment of the redemption price, and interest will cease to accrue on the Bonds to be redeemed on the redemption date specified in the notice of redemption.

All Bonds redeemed and purchased by the Fiscal Agent pursuant to the Fiscal Agent Agreement will be canceled by the Fiscal Agent.

### **Transfer and Exchange of Bonds**

Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of the Fiscal Agent Agreement, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office of the Fiscal Agent, accompanied by delivery of a duly executed written instrument of transfer in a form



acceptable to the Fiscal Agent. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer will be paid by the District. The Fiscal Agent will collect from the Owner requesting transfer of a Bond any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Bond or Bonds are surrendered for transfer, the City will execute and the Fiscal Agent will authenticate and deliver a new Bond or Bonds of like aggregate principal amount.

No transfers of Bonds will be required to be made (i) during the fifteen (15) days preceding the date established by the Fiscal Agent for selection of Bonds for redemption, or (ii) with respect to Bonds which have been selected for redemption.

Bonds may be exchanged at the Principal Office of the Fiscal Agent only for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity and interest rate. The cost for any services rendered or any expense incurred by the Fiscal Agent in connection with any such exchange will be paid by the District. The Fiscal Agent will collect from the Owner requesting exchange of a Bond any tax or other governmental charge required to be paid with respect to such exchange.

No exchanges of Bonds will be required to be made (i) during the fifteen (15) days preceding the date established by the Fiscal Agent for selection of Bonds for redemption, or (ii) with respect to Bonds which have been selected for redemption.

**Debt Service Schedule for the Bonds**

The following table presents the annual debt service on the Bonds (including sinking fund redemptions), assuming that there are no optional redemptions or mandatory redemptions from Special Tax Prepayments. See “—Redemption” above.

<i>Period Ending</i>	<i>Principal</i>	<i>Interest<sup>(1)</sup></i>	<i>Total Debt Service</i>
2011	\$	\$	\$
2012			
2013			
2014			
2015			
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
<b>TOTAL</b>	<u>\$</u>	<u>\$</u>	<u>\$</u>

<sup>(1)</sup> Interest on the Bonds is capitalized through September 1, 2011.

**SOURCES OF PAYMENT FOR THE BONDS**

The Special Taxes are the primary security for the repayment of the Bonds. Under the Fiscal Agent Agreement, the City has pledged to repay the Bonds from the Special Tax Revenues and amounts held in the Bond Fund and the Reserve Fund. Special Tax Revenues are defined in the Fiscal Agent Agreement to include the proceeds of the Special Taxes received by the City, including any scheduled payments, interest and penalties thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes in the amount of said lien, and interest and penalties thereon.

In the event that the Special Tax Revenues are not paid when due, the only sources of funds available to pay the debt service on the Bonds are amounts held by the Fiscal Agent, including amounts held in the Reserve Fund, for the exclusive benefit of the Owners of the Bonds.

**NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE COUNTY OF RIVERSIDE, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE BONDS. EXCEPT FOR THE SPECIAL TAXES, NO OTHER TAXES ARE PLEDGED TO THE PAYMENT OF THE BONDS. THE BONDS ARE NOT GENERAL OR SPECIAL OBLIGATIONS OF THE CITY BUT ARE SPECIAL OBLIGATIONS OF THE DISTRICT PAYABLE SOLELY FROM THE SPECIAL TAXES AND OTHER AMOUNTS PLEDGED UNDER THE FISCAL AGENT AGREEMENT AS MORE FULLY DESCRIBED HEREIN.**

### **Special Taxes**

The City Council, as the legislative body of the District, has covenanted in the Fiscal Agent Agreement that by August 10 of each year (or such later date as may be authorized by the Act or any amendment thereof) it will levy Special Taxes up to the maximum rates permitted under the Rate and Method in the amount required for the payment of principal of and interest on any Outstanding Bonds becoming due and payable during the ensuing calendar year, including any necessary replenishment or expenditure of the Reserve Fund and the amount estimated to be sufficient to pay the Administrative Expenses during such calendar year.

The Special Taxes levied in any fiscal year may not exceed the maximum rates authorized pursuant to the Rate and Method. See APPENDIX A — “RATE AND METHOD OF APPORTIONMENT” herein. There is no assurance that the Special Tax proceeds will, in all circumstances, be adequate to pay the principal of and interest on the Bonds when due. See the subcaption “SPECIAL RISK FACTORS — Insufficiency of Special Taxes” herein.

In addition to the Special Taxes to be levied by the District, the City has established the Community Facilities District No. 4 — Maintenance of the City of Moreno Valley (the “Maintenance District”), portions of which overlap with the District, to provide for maintenance of certain storm drain facilities. The special taxes which will be levied by the Maintenance District are not pledged for, and do not secure, the Bonds.

### **Rate and Method of Apportionment**

The Rate and Method provides that for each Fiscal Year all parcels in the District not otherwise exempt are to be classified as either Developed Property or Undeveloped Property. “Developed Property” is defined as all Taxable Property for which a building permit for new construction was issued prior to June 1 of the prior Fiscal Year. “Undeveloped Property” is defined to include all Taxable Property not classified as Developed Property. “Fiscal Year” is defined as the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive. Capitalized terms not defined under the subcaption “— Rate and Method of Apportionment” have the meanings set forth in the Rate and Method. See APPENDIX A — “RATE AND METHOD OF APPORTIONMENT.”

The Maximum Annual Special Tax for each Assessor’s Parcel of Developed Property, Undeveloped Property, Taxable Property Owner Association Property and Taxable Public Property shall be \$0.1924 per square foot of Land Area for Fiscal Year 2010-11, and will increase thereafter, commencing on July 1, 2011 and on July 1 of each Fiscal Year thereafter, by an amount equal to 2% of the Maximum Annual Tax for the previous Fiscal Year. Once classified as Developed Property, a parcel may not be subsequently re-classified as Undeveloped Property.

Commencing with Fiscal Year 2011-12 and for each following Fiscal Year, the City Council will levy the Special Tax until the amount of Special Taxes levied equals the Annual Special Tax Requirement.

The “Annual Special Tax Requirement” means that amount required in any Fiscal Year for the District to pay the sum of: (i) debt service on all Outstanding Bonds; (ii) periodic costs on the Bonds, including but not limited to, credit enhancement and rebate payments on the Bonds; (iii) Administrative Expenses; (iv) any amounts required to establish or replenish any reserve funds for all Bonds issued or to be issued by the District; and (v) any amounts required for the acquisition or construction of facilities eligible under the Act, provided that the inclusion of such amount does not cause an increase in the levy of Special Taxes on Undeveloped Property. In arriving at the Annual Special Tax Requirement, the CFD Administrator will take into account the reasonably anticipated delinquent Special Taxes based on the delinquency rate for Special Taxes levied in the previous Fiscal Year and shall give a credit for funds available to reduce the Special Tax levy.

The Special Tax will be levied each Fiscal Year as follows:

Step 1 - The Special Tax shall be levied Proportionately on each Assessor’s Parcel of Developed Property at up to 100% of the applicable Maximum Annual Special Tax for Developed Property.

Step 2 - If additional monies are needed to satisfy the Annual Special Tax Requirement, then the Special Tax shall be levied Proportionately on each Assessor’s Parcel of Undeveloped Property at up to 100% of the applicable Maximum Annual Special Tax for Undeveloped Property.

Step 3 - If additional monies are needed to satisfy the Annual Special Tax Requirement, then the Special Tax shall be levied Proportionately on each Assessor’s Parcel of Taxable Property Owner Association Property.

Step 4 - If additional monies are needed to satisfy the Annual Special Tax Requirement, then the Special Tax shall be levied Proportionately on each Assessor’s Parcel of Taxable Public Property.

The Bonds have been sized so that the Maximum Annual Special Tax for Assessor’s Parcels categorized as Developed Property as of December 31, 2010, which includes only Developed Property with completed buildings, produces at least 110% of Maximum Annual Debt Service on all Outstanding Bonds. See “THE COMMUNITY FACILITIES DISTRICT — Coverage from Developed Property.”

### **Prepayment of Special Taxes**

The Special Tax obligation applicable to an Assessor’s Parcel may be prepaid at any time and the obligation of such Assessor’s Parcel to pay any Special Tax may be fully or partially satisfied as described herein. See APPENDIX A — “RATE AND METHOD OF APPORTIONMENT” herein for a discussion of how the prepayment amount is calculated. No Special Tax prepayment shall be allowed unless the amount of Special Taxes, net of Administrative Expenses, that may be levied on Taxable Property within the District both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Outstanding Bonds. Tenders of Bonds in prepayment of Special Taxes may be accepted upon the terms and conditions established by the City Council pursuant to the Act. The Rate and Method provides that a property owner may prepay and satisfy the Special Tax obligation of an Assessor’s Parcel in whole only if there are no delinquent Special Taxes with respect to such Assessor’s Parcel at the time of prepayment.

In the event that a prepayment of Special Taxes occurs in the future, the net proceeds of such prepayment will be applied to effect a mandatory redemption of the Bonds. See the subcaption “THE BONDS—Redemption” herein.

### **Collection of Special Tax Revenues**

The Special Taxes are levied and collected by the Treasurer-Tax Collector of the County of Riverside (the “County”) in the same manner and at the same time as *ad valorem* property taxes, provided that the District may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor’s Parcels as permitted by the Act.

The City has made certain covenants in the Fiscal Agent Agreement for the purpose of ensuring that the current maximum Special Tax rates and method of collection of the Special Taxes are not altered in a manner that would impair the City’s ability to collect sufficient Special Taxes to pay debt service on the Bonds and Administrative Expenses when due. First, the City has covenanted that, to the extent it is legally permitted to do so, it will not reduce the maximum Special Tax rates on then existing Developed Property in the District below the amounts which are necessary to provide Special Tax Revenues in an amount equal 110% of Maximum Annual Debt Service on the Outstanding Bonds plus the Minimum Annual Administrative Expense Requirement. Second, the City has covenanted that in the event an ordinance is adopted by initiative pursuant to Section 3 of Article XIIC of the California Constitution, which purports to reduce or otherwise alter the Maximum Rates, it will commence and pursue legal action seeking to preserve its ability to comply with its covenant contained in the preceding sentence.

Although the Special Taxes constitute liens on taxable parcels within the District, they do not constitute a personal indebtedness of the owners of property within the District. Moreover, other liens for taxes and assessments already exist on the property located within the District and others could come into existence in the future in certain situations without the consent or knowledge of the City or the landowners therein. See the subcaption “SPECIAL RISK FACTORS—Parity Taxes, Special Assessments and Land Development Costs” herein. There is no assurance that property owners will be financially able to pay the annual Special Taxes or that they will pay such taxes even if financially able to do so, all as more fully described in the section of this Official Statement entitled “SPECIAL RISK FACTORS.”

Under the terms of the Fiscal Agent Agreement, not later than 10 Business Days after receipt, all Special Tax Revenues received by the City are to be deposited in the Special Tax Fund. As soon as practicable after the receipt from the City of any Special Tax Revenues, but no later than 10 Business Days after such receipt, the Fiscal Agent is to withdraw from the Special Tax Fund and deposit in the Administrative Expense Fund, an amount estimated by the City to be sufficient, together with the amount then on deposit in the Administrative Expense Fund, to pay the Administrative Expenses during the current Fiscal Year; provided, however, that the amount deposited in the Administrative Expense Fund prior to the deposit to the Interest Account and Principal Account of the Bond Fund shall not exceed \$30,000 (the “Minimum Annual Administrative Expense Requirement”) for any Fiscal Year. However, if prior to the September 1 Interest Payment Date in any Bond Year the City determines that Special Tax Revenues will be sufficient to enable the Fiscal Agent to deposit in the Reserve Fund and Principal Account the amount, if any, which is necessary to make the amount on deposit therein equal to the Reserve Requirement and deposit in the Bond Fund the full amount required for deposit to the Interest Account to pay the interest on and principal of the Bonds on such Interest Payment Date, the City may instruct the Fiscal Agent in an Officer’s Certificate, upon which the Fiscal Agent may conclusively rely, to deposit an additional amount, in the Administrative Expense Fund before making the required deposit to the Bond Fund, and the Fiscal Agent shall deposit such additional amount in the Administrative Expense Fund before depositing any amount to the Reserve Fund or Bond Fund.

On or before the March 1 Interest Payment Date in each Bond Year, if the amount of other moneys which is on deposit in the Special Tax Fund is less than the amount of the interest on the Bonds which is due on such Interest Payment Date, the Fiscal Agent will transfer moneys from the Surplus Account, to the extent of moneys on deposit therein and available for transfer, to and deposit such moneys in the Interest Account of the Bond Fund in an amount not to exceed the deficiency in the amount of other moneys which are on deposit in the Special Tax Fund, and available for transfer to and deposit in the Interest Account to pay the full amount of the interest on the Bonds which is due and payable on such Interest Payment Date. On or before the September 1 Interest Payment Date in each Bond Year, if the amount of other moneys which is on deposit in the Special Tax Fund is less than the amount of the interest on and principal of the Bonds which is due on such Interest Payment Date, the Fiscal Agent will transfer moneys from the Surplus Account, to the extent of moneys on deposit therein and available for transfer, to and deposit such moneys in the Interest Account and the Principal Account in amounts not to exceed the amount of the deficiency in the amount of other moneys which are on deposit in the Special Tax Fund, and available for transfer, to pay the full amount of the interest on and principal of the Bonds which is due and payable on such Interest Payment Date. On or before May 1 of each year, commencing on May 1, 2012 the Fiscal Agent will notify the City of the amount which is then on deposit in the Surplus Account and of the aggregate amount of the principal of and interest on the Bonds which will become due and payable on the following September 1.

### **No Teeter Plan**

Although the County Board of Supervisors has adopted the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the “Teeter Plan”) which allows each entity levying secured property taxes in the County to draw on the amount of property taxes levied rather than the amount actually collected, as provided for in Section 4701 et seq. of the California Revenue and Taxation Code, the District is not included in the County Teeter Plan. Consequently, the District may not draw on the County Tax Loss Reserve Fund in the event of delinquencies in Special Tax payments within the District.

### **Proceeds of Foreclosure Sales**

The net proceeds received following a judicial foreclosure sale of land within the District resulting from a landowner’s failure to pay the Special Tax when due are pledged to the payment of principal of and interest on the Bonds.

Pursuant to Section 53356.1 of the Act, in the event of any delinquency in the payment of any Special Tax or receipt by the City of Special Taxes in an amount which is less than the Special Tax levied, the City Council, as the legislative body of the District, may order that Special Taxes be collected by a superior court action to foreclose the lien within specified time limits. In such an action, the real property subject to the unpaid amount may be sold at a judicial foreclosure sale. Under the Act, the commencement of judicial foreclosure following the nonpayment of a Special Tax is not mandatory. However, in the Fiscal Agent Agreement, the City covenants for the benefit of the Owners of the Bonds that, within 60 days after each Interest Payment Date, it will cause to be commenced, as hereinafter provided, and (unless delinquent Special Taxes are paid) diligently prosecute to judgment, an action in the superior court to foreclose the lien of any Special Taxes, or any installments thereof, which were not paid by the statutory delinquency date (i.e., December 10 or April 10). In furtherance of this covenant, within five (5) Business Days after each Interest Payment Date, the Financial and Administrative Services Director, or his designee, shall review the most recent Fixed Charge Unpaid List received from the Auditor-Controller of the County of Riverside regarding unpaid property taxes to determine if there are any delinquent installments of Special Taxes levied on property in the District. If there are any such delinquent Special Tax installments, the Financial and Administrative Services Director, or his designee, shall notify the City Attorney of such delinquencies and, within the previously mentioned 60 days, the City Attorney shall commence, or cause to be commenced, and diligently prosecute such a superior court foreclosure action or actions to collect such delinquent Special Taxes.

If foreclosure is necessary and other funds (including amounts in the Reserve Fund) have been exhausted, debt service payments on the Bonds could be delayed until the foreclosure proceedings have ended with the receipt of any foreclosure sale proceeds. Judicial foreclosure actions are subject to the normal delays associated with court cases and may be further slowed by bankruptcy actions, involvement by agencies of the federal government and other factors beyond the control of the City. See the subcaption “SPECIAL RISK FACTORS—Bankruptcy and Foreclosure” herein. Moreover, no assurances can be given that the real property subject to foreclosure and sale at a judicial foreclosure sale will be sold or, if sold, that the proceeds of such sale will be sufficient to pay any delinquent Special Tax installment. See the subcaption “SPECIAL RISK FACTORS—Land Values” herein. Although the Act authorizes the City to cause such an action to be commenced and diligently pursued to completion, the Act does not impose on the District or the City any obligation to purchase or acquire any lot or parcel of property sold at a foreclosure sale if there is no other purchaser at such sale. The Act provides that, in the case of a delinquency, the Special Tax will have the same lien priority as is provided for *ad valorem* taxes.

### **Reserve Fund**

In order to secure further the payment of principal of and interest on the Bonds, the City is required, upon delivery of the Bonds, to deposit \$ \_\_\_\_\_ into the Reserve Fund and thereafter to maintain in the Reserve Fund an amount equal to the Reserve Requirement. The Fiscal Agent Agreement defines the Reserve Requirement as of the date of any calculation the lesser of (i) 10% of the proceeds of the sale of the Bonds; (ii) Maximum Annual Debt Service on the Bonds; or (iii) 125% of average Annual Debt Service on the Bonds, as determined by the City. Subject to the limits on the maximum annual Special Tax which may be levied within the District, as described in APPENDIX A, the City has covenanted to levy Special Taxes in an amount that is anticipated to be sufficient, in light of the other intended uses of the Special Tax proceeds, to maintain the balance in the Reserve Fund at the Reserve Requirement. Amounts in the Reserve Fund are to be applied to make transfers to the Interest Account and the Principal Account of the Bond Fund in the event of any deficiency at any time in either of such accounts of the amount then required for payment of the principal of and interest and any premium on the Bonds or to redeem Bonds in whole or in part. See APPENDIX C — “SUMMARY OF FISCAL AGENT AGREEMENT — Reserve Fund” herein.

### **Parity Bonds**

The District may issue Parity Bonds payable from Special Tax Revenues and other amounts deposited in the Special Tax Fund and secured by a lien and charge upon such amounts equal to the lien and charge securing the Bonds and any other Parity Bonds theretofore issued for any purposes authorized under the Act. Parity Bonds may be issued subject to the following specific conditions set forth in the Fiscal Agent Agreement, which are made conditions precedent to the issuance of any such Parity Bonds:

(A) The aggregate principal amount of the Bonds and all Parity Bonds issued may not exceed \$16,000,000.

(B) The City and the District are in compliance with all covenants set forth in the Fiscal Agent Agreement.

(C) The issuance of such Parity Bonds will have been duly authorized pursuant to the Act and all applicable laws, and the issuance of such Parity Bonds will have been provided for by a supplement to the Fiscal Agent Agreement (a “Supplemental Agreement”).

(D) The Fiscal Agent will have received the following documents, all of such documents dated or certified, as the case may be, as of the date of delivery of such Parity Bonds by the Fiscal Agent:

(1) a certified copy of the resolution authorizing the issuance of such Parity Bonds and the approval of the Supplemental Agreement pursuant to which such Parity Bonds are to be issued;

(2) an Officer's Certificate of the City on behalf of the District authorizing the authentication and delivery of such Parity Bonds;

(3) an opinion of Bond Counsel to the effect that (a) the District has the right and power under the Act to execute and deliver the Fiscal Agent Agreement and all Supplemental Agreements thereto, and the Fiscal Agent Agreement and all such Supplemental Agreements have been duly and lawfully approved, executed and delivered by the District, are in full force and effect and are valid and binding upon the District and enforceable in accordance with their terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization and other similar laws relating to the enforcement of creditors' rights), and no other authorization for the Fiscal Agent Agreement or such Supplemental Agreement is required; (b) the Fiscal Agent Agreement and such Supplemental Agreement create the valid pledge which they purport to create of the Special Taxes as provided in the Fiscal Agent Agreement and such Supplemental Agreement, subject to the application thereof to the purposes and on the conditions permitted by the Fiscal Agent Agreement and such Supplemental Agreement; (c) such Parity Bonds are valid and binding special obligations of the District, enforceable in accordance with their terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization and other similar laws relating to the enforcement of creditors' rights) and the terms of the Fiscal Agent Agreement and all Supplemental Agreements thereto and entitled to the benefits of the Fiscal Agent Agreement and all such Supplemental Agreements, and such Parity Bonds have been duly and validly authorized and issued in accordance with the Act (or other applicable laws) and the Fiscal Agent Agreement and all such Supplemental Agreements; and (d) the issuance of the Parity Bonds will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds and, if then applicable, the Bonds or the exemption from State of California personal income taxation of interest on the Bonds;

(4) an Officer's Certificate certifying that:

(a) The City has received a certificate from one or more Tax Consultants which, when taken together, certify that as of the date of calculation which will be no earlier than 60 days prior to the date of issuance of such Parity Bonds the aggregate Maximum Annual Special Tax that may be levied on all Developed Property and Updated Property within the District (excluding any Assessor's Parcel of Developed Property or Updated Property for which the payment of Special Taxes as of the date of calculation are delinquent) in any Fiscal Year by the District pursuant to the Act and the applicable resolutions and ordinances of the District equals (y) at least 1.10 times the amount required to pay Debt Service during the applicable Bond Year on all Outstanding Bonds plus (z) Minimum Annual Administrative Expense Requirement payable during such Bond Year; and

(b) the City has received an Appraisal with a date of value no earlier than 90 days preceding the Closing Date of the Parity Bonds indicating that following the issuance of the Parity Bonds:

(i) the aggregate value of all Developed Property within the District will be at least three times the Public Lien Amount;

(ii) for each common ownership of Undeveloped Property that will be subject to the Special Tax to pay debt service on the Bonds, the aggregate value of all such Undeveloped Property under such common ownership will be at least three times the Public Lien Amount apportioned to such properties; and



(iii) the value of each Assessor's Parcel of Undeveloped Property that will be subject to the Special Tax to pay debt service on the Bonds will be at least two times the Public Lien Amount apportioned to such parcel.

For purposes of the above, "Updated Property" means any assessor's parcel of taxable property for which a building permit was issued after June 1 preceding the first fiscal year after the issuance of the Bonds.

However, notwithstanding the above, nothing in the Fiscal Agent Agreement prevents the City from issuing and selling, pursuant to law, refunding bonds or other refunding obligations payable from and having a first lien upon the Special Taxes Revenues on a parity with the Outstanding Bonds and any Parity Bonds so long as the issuance of such refunding bonds or other refunding obligations results in a reduction in each Bond Year on the Annual Debt Service on the Bonds and any Parity Bonds when combined with the annual debt service on such refunding bonds or other refunding obligations following the issuance thereof. See APPENDIX C — "SUMMARY OF FISCAL AGENT AGREEMENT" herein.

## **THE COMMUNITY FACILITIES DISTRICT**

### **General Description of the District**

The District is located in the City, roughly bounded by Alessandro Boulevard to the north, Cactus Avenue to the south, Frederick Street to the west and Heacock Street to the east. The District consists of approximately 162 gross acres, of which approximately 128.87 acres are expected to be net developable (excluding the USPS Parcels located on approximately 12.40 acres for which Special Taxes have been prepaid).

The District consists of the partially developed Centerpointe Business Park, which includes industrial and warehouse/distribution uses. As of December 31, 2010, there were four completed buildings (Buildings 4, 5, 6 and 9) within the District (not including the USPS Parcels for which Special Taxes have been prepaid), and the Developer had signed leases totaling approximately 1,621,987 square feet, consisting of 100% of the available space within the completed four buildings in the District. (The Developer will not receive lease payments with respect to approximately 30,000 square feet of the Frazee Industries lease for the first 36 months of that lease; See Table 5 herein.) The four completed buildings in the District comprise Phases I and II of the Developer's four Phase development plan. Phases III and IV are not currently under construction and none of the space within Phases III and IV has been leased. See the subcaption "THE DEVELOPMENT AND PROPERTY OWNERSHIP — The Development Plan."

The City was incorporated as a general law city on December 3, 1984. The City Council is comprised of five members. The City is located in the western portion of the County, and is surrounded by Riverside, Perris, March Air Reserve Base, Lake Perris and Gilman Springs Road to the east.

### **Description of Authorized Facilities**

The facilities for the District to be financed from Bond proceeds (the "Facilities") include all or a portion of design, construction, indirect costs and administration relating to street improvements including curb, gutter, and sidewalks, signing and striping, traffic signals, street lighting, local drainage improvements, median landscaping, electric utility improvements and appurtenant structures and facilities associated with the Centerpointe Business Park.. All of the public infrastructure for the development of the District has been completed. The Bond proceeds will be used to reimburse the Developer for a portion of the public infrastructure benefiting the industrial and warehouse/distribution uses within the District.

**TABLE 1  
COMMUNITY FACILITIES DISTRICT NO. 4 — INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY  
CONSTRUCTION COSTS OF THE FACILITIES**

<i>Facilities</i>	<i>Estimated Actual Costs</i>
<b>Hard Costs:</b>	
Cactus Avenue	\$ 2,763,665
Frederick Street to Graham Street	
Graham Street to Heacock Street	
Brodiaea Avenue	2,838,358
Frederick Street to Graham Street	
Graham Street to Heacock Street	
Graham Street	383,644
Joy Street	597,549
Gilbert Street	561,937
Rebecca Street	351,211
Box Culvert (Heacock/Brodiaea)	<u>817,674</u>
<b>Subtotal Hard Costs</b>	<b>\$ 8,314,038</b>
<b>Soft Costs:</b>	
Civil Engineering	
Street Improvements	\$ 483,000
Traffic Signals	38,410
Construction Staking	167,354
Landscape Architect	6,112
Fullmer Management Services	433,356
Plan Check/Permits	1,248,491
Project Management	261,071
Soil Testing	<u>41,049</u>
<b>Subtotal Soft Costs</b>	<b>\$ 2,678,843</b>
<b>Subtotal Hard and Soft Costs</b>	<b>\$ 10,992,881</b>
<b>Eligible Dry Utilities Costs</b>	<u>549,644</u>
<b>Total Facilities Costs</b>	<b>\$ 11,542,525</b>

Source: The Developer.

**Coverage from Developed Property**

The Developer, as the owner of all taxable property within the District, is the sole taxpayer within the District. See the subcaption “SPECIAL RISK FACTORS—Concentration of Ownership/Reliance on Success of the Centerpointe Business Park” herein. As of December 31, 2010, there were four completed buildings (Buildings 4, 5, 6 and 9) within the District (not including the USPS Parcels for which Special Taxes have been prepaid), and the Developer had signed leases totaling approximately 1,621,987 square feet, consisting of 100% of the available space within the completed four buildings in the District. (The Developer will not receive lease payments with respect to approximately 30,000 square feet of the Frazee Industries lease for the first 36 months of that lease; See Table 5 herein.) The four completed buildings in the District comprise Phases I and II of the Developer’s four Phase development plan. Phases III and IV are not currently under

construction and none of the space within Phases III and IV has been leased. See the subcaption “THE DEVELOPMENT AND PROPERTY OWNERSHIP — The Development Plan.”

As a result, the Bonds have been sized so that the Maximum Annual Special Tax for parcels categorized as Developed Property as of December 31, 2010, which includes only Developed Property with completed buildings which were 100% leased as of December 31, 2010 (including the approximately 30,000 square feet of the Frazee lease under which the Developer will not receive lease payments for the first 36 months of that lease), produces at least 110% of Maximum Annual Debt Service on all Outstanding Bonds. However, Parity Bonds may be issued if certain conditions precedent are met, including the conditions that (i) Maximum Special Taxes that may be levied on all taxable property within the District (excluding any taxable property delinquent in the payment of Special Taxes as of the date of calculation) in any Fiscal Year equals at least 110% of debt service on the Bonds and any Parity Bonds plus projected administrative expenses of the District, and (ii) Maximum Special Taxes that may be levied on Developed Property on which the construction of structures suitable for industrial or warehouse use have been completed (excluding any taxable property delinquent in the payment of Special Taxes as of the date of calculation) equals at least 100% of debt service on the Bonds and any Parity Bonds plus projected administrative expenses of the District. See the subcaption “SOURCES OF PAYMENT FOR THE BONDS — Parity Bonds.”

The following table shows debt service coverage on the Bonds (including sinking fund redemptions but assuming that there are no optional redemptions or mandatory redemptions from Special Tax Prepayments), from Maximum Special Taxes from Developed Property (net of the Minimum Annual Administrative Expense Requirement) and from Maximum Special Taxes from all Taxable Property (net of the Minimum Annual Administrative Expense Requirement).

**TABLE 2  
COMMUNITY FACILITIES DISTRICT NO. 4 — INFRASTRUCTURE OF THE CITY OF MORENO VALLEY  
DEBT SERVICE COVERAGE FROM DEVELOPED PROPERTY AND ALL TAXABLE PROPERTY  
BASED ON DEVELOPMENT STATUS AS OF DECEMBER 31, 2010**

Period Ending	Total Debt Service on the Bonds <sup>(1)*</sup>	Maximum Special Taxes from Developed Property <sup>(2)</sup>	Less Minimum Annual Administrative Expense Requirement	Maximum Net Special Taxes from Developed Property <sup>(2)</sup>	Coverage Ratio from Maximum Net Special Taxes from Developed Property*	Maximum Net Special Taxes from all Taxable Property <sup>(2)</sup>	Less Minimum Annual Administrative Expense Requirement	Maximum Net Special Taxes from all Taxable Property <sup>(2)</sup>	Coverage Ratio from Maximum Net Special Taxes from all Taxable Property*
2011	--	\$ 602,171	\$ 30,000	\$ 572,171	--	\$ 1,080,052	\$30,000	\$ 1,050,052	--
2012	\$ 530,450	614,214	30,600	583,614	1.10	1,101,653	30,600	1,071,053	2.02
2013	530,450	626,499	31,212	595,287	1.12	1,123,687	31,212	1,092,475	2.06
2014	530,450	639,028	31,836	607,192	1.14	1,146,160	31,836	1,114,324	2.10
2015	535,450	651,809	32,473	619,336	1.16	1,169,083	32,473	1,136,610	2.12
2016	545,250	664,845	33,122	631,723	1.16	1,192,465	33,122	1,159,343	2.13
2017	554,650	678,142	33,785	644,357	1.16	1,216,314	33,785	1,182,530	2.13
2018	568,650	691,705	34,461	657,244	1.16	1,240,641	34,461	1,206,180	2.12
2019	581,650	705,539	35,150	670,389	1.15	1,265,454	35,150	1,230,304	2.12
2020	588,900	719,650	35,853	683,797	1.16	1,290,763	35,853	1,254,910	2.13
2021	605,488	734,043	36,570	697,473	1.15	1,316,578	36,570	1,280,008	2.11
2022	616,025	748,724	37,301	711,423	1.15	1,342,909	37,301	1,305,608	2.12
2023	625,025	763,698	38,047	725,651	1.16	1,369,768	38,047	1,331,720	2.13
2024	638,125	778,972	38,808	740,164	1.16	1,397,163	38,808	1,358,355	2.13
2025	655,025	794,552	39,584	754,967	1.15	1,425,106	39,584	1,385,522	2.12
2026	665,425	810,443	40,376	770,067	1.16	1,453,608	40,376	1,413,232	2.12
2027	679,625	826,652	41,184	785,468	1.16	1,482,681	41,184	1,441,497	2.12
2028	691,300	843,185	42,007	801,177	1.16	1,512,334	42,007	1,470,327	2.13
2029	706,350	860,048	42,847	817,201	1.16	1,542,581	42,847	1,499,733	2.12
2030	719,450	877,249	43,704	833,545	1.16	1,573,432	43,704	1,529,728	2.13
2031	735,600	894,794	44,578	850,216	1.16	1,604,901	44,578	1,560,323	2.12
2032	749,475	912,690	45,470	867,220	1.16	1,636,999	45,470	1,591,529	2.12
2033	765,175	930,944	46,379	884,564	1.16	1,669,739	46,379	1,623,360	2.12
2034	778,175	949,563	47,307	902,256	1.16	1,703,134	47,307	1,655,827	2.13
2035	793,475	968,554	48,253	920,301	1.16	1,737,197	48,253	1,688,943	2.13
2036	810,738	987,925	49,218	938,707	1.16	1,771,940	49,218	1,722,722	2.12
2037	829,625	1,007,684	50,203	957,481	1.15	1,807,379	50,203	1,757,177	2.12
2038	844,800	1,027,837	51,207	976,631	1.16	1,843,527	51,207	1,792,320	2.12
2039	861,263	1,048,394	52,231	996,163	1.16	1,880,397	52,231	1,828,167	2.12
2040	878,675	1,069,362	53,275	1,016,087	1.16	1,918,005	53,275	1,864,730	2.12
2041	896,700	1,090,749	54,341	1,036,408	1.16	1,956,365	54,341	1,902,025	2.12
<b>TOTAL</b>	<b>\$20,511,439</b>	<b>\$25,519,664</b>	<b>\$1,271,382</b>	<b>\$24,248,280</b>		<b>\$45,772,015</b>	<b>\$1,271,382</b>	<b>\$44,500,634</b>	

\* Preliminary, subject to change.  
 (1) Interest on the Bonds is capitalized through September 1, 2011.  
 (2) Based on the development status of the taxable property in the District as of December 31, 2010.

Table 3 below sets forth the projected Fiscal Year 2011-12 Special Tax Levy, based upon development status as of December 31, 2010. Developed Property is projected to be responsible for 100% of such projected Fiscal Year 2011-12 Special Tax Levy while Undeveloped Property is not expected to be levied.

**TABLE 3  
COMMUNITY FACILITIES DISTRICT NO. 4 — INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY  
PROJECTED FISCAL YEAR 2011-12 SPECIAL TAX LEVY  
BASED ON DEVELOPMENT STATUS  
AS OF DECEMBER 31, 2010**

	<i>Square Feet of Land Area</i>	<i>Projected Fiscal Year 2011-12 Special Tax Levy<sup>(2)*</sup></i>	<i>Percentage of Projected Fiscal Year 2011-12 Special Tax Levy*</i>
Developed Property <sup>(1)</sup>			
Building No. 4	1,430,946	\$280,751.60	45.7%
Building No. 5	381,586	74,867.17	12.2
Building No. 6	1,061,557	208,277.48	33.9
Building No. 9	<u>255,697</u>	<u>50,167.75</u>	<u>8.2</u>
Total	3,129,786 <sup>(1)</sup>	\$614,064.00	100.0%

<sup>(1)</sup> Does not include USPS Parcels, for which Special Taxes have been prepaid.

<sup>(2)</sup> Based on the development status of the taxable property in the District as of December 31, 2010.

Source: Special Tax Consultant.

### **Direct and Overlapping Debt**

The ability of the Developer or future owners of land within the District to pay the Special Taxes could be affected by the existence of other taxes and assessments imposed upon the property. Certain of these taxes relate to direct and overlapping tax and assessment debt. As of December 31, 2010, the Special Tax Consultant and the City were not aware of any direct or overlapping indebtedness within the District, other than the Bonds. However, new community facilities districts and/or special assessment districts could be formed in the future encompassing all or a portion of the property within the District; and such districts or the agencies that formed them could issue bonds and levy additional special taxes or assessments.

### **Estimated Appraised Value-to-Lien Ratio**

The estimated appraised value-to-lien ratio for the taxable property within the District based on the \$65,500,000 appraised value estimated by the Appraiser as of December 31, 2010 and the \$8,060,000\* principal amount of the outstanding Bonds results in an estimated appraised value-to-lien ratio of approximately 8.13\*-to-1 for the District as a whole. However, the value-to-lien ratio for Developed Property only, based on the appraised value by the appraiser of \$58,000,000 for the Developed Property within the District as of December 31, 2010 and assuming the entire amount of the Bonds is allocated to the Developed Property, results in a value-to-lien ratio for Developed Property of 7.20\*-to-1. Because all of the taxable property within the District is owned by the Developer, the Appraiser determined the “bulk sales value” of the taxable property within the District. In determining the bulk sales value, the Appraiser assumed that all of the improved property within the District would be sold to a single buyer, and all of the unimproved property within the District would be sold to a single buyer. The Appraiser did not determine the market value of individual parcels. However, each fiscal year the Assessor of the County assesses the value of each taxable

\* Preliminary, subject to change.

parcel within the County. For fiscal year 2010-11, the Assessor of the County assessed the value of the taxable property within the District of \$101,827,166.

Table 4A below demonstrates the assessed value-to-lien ratio of each parcel of Developed Property assuming the entire amount of the Bonds is allocated to the Developed Property based on each parcel's share of the projected fiscal year 2011-12 Special Tax levy. Table 4B below demonstrates the assessed value-to-lien ratio of each parcel of taxable property within the District assuming the Bonds are allocated proportionately based on each parcel's fiscal year 2011-12 Maximum Special Tax levy.

However, since the Developer owns all of the taxable property within the District, if the Developer were to become delinquent in the payment of all its Special Taxes, and all the taxable property were sold at or near the same time, the assessed values of the individual parcels may overstate such parcels' value sold in bulk, and the bulk sales value of the taxable property within the District may more accurately reflect such parcels' true value. See "THE DEVELOPMENT AND PROPERTY OWNERSHIP — Appraisal" and APPENDIX B — "Appraisal Report" for more information regarding the methodology utilized by the Appraiser

**TABLE 4A**  
**CITY OF MORENO VALLEY**  
**COMMUNITY FACILITIES DISTRICT NO. 4-INFRASTRUCTURE**  
**ASSESSED VALUE-TO-LIEN RATIO**  
**DEVELOPED PROPERTY ONLY**  
**BASED ON FISCAL YEAR 2011-12 SPECIAL TAX**

<b>Parcel</b>	<b>Building No. <sup>(1)</sup></b>	<b>APN</b>	<b>Current Acres</b>	<b>Current Taxable Land Area ( in square feet)</b>	<b>Estimated Total Share of Bonds <sup>(2)*</sup></b>	<b>Estimated Fiscal Year 2010-11 Assessed Value <sup>(3)</sup></b>	<b>Estimated Assessed Value-to-Lien Ratio *</b>
4	4	297-170-067	32.85	1,430,946	\$3,685,052.20	\$42,703,833	11.59
5	5	297-170-068	8.76	381,586	982,681.61	11,409,126	11.61
6	6	297-170-069	24.37	1,061,557	2,733,780.97	31,452,056	11.50
9	9	297-170-072	5.87	255,697	658,485.22	7,036,899	10.69
<b>Total:</b>			<b>71.85</b>	<b>3,129,786</b>	<b>\$8,060,000.00</b>	<b>\$92,601,914</b>	<b>11.49</b>

\* Preliminary, subject to change.

(1) Excludes the USPS Parcels, for which Special Taxes have been prepaid.

(2) Allocation of the Bonds based on the projected fiscal year 2011-12 Special Tax levy. Special Taxes are not expected to be levied on Undeveloped Property.

(3) Since the Developer owns all of the taxable property within the District, if the Developer were to become delinquent in the payment of all its Special Taxes, and all the taxable property were sold at or near the same time, the assessed values of the individual parcels may overstate such parcels' value sold in bulk, and the bulk sales value of the taxable property within the District may more accurately reflect such parcels' true value. See "THE DEVELOPMENT AND PROPERTY OWNERSHIP — Appraisal" and APPENDIX B — "Appraisal Report" for more information regarding the methodology utilized by the Appraiser.

Source: Special Tax Consultant.

**TABLE 4B**  
**CITY OF MORENO VALLEY**  
**COMMUNITY FACILITIES DISTRICT NO. 4-INFRASTRUCTURE**  
**ASSESSED VALUE-TO-LIEN RATIO**  
**ALL TAXABLE PROPERTY**  
**BASED ON FISCAL YEAR 2011-12 MAXIMUM SPECIAL TAX**

<b>Building No.<sup>(1)</sup></b>	<b>APN</b>	<b>Current Acres</b>	<b>Current Taxable Land Area (in square feet)</b>	<b>Estimated Total Share of Bonds<sup>(2)*</sup></b>	<b>Estimated Fiscal Year 2010-11 Assessed Value<sup>(3)</sup></b>	<b>Estimated Assessed Value-to-Lien Ratio</b>
Building No. 1	297-170-064	4.25	185,130	\$ 265,810.47	\$ 572,968	2.16
Building No. 2	297-170-065	4.54	197,762	283,947.55	612,065	2.16
Building No. 3	297-170-005	8.73	380,279	546,006.26	2,907,284	5.32
Building No. 3	297-170-066	8.78	382,457	549,133.44	1,183,687	2.16
Building No. 4	297-170-067	32.85	1,430,946	2,054,558.57	42,703,833	20.78
Building No. 5	297-170-068	8.76	381,586	547,882.86	11,409,126	20.82
Building No. 6	297-170-069	24.37	1,061,557	1,524,188.21	31,452,056	20.64
Building No. 7	297-170-078	6.71	292,288	419,668.40	904,618	2.16
Building No. 9	297-170-072	5.87	255,697	367,130.88	7,036,899	19.17
Building No. 10	297-170-075	8.80	383,328	550,384.03	1,117,585	2.03
Building No. 10	297-170-076	7.65	333,234	478,458.84	972,362	2.03
Building No. 11	297-170-027	7.56	329,314	472,830.49	954,683	2.02
<b>Totals:</b>		<b>128.87</b>	<b>5,613,578</b>	<b>\$8,060,000.00</b>	<b>\$101,827,166</b>	<b>12.63</b>

\* Preliminary, subject to change.

(1) Excludes the USPS Parcels, for which Special Taxes have been prepaid.

(2) Allocation of the Bonds based on the fiscal year 2011-12 Maximum Special Tax. However, as shown in Table 4A above, Special Taxes are not expected to be levied on Undeveloped Property in fiscal year 2011-12. See Table 4A above for the allocation of Bonds to the Developed Property within the District based on the projected fiscal year 2011-12 Special Tax levy. May not add up due to rounding.

(3) Since the Developer owns all of the taxable property within the District, if the Developer were to become delinquent in the payment of all its Special Taxes, and all the taxable property were sold at or near the same time, the assessed values of the individual parcels may overstate such parcels' value sold in bulk, and the bulk sales value of the taxable property within the District may more accurately reflect such parcels' true value. See "THE DEVELOPMENT AND PROPERTY OWNERSHIP — Appraisal" and APPENDIX B — "Appraisal Report" for more information regarding the methodology utilized by the Appraiser.

Source: Special Tax Consultant.



**Aerial Photo of District**

Below is an aerial photo of the District.

[INSERT AERIAL PHOTO]

## THE DEVELOPMENT AND PROPERTY OWNERSHIP

*Except for the information under the subcaptions “— Appraisal” and “— Market Absorption Study,” the Developer has provided the information in this section.*

*The information herein regarding ownership of property in the District has been included because it is considered relevant to an informed evaluation of the Bonds. The inclusion in this Official Statement of information related to the existing owner of all of the property within the District should not be construed to suggest that the Bonds, or the Special Taxes that will be used to pay the Bonds, are recourse obligations of such property owner. A property owner may sell or otherwise dispose of land within the District or a development or any interest therein at any time.*

*No assurance can be given that the proposed development within the District will occur as described below. Actual construction of improvements is as described below under the captions “—The Development Plan” and “—Infrastructure Requirements and Construction Status.” No assurance can be given that development of the land within the District will continue to completion, or that it will occur in a timely manner or in the configuration or intensity described herein, or that the Developer will retain ownership of any of the land within the District. However, the Bonds have been sized to produce at least 110% debt service coverage from property within the District with completed buildings, as described herein.*

*The Bonds and the Special Taxes are not personal obligations of any landowners and, in the event that a landowner defaults in the payment of the Special Taxes, the District may proceed with judicial foreclosure but has no direct recourse to the assets of any landowner other than the property upon which the Special Tax is levied. The Bonds are secured solely by the Special Taxes and other amounts pledged under the Fiscal Agent Agreement. See the caption “SOURCES OF PAYMENT FOR THE BONDS” and “SPECIAL RISK FACTORS” herein.*

### **General Description and Location of the District**

The City encompasses approximately 49 square miles of land area in western Riverside County. The City is immediately east of the City of Riverside, approximately 66 miles east of the City of Los Angeles, approximately 48 miles northeast of the City of Irvine and approximately 100 miles north of the City of San Diego. Geographically, the City is bordered by three low-lying mountain ranges, the March Air Reserve Base and Lake Perris State Park. The City is situated at the junction of two major highways, California State Highway 60 (the Moreno Valley Freeway) and Interstate 215.

The District consists of approximately 162 gross acres, of which approximately 128.87 acres are expected to be net developable (excluding the USPS Parcels located on approximately 12.40 acres for which Special Taxes have been prepaid). The District is located in the City, roughly bounded by Alessandro Boulevard to the north, Cactus Avenue to the south, Frederick Street to the west and Heacock Street to the east. The District consists of the Centerpointe Business Park, which, as of December 31, 2010, consists of 1,621,987 square feet of completed industrial and warehouse/distribution space located on approximately 71.85 acres and approximately 57.02 acres of undeveloped finished lots planned to be developed into approximately 1,188,295 square feet of industrial and warehouse/distribution uses. Due to current economic conditions, the Developer does not have a current time line for the completion of development of the undeveloped, finished lots within the District. When the Developer determines that market conditions warrant speculative development or a build-to-suit lease or build/purchase opportunity arises, then the Developer will consider moving forward with the construction of one or more of the buildings planned for the undeveloped, finished lots within the District.

All of the public infrastructure for the development of the District has been completed. The Bond proceeds will be used to reimburse the Developer for a portion of the public infrastructure benefiting the industrial and warehouse/distribution uses within the District. See Table 1.

### **The Developer**

The developer of Centerpointe Business Park is Ridge Moreno Valley, LLC, a Delaware limited liability company (the “Ridge Moreno Valley”), and Ridge Moreno Valley II, LLC, a Delaware limited liability company (the “Ridge Moreno Valley II,” and, together with Ridge Moreno Valley, the “Developer”). Ridge Moreno Valley and Ridge Moreno Valley II are both single member LLCs, the sole member of each such LLC is Ridge 191, LLC, a Delaware limited liability company. The members of Ridge 191, LLC are Ridge HMAN Investors, LLC, a Delaware limited liability company (“Ridge HMAN”), and HVP Egdird Investments, LLC, a Delaware limited liability company. The sole member of Ridge HMAN Investors, LLC is Ridge Property Trust, a Maryland real estate investment trust (“Ridge”).

The sole member of HVP Egdird Investments, LLC is Heitman Value Partners LLC (“Heitman”). Heitman is a multi-national real estate investment management firm with approximately \$21.3 billion in assets under management. Heitman focuses on three areas of real estate (1) direct investments in real estate, both in the U.S. and Europe, (2) investments in publicly traded securities, REITs, REOCs and other real estate companies in the U.S., Europe and Asia and (3) origination and servicing of debt secured by real estate. Heitman offers investment products and services within each of these disciplines. Heitman’s 240 employees own 50% of the firm. Heitman is headquartered in Chicago, with offices in Los Angeles, Minneapolis, London, Frankfurt, Luxembourg, Warsaw, Tokyo and Russia. Under the operating agreement for Ridge 191, LLC, Ridge HMAN is the managing member, owning a 20% membership interest and Heitman is an investment member, owning an 80% membership interest.

Ridge is a privately held real estate investment trust with ongoing industrial development in the United States and Mexico. Ridge is based in Chicago, Illinois and has regional offices across the United States and Mexico. Ridge is a provider of industrial real estate services and is partnered with Prudential Real Estate Investors, the real estate investment management business of Prudential Financial. Ridge offers a full-service platform of services including acquisition and development of greenfield sites, investment in value-enhancing projects and brownfield redevelopment, in-house property management and corporate build-to-suit solutions. As of December 31, 2010, Ridge had more than 9.2 million square feet of industrial space completed and nearly 30 million square feet under development.

Ridge Moreno Valley II was formed in 2007 to develop, own and operate Building 6 in Phase I of the Development. Ridge 191, LLC is the sole member of Ridge Moreno Valley II.

### **The Development Plan**

The Developer owns all of the taxable property within the District (other than the USPS Parcels for which Special Taxes have been prepaid) and pursuant to the Developer’s current business plan, anticipates maintaining ownership of the property within the District for the foreseeable future and leasing such property to various industrial tenants.

Centerpointe Business Park is being developed in four phases, which will consist of eleven buildings (excluding the USPS Parcels for which Special Taxes have been prepaid).

Phase I consists of one parcel (Building 6 on the Site Map) totaling approximately 24.37 net acres, on which there has been constructed a warehouse/distribution facility totaling approximately 532,926 square feet of space. This building has been constructed and is currently leased to Minka Lighting.

Phase II consists of three parcels totaling approximately 47.48 net acres consisting of three completed buildings for light industrial and warehouse/distribution uses. Phase II has been completed and contains approximately 1,089,061 square feet of space for light industrial and warehouse/distribution uses. One warehouse/distribution facility (Building 9 on the Site Map) totaling approximately 130,002 square feet of space for light industrial and warehouse/distribution uses is currently leased to ResMed. One warehouse/distribution facility (Building 5 on the Site Map) totaling approximately 180,043 square feet of space for light industrial and warehouse/distribution uses is currently leased to Frazee Industries. One warehouse/distribution facility (Building 4 on the Site Map) totaling approximately 779,016 square feet of space for light industrial and warehouse/distribution uses is currently leased to Harbor Freight Tools. The USPS building (Building 8) was also constructed during Phase II.

Phase III consists of five parcels of undeveloped finished lots for development totaling approximately 33.01 net acres. The Developer expects Phase III to contain approximately 678,762 square feet of space. The Developer anticipates starting construction on Phase III as market conditions warrant. Based on current market conditions, the Developer does not have a time frame for the development of Phase III at this time. None of the property in Phase III is currently developed and leased. However, one undeveloped parcel in Phase III is being leased to Harbor Freight Tools for trailer storage.

Phase IV consists of three parcels of undeveloped finished lots totaling approximately 24.01 net acres. The Developer expects Phase IV to contain approximately 509,533 square feet of space. The Developer anticipates starting construction on Phase IV as market conditions warrant. Based on current market conditions, the Developer does not have a time frame for the development of Phase IV at this time. None of the property in Phase IV is currently leased.

The Developer plans to lease the property within the District (other than the USPS Parcels for which Special Taxes have been prepaid) to various tenants and hold the property for investment. The leases vary as to term of lease, pricing, and other business terms. As of December 31, 2010, the Developer had signed leases totaling approximately 1,621,987 square feet in Phase I and Phase II of the Development within the District, consisting of 100% of the available space within the completed buildings in Phase I and Phase II (including the approximately 30,000 square feet of the Frazee lease under which the Developer will not receive lease payments for the first 36 months of that lease). Phases III and IV are not currently under construction and none of the space within Phases III and IV has been leased.

Table 5 below describes the current leasing status and tenant information as of December 31, 2010. Please see the Site Map of the District on the following page for a description of the Centerpointe Business Park project and the general locations of the development phases shown on Table 6.

[INSERT SITE MAP]

**TABLE 5  
COMMUNITY FACILITIES DISTRICT NO. 4 — INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY  
SUMMARY OF LEASING/TENANT STATUS  
(As of December 31, 2010)**

<i>Tenant</i>	<i>Building No.</i>	<i>Use</i>	<i>Building Size (in Square Feet)</i>	<i>Building Completion Date</i>	<i>Initial Lease Term (in Years)</i>	<i>Option</i>	<i>Initial Rent Start Date</i>	<i>Status</i>
<b>Phase I</b>								
Mimka Lighting	6	Warehouse/Distribution	<u>532,926</u>		7 years, 4 months	1 five year option.	2/1/2007	Lease executed, 100% leased out
<b>Total Leased Phase I</b>			532,926					
<b>Total Available Phase I<sup>(1)</sup></b>			0					
Harbor Freight Tools	4	Warehouse/Distribution	779,016		127 months	2 five year options.	6/1/2011	Lease executed, 100% leased out
Frazee Industries	5	Warehouse/Distribution	180,043		120 months	2 five year options.	4/16/2010	Lease executed, 100% leased out <sup>(3)</sup>
ResMed	9	Warehouse/Distribution	<u>130,002</u>		Extended to October 20, 2014	2 three year options.	7/22/2008, amended November 19, 2010	Lease executed, 100% leased out
<b>Total Leased Phase II</b>			1,089,061					
<b>Total Available Phase II</b>			0					
<b>Phase III</b>								
	1	Warehouse/Distribution	80,862					Construction TBD <sup>(2)</sup>
	2	Warehouse/Distribution	106,702					Construction TBD <sup>(2)</sup>
	3	Warehouse/Distribution	391,231					Construction TBD <sup>(2)</sup>
	7A	Warehouse/Distribution	49,994					Construction TBD <sup>(2)</sup>
	7B	Warehouse/Distribution	<u>49,973</u>					Construction TBD <sup>(2)</sup>
<b>Total Leased Phase III</b>			678,762					
<b>Total Available Phase III</b>			0					
<b>Phase IV</b>								
	10	Warehouse/Distribution	353,869					Construction TBD <sup>(2)</sup>
	11	Business Park/Office	<u>155,664</u>					Construction TBD <sup>(2)</sup>
<b>Total Leased Phase IV</b>			509,533					
<b>Total Available Phase IV</b>			0					
<b>TOTAL SQ. FT.<sup>(1)</sup></b>			2,810,282					
<b>TOTAL SQ. FT. LEASED</b>			1,621,987					

<sup>(1)</sup> Excludes the USPS Parcels for which all of the Special Taxes have been prepaid and discharged in full.

<sup>(2)</sup> The Developer anticipates starting construction on Phase III and Phase IV as market conditions warrant. Based on current market conditions, the Developer does not have a time frame for the development of Phase III and Phase IV at this time. None of the property in Phase III and Phase IV is currently leased.

<sup>(3)</sup> The Developer will not receive lease payments with respect to approximately 30,000 square feet of the Frazee lease for the first 36 months of that lease.  
Source: Developer.

## **Infrastructure Requirements and Construction Status**

The facilities to be funded by the District are generally offsite public infrastructure improvements. These improvements include streets, street lights, traffic signals, median landscaping, drainage improvements, electric utilities and appurtenant facilities required for the orderly development of the property within the District. The Developer has completed buildings 4, 5, 6, 8 and 9 consisting of 1,621,987 square feet of space (excluding Building 8) and all the associated off-site infrastructure improvements for the entire project, including the undeveloped parcels within the District. There are eight remaining parcels for development that are expected to have 1,188,295 square feet of space for light industrial uses.

As of December 31, 2010, all public improvements necessary to complete the Development within the District, including all public improvements to be funded with Bond proceeds, are complete.

## **Developer's Financing Plan**

The Developer has completed Phase I and Phase II of the construction within the District, including all the associated off-site infrastructure improvements for the entire project. Phase I and Phase II are currently 100% leased out. See Table 5.

In order to complete Phase I and Phase II within the District, the Developer obtained a construction loan from Bank of America, N.A., a national banking association (as the successor by merger to LaSalle Bank, the original lending institution to the Developer), and participating lenders (collectively, the "Construction Lender"), pursuant to a Construction Loan Agreement dated as of June 6, 2006 and amended by eight amendments to the Construction Loan Agreement (as amended, the "Construction Loan Agreement").

Additionally, the Developer refinanced a portion of the development within the District by obtaining permanent financing for Building 6 (the "Minka Building") through a loan from the Fireman's Fund Insurance Company, a California corporation, that matures on May 10, 2012 in the amount of \$24.6 million of which \$24,070,444 was outstanding as of August 31, 2010.

The original Construction Loan Agreement with the Construction Lender covered site improvements and buildings costs for buildings 4, 5, 6, 8 and 9, site improvements associated with buildings 1, 2, 3 and 7 (onsite improvements and vertical construction to be financed from another source), and site improvements associated with 24.01 acres in Phase IV (onsite improvements and vertical construction to be financed with another source). Building 8 and an adjoining parking lot parcel (collectively, the USPS Parcels, located on approximately 12.40 acres) was sold to the USPS, and in connection with that sale all Special Taxes for that parcel were prepaid and discharged in full. However, after obtaining permanent financing for the Minka Building, the Minka Building was released from the Construction Loan Agreement. The Construction Loan Agreement currently matures on January 8, 2012.

Based on the current leasing status within the District, the Developer expects to operate the development and repay all of its outstanding indebtedness in a timely manner. The Developer anticipates starting construction on Phase III and Phase IV as market conditions warrant. Based on current market conditions, the Developer does not have a time frame for the development of Phase III and Phase IV at this time. The completion of the development of Phase III and Phase IV would require the Developer to obtain additional financing for Phase III and Phase IV in an approximate amount of not less than \$41.6 million. There can be no assurance that the Developer will have timely access to additional sources of funds which will be necessary to complete (or even begin) Phase III and Phase IV within the District. However, the Bonds have been sized so that the Maximum Annual Special Tax for Assessor's Parcels categorized as Developed Property as of December 31, 2010, which includes only Developed Property with completed buildings, produces at least 110% of Maximum Annual Debt Service on all Outstanding Bonds. See "THE COMMUNITY FACILITIES DISTRICT — Coverage from Developed Property."

## Status of Land Use Approvals

The Developer recorded Parcel Map No. 32326, August 15, 2006. Parcel Map No. 32326 lies within the District and comprises 9 parcels all of which have received Site Development Plan approval and are entitled as such, with the exception of Parcel 7, which presently has a plan submittal pending. Parcel 3 has been revised to include the adjoining property (referred to as parcel 3a) and therefore will need entitlements for that plan. This revision to Parcel 3 has required Tentative Parcel Map 35838 to merge the property and has been submitted along with the site plan. The parcels immediately abutting Joy Street (referred to as Building 10) have the same requirements as Parcel 3 and 3a and may be merged under Tentative Parcel Map 35837 which is currently being reviewed and considered by the City, pending further action by the Developer. The northeast corner of Cactus Avenue and Frederick Street has not been master planned as of this date. Various conditions remain for the approval of the final parcel maps regarding Parcel 3, 3a and the parcels relating to Building 10. Both Parcels 3 and 3a and Building 10 are currently zoned Light Industrial (LI). Parcel 11 is zoned Business Park (BP). It is the Developer's current intention to have Parcel 7 re-zoned to Light Industrial (LI).

## Appraisal

The following information regarding ownership of property in the District included in the Appraisal has been included because it is considered relevant to an informed evaluation of the Bonds. The inclusion in this Official Statement of information related to the Developer should not be construed to suggest that the Bonds, or the Special Taxes that will be used to pay the Bonds, are recourse obligations of the Developer or future property owners within the District. A property owner may sell or otherwise dispose of land within the District or a development or any interest therein at any time. Development may also be abandoned at any time.

To arrive at the value of the property within the District and subject to the Special Taxes, for its highest and best use (as defined in the Appraisal), the Appraiser utilized the sales comparison approach, the cost approach, income capitalization approach and a discounted cash flow analysis. Based on the foregoing, and based on other qualifications stated in the Appraisal, the Appraiser concluded that the bulk sales value of the fee simple interest for the property within the District and subject to the Special Taxes, as of December 31, 2010, is \$65,500,000, which includes a bulk sales value for the improved property within the District of \$58,000,000 and a bulk sales value for the unimproved property within the District of \$7,500,000. This value is based upon a number of assumptions and limiting conditions contained in the Appraisal as set forth in APPENDIX B. See APPENDIX B — "APPRAISAL REPORT" herein.

The Appraisal contains the bulk sales value of the taxable property within the District, as opposed to the market value of the individual parcels of taxable property, because the Developer currently owns all of the taxable property within the District. The bulk sales value is the appropriate value when appraising a portfolio of properties owned by a single owner or related owners like, for example, all of the taxable property within the District. The Appraiser did not determine the market value of individual parcels. Apportioning a value on a pro rata basis to a single building within the District based only on the bulk sales value will in most cases understate the lone building's individual market value (known as its "retail value"), since there is an economies-of-scale discount built into the value of the bulk that would not be contained in the value of the single component building. In this case, the sum is worth less than the piecemeal value of its parts if they are considered individually. Conversely, the sum of the individual retail values in a portfolio of properties, if simply added up, will in most cases overstate the true value of the bulk. In the opinion of the Appraiser, the value of the discrete parts of the taxable property within the District is likely more than the value of the taxable property within the District as a whole.

No assurance can be given that the assumptions made by the Appraiser will, in fact, be realized, and, as a result, no assurance can be given that the property within the District could be sold at the appraised values included in the Appraisal. See APPENDIX B — "APPRAISAL REPORT" herein.



## **Market Absorption Study**

A Market Absorption Study for the District has been prepared by the Market Absorption Consultant, Empire Economics, Inc., Capistrano Beach, California. The Market Absorption Study is included herein as APPENDIX H. For purposes of the Market Absorption Study, the term “absorption” is utilized to represent a building that is fully constructed and occupied by final-users/tenants. The Market Absorption Consultant has estimated, based upon the analysis of relevant demographic and economic conditions in the City, the number and proportion of leaseable space in the District that can be expected to be marketed annually using the estimated absorption schedules for each of the use types. The Market Absorption Study examines the two remaining phases of development (Phase I and Phase II having already been completed and fully leased) and provides a separate absorption schedule for each as follows:

Phase III. The approximately 33.0 net acres within Phase III are expected to have approximately 678,762 square feet of space for light industrial uses to be absorbed as follows: 5.0 acres in 2013, 15.0 acres in 2014 and the remaining 13.8 acres in 2015.

Phase IV. The approximately 24.0 net acres within Phase IV are expected to have 509,533 square feet of space for light industrial uses (estimated building space; one parcel is not yet entitled) are expected to be absorbed as follows: 6.2 acres in 2015 and the remaining 17.8 acres in 2016. The absorption of the light industrial and warehouse-distribution products in the District are expected to be absorbed at a rate of some 14.3 acres per year during the 2013 to 2016 time period on average. The absorption starts at a rate of 5 acres in 2013, rises to 15.0 acres in 2014, attains peak levels of 19.2 acres in 2015, and then diminishes, as various parcels build-out, with the final 17.8 acres being absorbed in 2016. See APPENDIX H—“MARKET ABSORPTION STUDY” herein.

Since there is not any current construction activity, and the Developer does not presently have any definitive plans for commencing new construction, the Market Absorption Consultant estimated the market-entry date for the undeveloped property within the District based upon the Market Absorption Consultant’s expectations regarding future economic and industrial market conditions. The Developer may add or delete additional space in the future based on changes to the development plan at the time of construction.

The Market Absorption Study assumes that the Developer takes into consideration the relatively high level of Special Taxes for the properties in the District (approximately \$8,381 per acre per year) in setting lease rates and/or sale prices so that the buildings/land are competitively priced in the marketplace. The Market Absorption Study is also based upon the assumption that lease rates and/or sales prices are competitive in the marketplace; otherwise the time required for absorption would be substantially longer. The Market Absorption Study assumes that all required governmental approvals will be obtained, that there are no physical impediments to construction such as earthquakes and hazardous waste, that the public infrastructure necessary to develop will be provided in a timely manner, that the Developer will respond to market conditions with products that are competitively priced and have the features and amenities desired by purchasers, that the Developer and its lenders have sufficient financial strength to fund adequately the projects and that they have sufficient cash flow reserves to supplement their cash flow positions in the event that adverse economic or market conditions occur. The actual absorption of units could be adversely affected if one or more of the foregoing assumptions is not realized. See APPENDIX H—“MARKET ABSORPTION STUDY” herein.

## **History of Property Tax Payments; Loan Defaults; Litigation; Bankruptcy**

The Developer represents that neither the Developer nor any of its affiliates has ever been delinquent or defaulted in the payment of any *ad valorem* property tax, special assessment or special taxes included within the boundaries of (i) one of its developments, (ii) a community facilities district, or (iii) an assessment district, and that it is not currently in default of payment of any taxes or assessments on its property in the District. The Developer further represents neither the Developer nor any of its affiliates is in payment default on any loans,

lines of credit or other obligation to repay borrowed money related to the development in the District, which payment default would in any way materially and adversely affect its ability to develop its property in the District or pay Special Taxes when due.

The Developer also represents that there is no litigation pending against the Developer or any of its affiliates (based on proper service of process having been accomplished) or, to its actual knowledge, threatened against the Developer or any of its affiliates, which if successful, would materially adversely affect the Developer's ability to complete its projects within the District within the budget and timeframe described herein or to pay the Special Taxes or ad valorem tax obligations on the parcels that the Developer or any of its affiliates owns within the District prior to delinquency.

The Developer also represents that no proceedings are pending (based upon service of process being accomplished) or, to the Developer's actual knowledge, threatened, in which the Developer or any of its affiliates may be adjudicated as bankrupt or discharged from any and all of its debts or obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts, and there are no current plans for the Developer or any of its affiliates to file for bankruptcy.

Unless and until ownership within the District is diversified, the receipt of all of the Special Taxes is dependent on the willingness and the ability of the Developer, or its successors, to pay the Special Taxes prior to delinquency. See "SPECIAL RISK FACTORS — Concentration of Ownership" herein.

### **SPECIAL RISK FACTORS**

The purchase of the Bonds involves a high degree of investment risk and, therefore, the Bonds are not appropriate investments for many types of investors. The following is a discussion of certain risk factors which should be considered, in addition to other matters set forth herein, in evaluating the investment quality of the Bonds. This discussion does not purport to be comprehensive or definitive. The occurrence of one or more of the events discussed herein could adversely affect the ability or willingness of property owners in the District to pay their Special Taxes when due. Such failures to pay Special Taxes could result in the inability of the City to make full and punctual payments of debt service on the Bonds. In addition, the occurrence of one or more of the events discussed herein could adversely affect the value of the property in the District. See "— Land Values" and "— Limited Secondary Market" below.

#### **Concentration of Ownership**

All of the taxable land within the District is owned by the Developer. The Developer, pursuant to its current business plan, intends to maintain ownership of the project indefinitely. Accordingly, the Developer is responsible for 100% of the Special Tax Levy. The lack of diversity in the obligation to pay Special Taxes represents a risk to Bondowners. The receipt of the Special Taxes is dependent on the willingness and the ability of the Developer to pay the Special Taxes when due and could be adversely affected by the Developer's inability to lease property within the District due to commercial downturns or high vacancy rates. The only significant asset of the Developer is its ownership interest in the Centerpointe Business Park project. Failure of the Developer, or any successor, to pay the annual Special Taxes when due could result in a default in payments of the principal of, and interest on, the Bonds, when due.

The willingness of the Developer, or any successor, to pay the Special Taxes will be dependent in large measure on the success of the Centerpointe Business Park project. No assurance can be made that the Developer, or its successors, will complete construction and development on the remaining undeveloped parcels within the District. See "—Failure to Develop Properties" below. No assurance can be given that the Developer and any future landowners within the District will continue to pay Special Taxes in the future or that they will be able to pay such Special Taxes on a timely basis. See "—Bankruptcy and Foreclosure"

below, for a discussion of certain limitations on the District's ability to pursue judicial proceedings with respect to delinquent parcels.

### **Limited Obligations**

The Bonds and interest thereon are not payable from the general funds of the City. Except with respect to the Special Taxes, neither the credit nor the taxing power of the District or the City is pledged for the payment of the Bonds or the interest thereon, and, except as provided in the Fiscal Agent Agreement, no Owner of the Bonds may compel the exercise of any taxing power by the District or the City or force the forfeiture of any City or District property. The principal of, premium, if any, and interest on the Bonds are not a debt of the City or a legal or equitable pledge, charge, lien or encumbrance upon any of the City's property or upon any of the City's income, receipts or revenues, except the Special Taxes and other amounts pledged under the Fiscal Agent Agreement.

### **Insufficiency of Special Taxes**

Under the Rate and Method, the annual amount of Special Tax to be levied on each taxable parcel in the District will generally be based on whether such parcel is categorized as Undeveloped Property or as Developed Property. However, the Bonds have been sized to produce at least 110% debt service coverage from Developed Property within the District which all have completed buildings, as described herein. See Table 5A. See APPENDIX A — "RATE AND METHOD OF APPORTIONMENT," "SOURCES OF PAYMENT FOR THE BONDS — Rate and Method of Apportionment" and "THE DEVELOPMENT AND PROPERTY OWNERSHIP" herein.

If for any reason property within the District becomes exempt public property, including, but not limited to, schools, streets, parks, storm drainage facilities, urban runoff facilities and fire and police stations, subject to the limitations of the maximum authorized rates, the Special Tax will be reallocated to the remaining taxable properties within the District. This would result in the owners or tenants of such property paying a greater amount of the Special Tax and could have an adverse impact upon the ability and willingness of the owners or tenants of such property to pay the Special Tax when due.

**Moreover, if a substantial portion of land within the District became exempt from the Special Tax because of public ownership, or otherwise, the maximum Special Tax which could be levied upon the remaining property within the District might not be sufficient to pay principal of and interest on the Bonds when due and a default could occur with respect to the payment of such principal and interest.**

### **Natural Disasters**

The District, like all California communities, may be subject to unpredictable seismic activity, fires, floods or other natural disasters. The District is not located within an Alquist Priolo earthquake fault zone. However, the District, like most of Southern California, is located in a seismically active area. Seismic activity from faults represents potential risk for damage to buildings, roads, bridges and property within the District in the event of an earthquake. There is significant potential for destructive ground-shaking during the occurrence of a major seismic event. In addition, land susceptible to seismic activity may be subject to liquefaction during the occurrence of such an event.

With respect to the proposed commercial/industrial development, the "Geotechnical Investigation – Centerpointe Business Park – Graham Street and Cactus Avenue" dated August 15, 2005, the "Geotechnical Investigation – Centerpointe Business Park; Buildings A through D – NEC Frederick Street and Cactus Avenue" dated June 21, 2006 and "Addendum to Geotechnical Investigation – Graham Street and Brodiaea Avenue" dated June 21, 2006 prepared by Southern California Geotechnical Inc. provided recommendations to be taken into the design, construction and grading considerations and Grading Guide Specifications to be

incorporated into project specifications. All three reports concluded that the proposed development was considered feasible from a geotechnical standpoint.

The “Final Compaction Report, Centerpointe Business Park Phase 2: Building 5” prepared by Southern California Geotechnical, dated July 27, 2007, concluded that the fill soils observed in the footing excavations were expected to provide adequate support for the new structure and their observations and testing of the identified utility trenches, pavement subgrades, and pavement base course indicated that these areas, where tested by personnel were suitably prepared and grading activities were conducted in accordance with recommendations presented in the original geotechnical report and local building codes. This report also concluded that new pavement subgrades were expected to provide adequate support for the new pavement sections and the anticipated traffic loads.

In the event of a severe earthquake, fire, flood or other natural disaster, there may be significant damage to both property and infrastructure in the District. As a result, the Developer or future property owners may be unable or unwilling to pay the Special Taxes when due. In addition, the value of land in the District could be diminished in the aftermath of such a natural disaster, reducing the resulting proceeds of foreclosure sales in the event of delinquencies in the payment of the Special Taxes.

The District has a Zone X FEMA designation per community panel number 060574002513. Zone X is the flood insurance rate zone that corresponds to areas outside the 1% annual chance of flood plain (areas of 1% annual chance of sheet flow flooding where average depths are less than one foot, areas of 1% annual chance of stream flooding where the contributing drainage area is less than one square mile, or areas protected from the 1% annual chance of flood by levels). No base flood elevations or depths are shown within Zone X. Flood insurance is not required.

### **Hazardous Substances**

The value of a parcel may be substantially reduced due to the presence of a hazardous substance. In general, the owners and operators of a parcel may be required by law to remedy conditions of the parcel relating to releases or threatened releases of hazardous substances. The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as “CERCLA” or the “Superfund Act,” is the most well-known and widely applicable of these laws, but California laws with regard to hazardous substances are also stringent and similar. Under many of these laws, the owner or operator is obligated to remedy a hazardous substance condition of property whether or not the owner or operator has anything to do with creating or handling the hazardous substance. The effect, therefore, should any of the taxed parcels be affected by a hazardous substance, is to reduce the marketability and value of the parcel by the costs of remedying the condition, because the purchaser, upon becoming owner, will become obligated to remedy the condition just as is the seller.

Further, it is possible that liabilities may arise in the future with respect to any of the parcels resulting from the existence, currently, on the parcel of a substance presently classified as hazardous but which has not been released or the release of which is not presently threatened, or may arise in the future resulting from the existence, currently on the parcel of a substance not presently classified as hazardous but which may in the future be so classified. Further, such liabilities may arise not simply from the existence of a hazardous substance but from the method of handling it. All of these possibilities could significantly affect the value of a parcel that is realizable upon a delinquency.

The Developer is not aware of any hazardous substances located within the District.

## **Parity Taxes, Special Assessments and Land Development Costs**

The Special Taxes and any penalties thereon will constitute a lien against the lots and parcels of land on which they will be annually imposed until they are paid. Such lien is on a parity with all special taxes and special assessments levied by other agencies and is co-equal to and independent of the lien for general property taxes regardless of when they are imposed upon the same property. The Special Taxes have priority over all existing and future private liens imposed on the property, except for liens or security interests held by the Federal Deposit Insurance Corporation or other federal agencies. See the subcaption “—Bankruptcy and Foreclosure” below.

**Neither the City nor the District has control over the ability of other entities and districts to issue indebtedness secured by special taxes or assessments payable from all or a portion of the property within the District. In addition, the landowners within the District may, without the consent or knowledge of the City, petition other public agencies to issue public indebtedness secured by special taxes or assessments. Any such special taxes or assessments may have a lien on such property on a parity with the Special Taxes and could reduce the estimated value-to-lien ratios for property within the District described herein.**

## **Disclosures to Future Purchasers**

The willingness or ability of an owner of a parcel to pay the Special Tax even if the value of the parcel is sufficient may be affected by whether or not the owner was given due notice of the Special Tax authorization at the time the owner purchased the parcel, was informed of the amount of the Special Tax on the parcel should the Special Tax be levied at the maximum tax rate and the risk of such a levy and, at the time of such a levy, has the ability to pay it as well as pay other expenses and obligations. The City has caused a notice of the Special Tax lien to be recorded in the Office of the Recorder for the County against each parcel. While title companies normally refer to such notices in title reports, there can be no guarantee that such reference will be made or, if made, that a prospective purchaser or lender will consider such Special Tax obligation in the purchase of a property within the District or lending of money thereon.

The Act requires the subdivider (or its agent or representative) of a subdivision to notify a prospective purchaser or long-term lessor of any lot, parcel, or unit subject to a Mello-Roos special tax of the existence and maximum amount of such special tax using a statutorily prescribed form. California Civil Code Section 1102.6b requires that in the case of transfers other than those covered by the above requirement, the seller must at least make a good faith effort to notify the prospective purchaser of the special tax lien in a format prescribed by statute. Failure by an owner of the property to comply with the above requirements, or failure by a purchaser or lessor to consider or understand the nature and existence of the Special Tax, could adversely affect the willingness and ability of the purchaser or lessor to pay the Special Tax when due.

## **Special Tax Delinquencies**

Under provisions of the Act, the Special Taxes, from which funds necessary for the payment of principal of, and interest on, the Bonds are derived, are customarily billed to the properties within the District on the *ad valorem* property tax bills sent to owners of such properties. The Act currently provides that such Special Tax installments are due and payable, and bear the same penalties and interest for non-payment, as do *ad valorem* property tax installments.

See the subcaption “SOURCES OF PAYMENT FOR THE BONDS—Proceeds of Foreclosure Sales,” for a discussion of the provisions which apply, and procedures which the City is obligated to follow under the Fiscal Agent Agreement, in the event of delinquencies in the payment of Special Taxes. See “—Bankruptcy and Foreclosure” below, for a discussion of the policy of the Federal Deposit Insurance

Corporation regarding the payment of special taxes and assessments and limitations on the City's ability to foreclosure on the lien of the Special Taxes in certain circumstances.

### **Non-Cash Payments of Special Taxes**

Under the Act, the City Council may reserve to itself the right and authority to allow the owner of any taxable parcel to tender a Bond in full or partial payment of any installment of the Special Taxes or the interest or penalties thereon. A Bond so tendered is to be accepted at par and credit is to be given for any interest accrued thereon to the date of the tender. Thus, if Bonds can be purchased in the secondary market at a discount, it may be to the advantage of an owner of a taxable parcel to pay the Special Taxes applicable thereto by tendering a Bond. Such a practice would decrease the cash flow available to the City to make payments with respect to other Bonds then outstanding; and, unless the practice was limited by the City, the Special Taxes paid in cash could be insufficient to pay the debt service due with respect to such other Bonds. In order to provide some protection against the potential adverse impact on cash flows which might be caused by the tender of Bonds in payment of Special Taxes, the Fiscal Agent Agreement includes a covenant pursuant to which the City will not authorize owners of taxable parcels to satisfy Special Tax obligations by the tender of Bonds unless the City shall have first obtained a report of an Independent Financial Consultant certifying that doing so would not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on all Outstanding Bonds when due.

### **Payment of the Special Tax is not a Personal Obligation of the Owners**

An owner of a taxable parcel is not personally obligated to pay the Special Tax. Rather, the Special Tax is an obligation which is secured only by a lien against the taxable parcel. If the value of a taxable parcel is not sufficient, taking into account other liens imposed by public agencies, to fully secure the Special Tax, the City has no recourse against the owner.

### **Land Values**

The value of the property within the District is a critical factor in determining the investment quality of the Bonds. If an owner of taxable property in the District is delinquent in the payment of Special Taxes, the City's only remedy is to commence foreclosure proceedings in an attempt to obtain funds to pay the Special Taxes. Reductions in property values due to a downturn in the economy, physical events such as earthquakes, fires, floods or military or terrorist activities, stricter land use regulations, delays in development or other events will adversely impact the security underlying the Special Taxes. See the subcaption "THE COMMUNITY FACILITIES DISTRICT—Estimated Appraised Value-to-Lien Ratio" herein.

The Appraiser has estimated, on the basis of certain definitions, assumptions and limiting conditions contained in the Appraisal, that as of December 31, 2010 the bulk sales value of the land and buildings within the District was \$65,500,000.

The Appraisal is based on the assumptions as stated in APPENDIX C—"APPRAISAL REPORT." The Appraisal does not reflect any possible negative impact which could occur by reason of future slow or no growth voter initiatives, any potential limitations on development occurring due to time delays, an inability of the Developer to obtain any needed development approval or permit, the presence of hazardous substances within the District, the listing of endangered species or the determination that habitat for endangered or threatened species exists within the District, or other similar situations.

Prospective purchasers of the Bonds should not assume that the land within the District could be sold for the appraised amounts described above at a foreclosure sale for delinquent Special Taxes. In arriving at the estimates of value, the Appraiser assumes that any sale will be unaffected by undue stimulus and will occur following a reasonable marketing period, which is not always present in a foreclosure sale. See the Appraisal

Summary included as APPENDIX C for a description of other assumptions made by the Appraiser and for the definitions and limiting conditions used by the Appraiser.

No assurance can be given that, should a parcel with delinquent Special Taxes be foreclosed upon and sold for the amount of the delinquency, any bid will be received for such property or, if a bid is received, that such bid will be sufficient to pay all delinquent Special Taxes. See the subcaption “SOURCES OF PAYMENT FOR THE BONDS—Proceeds of Foreclosure Sales” herein.

### **Failure to Develop Properties**

Undeveloped or partially developed land is inherently less valuable than developed land and provides less security to the Bondowners should it be necessary for the City to foreclose on the property due to the nonpayment of Special Taxes. The failure to complete the development in the District as planned, or substantial delays in the completion of the development due to litigation or other causes may reduce the value of the property within the District and increase the length of time during which Special Taxes will be payable from undeveloped property, and may affect the willingness and ability of the owners of taxable property within the District to pay the Special Taxes when due.

Land development is subject to comprehensive federal, State and local regulations. Approval is required from various agencies in connection with the layout and design of developments, the nature and extent of improvements, construction activity, land use, zoning, school and health requirements, as well as numerous other matters. There is always the possibility that such approvals will not be obtained or, if obtained, will not be obtained on a timely basis. Failure to obtain any such agency approval or satisfy such governmental requirements would adversely affect planned land development. Finally, development of land is subject to economic considerations.

The Bonds have been sized to produce at least 110% debt service coverage from Developed Property within the District which all have completed buildings, as described herein. See “THE DEVELOPMENT AND PROPERTY OWNERSHIP” herein. However, if Special Taxes on the property within the District currently classified as Developed Property is insufficient to pay debt service on the Bonds, the District would levy Special Taxes next on Undeveloped Property within the District. No assurance can be given that the development within the District will be fully completed. The Developer anticipates starting construction on Phase III and Phase IV as market conditions warrant. Based on current market conditions, the Developer does not have a time frame for the development of Phase III and Phase IV at this time. The completion of the development of Phase III and Phase IV would require the Developer to obtain additional financing. See the subcaption “THE DEVELOPMENT AND PROPERTY OWNERSHIP—Estimated Sources and Uses of Funds and Projected Cash Flow.”

The construction of the remaining development within the District is subject to the receipt of ministerial and discretionary approvals from a number of public agencies concerning the layout and design of the remaining development in Phase III and Phase IV of the development within the District, the nature and extent of the improvements, land use, health and safety requirements and other matters. The failure to obtain any such approval could adversely affect the remaining planned land development within the District. Moreover, there can be no assurance that remaining land development operations within the District will not be adversely affected by future governmental policies, including, but not limited to, governmental policies to restrict or control development.

Under current California law, it is generally accepted that proposed development is not exempt from future land use regulations until building permits have been properly issued and substantial work has been performed and substantial liabilities have been incurred in good faith reliance on such permits.

In the past, a number of communities in Southern California have placed on the ballot initiative measures intended to control the rate of future development. It is possible that future initiatives could be enacted, could become applicable to the remaining development within the District, and could negatively impact the ability of the current landowners or their successors to complete the remaining development. The application of future land use regulations to the remaining development could cause significant delays and cost increases in the completion of the development and could cause the land values on the undeveloped property within the District to decrease substantially from those estimated by the Appraiser.

There can be no assurance that remaining land development operations within the District will not be adversely affected by a future deterioration of the real estate market and economic conditions or future local, State and federal governmental policies relating to real estate development, the income tax treatment of real property ownership, the direct and indirect consequences of military and/or terrorist activities in this country or abroad, or the national economy. A slowdown of the development process and the absorption rate could adversely affect land values and reduce the ability or desire of the Developer to pay the annual Special Taxes. In that event, there could be a default in the payment of principal of, and interest on, the Bonds when due.

Bondowners should assume that any event that significantly impacts the ability to develop land in the District would cause the property values within the District to decrease substantially from those estimated by the Appraiser and could affect the willingness and ability of the owners of taxable property within the District to pay the Special Taxes when due.

### **Endangered Species**

During the last several years, there has been an increase in activity at the State and federal level related to the possible listing of certain plant and animal species found in the Southern California area as endangered species. An increase in the number of endangered species is expected to curtail development in a number of areas. The Developer is not aware of the existence of any plant or animal species which either the California Fish and Game Commission or the United States Fish and Wildlife Service has listed or has proposed for listing on the endangered species list located within the District. Notwithstanding this fact, new species are proposed to be added to the State and federal protected lists on a regular basis. Any action by the State or federal governments to protect species located on or adjacent to the property within the District could negatively impact the ability of an owner of the undeveloped land within the District, to complete the remaining development planned within the District. This, in turn, could reduce the likelihood of timely payment of the Special Taxes and would likely reduce the value of the land estimated by the Appraiser and the potential revenues available at a foreclosure sale for delinquent Special Taxes. See “—Failure to Develop Properties” and “—Land Values” below.

### **FDIC/Federal Government Interests in Properties**

The ability of the City to collect interest and penalties specified by the Act and to foreclose the lien of delinquent Special Taxes may be limited in certain respects with regard to parcels in which the FDIC, or other federal government entities such as Fannie Mae or Freddie Mac, has or obtains an interest.

In the case of FDIC, in the event that any financial institution making a loan which is secured by parcels is taken over by the FDIC and the applicable Special Tax is not paid, the remedies available to the City may be constrained. The FDIC’s policy statement regarding the payment of state and local real property taxes (the “Policy Statement”) provides that taxes other than ad valorem taxes which are secured by a valid lien in effect before the FDIC acquired an interest in a property will be paid unless the FDIC determines that abandonment of its interests is appropriate. The Policy Statement provides that the FDIC generally will not pay installments of non-ad valorem taxes which are levied after the time the FDIC acquires its fee interest, nor will the FDIC recognize the validity of any lien to secure payment except in certain cases where the Resolution Trust Corporation had an interest in property on or prior to December 31, 1995. Moreover, the Policy



Statement provides that, with respect to parcels on which the FDIC holds a mortgage lien, the FDIC will not permit its lien to be foreclosed out by a taxing authority without its specific consent, nor will the FDIC pay or recognize liens for any penalties, fines or similar claims imposed for the non-payment of taxes.

The FDIC has taken a position similar to that expressed in the Policy Statement in legal proceedings brought against Orange County, California in United States Bankruptcy Court and in Federal District Court. The Bankruptcy Court issued a ruling in favor of the FDIC on certain of such claims. Orange County appealed that ruling, and the FDIC cross-appealed. On August 28, 2001, the Ninth Circuit Court of Appeals issued a ruling favorable to the FDIC except with respect to the payment of pre-receivership liens based upon delinquent property tax.

The City is unable to predict what effect the application of the Policy Statement would have in the event of a delinquency with respect to parcels in which the FDIC has or obtains an interest, although prohibiting the lien of the FDIC to be foreclosed out at a judicial foreclosure sale would prevent or delay the foreclosure sale.

In the case of Fannie Mae and Freddie Mac, in the event a parcel of taxable property is owned by a federal government entity or federal government sponsored entity, such as Fannie Mae or Freddie Mac, or a private deed of trust secured by a parcel of taxable property is owned by a federal government entity or federal government sponsored entity, such as Fannie Mae or Freddie Mac, the ability to foreclose on the parcel or to collect delinquent Special Taxes may be limited. Federal courts have held that, based on the supremacy clause of the United States Constitution “this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.” In the absence of Congressional intent to the contrary, a state or local agency cannot foreclose to collect delinquent taxes or assessments if foreclosure would impair the federal government interest. This means that, unless Congress has otherwise provided, if a federal government entity owns a parcel of taxable property but does not pay taxes and assessments levied on the parcel (including Special Taxes), the applicable state and local governments cannot foreclose on the parcel to collect the delinquent taxes and assessments.

Moreover, unless Congress has otherwise provided, if the federal government has a mortgage interest in the parcel and the City wishes to foreclose on the parcel as a result of delinquent Special Taxes, the property cannot be sold at a foreclosure sale unless it can be sold for an amount sufficient to pay delinquent taxes and assessments on a parity with the Special Taxes and preserve the federal government’s mortgage interest. For a discussion of risks associated with taxable parcels within the District becoming owned by the federal government, federal government entities or federal government sponsored entities, see “— Insufficiency of the Special Taxes.”

The City’s remedies may also be limited in the case of delinquent Special Taxes with respect to parcels in which other federal agencies (such as the Internal Revenue Service and the Drug Enforcement Administration) have or obtain an interest.

### **Bankruptcy and Foreclosure**

Bankruptcy, insolvency and other laws generally affecting creditor’s rights could adversely impact the interests of owners of the Bonds in at least two ways. First, the payment of property owners’ taxes and the ability of the District to foreclose the lien of a delinquent unpaid Special Tax pursuant to its covenant to pursue judicial foreclosure proceedings may be limited by bankruptcy, insolvency or other laws generally affecting creditors’ rights or by the laws of the State relating to judicial foreclosure. See the subcaption “SOURCES OF PAYMENT FOR THE BONDS—Proceeds of Foreclosure Sales” herein. In addition, the prosecution of a

foreclosure could be delayed due to many reasons, including crowded local court calendars or lengthy procedural delays.

Secondly, the Bankruptcy Code might prevent moneys on deposit in the Special Tax Fund and the Reserve Fund from being applied to pay interest on the Bonds and/or to redeem Bonds if bankruptcy proceedings were brought by or against the current landowner or its successors and if the court found that any of such landowners had an interest in such moneys within the meaning of Section 541(a)(1) of the Bankruptcy Code.

Although a bankruptcy proceeding would not cause the Special Taxes to become extinguished, the amount and priority of any Special Tax lien could be modified if the value of the property falls below the value of the lien. If the value of the property is less than the lien, such excess amount could be treated as an unsecured claim by the bankruptcy court. In addition, bankruptcy of a property owner could result in a delay in procuring Superior Court foreclosure proceedings. Such delay would increase the likelihood of a delay or default in payment of the principal of, and interest on, the Bonds and the possibility of delinquent tax installments not being paid in full.

The various legal opinions to be delivered concurrently with the delivery of the Bonds (including Bond Counsel's approving legal opinion) will be qualified, as to the enforceability of the various legal instruments, by moratorium, bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

#### **No Acceleration Provision**

The Bonds do not contain a provision allowing for the acceleration of the Bonds in the event of a payment default or other default under the Bonds or the Fiscal Agent Agreement.

#### **Loss of Tax Exemption**

As discussed under the caption "TAX MATTERS," the interest on the Bonds could become includable in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds as a result of a failure of the City to comply with certain provisions of the Internal Revenue Code of 1986, as amended. Should such an event of taxability occur, the Bonds are not subject to early redemption and will remain outstanding to maturity or until redeemed under the optional redemption provisions of the Fiscal Agent Agreement.

#### **Limitations on Remedies**

Remedies available to the Owners of the Bonds may be limited by a variety of factors and may be inadequate to assure the timely payment of principal of and interest on the Bonds or to preserve the tax-exempt status of interest on the Bonds.

Bond Counsel has limited its opinion as to the enforceability of the Bonds and of the Fiscal Agent Agreement to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium, or other similar laws affecting generally the enforcement of creditors' rights, by equitable principles and by the exercise of judicial discretion. The lack of availability of certain remedies or the limitation of remedies may entail risks of delay, limitation or modification of the rights of the Owners of the Bonds.

## **Limited Secondary Market**

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that such Bonds can be sold for any particular price. Although the City and the Developer have committed to provide certain statutorily-required financial and operating information, there can be no assurance that such information will be available to Bondowners on a timely basis. See the caption "CONTINUING DISCLOSURE" herein. The failure to provide the required annual financial information does not give rise to monetary damages but merely an action for specific performance. Occasionally, because of general market conditions, lack of current information, or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Such prices could be substantially different from the original purchase price.

## **Proposition 218**

An initiative measure entitled the "Right to Vote on Taxes Act" (the "Initiative") was approved by the voters of the State at the November 5, 1996 general election. The Initiative added Article XIIC and Article XIID to the California Constitution. According to the "Title and Summary" of the Initiative prepared by the California Attorney General, the Initiative limits "the authority of local governments to impose taxes and property-related assessments, fees and charges." Provisions of the Initiative have been and will continue to be interpreted by the courts. The Initiative could potentially impact the Special Taxes otherwise available to the District to pay the principal of and interest on the Bonds as described below.

Among other things, Section 3 of Article XIIC states that "... the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge." The Act provides for a procedure, which includes notice, hearing, protest and voting requirements to alter the Rate and Method of Apportionment of an existing special tax. However, the Act prohibits a legislative body from adopting any resolution to reduce the rate of any special tax or terminate the levy of any special tax pledged to repay any debt incurred pursuant to the Act unless such legislative body determines that the reduction or termination of the special tax would not interfere with the timely retirement of that debt. On July 1, 1997, a bill was signed into law by the Governor of the State enacting Government Code Section 5854, which states that:

Section 3 of Article XIIC of the California Constitution, as adopted at the November 5, 1996, general election, shall not be construed to mean that any owner or beneficial owner of a municipal security, purchased before or after that date, assumes the risk of, or in any way consents to, any action by initiative measure that constitutes an impairment of contractual rights protected by Section 10 of Article I of the United States Constitution.

Accordingly, although the matter is not free from doubt, it is likely that the Initiative has not conferred on the voters the power to repeal or reduce the Special Taxes if such reduction would interfere with the timely retirement of the Bonds.

It may be possible, however, for voters or the District or the City acting as the legislative body of the District to reduce the Special Taxes in a manner which does not interfere with the timely repayment of the Bonds, but which does reduce the maximum amount of Special Taxes that may be levied in any year below the existing levels. Furthermore, no assurance can be given with respect to the future levy of the Special Taxes in amounts greater than the amount necessary for the timely retirement of the Bonds. Therefore, no assurance can be given with respect to the levy of special taxes for Administrative Expenses. Nevertheless, the District has covenanted that it will not initiate proceedings under the Act to reduce the maximum Special Tax rates on parcels of Developed Property within the District below the amounts which are necessary to provide the Special Tax Revenues in an amount equal to the estimated Administrative Expense on the then current Fiscal

Year plus an amount equal to one hundred ten percent (110%) of Maximum Annual Debt Service on the Outstanding Bonds. The District also has covenanted that, in the event an initiative is adopted which purports to reduce or otherwise alter the Maximum Rates, it will commence and pursue legal action in seeking to preserve its ability to comply with the foregoing covenant. However, no assurance can be given as to the enforceability of the foregoing covenants.

The interpretation and application of the Initiative will ultimately be determined by the courts with respect to a number of the matters discussed above, and it is not possible at this time to predict with certainty the outcome of such determination or the timeliness of any remedy afforded by the courts. See “—Limitations on Remedies” herein.

### **Ballot Initiatives**

Article XIII A, Article XIII B and Proposition 218 were adopted pursuant to measures qualified for the ballot pursuant to California’s constitutional initiative process. On March 6, 1995 in the case of *Rossi v. Brown*, the State Supreme Court held that an initiative can repeal a tax ordinance and prohibit the imposition of further such taxes and that the exemption from the referendum requirements does not apply to initiatives. From time to time, other initiative measures could be adopted by California voters. The adoption of any such initiative might place limitations on the ability of the State, the City or local districts to increase revenues or to increase appropriations or on the ability of the landowners within the District to complete the remaining development. See the subcaption “SPECIAL RISK FACTORS—Failure to Develop Properties” herein.

### **CONTINUING DISCLOSURE**

Pursuant to a Continuing Disclosure Agreement with the Fiscal Agent, as dissemination agent (the “Continuing Disclosure Agreement of the City”), the City, for and on behalf of the District, has agreed to provide, or cause to be provided, to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System for municipal securities disclosures, maintained on the Internet at <http://emma.msrb.org> (“EMMA”) for purposes of Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission (each, a “Repository”) certain annual financial information and operating data concerning the District. The Annual Report to be filed by the City for and on behalf of the District is to be filed not later than April 1 of each year, beginning April 1, 2012 and is to include audited financial statements of the City. The requirement that the City file its audited financial statements as a part of the Annual Report has been included in the Continuing Disclosure Agreement of the City solely to satisfy the provisions of Rule 15c2-12. The inclusion of this information does not mean that the Bonds are secured by any resources or property of the City other than as described hereinabove. See the caption “SOURCES OF PAYMENT FOR THE BONDS” and the subcaption “SPECIAL RISK FACTORS—Limited Obligations” herein. The City represents that the City has complied in all material respects with each of its previous undertakings with regard to Rule 15c2-12 to provide annual reports or notices of material events. The full text of the Continuing Disclosure Agreement of the City is set forth in APPENDIX D — “FORM OF CONTINUING DISCLOSURE AGREEMENT OF THE CITY OF MORENO VALLEY.”

To assist the Underwriter in complying with Rule 15c2-12(b)(5), the Developer will enter into a Continuing Disclosure Agreement with the Fiscal Agent, as dissemination agent (the “Continuing Disclosure Agreement of the Developer”) covenanting prior to the termination of the Continuing Disclosure Agreement of the Developer to provide an Annual Report not later than March 1 of each year beginning March 1, 2012 and a Semiannual Report not later than September 1 of each year, commencing September 1, 2011. The Annual Reports provided by the Developer will contain audited financial statements and the additional financial and operating data outlined in Section 4 of the Continuing Disclosure Agreement of the Developer, a form of which is attached in APPENDIX E — “FORM OF CONTINUING DISCLOSURE AGREEMENT OF THE DEVELOPER.” In addition to the information expressly required to be provided pursuant to the Continuing Disclosure Agreement of the Developer, the Developer is also required to provide such further information, if

any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading. The Developer has not previously entered into an undertaking with regard to Rule 15c2-12, but affiliates of the Developer have. The Developer represents that the affiliates of the Developer have complied in all material respects with each of their previous undertakings with regard to Rule 15c2-12 to provide annual reports or notices of material events.

The Continuing Disclosure Agreement of the Developer will inure solely to the benefit of the City, any Dissemination Agent, the Underwriter and owners or Beneficial Owners from time to time of the Bonds.

## **TAX MATTERS**

In the opinion of Best Best & Krieger LLP, San Diego, California, Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations. In the further opinion of Bond Counsel, interest on the Bonds is exempt from State of California personal income tax. Bond Counsel notes that, with respect to corporations, interest on the Bonds will be included as an adjustment in the calculation of alternative minimum taxable income, which may affect the alternative minimum taxable liability of such corporations.

Bond Counsel's opinion as to the exclusion from gross income for federal income tax purposes of interest on the Bonds is based upon certain representations of fact and certifications made by the District, the Underwriter and others and is subject to the condition that the District complies with all requirements of the Internal Revenue Code of 1986, as amended (the "Code") that must be satisfied subsequent to the issuance of the Bonds to assure that interest on the Bonds will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. The District has covenanted to comply with all such requirements.

Should the interest on the Bonds become includable in gross income for federal income tax purposes, the Bonds are not subject to early redemption as a result of such occurrence and will remain outstanding until maturity or until otherwise redeemed in accordance with the Fiscal Agent Agreement.

Bond Counsel's opinion may be affected by action taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Bonds. Bond Counsel has not undertaken to determine, or to inform any person, whether any such action or events are taken or do occur, or whether such actions or events may adversely affect the value or tax treatment of a Bond, and Bond Counsel expresses no opinion with respect thereto.

The Internal Revenue Service (the "IRS") has initiated an expanded program for auditing tax-exempt bond issues, including both random and targeted audits. It is possible that the Bonds will be selected for audit by the IRS. It is also possible that the market value of the Bonds might be affected as a result of such an audit (or by an audit of similar bonds).

Although Bond Counsel has rendered an opinion that interest on the Bonds is excluded from gross income for federal income tax purposes provided the District continues to comply with certain requirements of the Code, the accrual or receipt of interest on the Bonds may otherwise affect the tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status and other items of income or deductions. Bond Counsel expresses no opinion regarding any such consequences. Accordingly, all potential purchasers should consult their tax advisors before purchasing any of the Bonds.

## **LEGAL MATTERS**

The legal opinion of Best Best & Krieger LLP, San Diego, California, approving the validity of the Bonds in substantially the form set forth as APPENDIX F hereto, will be made available to purchasers at the time of original delivery. A copy of the legal opinion for the Bonds will be provided with each definitive bond. Certain legal matters will be passed upon for the City and the District by the City Attorney and for the District by Stradling Yocca Carlson & Rauth, a Professional Corporation, as Disclosure Counsel (“Disclosure Counsel”). Bond Counsel and Disclosure Counsel express no opinion to the Owners of the Bonds as to the accuracy, completeness or fairness of this Official Statement or other offering materials relating to the Bonds, and expressly disclaim any duty to advise the Owners of the Bonds as to matters related to the Official Statement.

## **LITIGATION**

No litigation is pending or threatened concerning the validity of the Bonds or the pledge of Special Taxes to repay the Bonds and a certificate of the City to that effect will be furnished to the Underwriter at the time of the original delivery of the Bonds. The City is not aware of any litigation pending or threatened which questions the existence of the District or the City or contests the authority of the City to levy and collect the Special Taxes or to issue and retire the Bonds.

## **NO RATING**

The City has not made and does not contemplate making application to any rating agency for the assignment of a rating of the Bonds.

## **UNDERWRITING**

The Bonds are being purchased by De La Rosa & Co. (the “Underwriter”). The Underwriter has agreed to purchase the Bonds at a price of \$\_\_\_\_\_ (being \$\_\_\_\_\_ aggregate principal amount thereof, less Underwriter’s discount of \$\_\_\_\_\_ and less original issue discount/plus original issue premium of \$\_\_\_\_\_). The purchase agreement relating to the Bonds provides that the Underwriter will purchase all of the Bonds if any are purchased. The obligation to make such purchase is subject to certain terms and conditions set forth in such purchase agreement, the approval of certain legal matters by counsel and certain other conditions.

The Underwriter may offer and sell the Bonds to certain dealers and others at prices lower than the offering price stated on the cover page hereof. The offering price may be changed from time to time by the Underwriter.

## **FINANCIAL INTERESTS**

The fees being paid to the Underwriter are contingent upon the issuance and delivery of the Bonds. A portion of the fees paid to the Financial Advisor, Bond Counsel and Disclosure Counsel is contingent upon the issuance and delivery of the Bonds. From time to time, Bond Counsel and Disclosure Counsel represent the Underwriter on matters unrelated to the Bonds.

## **PENDING LEGISLATION**

The City is not aware of any significant pending legislation which would have material adverse consequences on the Bonds or the ability of the City to pay the principal of and interest on the Bonds when due.

**ADDITIONAL INFORMATION**

The purpose of this Official Statement is to supply information to prospective buyers of the Bonds. Quotations and summaries and explanations of the Bonds and documents contained in this Official Statement do not purport to be complete, and reference is made to such documents for full and complete statements and their provisions.

The execution and delivery of this Official Statement by the Financial and Administrative Services Director of the City has been duly authorized by the City Council of the City acting in its capacity as the legislative body of the District.

CITY OF MORENO VALLEY FOR AND ON  
BEHALF OF COMMUNITY FACILITIES DISTRICT  
NO. 4 — INFRASTRUCTURE OF THE CITY OF  
MORENO VALLEY

By: \_\_\_\_\_  
Financial and Administrative Services Director

**APPENDIX A**

**AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT FOR  
COMMUNITY FACILITIES DISTRICT NO. 4 – INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY**

A Special Tax as hereinafter defined shall be levied on all Assessor's Parcels of Taxable Property in Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley ("CFD No. 4-I") and collected each Fiscal Year commencing in Fiscal Year 2010-11, in an amount determined by the City Council through the application of the appropriate Special Tax for "Developed Property," "Undeveloped Property," "Taxable Property Owner Association Property," and "Taxable Public Property" as described below. All of the real property in CFD No. 4-I shall be taxed for the purposes, to the extent and in the manner herein provided, except property defined as Exempt Property and subject to Section E below.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 4-I: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City, CFD No. 4-I or any designee thereof of complying with arbitrage rebate requirements including, but not limited to, any rebate obligation; the costs to the City, CFD No. 4-I or any designee thereof of complying with disclosure requirements of the City; and /or CFD No. 4-I associated with applicable federal and state securities laws and the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs to the City, CFD No. 4-I or any designee thereof related to any appeal of the Special Tax; the costs associated with the release of funds from an escrow or appeals account, including appraisal costs; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated by the CFD Administrator or advanced by the City or CFD No. 4-I for any other administrative purposes of CFD No. 4-I, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

**"Annual Special Tax Requirement"** means that amount required in any Fiscal Year for CFD No. 4-I to pay the sum of: (i) debt service on all Outstanding Bonds; (ii) periodic costs on the Bonds, including but not limited to, credit enhancement and rebate payments on the Bonds; (iii) Administrative Expenses; (iv) any amounts required to establish or replenish any reserve funds for all Bonds issued or to be issued by CFD No. 4-I; and (v) any amounts required for the acquisition or construction of facilities eligible under the Act, provided that the inclusion of such amount does not cause an increase in the levy of Special Taxes on Undeveloped Property. In arriving at the Annual Special Tax Requirement, the CFD Administrator shall take into account the reasonably anticipated delinquent Special Taxes based on the delinquency rate for Special Taxes levied in the previous Fiscal Year and shall give a credit for funds available to reduce the Special Tax levy.



“**Assessor’s Parcel**” means a parcel shown in an Assessor’s Parcel Map with an assigned Assessor’s Parcel Number (APN).

“**Assessor’s Parcel Map**” means an official map of the Assessor of the County designating parcels by Assessor’s Parcel Number.

“**Building Permit**” means a permit for new construction for a structure. For purposes of this definition, “Building Permit” shall not include permits for construction of perimeter fencing, parking lot, wet and dry utility improvements, screening, landscaping, site lighting, required site-related storm water improvements, or other such improvements not intended for occupancy, with the exception of a guard shack, or similar ancillary structure.

“**Bonds**” means any binding obligation including bonds or other debt (as defined in Section 53317(d) of the Act), whether in one or more series, issued by CFD No. 4-I under the Act.

“**CFD Administrator**” means the Special Districts Division Manager of the City of Moreno Valley, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

“**CFD No. 4-I**” means Community Facilities District No. 4 – Infrastructure of the City of Moreno Valley.

“**City**” means the City of Moreno Valley.

“**City Council**” means the City Council of the City, acting as the legislative body of CFD No. 4-I.

“**County**” means the County of Riverside.

“**Developed Property**” means all Assessor’s Parcels of Taxable Property for which Building Permits were issued on or before June 1 preceding the Fiscal Year for which Special Taxes are being levied.

“**Exempt Property**” means any property not subject to Special Tax as described under Section E, herein.

“**Final Map**” means a final map, parcel map, lot line adjustment, or other map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*) that creates individual lots for which building permits may be issued.

“**Fiscal Year**” means the period starting July 1 and ending on the following June 30.

“**Indenture**” means the indenture, fiscal agent agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“**Land Area**” means the square footage of land, excluding rights-of-way, as shown on the applicable Final Map or condominium map or if the square footage is not shown on said map, the square footage of an Assessor’s Parcel as shown on an Assessor’s Parcel Map. If the area is presented in acreage, then the square footage equals the acreage multiplied by 43,560 (square footage per acre). Exhibit 1, attached herein, provides an estimate of the taxable Land Area by Assessor’s Parcel.

“**Maximum Annual Special Tax**” means the maximum Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year on any Assessor’s Parcel.

“**Outstanding Bonds**” means all Bonds that are deemed to be outstanding under the Indenture.

“**Property Owner Association Property**” means, for each Fiscal Year, (i) any Assessor’s Parcel within the boundaries of CFD No. 4-I for which the owner of record, as determined from the County Assessor’s secured tax roll for the Fiscal Year in which the Special Tax is being levied, is a property owner’s association, including any master or sub-association, or (ii) any property located in a Final Subdivision that was recorded as of the January 1 preceding the Fiscal Year in which the Special Tax is being levied and which, as determined from such Final Subdivision, is or will be open space, a common area recreation facility, or a private street.

“**Proportionately**” means, for Developed Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Developed Property. For Undeveloped Property, “Proportionately” means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Undeveloped Property. The term “Proportionately” may similarly be applied to other categories of Taxable Property as listed in Section E below. Notwithstanding the above, Assessor’s Parcels that have been delinquent in paying their Special Taxes may be taxed disproportionately to cover the shortfall generated by their delinquency.

“**Public Property**” means, for each Fiscal Year, any Assessor’s Parcel within the boundaries of CFD No. 4-I that is (i) owned by, irrevocably offered or dedicated to the federal government, the State, the County, the City, or any local government or other public agency, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use; or (ii) encumbered by a public utility easement making impractical its use for any purpose other than that set forth in the easement.

“**Special Tax**” means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Developed Property and Undeveloped Property to fund the Annual Special Tax Requirement.

“**State**” means the State of California.

“**Taxable Property**” means all of the Assessor’s Parcels within the boundaries of CFD No. 4-I, which are not classified as Exempt Property from the Special Tax pursuant to law or Section E, herein, or for which the Special Tax obligation has been prepaid in full per Section G, herein.

“**Taxable Property Owner Association Property**” means Property Owner Association Property that is subject to the levy of the Special Tax pursuant to Section E below.

“**Taxable Public Property**” means Public Property that is subject to the levy of the Special Tax pursuant to Section E below.

“**Trustee**” means the trustee, fiscal agent, or paying agent under the Indenture.

“**Undeveloped Property**” means, for each Fiscal Year, all Taxable Property not classified as Developed Property, Taxable Property Owner Association Property, or Taxable Public Property.

## **B. CLASSIFICATION OF PROPERTIES**

Each Fiscal Year, all Property within CFD No. 4-I shall be classified as Developed Property, Undeveloped Property, Taxable Property Owner Property Association, Taxable Public Property or Exempt Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment determined pursuant to Sections C and D.

**C. SPECIAL TAX RATE**

**Maximum Annual Special Tax**

The Maximum Annual Special Tax for each Assessor's Parcel of Developed Property, Undeveloped Property, Taxable Property Owner Association Property and Taxable Public Property shall be \$0.1924 per square foot of Land Area for Fiscal Year 2010-11, and shall increase thereafter, commencing on July 1, 2011 and on July 1 of each Fiscal Year thereafter, by an amount equal to two percent (2%) of the Maximum Annual Tax for the previous Fiscal Year.

Once classified as Developed Property, a parcel may not be subsequently re-classified as Undeveloped Property.

**D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

Commencing with Fiscal Year 2010-11 and for each following Fiscal Year, the City Council shall levy the Special Tax until the amount of Special Taxes levied equals the Annual Special Tax Requirement. The Special Tax shall be levied each Fiscal Year as follows:

- Step 1 - The Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property at up to 100% of the applicable Maximum Annual Special Tax for Developed Property.
- Step 2 - If additional monies are needed to satisfy the Annual Special Tax Requirement, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property at up to 100% of the applicable Maximum Annual Special Tax for Undeveloped Property.
- Step 3 - If additional monies are needed to satisfy the Annual Special Tax Requirement, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Property Owner Association Property.
- Step 4 - If additional monies are needed to satisfy the Annual Special Tax Requirement, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property.

**E. EXEMPTIONS**

Provided that no such classification would reduce the Land Area of Taxable Property to less than 5,427,292 square feet, the CFD Administrator shall classify as Exempt Property: (i) Public Property; and (ii) Property Owner Association Property. Such minimum square footage shall be subject to reduction by the CFD Administrator should the Special Tax obligation for an Assessor's Parcel be paid off in full or in part per Section G, herein.

The CFD Administrator shall classify property as Exempt Property in the chronological order that such property qualifies to be classified as such.

All or any portion of an Assessor's Parcel in CFD No. 4-I that is transferred to a public agency or property owner's association that reduces the square footage of the total Land Area of Taxable Property to less than 5,427,292 square feet, or the minimum square footage as reduced by the CFD Administrator as specified above in this Section E, shall not be exempt from the Special Tax and shall instead require a prepayment of the Special Tax obligation for the excess portion of such Assessor's

Parcel pursuant to Section G below to eliminate the necessity of levying an annual Special Tax on such excess portion of such Assessor's Parcel. The full or partial prepayment of the Special Tax for such Assessor's Parcel shall occur prior to the transfer of the Assessor's Parcel to a public agency or property owner association.

In the event that the Special Tax obligation applicable to the excess portion of an Assessor's Parcel is not prepaid as specified in the preceding paragraph, Assessor's Parcels which cannot be classified as Exempt Property because such classification would reduce the Land Area of Taxable Property to less than 5,427,292 square feet, or the minimum square footage as reduced by the CFD Administrator as specified above in this Section E, will be classified as Taxable Public Property or Taxable Property Owner Association Property, as applicable, and will continue to be subject to Special Taxes accordingly. If the use of an Assessor's Parcel classified as Exempt Property changes so that such Assessor's Parcel is no longer classified as one of the uses that would make such Assessor's Parcel eligible to be classified as Exempt Property, such Assessor's Parcel shall cease to be classified as Exempt Property and shall be classified as Taxable Property.

**F. MANNER OF COLLECTION**

The Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 4-I may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor's Parcels as permitted by the Act.

**G. PREPAYMENT OF SPECIAL TAX**

The following definitions apply to Section G, herein.

“**CFD Public Facilities**” means those public facilities authorized to be financed by CFD No. 4- I.

“**CFD Public Facilities Costs**” means either \$12.5 million or such lower number as shall be determined either by (a) the CFD Administrator as sufficient to finance the CFD Public Facilities, or (b) shall be determined by the City Council concurrently with a covenant that it will not issue any more Bonds to be secured by Special Taxes levied under this Amended and Restated Rate and Method of Apportionment.

“**Construction Fund**” means the fund as identified in the Indenture, which is used to disburse funds to pay the cost and acquisition of public improvements funded with the bond proceeds or Special Taxes.

“**Future Facilities Costs**” means the CFD Public Facilities Costs minus: (a) the portion of the CFD Public Facilities Costs previously funded (i) from the proceeds of all previously issued Bonds, (ii) from interest earnings on the Construction Fund actually earned prior to the date of prepayment and (iii) directly from Special Tax revenues; and (b) the amount of the proceeds of all previously issued Bonds then on deposit in the Construction Fund.

“**Previously Issued Bonds**” means all Outstanding Bonds that have been issued prior to the date of the prepayment which will remain outstanding after the first interest and/or principal payment date following the current Fiscal Year, excluding Bonds to be redeemed at a later date with the proceeds of prior prepayments of Special Taxes.

## Prepayment of a Special Tax in Part or in Full

The Special Tax obligation applicable to an Assessor's Parcel may be prepaid at any time and the obligation of such Assessor's Parcel to pay any Special Tax may be fully or partially satisfied as described herein. The CFD Administrator may charge a reasonable fee for calculation of the Prepayment Amount as defined below.

### 1. Prepayment in Full

The Maximum Annual Special Tax obligation may be prepaid and permanently satisfied for any Assessor's Parcel. The Maximum Annual Special Tax obligation applicable to such Assessor's Parcel may be fully prepaid and the obligation of the Assessor's Parcel to pay the Special Tax permanently satisfied as described herein; provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Maximum Annual Special Tax obligation shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount of such Assessor's Parcel. The CFD Administrator may charge a reasonable fee for providing this figure.

The Prepayment Amount (defined below) shall be calculated as follows (capitalized terms as defined below):

	Bond Redemption Amount
plus	Redemption Premium
plus	Future Facilities Amount
plus	Defeasance Amount
plus	Prepayment Fees and Expenses
less	Reserve Fund Credit
less	<u>Capitalized Interest Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount (defined below) shall be calculated as follows:

1. Confirm that no Special Tax delinquencies apply to such Assessor's Parcel.
2. Compute the Maximum Annual Special Tax for the Assessor's Parcel to be prepaid.
3. Divide the Maximum Annual Special Tax computed pursuant to paragraph 2 by the sum of the total expected Maximum Annual Special Tax revenues that may be levied within CFD No. 4-I, excluding any Assessors Parcels for which the Maximum Annual Special Tax obligation has been previously prepaid.
4. Multiply the quotient computed pursuant to paragraph 3 by the principal amount of Outstanding Bonds to compute the amount of Previously Issued Bonds to be retired and prepaid (the "Bond Redemption Amount").
5. Multiply the Bond Redemption Amount computed pursuant to paragraph 4 by the applicable redemption premium, if any, on the Previously Issued Bonds to be redeemed (the "Redemption Premium").

6. If all the Bonds authorized to be issued have not been issued, compute the Future Facilities Costs.
7. Multiply the quotient computed pursuant to paragraph 3 by the amount determined pursuant to paragraph 6 to compute the amount of Future Facilities Costs to be allocated to such Assessor's Parcel (the "Future Facilities Amount").
8. Compute the amount needed to pay interest on the Bond Redemption Amount from the first bond interest and/or principal payment date following the current Fiscal Year until the earliest redemption date for the Previously Issued Bonds.
9. Determine the Special Taxes levied on the Assessor's Parcel in the current Fiscal Year which have not yet been paid.
10. Compute the amount the CFD Administrator reasonably expects to derive from the reinvestment of the Prepayment Amount less the Future Facilities Amount and the Prepayment Fees and Expenses (defined below) from the date of prepayment until the redemption date for the Previously Issued Bonds to be redeemed with the prepayment.
11. Add the amounts computed pursuant to paragraphs 8 and 9 and subtract the amount computed pursuant to paragraph 10 (the "Defeasance Amount").
12. The administrative fees and expenses of CFD No. 4-I are as calculated by the CFD Administrator and include the costs of computation of the prepayment, the costs to invest the prepayment proceeds, the costs of redeeming CFD No. 4-I Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the "Prepayment Fees and Expenses").
13. The reserve fund credit (the "Reserve Fund Credit") shall equal the lesser of: (a) the expected reduction in the reserve requirement (as defined in the Indenture), if any, associated with the redemption of Previously Issued Bonds as a result of the prepayment; or (b) the amount derived by subtracting the new reserve requirement (as defined in the Indenture) in effect after the redemption of Previously Issued Bonds as a result of the prepayment from the balance in the reserve fund on the prepayment date, but in no event shall such amount be less than zero. No Reserve Fund Credit shall be granted if the amount then on deposit in the reserve fund for the Previously Issued Bonds is below 100% of the reserve fund requirement (as defined in the Indenture).
14. If any capitalized interest for the Previously Issued Bonds will not have been expended at the time of the first interest and/or principal payment following the current Fiscal Year, a capitalized interest credit shall be calculated by multiplying the quotient computed pursuant to paragraph 3 by the expected balance in the capitalized interest fund after such first interest and/or principal payment (the "Capitalized Interest Credit").
15. The Maximum Annual Special Tax prepayment is equal to the sum of the amounts computed pursuant to paragraphs 4, 5, 7, 11 and 12, less the amounts computed pursuant to paragraphs 13 and 14 (the "Prepayment Amount").

16. From the Prepayment Amount, the amounts computed pursuant to paragraphs 4, 5, 11, 13, and 14 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to paragraph 7 shall be deposited in the Construction Fund.

If the Prepayment Amount is insufficient to redeem Bonds in \$5,000 increments, the increment above \$5,000 or integral multiple thereof will be retained in the appropriate fund established under the Indenture to be used with the next prepayment of bonds or to make debt service payments.

As a result of the payment of the current Fiscal Year's Special Tax levy as determined under paragraph 9 above, the CFD Administrator shall remove the current Fiscal Year's Special Tax levy for such Assessor's Parcel from the County tax rolls. With respect to any Assessor's Parcel that is prepaid, the City Council shall cause a suitable notice to be recorded in compliance with the Act, to indicate the prepayment of Special Taxes and the release of the Special Tax lien on such Assessor's Parcel, and the obligation of such Assessor's Parcel to pay the Special Tax shall cease.

Notwithstanding the foregoing, no Special Tax prepayment shall be allowed unless the amount of Special Taxes, net of Administrative Expenses, that may be levied on Taxable Property both prior to and after the proposed prepayment is at least 1.10 times the maximum annual debt service on all Outstanding Bonds.

Tenders of Bonds in prepayment of Special Taxes may be accepted upon the terms and conditions established by the City Council pursuant to the Act. However, the use of Bond tenders shall only be allowed on a case-by-case basis as specifically approved by the City Council.

## **2. Prepayment in Part**

The Maximum Annual Special Tax obligation of an Assessor's Parcel may be partially prepaid. The amount of the prepayment shall be calculated as in Section G.1; except that a partial prepayment shall be calculated according to the following formula:

$$PP = (PE \times F) + A$$

These terms have the following meaning:

- PP = the partial prepayment  
PE = the Prepayment Amount calculated according to Section G.1, minus Prepayment Fees and Expenses pursuant to paragraph 12 of Section G.1.  
F = the percent by which the owner of the Assessor's Parcel(s) is partially prepaying the Maximum Annual Special Tax obligation.  
A = the Prepayment Fees and Expenses pursuant to paragraph 12 of Section G.1.

The owner of an Assessor's Parcel who desires to partially prepay the Maximum Annual Special Tax obligation shall notify the CFD Administrator of: (i) such owner's intent to partially prepay the Maximum Annual Special Tax obligation, (ii) the percentage by which the Maximum Annual Special Tax obligation shall be prepaid, and (iii) the company or agency that will be acting as the escrow agent, if applicable. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the

Maximum Annual Special Tax obligation for an Assessor's Parcel within 30 days of the request and may charge a reasonable fee for providing this service.

With respect to any Assessor's Parcel that is partially prepaid, the City shall: (i) distribute the funds remitted to it according to paragraph 16 of Section G.1, and (ii) indicate in the records of CFD No. 4-I that there has been a partial prepayment of the Maximum Annual Special Tax obligation and that a portion of the Maximum Annual Special Tax obligation equal to the outstanding percentage (1.00 - F) of the remaining Special Tax obligation shall continue to be authorized to be levied on such Assessor's Parcel pursuant to Section D.

**H. TERM OF SPECIAL TAX**

The Special Tax shall be levied on each Assessor's Parcel of Developed Property, Taxable Property Owner Association Property and Taxable Public Property for a period not to exceed 40 years from the Fiscal Year in which the Special Tax is first levied on such Assessor's Parcel as Developed Property, Taxable Property Owner Association Property or Taxable Public Property. The Special Tax shall be levied on Undeveloped Property indefinitely or until such time that all debt service necessary to retire the Bonds is paid in full.

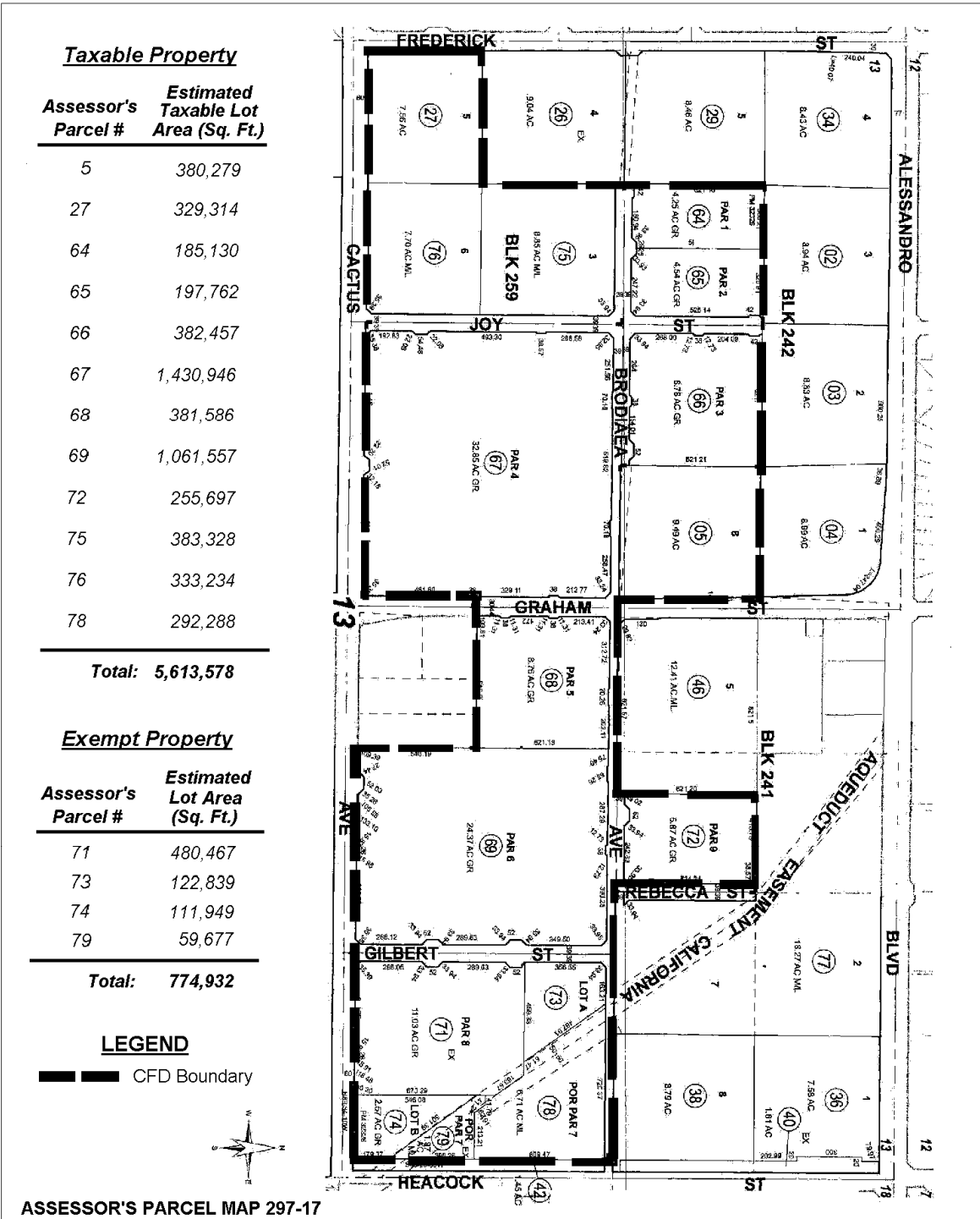
**I. APPEALS**

Any landowner who feels that the amount of the Special Tax levied on their Assessor's Parcel is in error may submit a written appeal to CFD No. 4-I. The CFD Administrator shall review the appeal and if the CFD Administrator concurs, the amount of the Special Tax levied shall be appropriately modified.

The City Council may interpret this Amended and Restated Rate and Method of Apportionment for purposes of clarifying any ambiguity and make determinations relative to the annual administration of the Special Tax and any landowner appeals. Any decision of the City Council shall be final and binding as to all persons.



Exhibit 1



**APPENDIX B**  
**APPRAISAL REPORT**

**APPENDIX C**  
**SUMMARY OF FISCAL AGENT AGREEMENT**

**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE AGREEMENT  
OF THE CITY OF MORENO VALLEY**

This Continuing Disclosure Agreement dated as of April 1, 2011 (the “Disclosure Agreement”) is executed and delivered by the City of Moreno Valley (the “Issuer”) for and on behalf of Community Facilities District No. 4 - Infrastructure and Wells Fargo Bank, National Association, as fiscal agent (the “Fiscal Agent”) and as dissemination agent (the “Dissemination Agent”), in connection with the issuance and delivery by the Issuer of \$\_\_\_\_\_ aggregate principal amount of its Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the “Bonds”). The Bonds are being issued pursuant to a Fiscal Agent Agreement, dated as of April 1, 2011 (the “Fiscal Agent Agreement”), by and between the Issuer and the Fiscal Agent. The Issuer, the Fiscal Agent and the Dissemination Agent covenant as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer, the Fiscal Agent and the Dissemination Agent, for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Fiscal Agent Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income purposes.

“Disclosure Representative” shall mean the City Manager of the City of Moreno Valley or the Financial and Administrative Services Director, or their designee, or such other officer or employee as the Issuer shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean, initially, Wells Fargo Bank, National Association acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the then current Dissemination Agent a written acceptance of such designation.

“EMMA” shall mean the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System for municipal securities disclosures, maintained on the Internet at <http://emma.msrb.org/>.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“Official Statement” shall mean the Official Statement dated \_\_\_\_\_, 2011 relating to the Bonds.

“Participating Underwriter” shall mean the original Underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds, which is De La Rosa & Co.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preferences or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax or environmental tax.

### SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent by written direction to such Dissemination Agent to, not later than April 1 after the end of the Issuer’s fiscal year (which currently ends on June 30), commencing with the report due on April 1, 2012, provide to EMMA, the Fiscal Agent (if the Fiscal Agent is not the Dissemination Agent) and the Participating Underwriter an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer may be submitted separately from and later than the balance of the Annual Report if they are not available by the date required above for the filing of the Annual Report.

An Annual Report shall be provided at least annually notwithstanding any fiscal year longer than 12 calendar months. The Issuer’s fiscal year is currently effective from July 1 to the immediately succeeding June 30 of the following year. The Issuer will promptly notify EMMA, the Fiscal Agent and the Dissemination Agent of a change in the fiscal year dates.

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to EMMA, the Issuer shall provide the Annual Report to the Dissemination Agent and the Fiscal Agent (if the Fiscal Agent is not the Dissemination Agent). If by fifteen (15) Business Days prior to such date the Fiscal Agent has not received a copy of the Annual Report, the Fiscal Agent shall contact the Issuer and the Dissemination Agent to determine if the Issuer is in compliance with subsection (a). The Issuer shall provide a written certification with each Annual Report furnished to the Dissemination Agent and the Fiscal Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to EMMA by the date required in subsection (a), the Dissemination Agent shall send a notice to EMMA, in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall promptly after receipt of the Annual Report, file a report with the Issuer and (if the Dissemination Agent is not the Fiscal Agent) the Fiscal Agent certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing all the Repositories and other parties to which it was provided.

SECTION 4. Content of Annual Report. The Issuer’s Annual Report shall contain or include by reference:

(a) Financial Statements. The audited financial statements of the Issuer for the most recent fiscal year of the Issuer then ended. If the Issuer prepares audited financial statements and if the audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report shall contain any unaudited financial statements of the Issuer in a format similar to the financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available. Audited financial statements of the Issuer shall be audited by such auditor as shall then be required

or permitted by State law or the Fiscal Agent Agreement. Audited financial statements, if prepared by the Issuer, shall be prepared in accordance with generally accepted accounting principles as prescribed for governmental units by the Governmental Accounting Standards Board; provided, however, that the Issuer may from time to time, if required by federal or state legal requirements, modify the basis upon which its financial statements are prepared. In the event that the Issuer shall modify the basis upon which its financial statements are prepared, the Issuer shall provide the information referenced in Section 8(d) below.

(b) Financial and Operating Data. The Annual Report shall contain or incorporate by reference the following information.

(i) the principal amount of Bonds outstanding as of the September 2 preceding the filing of the Annual Report;

(ii) the balance in each fund under the Fiscal Agent Agreement following the September 1 debt service payment preceding the filing of the Annual Report;

(iii) any changes to the Rate and Method of Apportionment approved or submitted to the qualified electors for approval prior to the filing of the Annual Report and a description of any parcels for which the Special Taxes have been prepaid, including the amount prepaid, since the date of the last Annual Report;

(iv) a table setting forth the most recent assessed values of the property and the principal amount of the Bonds and any other land secured debt known by the City to be allocable to parcels within the District by property owner and a statement as to whether any of such taxpayers is delinquent in the payment of Special Taxes;

(vi) any event known to the Issuer which reduces the taxable acreage or which results in a moratorium on future building within the District;

(vii) a table setting forth for the five most recent fiscal years in which Special Taxes were levied, the amount of Special Taxes levied in each fiscal year and the percentage delinquent as of the date of the Annual Report, and a description of the status of any foreclosure actions being pursued by the Issuer with respect to delinquent Special Taxes;

(viii) any information not already included under (i) through (viii) above that the Issuer is required to file in its annual report to the California Debt and Investment Advisory Commission pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended.

(c) Any or all of the items listed in (a) or (b) above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to each of EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify each such other document so included by reference.

#### SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, not more than ten (10) Business Days after the event:

1. principal and interest payment delinquencies;

2. unscheduled draws on debt service reserves reflecting financial difficulties;
3. unscheduled draws on credit enhancements reflecting financial difficulties;
4. substitution of credit or liquidity providers, or their failure to perform;
5. adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds;
6. defeasances;
7. tender offers;
8. bankruptcy, insolvency, receivership or similar proceedings; and
9. ratings changes.

(b) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated persons or their termination;
2. appointment of a successor or additional trustee or the change of the name of a trustee;
3. non payment related defaults;
4. modifications to the rights of Bondholders;
5. notices of prepayment; and
6. release, substitution or sale of property securing repayment of the Bonds.

(c) The Fiscal Agent shall, promptly upon obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Issuer pursuant to the Fiscal Agent Agreement, inform such person of the event, and request that the Issuer promptly notify the Dissemination Agent to report the event pursuant to subsection (g). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Events shall mean actual knowledge by the officer at the corporate trust office of the Fiscal Agent with regular responsibility for the administration of matters related to the Fiscal Agent Agreement.

(d) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, whether because of a notice from the Fiscal Agent pursuant to subsection (c) or otherwise, the Issuer shall as soon as possible determine if such event would be material under applicable federal securities laws.

(e) If the Issuer has determined that knowledge of the occurrence of a Listed Event in subsection (b) would be material under applicable federal securities laws, the Issuer shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (f)

(f) If in response to a request under subsection (b), the Issuer determines that the Listed Event would not be material under applicable federal securities laws, the Issuer shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (g).

(g) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with EMMA.

(h) The Issuer hereby agrees that the undertaking set forth in this Disclosure Agreement is the responsibility of the Issuer and that the Fiscal Agent or the Dissemination Agent shall not be responsible for determining whether the Issuer's instructions to the Dissemination Agent under this Section 5 comply with the requirements of the Rule.

SECTION 6. Termination of Reporting Obligation. The obligation of the Issuer, the Fiscal Agent and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event under Section 5.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Fiscal Agent shall be the Dissemination Agent. The Dissemination Agent may resign by providing (i) thirty days written notice to the Issuer and the Fiscal Agent (if the Fiscal Agent is other than the Dissemination Agent) and (ii) upon appointment of a new Dissemination Agent hereunder.

SECTION 8. Amendment. (a) This Disclosure Agreement may be amended, by written agreement of the parties, without the consent of the Owners, if all of the following conditions are satisfied: (i) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Issuer or the type of business conducted thereby; (ii) this Disclosure Agreement as so amended would have complied with the requirements of the Rule as of the date of this Disclosure Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; (iii) the Issuer shall have delivered to the Fiscal Agent an opinion of a nationally recognized bond counsel or counsel expert in federal securities laws, addressed to the Issuer and the Fiscal Agent, to the same effect as set forth in clause (ii) above; (iv) the Issuer shall have delivered to the Dissemination Agent an opinion of nationally recognized bond counsel or counsel expert in federal securities laws, addressed to the Issuer, to the effect that the amendment does not materially impair the interests of the Owners or Beneficial Owners; and (v) the Issuer shall have delivered copies of such opinion and amendment to each Repository.

(b) This Disclosure Agreement may be amended, by written agreement of the parties, upon obtaining the consent of Owners in the same manner as provided in the Fiscal Agent Agreement for amendments to the Fiscal Agent Agreement with the consent of the Owners of the Bonds, provided that the conditions set forth in Section 8(a)(i), (ii), (iii) and (iv) have been satisfied.

(c) To the extent any amendment to this Disclosure Agreement results in a change in the type of financial information or operating data provided pursuant to this Disclosure Agreement, the first Annual Report provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change.



(d) If an amendment is made to the basis on which financial statements are prepared, the Annual Report for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a quantitative and, to the extent reasonably feasible, qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

The Issuer acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Issuer, and that under some circumstances compliance with this Disclosure Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Issuer under such laws.

SECTION 10. Default. In the event of a failure of the Issuer or the Dissemination Agent to comply with any provision of this Disclosure Agreement, any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Fiscal Agent Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer or the Fiscal Agent to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Fiscal Agent and Dissemination Agent. Article VII of the Fiscal Agent Agreement is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Fiscal Agent Agreement and the Dissemination Agent and the Fiscal Agent shall be entitled to the same protections, limitations from liability and indemnification hereunder as are afforded the Fiscal Agent thereunder. The Dissemination Agent and the Fiscal Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Issuer agrees to indemnify and save the Dissemination Agent and the Fiscal Agent and their respective officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or the Fiscal Agent's respective negligence or willful misconduct. The Dissemination Agent shall be paid compensation by the Issuer for its services provided hereunder in accordance with its schedule of fees as amended from time to time and all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. The Dissemination Agent and the Fiscal Agent shall have no duty or obligation to review any information provided to them hereunder. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and Fiscal Agent and payment of the Bonds. No person shall have any right to commence any action against the Fiscal Agent or the Dissemination Agent seeking any remedy other than to compel specific performance of this Disclosure Agreement. The Dissemination Agent and the Fiscal Agent shall not be liable under any circumstances for monetary damages to any person for any breach under this Disclosure Agreement. Any company succeeding to all or substantially all of the Dissemination Agent's

corporate trust business shall be the successor to the Dissemination Agent hereunder without the execution or filing of any paper or any further act.

SECTION 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Fiscal Agent, the Dissemination Agent, the Participating Underwriter and Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 13. Notices. Notices should be sent in writing to the following addresses. The following information may be conclusively relied upon until changed in writing.

Disclosure Representative:	City Manager City of Moreno Valley 14177 Frederick Street P.O. Box 88005 Moreno Valley, CA 92552-0805
	Special Districts Division Manager City of Moreno Valley 14325 Frederick Street, Suite 9 P.O. Box 88005 Moreno Valley, CA 92552-0805
Dissemination Agent:	Wells Fargo Bank, National Association 707 South Wilshire Boulevard Los Angeles, CA 90017
Fiscal Agent:	Wells Fargo Bank, National Association 707 South Wilshire Boulevard Los Angeles, CA 90017
Participating Underwriter:	De La Rosa & Co. 11900 West Olympic Boulevard, Suite 500 Los Angeles, CA 90064

SECTION 14. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

CITY OF MORENO VALLEY, for and on behalf  
of COMMUNITY FACILITIES DISTRICT NO. 4  
— INFRASTRUCTURE OF THE CITY OF  
MORENO VALLEY, COUNTY OF  
RIVERSIDE, STATE OF CALIFORNIA

By: \_\_\_\_\_  
Financial and Administrative Services Director

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Fiscal Agent and Dissemination  
Agent

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley,  
County of Riverside, State of California

Name of Bond Issue: \$ \_\_\_\_\_ Community Facilities District No. 4 — Infrastructure of the City of  
Moreno Valley 2011 Special Tax Bonds

Date of Issuance: \_\_\_\_\_, 2011

NOTICE IS HEREBY GIVEN that Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley, County of Riverside, State of California (the “District”), has not provided an Annual Report with respect to the above-named Bonds as required by Section 3 of the Continuing Disclosure Agreement, dated as of April 1, 2011, by and between the District and Wells Fargo Bank, National Association as Fiscal Agent and Dissemination Agent. [The District anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Dissemination Agent

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cc: City of Moreno Valley

## APPENDIX E

### FORM OF CONTINUING DISCLOSURE AGREEMENT OF THE DEVELOPER

This Continuing Disclosure Agreement (the “Disclosure Agreement”) dated as of April 1, 2011 is executed and delivered by Ridge Moreno Valley, LLC, a Delaware limited liability company and Ridge Moreno Valley II, LLC, a Delaware limited liability company (collectively, the “Landowner”), and Wells Fargo Bank, National Association, as fiscal agent (the “Fiscal Agent”) and as dissemination agent (the “Dissemination Agent”), in connection with the execution and delivery by Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley, County of Riverside, State of California (the “District”) of \$\_\_\_\_\_ aggregate principal amount of its Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the “Bonds”). The Bonds are being executed and delivered pursuant to a Fiscal Agent Agreement dated as of April 1, 2011 by and between the District and Wells Fargo Bank, National Association as Fiscal Agent (the “Agreement”).

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Landowner for the benefit of the Bondowners and Beneficial Owners and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5). Pursuant to this Disclosure Agreement, the Landowner agrees to provide the information required to be provided by the Landowner hereunder at the time and in the manner required hereunder and as otherwise required to comply with the Rule as specified in a written opinion of counsel to the Underwriter or a nationally recognized bond counsel. This Disclosure Agreement does not address additional undertakings, if any, by or with respect to persons other than the Landowner who may be considered obligated persons for purposes of the Rule, which additional undertakings, if any, may be required for the Participating Underwriter to comply with the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Affiliate” shall mean, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially or as an agent, guardian or other fiduciary, twenty-five percent (25%) or more of any class of Equity Securities of such Person, (b) each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person or (c) each of such Person’s executive officers, directors, joint venturers and general partners; provided, however, that in no case shall the District be deemed to be an Affiliate of the Landowner for purposes of this Agreement. For the purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Annual Report” shall mean any Annual Report provided by the Landowner on or prior to March 1 of each year pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of the Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Development Plan” shall mean, with respect to the Landowner or a Successor, the specific improvements such Person intends to make, or cause to be made, to the portion of the Property owned by such Person in order for such portion of the Property to reach final buildout in Phases III and IV of the Property development as planned by the Landowner or Successor, the time frame in which such improvements are intended to be made and the estimated costs of such improvements. As of the date hereof, the development

plan for the Property owned by the Landowner and its Affiliates is described in the Official Statement under the caption “THE DEVELOPMENT AND PROPERTY OWNERSHIP — The Development Plan.”

“Disclosure Representative” shall mean the President or his designee acting on behalf of the Landowner, or such other officer or employee as the Landowner shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean Wells Fargo Bank, National Association acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Landowner and which has filed with the Landowner and the City a written acceptance of such designation.

“District” shall mean Community Facilities District No. 4 – Infrastructure established by the City of Moreno Valley.

“EMMA” shall mean the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System for municipal securities disclosures, maintained on the Internet at <http://emma.msrb.org/>.

“Equity Securities” of any Person shall mean (a) all common stock, preferred stock, participations, shares, general partnership interests or other equity interests in and of such person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options and other rights to acquire any of the foregoing.

“Financing Plan” shall mean, with respect to the Landowner or a Successor, the method by which such Person intends to finance its Development Plan, including specific sources of funding for such Development Plan. As of the date hereof, the Financing Plan for the Landowner and its Affiliates is described in the Official Statement under the caption “THE DEVELOPMENT AND PROPERTY OWNERSHIP — Developer’s Financing Plan.”

“Fiscal Year” shall mean the period beginning on July 1 of each year and ending on the next succeeding June 30.

“Government Authority” shall mean any national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Landowner Improvements” shall mean those improvements listed on Table 1 of the Official Statement.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“Official Statement” shall mean the Official Statement, dated \_\_\_\_\_, 2011, relating to the Bonds.

“Participating Underwriter” shall mean the original Underwriter of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“Person” shall mean any natural person, corporation, partnership, firm, association, Government Authority or any other Person whether acting in an individual fiduciary, or other capacity.

“Property” shall mean the parcels within the boundaries of the Community Facilities District subject to Special Taxes.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Semiannual Report” shall mean any report to be provided by the Landowner on or prior to September 1 of each year pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“State” shall mean the State of California.

“Successor” shall mean any Person, other than the Landowner, who owns any portion of the Property.

SECTION 3. Provision of Annual Reports.

(a) The Landowner shall (or upon its receipt of the Annual Report the Dissemination Agent shall), not later than March 1 of each year, commencing March 1, 2012, provide to EMMA, the Participating Underwriter and the District an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement provided that the audited financial statements, if any, of the Landowner may be submitted separately from the balance of the Annual Report and later than the date required for the filing of the Annual Report if they are not available by that date. In addition, the Landowner shall, or upon its receipt of the Semiannual Report the Dissemination Agent shall, not later than September 1 of each year, commencing September 1, 2011, provide to EMMA, the Participating Underwriter and the District a Semiannual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement.

(b) Not later than fifteen (15) Business Days prior to the dates specified in subsection (a) for providing the Annual Report and Semiannual Report to EMMA, the Landowner shall provide the Annual Report or the Semiannual Report, as applicable, to the Dissemination Agent or shall provide notification to the Dissemination Agent that the Landowner is preparing, or causing to be prepared, the Annual Report or the Semiannual Report, as applicable, and the date which the Annual Report or the Semiannual Report, as applicable, is expected to be available. The Landowner shall provide a written certification with each Annual Report furnished to the Dissemination Agent and the Fiscal Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder. If by such date, the Dissemination Agent has not received a copy of the Annual Report or the Semiannual Report, as applicable, or notification as described in the preceding sentence, the Dissemination Agent shall contact the Landowner to determine if the Landowner is in compliance with the requirements of this subsection (b).

(c) If the Dissemination Agent is unable to provide an Annual Report or Semiannual Report to EMMA by the date required in subsection (a) or to verify that an Annual Report or Semiannual Report has been provided to EMMA by the date required in subsection (a), the Dissemination Agent shall send a notice to EMMA in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall file a report with the Landowner and the City certifying that the Annual Report or the Semiannual Report, as applicable, has been provided to EMMA pursuant to this Disclosure Agreement, and stating the date it was provided.

SECTION 4. Content of Annual Report and Semiannual Report.

(a) The Landowner's Annual Report and Semiannual Report shall contain or include by reference the information which is available as of the date of the filing of the Annual Report or the Semiannual Report, as applicable, relating to the following:

(i) If information regarding such Person has not previously been included in an Annual Report, a Semi-Annual Report or the Official Statement, the Development Plan of such Person; or, if information regarding such Person has previously been included in an Annual Report, a Semi-Annual Report or the Official Statement, a description of the progress made in the implementation of the Development Plan of such Person since the date of such information and a description of any significant changes in such Development Plan and the causes or rationale for such changes.

(ii) If information regarding such Person has not previously been included in an Annual Report, a Semi-Annual Report or the Official Statement, the Financing Plan of such Person; or, if information regarding such Person has previously been included in an Annual Report, a Semi-Annual Report or the Official Statement, an update to Table 6 and a description of any significant changes in the Financing Plan of such Person and the causes or rationale for such changes.

(iii) A description of any sales of all or any portion of such Person's Property and of any material leases of space within any of the buildings located on such Person's portion of the Property during the period covered by such Annual Report or Semi-Annual Report, including the identification of each buyer or lessee and the area that was sold or leased and the length of the applicable lease. (As used herein, "material lease" means a lease of more than 5,000 square feet.)

(iv) With respect to any portion of the Property owned by such Person and any of its Affiliates, a statement as to whether any taxes or assessment installments applicable to such portion of the Property are delinquent.

(v) A description of any change in the ownership structure of such Person and/or the financial condition of such Person or any of its Affiliates if such change in ownership structure and/or financial condition could materially interfere with such Person's ability to complete its Development Plan.

(vi) Any amendments to land use entitlements for any portion of the Property owned by such Person that could have a material adverse effect on such Person's most recently disclosed Financing Plan or Development Plan or on the ability of such Person, or any Affiliate of such Person, to pay installments of Special Taxes when due.

(vii) Any precondition to commencement or continuation of development on any portion of the Property owned by such Person imposed by a governmental entity after the date of issuance of the Bonds which has not been previously disclosed and which could have a material adverse affect, or any change in the status of any such precondition that was previously disclosed in the Official Statement, an Annual Report or a Semi-Annual Report, which could have a material adverse effect on such Person's most recently disclosed Financing Plan or Development Plan or on the ability of such Person, or any Affiliate of such Person, to pay installments of Special Taxes when due.

(viii) Any previously undisclosed legislative, administrative or judicial challenges to development on any portion of the Property owned by such Person, or any material change in the status of any such challenge that was previously disclosed in the Official Statement, an Annual Report or a Semi-Annual Report, that could have a material adverse effect on such Person's most recently



disclosed Financing Plan or Development Plan or on the ability of such Person, or any Affiliate of such Person, to pay installments of Special Taxes when due.

(ix) An update of the status of any previously reported Listed Event described in Section 5.

(b) In the event that as a result of subsequent amendment of the Rule, interpretive releases, no-action letters or other official guidance from the Securities and Exchange Commission or its staff, the information required to satisfy the Rule shall differ from the information described above, the Landowner shall provide to the Dissemination Agent such other information as is available to the Landowner and not otherwise readily available to the District.

(c) Any and all of the items listed above may be included by specific reference to other documents, including official statements of debt issues which have been submitted to EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from EMMA. The Landowner shall clearly identify each such other document so included by reference.

#### SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the Landowner shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material under paragraphs (b) and (c):

(i) failure to pay any real property taxes, special taxes or assessments levied within the District on a parcel owned by the Landowner or any Affiliate;

(ii) damage to or destruction of any of the Landowner Improvements or the District Improvements which has a material adverse effect on the value of the parcels owned by the Landowner or any Affiliate;

(iii) material default by the Landowner or any Affiliate on any loan with respect to the construction or permanent financing of the Landowner Improvements;

(iv) material default by the Landowner or any Affiliate on any loan secured by property within the District owned by the Landowner or any Affiliate;

(v) payment default by the Landowner or any Affiliate located in the United States on any loan of the Landowner or any Affiliate (whether or not such loan is secured by property within the District) which is beyond any applicable cure period in such loan and which may materially and adversely affect the Landowner's development within the District;

(vi) the filing of any proceedings with respect to the Landowner or any Affiliate, in which the Landowner or any Affiliate, may be adjudicated as bankrupt or discharged from any or all of their respective debts or obligations or granted an extension of time to pay debts or a reorganization or readjustment of debts; and

(vii) the filing of any lawsuit against the Landowner or any of its Affiliates located in the United States which, in the reasonable judgment of the Landowner, will adversely affect the completion of the District Improvements, the Landowner Improvements or the development of parcels owned by the Landowner or its Affiliates within the District, or litigation which if decided against the

Landowner, or any of its Affiliates, in the reasonable judgment of the Landowner, would materially adversely affect the financial condition of the Landowner or its Affiliates.

(viii) the assumption of any obligation by a Successor pursuant to Section 6 hereof.

(b) Whenever the Landowner obtains knowledge of the occurrence of a Listed Event, the Landowner shall as soon as possible determine if such event would be material under applicable federal securities laws.

(c) If the Landowner determines that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the Landowner shall promptly file a notice of such occurrence with the Dissemination Agent which shall then distribute such notice to the EMMA, with a copy to the City.

(d) The Landowner shall also give notice immediately upon the occurrence of any of the following events (to the extent the Landowner has actual knowledge thereof) in accordance with the procedures set forth in (c) above: (i) a sale or transfer of all or substantially all of the Landowner's assets, and (ii) a change in the identity of the managing member of the Landowner.

SECTION 6. Termination of Reporting Obligation. The Landowner's obligations hereunder shall terminate (except as provided in Section 12) upon the earlier to occur of (a) the legal defeasance, prior redemption or payment in full of all the Bonds or (b) the date on which those portions of the Rule which require this written undertaking are held to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds. The Landowner's obligations hereunder shall terminate with respect to any portion of the Property on the date such obligations have been assumed by one or more Successors or Affiliates thereof pursuant to an Assumption Agreement. The Landowner's obligations under this Disclosure Agreement with respect to a Person that purchased Property from the Landowner shall terminate upon the earlier to occur of (i) the date on which the Landowner's obligations with respect to such Person are assumed under an Assumption Agreement entered into pursuant to Section 6 or (ii) the date on which all Special Taxes applicable to the portion of the Property owned by such Person and its Affiliates are prepaid in full; provided, however, until the occurrence of either of the events described in clauses (i) and (ii), the Landowner's obligations hereunder with respect to each Successor, if any, shall remain in full force and effect. Upon the occurrence of any such termination prior to the final maturity of the Bonds, the Landowner shall cause the Dissemination Agent to give notice of such termination in the same manner as for a Listed Event under Section 5(c). Notwithstanding the foregoing, the Landowner shall have no obligation to provide Semi-Annual Reports pursuant to Section 3 subsequent to the date on which it provides an Annual Report or a Semi-Annual Report which indicates that the then-applicable Development Plan for each portion of the Property has been fully implemented and such subsequent Annual Report shall be limited to the items listed under Section 4(iii), (iv), (v) and (ix) hereof.

SECTION 7. Dissemination Agent. The Landowner may from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If the Dissemination Agent is not the Landowner, the Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Landowner pursuant to this Disclosure Agreement. The Dissemination Agent may resign (i) by providing thirty days written notice to the Landowner, the City, the Participating Underwriter and the Fiscal Agent (if the Fiscal Agent is other than the Dissemination Agent) and (ii) upon appointment of a new Dissemination Agent hereunder.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Landowner may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) this Disclosure Agreement, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel addressed to the City, the Fiscal Agent and the Participating Underwriter, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances;

(c) the amendment or waiver either (i) is approved by the Bondowners in the same manner as provided in the Agreement for amendments to the Agreement with the consent of Bondowners, or (ii) does not, in the opinion of nationally recognized bond counsel addressed to the Authority and the Fiscal Agent, materially impair the interests of the Bondowners or Beneficial Owners of the Bonds; and

(d) the Landowner, or the Dissemination Agent, shall have delivered copies of the amendment and any opinions delivered under (b) and (c) above to the City and the Participating Underwriter.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Landowner shall describe such amendment in the next Annual Report or Semiannual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Landowner. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given to EMMA; and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison of financial data described in clause (ii) of the preceding sentence shall be provided at the time financial statements, if any, are filed under Section 4(a)(viii) hereof.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Landowner from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Landowner chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Landowner shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

The Landowner acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Landowner, and that under some circumstances compliance with this Disclosure Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Landowner under such laws.

SECTION 10. Default. In the event of a failure of the Landowner to comply with any provision of this Disclosure Agreement, any Participating Underwriter or any Bondowner or Beneficial Owner of the

Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Landowner or the Dissemination Agent to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the Landowner to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement and the Landowner agrees to indemnify, defend and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall not be deemed to be acting in any fiduciary capacity for the Landowner, the Participating Underwriter, Bondowners or Beneficial Owners or any other party. The Dissemination Agent may rely and shall be protected in acting or refraining from acting upon a direction from the Landowner or an opinion of nationally recognized bond counsel. The obligations of the Landowner under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. No person shall have any right to commence any action against the Dissemination Agent seeking any remedy other than to compel specific performance of this Disclosure Agreement. Any company succeeding to all or substantially all of the Dissemination Agent's corporate trust business shall be the successor to the Dissemination Agent hereunder without the execution or filing of any paper or any further act.

The Dissemination Agent will not, without the Landowner's prior written consent, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification may be sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Landowner and its controlling persons from all liability arising out of such claim, action or proceedings. If a claim, action or proceeding is settled with the consent of the Landowner or if there is a final judgment (other than a stipulated final judgment without the approval of the Landowner) for the plaintiff in any such claim, action or proceeding, with or without the consent of the Landowner, the Landowner agrees to indemnify and hold harmless the Dissemination Agent to the extent described herein.

SECTION 12. Landowner as Independent Contractor. In performing under this Disclosure Agreement, it is understood that the Landowner is an independent contractor and not an agent of the City.

SECTION 13. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Landowner, the City, the Dissemination Agent, the Participating Underwriter and Bondowners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

“LANDOWNER”

Ridge Moreno Valley, LLC, a Delaware limited liability company doing business in California as Ridge Moreno Valley Property, LLC

By: Ridge 191, LLC, a Delaware limited liability company, its managing member

By: Ridge HMAN Investors, LLC, a Delaware limited liability company, its managing member

By: Ridge Property Trust, a Maryland real estate investment trust, its managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

and

Ridge Moreno Valley II, LLC, a Delaware limited liability company

By: Ridge 191, LLC, a Delaware limited liability company, its managing member

By: Ridge HMAN Investors, LLC, a Delaware limited liability company, its managing member

By: Ridge Property Trust, a Maryland real estate investment trust, its managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Dissemination Agent

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of the Issuer: Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley,  
County of Riverside, State of California

Name of Bond Issue: \$ \_\_\_\_\_ Community Facilities District No. 4 — Infrastructure of the City of  
Moreno Valley 2011 Special Tax Bonds

Date of Issuance: \_\_\_\_\_, 2011

NOTICE IS HEREBY GIVEN that \_\_\_\_\_ has not provided an [Annual Report or Semiannual  
Report] with respect to the above-named Bonds as required by the Continuing Disclosure Agreement of the  
Developer. [The Landowner anticipates that such [Annual Report or Semiannual Report] will be filed not later  
than \_\_\_\_\_, \_\_\_\_.]

Dated: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Dissemination Agent

cc: City of Moreno Valley

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**APPENDIX F**

**FORM OF OPINION OF BOND COUNSEL**

[TO COME]

## APPENDIX G

### BOOK-ENTRY-ONLY SYSTEM

*The information in this section concerning DTC and DTC's book-entry only system has been obtained from sources that the District and the Underwriter believe to be reliable, but neither the District nor the Underwriter take any responsibility for the completeness or accuracy thereof. The following description of the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, premium, if any, accreted value, if any, and interest on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfers of beneficial ownership interests in the Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC.*

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond will be issued for each annual maturity of the Bonds, each in the aggregate principal amount of such annual maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive Bonds representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.



Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as prepayments, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the District or the Fiscal Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Fiscal Agent, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Fiscal Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Bond Owner shall give notice to elect to have its Bonds purchased or tendered, through its Participant, to the Fiscal Agent, and shall effect delivery of such Bonds by causing the Direct Participant to transfer the Participant's interest in the Bonds, on DTC's records, to the Fiscal Agent. The requirement for physical delivery of Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the Fiscal Agent's DTC account.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the District or the Fiscal Agent. Under such circumstances, in the event that a successor depository is not obtained, physical certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, Bonds will be printed and delivered to DTC.

THE PAYING AGENT, AS LONG AS A BOOK-ENTRY ONLY SYSTEM IS USED FOR THE BONDS, WILL SEND ANY NOTICE OF REDEMPTION OR OTHER NOTICES TO OWNERS ONLY TO DTC. ANY FAILURE OF DTC TO ADVISE ANY DTC PARTICIPANT, OR OF ANY DTC PARTICIPANT TO NOTIFY ANY BENEFICIAL OWNER, OF ANY NOTICE AND ITS CONTENT OR EFFECT WILL NOT AFFECT THE VALIDITY OF SUFFICIENCY OF THE PROCEEDINGS RELATING TO THE REDEMPTION OF THE BONDS CALLED FOR REDEMPTION OR OF ANY OTHER ACTION PREMISED ON SUCH NOTICE.

**APPENDIX H**  
**MARKET ABSORPTION STUDY**

§ \_\_\_\_\_  
**COMMUNITY FACILITIES DISTRICT NO. 4 - INFRASTRUCTURE  
OF THE CITY OF MORENO VALLEY  
2011 SPECIAL TAX BONDS**

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_, 2011

The City of Moreno Valley, on behalf of  
Community Facilities District No. 4 – Infrastructure  
of the City of Moreno Valley  
14177 Frederick Street  
P.O. Box 88005  
Moreno Valley, CA 92552-0805

Ladies and Gentlemen:

E. J. De La Rosa & Co., Inc. (collectively, the “Underwriter”), acting not as a fiduciary or agent for you, but on behalf of itself, offers to enter into this Bond Purchase Agreement with the City of Moreno Valley (the “City”), on behalf of Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley (the “District”) which, upon acceptance, will be binding upon the City and upon the Underwriter. This offer is made subject to acceptance of it by the City on the date hereof, and if not accepted will be subject to withdrawal by the Underwriter upon notice delivered to the City at any time prior to the acceptance hereof by the City.

The Underwriter hereby acknowledges that it is duly authorized to execute this Bond Purchase Agreement and to take all action required or permitted to be taken hereunder by or on behalf of the Underwriter. Any authority, discretion or other power conferred upon the Underwriter by this Bond Purchase Agreement may be executed by the representative alone.

1. Purchase, Sale and Delivery of the Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter agrees to purchase from the City, on behalf of the District, and the City agrees to sell to the Underwriter, all (but not less than all) of the \$\_\_\_\_\_ Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the “Bonds”). The Bonds shall be dated the Closing Date (hereinafter defined), and bear interest (payable semiannually on March 1 and September 1 in each year, commencing September 1, 2011) at the rates per annum and maturing on the dates and in the amounts set forth in Exhibit A hereto. The purchase price for the Bonds shall be \$\_\_\_\_\_ (representing the principal amount of the Bonds, less an Underwriter’s discount of \$\_\_\_\_\_, and [less net original issue discount] [plus net original issue premium] of \$\_\_\_\_\_). The Bonds will have the maturities and bear interest at the rates set forth on

ATTACHMENT 4

1

Exhibit A hereto. The Bonds will be subject to redemption as set forth in the Fiscal Agent Agreement (defined below). The Bonds will be issued in book-entry form only.

The Bonds shall be issued and secured under the provisions of, and shall be payable and subject to redemption as provided in, a Fiscal Agent Agreement, dated as of April 1, 2011, between the City, on behalf of the District, and Wells Fargo Bank, National Association (the "Fiscal Agent"), approved in Resolution No. \_\_\_\_\_ adopted by the City Council (the "City Council") of the City, acting in its capacity as the legislative body of the District, on \_\_\_\_\_, 2011 (the "Resolution of Issuance"). The Bonds and interest thereon will be payable from a special tax (the "Special Tax") levied and collected on the taxable land within the District. Proceeds of the sale of the Bonds will be used in accordance with the Fiscal Agent Agreement and the Mello-Roos Community Facilities Act of 1982, as amended (Sections 53311 *et seq.* of the Government Code of the State of California) (the "Act"), to construct and acquire various public improvements required with respect to the development of certain land within the District, to fund a Reserve Fund for the Bonds, and to pay costs of issuance of the Bonds.

(b) At or prior to the acceptance hereof, the City and the District have authorized the use of the Official Statement in connection with the public offering of the Bonds. The City and the District also have consented to the use by the Underwriter prior to the date hereof of the Preliminary Official Statement (defined below) relating to the Bonds in connection with the public offering of the Bonds. Authorized officers of the City, on behalf of the District, have certified to the Underwriter that such Preliminary Official Statement was deemed to be final as of its date for purposes of Rule 15c2-12 (defined below), with the exception of certain final pricing and related information referred to in Rule 15c2-12.

(c) At or prior to the acceptance hereof by the City, the Underwriter shall have received, unless otherwise waived by the Underwriter and the City, a certificate executed by an authorized officer of Ridge Moreno Valley, LLC, a Delaware limited liability company and Ridge Moreno Valley II, LLC, a Delaware limited liability company (collectively, the "Developer"), in substantially the form attached hereto as Exhibit B, with only such changes therein as shall have been accepted by the Underwriter and the City.

(d) Subsequent to its receipt of a certificate from the City deeming the Preliminary Official Statement for the Bonds, dated \_\_\_\_\_, 2011 (which Preliminary Official Statement, together with the cover page and all appendices thereto, is herein collectively referred to as the "Preliminary Official Statement" and which, as amended with the prior approval of the Underwriter and executed by the City, will be referred to herein as the "Official Statement") final for purposes of Rule 15c2-12 ("Rule 15c2-12") of the Securities and Exchange Commission (the "SEC"), the Underwriter has distributed copies of the Preliminary Official Statement. The City hereby ratifies the use by the Underwriter of the Preliminary Official Statement and authorizes the Underwriter to use and distribute the final Official Statement dated the date hereof (including all information previously permitted to have been omitted by Rule 15c2-12 and any supplements and amendments thereto as have been approved by the District as evidenced by the execution and delivery of such document by an officer of the City (the "Official Statement"), the Fiscal Agent Agreement, the Continuing Disclosure Agreement of the City, on behalf of the District (the "City Disclosure Agreement"), this Bond Purchase Agreement, any other documents or contracts to which the City or the District is a party, and all

information contained therein, and all other documents, certificates and statements furnished by the City and the District to the Underwriter in connection with the transactions contemplated by this Bond Purchase Agreement, in connection with the offer and sale of the Bonds by the Underwriter. The Underwriter hereby agrees to deliver a copy of the Official Statement to a national repository on or before the Closing Date (as hereinafter defined) and to each investor that purchases any of the Bonds prior to the “end of the underwriting period” (as such term is defined in Section 2(h) below) and otherwise to comply with all applicable statutes and regulations in connection with the offering and sale of the Bonds, including, without limitation, Rule G-32 of the Municipal Securities Rulemaking Board (the “MSRB”) and Rule 15c2-12. The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information. As of the date hereof, the Underwriter has not notified the City of the need to modify or supplement the Preliminary Official Statement.

(e) At 8:00 A.M., Pacific Daylight Time, on \_\_\_\_\_, 2011, or at such earlier time or date as shall be agreed upon by the Underwriter and the City (such time and date being herein referred to as the “Closing Date”), the City, on behalf of the District, will deliver (i) through the facilities of The Depository Trust Company, New York, New York, the Bonds in definitive form (all Bonds being in book-entry form registered in the name of Cede & Co. and having the CUSIP numbers assigned to them printed thereon), duly executed by the officers of the District as provided in the Fiscal Agent Agreement, and (ii) to the Underwriter, at the offices of Best Best & Krieger LLP (“Bond Counsel”) in San Diego, California, or at such other place as shall be mutually agreed upon by the City and the Underwriter, the other documents herein mentioned; and the Underwriter shall accept such delivery and pay the purchase price of the Bonds in immediately available funds (such delivery and payment being herein referred to as the “Closing”). Notwithstanding the foregoing, the Underwriter may, in its discretion, accept delivery of the Bonds in temporary form upon making arrangements with the City which are satisfactory to the Underwriter relating to the delivery of the Bonds in definitive form.

(f) The City acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm’s length commercial transaction between the City and the Underwriter, (ii) in connection with such transaction, the Underwriter is acting solely as a principal and not as an agent or a fiduciary of the City, (iii) the Underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the City with respect to the offering of the Bonds or the process leading thereto (whether or not any Underwriter, or any affiliate of an Underwriter, has advised or is currently advising the City on other matters) or any other obligation to the City except the obligations expressly set forth in this Agreement and (iv) the City has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds.

2. Representations, Warranties and Agreements of the City. The City represents, warrants and covenants to and agrees with the Underwriter that:

(a) The City is duly organized and is validly existing under the Constitution and laws of the State as a general law city and municipal corporation, has full legal right, power, and authority (i) to execute, deliver and perform its obligations under the Acquisition/Financing

Agreement dated May 26, 2005, as amended (the “Acquisition Agreement”) between the Ridge Property Trust and the City and to carry out all transactions contemplated by the Acquisition Agreement and the Fiscal Agent Agreement (collectively, the Fiscal Agent Agreement, the City Disclosure Agreement and the Acquisition Agreement are referred to herein as the “City Documents”), (ii) to issue, sell and deliver the Bonds on behalf of the District to the Underwriter pursuant to the Resolution of Issuance and the Fiscal Agent Agreement as provided herein, and (iii) to carry out, give effect to and consummate the transactions contemplated by the Formation Documents and by the City Documents and the Official Statement. The City Council, in its capacity as the City Council for the City, has duly adopted a resolution forming the District, as amended to annex additional property (the “Resolution of Formation”) and an ordinance authorizing the levy of a special tax on the taxable property within the District (the “Special Tax Ordinance”) and all other ordinances and resolutions referred to in the Resolution of Formation and the Special Tax Ordinance. The District has caused to be recorded in the real property records of the County of Riverside an Amended Notice of Special Tax Lien (the “Notice of Special Tax Lien”) (such ordinances and resolutions, as subsequently amended, and Notice of Special Tax Lien being collectively referred to herein as the “Formation Documents”) with respect to the District. Each of the Formation Documents remains in full force and effect as of the date hereof and has not been amended.

(b) The District is duly organized and validly existing as a community facilities district under the laws of the State of California. The District has, and at the Closing Date will have, as the case may be, full legal right, power and authority (i) to execute, deliver and perform its obligations under the City Disclosure Agreement, and to carry out all transactions contemplated by each of such agreements, and (ii) to carry out, give effect to and consummate the transactions contemplated by the Formation Documents and the Official Statement;

(c) The District and the City, as applicable, each has complied, and will at the Closing Date be in compliance, in all material respects with the Formation Documents and the City Documents, and any immaterial compliance by the District and the City, if any, will not impair the ability of the District and the City, as applicable, to carry out, give effect to or consummate the transactions contemplated by the foregoing. From and after the date of issuance of the Bonds, the City and the District will continue to comply with their respective covenants in the City Documents;

(d) The City Council, in its capacity as the City Council for the City with respect to (i) below and as the legislative body of the District with respect to (ii) and (iii) below, has duly and validly: (i) taken or caused to be taken, all proceedings necessary under the Act and the Constitution and laws of the State of California in order to form the District, to authorize the execution of the City Documents and the levy of a special tax (the “Special Tax”) on the taxable property within the District pursuant to an Amended and Restated Rate and Method of Apportionment of Special Tax approved pursuant to the Resolution of Consideration adopted on December 14, 2010 (collectively, the “Rate and Method of Apportionment”), to cause the Special Tax to be secured by a continuing lien on each parcel of Taxable Property (as defined in the Rate and Method of Apportionment); (ii) authorized and approved the execution and delivery of the City Documents and the issuance and sale of the Bonds; and (iii) authorized and approved the performance by the City and the District of their respective obligations contained in, and the

taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by, each of said City Documents (including, without limitation, the collection of the Special Tax). The District has been validly formed, the Special Tax has been approved and its levy authorized, and (assuming due authorization, execution and delivery by other parties thereto, where necessary) the City Documents will constitute the valid, legal and binding obligations of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights in general and to the application of equitable principles.

(e) To the best of the City's knowledge, neither the District nor the City is in breach of or default under any applicable law or administrative rule or regulation of the State of California (the "State"), or of any department, division, agency or instrumentality thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, bond indenture, contract, agreement or other instrument to which the District or the City is a party or is otherwise subject or bound, a consequence of which could be to materially and adversely affect the performance by the City of its obligations under the Bonds, the Formation Documents or the City Documents, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, or of any department, division, agency or instrumentality thereof, or under any applicable court or administrative decree or order, or a material breach of or default under any loan agreement, note, resolution, trust agreement, contract, agreement or other instrument to which the District or the City, as the case may be, is a party or is otherwise subject or bound;

(f) Except for compliance with the blue sky or other states securities law filings, as to which the District makes no representations, all approvals, consents, authorizations, elections and orders of or filings or registrations with any State governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the City of its obligations hereunder, or under the Formation Documents or the City Documents, have been obtained and are in full force and effect;

(g) The Special Tax constituting the security for the Bonds has been duly and lawfully authorized and may be levied under the Act and the Constitution and the applicable laws of the State of California, and such Special Tax, when levied, will constitute a valid and legally binding continuing lien on the properties on which it has been levied, subject to the effect of bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws relating to or affecting creditors' rights generally, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against agencies in the State of California;

(h) Until the earlier of (i) the date which is twenty-five (25) days after the "end of the underwriting period" (as hereinafter defined), or (ii) 90 days after the date of Closing, if any event shall occur of which the District is aware, as a result of which it may be necessary to supplement the Official Statement in order to make the statements in the Official Statement, in light of the circumstances existing at such time, not misleading, the City shall forthwith notify the Underwriter of any such event of which it has knowledge and shall cooperate fully in

furnishing any information available to it for any supplement to the Official Statement necessary, in the Underwriter's or City's opinion, so that the statements therein as so supplemented will not be misleading in light of the circumstances existing at such time and the City shall promptly furnish to the Underwriter a reasonable number of copies of such supplement. As used herein, the term "end of the underwriting period" means the later of such time as (i) the City delivers the Bonds to the Underwriter, or (ii) the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Unless the Underwriter gives notice to the contrary, the "end of the underwriting period" shall be deemed to be the Closing Date. Any notice delivered pursuant to this provision shall be written notice delivered to the City at or prior to the Closing Date, and shall specify a date (other than the Closing Date) to be deemed the "end of the underwriting period," and the Underwriter agrees to notify the City in writing of the date on which the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public;

(i) The Fiscal Agent Agreement creates a valid pledge of the Special Taxes and the moneys in the Special Tax Fund (other than the Administrative Expense Account) established pursuant to the Fiscal Agent Agreement, including the investments thereof, subject in all cases to the provisions of the Fiscal Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(j) Except as disclosed in the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body is pending or, to the best current, actual knowledge of the City, threatened (i) which would materially adversely affect the ability of either the City or the District to perform their respective obligations under the Formation Documents or the City to perform its obligations under the Bonds or the City Documents, or (ii) seeking to restrain or to enjoin the development of the land within the District, the issuance, sale or delivery of the Bonds, the application of the proceeds thereof in accordance with the Fiscal Agent Agreement, or the collection or application of the Special Tax pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the Formation Documents, the City Documents, or any action contemplated by any of said documents, or (iii) in any way contesting the completeness or accuracy of the Preliminary Official Statement or the powers or authority of the City with respect to the Bonds, the Formation Documents, the City Documents, or any action of the City contemplated by any of said documents; nor is there any action pending or, to the best knowledge of the City, threatened against the City or the District which alleges that interest on the Bonds is not excludable from gross income for federal income tax purposes or is not exempt from California personal income taxation;

(k) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order for the Underwriter to qualify the Bonds for offer and sale under the "Blue Sky" or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate; provided, however, the City shall not be required to register as a dealer or a broker of securities or to consent to service of process in connection with any blue sky filing;



(l) Any certificate signed by any authorized official of the City and the District authorized to do so shall be deemed a representation and warranty to the Underwriter as to the statements made therein;

(m) The City will apply the proceeds of the Bonds in accordance with the Fiscal Agent Agreement and as described in the Official Statement;

(n) The information contained in the Preliminary Official Statement (other than information therein provided by the Developer including under the heading "THE DEVELOPMENT AND PROPERTY OWNERSHIP," information provided by Harris & Associates, Inc., and information in "APPENDIX G - Book-Entry Only System," as to which no view is expressed) was as of the date thereof, and the information contained in the Official Statement (other than information therein provided by the Developer under the heading "THE DEVELOPMENT AND PROPERTY OWNERSHIP," information provided by Harris & Associates, Inc., and information in "APPENDIX G - Book-Entry Only System," as to which no view is expressed) as of its date and on the Closing Date shall be, true and correct in all material respects and such information does not and shall not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(o) The Preliminary Official Statement heretofore delivered to the Underwriter was deemed final by the City as of its date, except for the omission of such information as is permitted to be omitted in accordance with paragraph (b)(1) of Rule 15c2-12. The City hereby covenants and agrees that, within seven (7) business days from the date hereof, the City shall cause a final printed form of the Official Statement to be delivered to the Underwriter in a quantity mutually agreed upon by the Underwriter and the City so that the Underwriter may comply with paragraph (b)(4) of Rule 15c2-12 and Rules G-12, G-15, G-32 and G-36 of the Municipal Securities Rulemaking Board;

(p) Except as disclosed in the Official Statement, neither the City nor the District is in default with respect to any reporting obligation that it has undertaken under Rule 15c2-12 for any indebtedness issued by it.

3. Conditions to the Obligations of the Underwriter. The obligations of the Underwriter to accept delivery of and pay for the Bonds on the Closing Date shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the representations and warranties on the part of the City contained herein, as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the City and the District made in any certificates or other documents furnished pursuant to the provisions hereof, to the performance by the City of its obligations to be performed hereunder at or prior to the Closing Date and to the following additional conditions:

(a) At the Closing Date, the Formation Documents and the City Documents shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and there shall have been taken in connection therewith, with the issuance of the Bonds and with the transactions contemplated

thereby and by this Bond Purchase Agreement, all such actions as, in the opinion of Bond Counsel, shall be necessary and appropriate;

(b) Between the date hereof and the Closing Date, the market price or marketability of the Bonds at the initial offering prices set forth in the Official Statement shall not have been materially adversely affected, in the judgment of the Underwriter (evidenced by a written notice to the City terminating the obligation of the Underwriter to accept delivery of and pay for the Bonds), by reason of any of the following:

(1) legislation introduced in or enacted (or resolution passed) by the Congress of the United States of America or recommended to the Congress by the President of the United States, the Department of the Treasury, the Internal Revenue Service, or any member of Congress, or favorably reported for passage to either House of Congress by any committee of such House to which such legislation had been referred for consideration or a decision rendered by a court established under Article III of the Constitution of the United States of America or by the Tax Court of the United States of America, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Treasury Department or the Internal Revenue Service of the United States of America, with the purpose or effect, directly or indirectly, of imposing federal income taxation upon the interest as would be received by the holders of the Bonds beyond the extent to which such interest is subject to taxation as of the date hereof;

(2) legislation introduced in or enacted (or resolution passed) by the Congress of the United States of America, or an order, decree or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or that the Fiscal Agent Agreement is not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of obligations of the general character of the Bonds, or of the Bonds, including any or all underwriting arrangements, as contemplated hereby or by the Official Statement or otherwise is or would be in violation of the federal securities laws, rules or regulations as amended and then in effect;

(3) any amendment to the federal or California Constitution or action by any federal or California court, legislative body, regulatory body or other authority materially adversely affecting the tax status of the City or the District, their property, income, securities (or interest thereon), the validity or enforceability of the Special Tax or the ability of the City or the District to construct or acquire the improvements as contemplated by the Formation Documents, the City Documents or the Official Statement;

(4) any event occurring, or information becoming known, which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or results in the Official Statement containing any untrue statement of a material fact or omitting to state a material fact required to be stated

therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(5) the declaration of war or the escalation of, or engagement in, military hostilities by the United States or the occurrence of any other national or international emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;

(6) the declaration of a general banking moratorium by federal, State of New York or State of California authorities, or the general suspension of trading on any national securities exchange;

(7) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Bonds or obligations of the general character of the Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

(8) Any amendment is made to the Official Statement that in the Underwriter's reasonable judgment will materially adversely affect the marketability of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds.

(c) On the Closing Date, the Underwriter shall have received counterpart originals or certified copies of the following documents, in each case satisfactory in form and substance to the Underwriter:

(1) the Formation Documents and the City Documents, together with a certificate dated as of the Closing Date of the Clerk of the City Council to the effect that each Formation Document is a true, correct and complete copy of the one duly adopted by the City Council;

(2) the Preliminary Official Statement and the Official Statement;

(3) an opinion of Bond Counsel, dated the Closing Date and addressed to the City, in the form attached to the Preliminary Official Statement as APPENDIX F, and an unqualified opinion of such counsel, dated the Closing Date and addressed to the Underwriter, to the effect that such approving opinion addressed to the City may be relied upon by the Underwriter to the same extent as if such opinion was addressed to it;

(4) a supplemental opinion, dated the Closing Date and addressed to the Underwriter, of Bond Counsel, to the effect that (i) this Bond Purchase Agreement has been duly authorized, executed and delivered by the District and, assuming such agreement constitutes a valid and binding obligation of the other parties thereto, constitutes the legally valid and binding agreement of the City enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, moratorium, insolvency or other laws affecting creditor's rights or remedies and is subject to general principles of equity (regardless of whether such enforceability is considered in equity or at law); (ii) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Fiscal Agent Agreement is

exempt from qualification under the Trust Indenture Act of 1939, as amended; (iii) the information contained in the Official Statement on the cover and under the captions “INTRODUCTION,” “THE BONDS,” “SOURCES OF PAYMENT FOR THE BONDS,” “LEGAL MATTERS – Tax Exemption” and APPENDICES C and F thereof, insofar as it purports to summarize certain provisions of the Act, the Bonds and the Fiscal Agent Agreement and such counsel’s opinion as to the exclusion from gross income for federal income tax purposes and exemption from State of California personal income taxes of interest on the Bonds, present a fair and accurate summary of such provisions; and (iv) the Special Taxes have been duly and validly authorized in accordance with the provisions of the Act and a lien to secure payment of the Special Taxes has been imposed on all non-exempt property in the District;

(5) a letter from Stradling Yocca Carlson & Rauth, a Professional Corporation, as Disclosure Counsel (“Disclosure Counsel”), to the Underwriter, to the effect that, without having undertaken to determine independently the accuracy or completeness of the statements contained in the Official Statement, no facts have come to the attention of the attorneys in the firm rendering legal services in connection with the issuance of the Bonds that have caused them to believe that the Official Statement as of its date contained, or as of the Closing Date contains, any untrue statement of a material fact, or as of its date omitted, or as of the Closing Date omits, to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except that the firm expresses no view with respect to any information concerning The Depository Trust Company, or the book-entry system, or with respect to any financial, statistical, economic or demographic data or revenue or other forecasts, projections, numbers, estimates, tables, assumptions, appraisals, assessed valuations or assumptions or expressions of opinion contained in the Official Statement, or with respect to any of the appendices thereto).

(6) a certificate, dated the Closing Date and signed by an authorized representative of the City, ratifying the use and distribution by the Underwriter of the Preliminary Official Statement and the Official Statement in connection with the offering and sale of the Bonds; and certifying that (i) the representations and warranties of the City contained in Section 2 hereof are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (ii) to the best of his or her knowledge, no event has occurred since the date of the Official Statement affecting the matters contained therein which should be disclosed in the Official Statement for the purposes for which it is to be used in order to make the statements and information contained in the Official Statement not misleading in any material respect, and the Bonds, the Formation Documents and the City Documents conform as to form and tenor to the descriptions thereof contained in the Official Statement; (iii) the City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied under the Formation Documents, the City Documents and the Official Statement at or prior to the Closing Date; (iv) that except as disclosed in the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, as to which the City or District has been served with notice, is pending or, to the knowledge of the City, threatened against the City or District (a) which would materially adversely affect the ability of the City to perform its obligations under the City Documents; (b) seeking to restrain or to enjoin: (A) the development of any of the land within the District, (B) the issuance, sale or delivery of the Bonds, (C) the application of the proceeds thereof in accordance with the Acquisition Agreement, or (D) the collection or

application of the Special Taxes, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the City Documents, any tentative or final subdivision map or building permits applicable to property within the District, any other instruments relating to the development of any of the property within the District, or any action contemplated by any of said documents; or (c) in any way contesting the powers or authority of the City with respect to the City Documents, or any action of the City contemplated by any of said documents; nor is there any action pending or, to the knowledge of the City, threatened against the City or the District which alleges that interest on the Bonds is not excludable from gross income for federal income tax purposes or is not exempt from California personal income taxation; and (v) the City will apply Bond proceeds in compliance with the Acquisition Agreement;

(7) an opinion of the City Attorney, as counsel to the City and the District, dated the Closing Date and addressed to the Underwriter, to the effect that (i) the City is duly organized and validly existing under the Constitution and laws of the State as a municipal corporation; (ii) the City has full legal right, power, and authority to execute and deliver the City Documents; (iii) the City Documents have been duly authorized, executed, and delivered by the City and, assuming due authorization and execution by any other applicable parties thereto, the City Documents constitute the valid and binding obligations of the City, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought; (iv) the City Council adopted the resolutions and ordinances forming the District, confirming the Special Taxes, approving the City Documents and authorizing the sale and issuance of the Bonds at meetings of the City Council which were called, held and conducted pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and such resolutions and ordinances are now in full force and effect and have not been amended, modified or rescinded; (v) to the best of such counsel's current, actual knowledge, after due inquiry, there are no actions, suits, proceedings, inquiries, or investigations, at law or in equity, before or by any court, governmental agency, public board, or body, pending or threatened against the City or the District, for which the City or the District has been served, to restrain or enjoin the issuance of the Bonds, the collection or application of the Special Taxes, or the payment of principal of and interest on the Bonds, or in any way contesting the validity of the formation of the District, the Bonds, or the City Documents; (vi) the execution and delivery of the City Documents, and compliance with the provisions thereof and hereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the City or the District a breach of or default under any agreement or other instrument to which either is a party or by which either is bound or any existing law, regulation, court order or consent decree to which either is subject; and (vii) the Special Taxes constituting the security for the Bonds have been duly and lawfully levied under and pursuant to the Act and constitute valid and legally binding liens on the properties on which they have been levied, subject to the effect of bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws relating to or affecting creditors' rights generally, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against agencies in the State of California;

(8) a certificate dated the Closing Date from Harris & Associates, Inc. addressed to City and the Underwriter to the effect that (i) the Special Tax if collected in the

maximum amounts permitted pursuant to the Rate and Method of Apportionment of Special Taxes as of the Closing Date would generate at least 110% of the sum of the maximum annual debt service payable on the Bonds, plus the Administrative Expenses, based on such assumptions and qualifications as shall be acceptable to the Underwriter, and (ii) it has reviewed the Preliminary Official Statement and Official Statement, and the statements concerning the Rate and Method and all statistical and financial data set forth in the tables and described in the Official Statement which were derived from information supplied by the Special Tax Consultant for use in the Official Statement as of the date of the Official Statement and as of the Closing Date are true, correct and complete in all material respects and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and no events or occurrences have been ascertained by the Special Tax Consultant or have come to its attention that would substantially change such information set forth in the Official Statement;

(9) A certificate of the City dated the Closing Date, in a form acceptable to Bond Counsel, that the Bonds are not arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

(10) A certificate of the Fiscal Agent and an opinion of counsel to the Fiscal Agent dated the Closing Date and addressed to the City and the Underwriter to the effect that it has duly authorized the execution and delivery of the Fiscal Agent Agreement, the city Continuing Disclosure Agreement and the Developer Continuing Disclosure Agreement (defined below) and that each such document is a valid and binding obligation of the Fiscal Agent enforceable in accordance with its terms;

(11) A fully executed and delivered Continuing Disclosure Agreement, dated as of April 1, 2011, between the Developer and Wells Fargo Bank, National Association, as dissemination agent (the "Developer Continuing Disclosure Agreement"), substantially in the form attached as APPENDIX E to the Official Statement;

(12) A certificate executed by an authorized officer of the Developer, dated the Closing Date and addressed to the Underwriter, the District and the City, in substantially the form attached hereto as Exhibit C (except that all references therein to the Preliminary Official Statement shall be changed to the Official Statement), with only such changes therein as shall have been accepted by the Underwriter;

(13) a certificate addressed to the City and the Underwriter, dated as of the Closing Date, of each lender, if any, to the Developer which has a loan secured by property within the District in substantially the form attached hereto as Exhibit D or other evidence provided by each lender that there is no event of default under the loan agreement(s) at this time and acknowledging the priority position of the lien of Special Taxes relative to such lender's security for the loan; such lenders shall include, but are not limited to, Bank of America, N.A. and Fireman's Fund Insurance Company;

(14) a letter or letters of Rutan & Tucker, LLP, special counsel to the Developer, and/or other counsel to the Developer, dated the date of the Closing and addressed to the City and the Underwriter, in form and substance acceptable to the City, the Underwriter and

it's counsel, to the effect that (i) Ridge Moreno Valley, LLC, a Delaware limited liability company and Ridge Moreno Valley II, LLC, a Delaware limited liability company are each a Delaware limited liability company, duly formed, validly existing and in good standing as a limited liability company under the laws of the State of Delaware, and are authorized to transact business and are in good standing in the State of California; (ii) the Developer has the limited liability company power to own and develop its properties in the District as described in the Official Statement; (iii) the Developer has the limited liability company power to enter into and perform its obligations under the Developer Continuing Disclosure Agreement and the Acquisition Agreement, (iv) the execution, delivery and performance of the Developer Continuing Disclosure Agreement and the Acquisition Agreement have been duly authorized by all necessary limited liability company action on the part of the Developer, and the Developer Continuing Disclosure Agreement and the Acquisition Agreement have been executed and delivered by the Developer and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legally valid and binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms; (v) the execution and delivery of the Certificate attached hereto as Exhibit C and performance of the indemnification provisions set forth in such Certificate (the "Indemnity Agreement") by the Developer has been duly authorized by all necessary limited liability company action on the part of the Developer and the Indemnity Agreement has been executed and delivered by the Developer and constitutes the legally valid and binding obligation of the Developer; (vi) to counsel's actual knowledge, the Developer is not in violation of any provision of, or in default under its organizational documents (the "Organization Documents"), the violation of or default under which would materially and adversely affect the ability of the Developer to complete the its proposed development (as described in the Official Statement, the "Development"); and (vii) to counsel's actual knowledge, without conducting any independent investigation or inquiry of parties other than the Developer, or investigation other than conducting litigation searches over the Internet of the Superior Court records of the County of Riverside and the United States District Court and Bankruptcy Court records of the Southern District of California, there are no legal or governmental actions, proceedings, inquiries or investigations pending or threatened by governmental authorities or to which the Developer is a party, which, if determined adversely to such entity, would, individually or in the aggregate (x) have a material adverse effect on the financial position or results of operations of the Developer, (y) otherwise materially or adversely affect the ability of the Developer to comply with its obligations under the Developer Continuing Disclosure Agreement, the Indemnity Agreement or the Acquisition Agreement, or (z) which would materially and adversely affect the ability of the Developer to pay Special Taxes due with respect to its property in the District or to complete the proposed Development;

(15) The appraisal dated December 31, 2010 (the "Appraisal") by Bruce W. Hull & Associates (the "Appraiser"), together with a letter dated the Closing Date from the Appraiser addressed to the Underwriter and the City to the effect that it has prepared the Appraisal and that (a) the Appraisal, in the form set forth in APPENDIX B to the Official Statement, may be included in the Preliminary Official Statement and the Official Statement, (b) it has reviewed the Official Statement and the Appraisal included in APPENDIX B thereto and the information in the Official Statement referring to the Appraisal is accurate and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not

misleading, and (c) no events or occurrences have been ascertained by it or have come to its attention that would materially change the opinion of value set forth in the Appraisal.

(16) A letter from Empire Economics, Inc., dated the Closing Date addressed to the Underwriter and the City to the effect that it has prepared the market absorption study (the “Study”) referred to in the Official Statement and that it has reviewed the Official Statement and the information regarding the Study and the projected absorption of the proposed development included in the Official Statement is accurate and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and (c) no events or occurrences have been ascertained by it or have come to its attention that would materially changed the opinion set forth in the Study.

(17) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the statements and information contained in the Preliminary Official Statement and the Official Statement, of the City’s representations and warranties contained herein and the due performance or satisfaction by the City at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the City in connection with the transactions contemplated hereby and by the Official Statement.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds contained in this Bond Purchase Agreement, or if the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate and neither the Underwriter nor the City shall be under any further obligation hereunder, except that the respective obligations of the City and the Underwriter set forth in Section 5 and Section 6 hereof shall continue in full force and effect.

4. Conditions of the City’s Obligations. The City’s obligations hereunder are subject to the Underwriter’s performance of its obligations hereunder, and are also subject to the following conditions:

(a) As of the Closing Date, no litigation shall be pending or, to the knowledge of the duly authorized officer of the City executing the certificate referred to in Section 3(c)(6) hereof, threatened, to restrain or enjoin the issuance or sale of the Bonds or in any way affecting any authority for or the validity of the Bonds, the Formation Documents, the City Documents or the existence or powers of the City or the District; and

(b) As of the Closing Date, the City shall receive the opinions of Bond Counsel and Disclosure Counsel referred to in Section 3(c)(3) and (5) hereof.

5. Expenses. Whether or not the Bonds are delivered to the Underwriter as set forth herein:

(a) The Underwriter shall be under no obligation to pay, and the City shall pay or cause to be paid (out of any legally available funds of the City) any expenses incident to



the performance of the City's obligations hereunder, including, but not limited to, the cost of printing and delivering the Bonds to the Underwriter, the cost of preparation, printing, distribution and delivery of the Fiscal Agent Agreement, the Preliminary Official Statement, the Official Statement and all other agreements and documents contemplated hereby (and drafts of any thereof) in such reasonable quantities as requested by the Underwriter; and any fees and disbursements of the Fiscal Agent for the Bonds then due, Bond Counsel, Disclosure Counsel, counsel to the City and District, and any accountants, engineers or any other experts or consultants the District or the City has retained in connection with the Bonds; and

(b) The City shall be under no obligation to pay, and the Underwriter shall pay, any fees of the California Debt and Investment Advisory Commission, the cost of preparation of any "blue sky" or legal investment memoranda and this Bond Purchase Agreement; expenses to qualify the Bonds for sale under any "blue sky" or other state securities laws; and all other expenses incurred by the Underwriter in connection with its public offering and distribution of the Bonds (except those specifically enumerated in paragraph (a) of this section), including the fees and disbursements of its counsel and any advertising expenses.

6. Notices. Any notice or other communication to be given to the City under this Bond Purchase Agreement may be given by delivering the same in writing to the City at the address set forth above; and any notice or other communication to be given to the Underwriter under this Bond Purchase Agreement may be given by delivering the same in writing to E. J. De La Rosa & Co., Inc., 10866 Wilshire Blvd., Suite 1650, Los Angeles, CA 90024.

7. Parties in Interest. This Bond Purchase Agreement is made solely for the benefit of the City and the Underwriter (including their successors or assigns), and no other person shall acquire or have any right hereunder or by virtue hereof.

8. Survival of Representations and Warranties. The representations and warranties of the City set forth in or made pursuant to this Bond Purchase Agreement and any certificates delivered hereunder shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Bond Purchase Agreement and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the City and regardless of delivery of and payment for the Bonds.

9. Effective. This Bond Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the City and shall be valid and enforceable as of the time of such acceptance.

10. No Prior Agreements. This Purchase Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of Bonds for the District.

11. Governing Law. This Bond Purchase Agreement shall be governed by the laws of the State of California.

12. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Very truly yours,

**E. J. DE LA ROSA & CO., INC.**

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

ACCEPTED:

**CITY OF MORENO VALLEY**, on behalf of  
COMMUNITY FACILITIES DISTRICT NO. 4 -  
INFRASTRUCTURE OF THE CITY OF MORENO  
VALLEY

By: \_\_\_\_\_  
Authorized Representative  
Time of Execution: \_\_\_\_\_

**EXHIBIT A**  
**MATURITY SCHEDULE**

<b><u>Maturity Date</u></b> <b><u>(September 1)</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Price or</u></b> <b><u>Yield</u></b>
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## EXHIBIT B

### FORM OF DEVELOPER CERTIFICATE AS TO NEAR FINALITY OF THE PRELIMINARY OFFICIAL STATEMENT

The undersigned hereby certifies to the City and the Underwriter that he/she is a duly appointed and acting officer of [Ridge Moreno Valley, LLC, a Delaware limited liability company] [Ridge Moreno Valley II, LLC, a Delaware limited liability company] (the "Developer"), and is authorized to execute and deliver this certificate, and further hereby certifies as follows:

1. The Developer or its Affiliates (as defined in the Developer Continuing Disclosure Agreement, dated as of April 1, 2011, between the Developer and Wells Fargo Bank, National Association) control the property in Community Facilities District No. 4 - Infrastructure of the City or Moreno Valley (the "District"), as described in the Preliminary Official Statement dated \_\_\_\_\_, 2011 (the "Preliminary Official Statement") in connection with the offering and sale of the \$\_\_\_\_\_ Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the "Bonds").

2. The Developer covenants that, while the Bonds are outstanding, the Developer will not bring any action, suit, proceeding, inquiry or investigation at law or in equity, before any court, regulatory agency, public board or body which in any way seeks to challenge or overturn the formation or operation of the District in accordance with the Formation Documents and applicable law, to challenge the levy of the Special Tax in accordance with the terms of the Formation Documents and applicable law, or to challenge the validity of the Bonds or the proceedings leading up to their issuance. The foregoing covenant shall not prevent the Developer from bringing an action, suit or proceeding contending that the Special Tax has not been levied in accordance with the methodology contained in the Rate and Method of Apportionment of Special Taxes for the District previously adopted by the City Council of the City of Moreno Valley (the "City").

3. Any and all information submitted in writing by the Developer to the City, the District or E. J. De La Rosa & Co., Inc. (the "Underwriter") in connection with the preparation of the Preliminary Official Statement was, as of the date thereof, or as updated and/or corrected subsequent to the date thereof, and is as of the date hereof and as updated or corrected, to the best of the Developer's knowledge, true and correct, and any and all information submitted in writing by the Developer to the Special Tax Consultant, Bruce W. Hull & Associates and Empire Economics, Inc. was, as of the date thereof, or as updated and/or corrected subsequent to the date thereof, and is as of the date hereof and as updated or corrected, to the best of Developer's knowledge, true and correct.

4. The statements relating to the Developer, its proposed development in the District, its property ownership and its contractual arrangements, if any, contained in the Preliminary Official Statement under the captions entitled "THE DEVELOPMENT AND PROPERTY OWNERSHIP" and "CONTINUING DISCLOSURE," and under the sub-caption

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entitled “SPECIAL RISK FACTORS, - Hazardous Substances,” do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

5. No proceedings have been filed and served or to the Developer’s actual knowledge, after due inquiry, are pending (based on service of process) or threatened in which the Developer or its Affiliates may be adjudicated as bankrupt or discharged from any or all of its debts and obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts. The Developer and its Affiliates have no current intention of filing for bankruptcy. The Developer has never filed bankruptcy or been declared bankrupt.

6. Except as disclosed in the Preliminary Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, has been filed and served or is pending (based on service of process) or, to the Developer’s actual knowledge, threatened, in any way seeking to restrain or enjoin the development of the property controlled by the Developer or its Affiliates in the District.

7. Except as disclosed in the Preliminary Official Statement, there are no events of monetary default by the Developer or any of its Affiliates or events which with the passage of time would constitute a monetary default by the Developer under any loan or similar credit arrangement to which the Developer is a party or to which any of its properties are subject and which would materially, adversely affect the Developer’s ability to develop its property in the District or to pay special taxes for which it is responsible. Except as disclosed in the Preliminary Official Statement, neither the Developer nor, to its actual knowledge, any entity in which it has a controlling ownership interest, is in payment default on any loans, lines of credit or other obligation to repay borrowed money related to its development in the District, or its other projects, which payment default would in any way materially and adversely affect the ability of the Developer or any Affiliate to develop its property in the District.

8. Except as disclosed in the Preliminary Official Statement, to the actual knowledge of the Developer, no other public debt secured by a tax or assessment on the land owned or controlled by the Developer or any Affiliate in the District is in the process of being authorized and no assessment districts or community facilities districts have been or are in the process of being formed which include any portion of such land.

9. Except as disclosed in the Preliminary Official Statement, to the actual knowledge of the Developer, neither it nor any of the Affiliates has ever been delinquent in the payment of any ad valorem property tax, special assessment or special taxes on property included within the boundaries of (i) one of its residential or commercial developments, (ii) a community facilities district, or (iii) an assessment district, that was not cured either within the fiscal year in which the tax or assessment was levied.

10. Except as disclosed in the Preliminary Official Statement, the Developer is not aware of any endangered species or hazardous substances located on the property controlled by it or any Affiliate within the District.

11. Neither the Developer nor any Affiliate has ever failed to comply in all material respects with any previous undertakings imposed upon the Developer or any such Affiliate to provide disclosure reports or notices of material events pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

Except as otherwise defined herein, all capitalized terms shall have the meaning assigned to those terms in the Preliminary Official Statement.

[DEVELOPER SIGNATURE BLOCK]

## EXHIBIT C

### COMMUNITY FACILITIES DISTRICT NO. 4 - INFRASTRUCTURE OF THE CITY OF MORENO VALLEY 2011 SPECIAL TAX BONDS

#### DEVELOPER CLOSING CERTIFICATE

In connection with the issuance and sale of the Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the "Bonds"), and pursuant to the Bond Purchase Agreement, dated \_\_\_\_\_, 2011, between the City of Moreno Valley (the "City"), on behalf of Community Facilities District No. 4 - Infrastructure of the city of Moreno Valley (the "District") and E. J. De L Rosa & Co., Inc., as the Underwriter named therein (the "Bond Purchase Agreement"), the undersigned hereby certifies, represents, warrants and covenants to and for the benefit of the City and the Underwriter, on behalf of [Ridge Moreno Valley, LLC, a Delaware limited liability company] [Ridge Moreno Valley II, LLC, a Delaware limited liability company] (the "Developer") that:

1. The undersigned is, and at all pertinent times mentioned herein has been, an authorized representative of the Developer, and is authorized to make this certification on behalf of the Developer.
2. Capitalized terms that are not defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement.
3. The Developer is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware.
4. The Developer has full limited liability company power and authority to execute, deliver, and perform its obligations under the Acquisition/Financing Agreement, between the Developer and the City of Moreno Valley (the "City"), and the Developer Continuing Disclosure Agreement, dated as of April 1, 2011, between the Developer and Wells Fargo Bank, National Association, as dissemination agent (the "Developer Continuing Disclosure Agreement") (collectively, the "Developer Documents"). Each Developer Document and this Certificate has been duly authorized, executed, and delivered by the Developer, and, assuming due authorization, execution and delivery by the other parties thereto, as applicable, constitutes a legal, valid, and binding obligation of the Developer, enforceable against the Developer in accordance with its respective terms, subject to laws relating to bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought.
5. We have received a copy of the Official Statement and have reviewed the contents thereof. We have reviewed the contents of this Certificate and have conferred with our counsel for the purpose of discussing the meaning of its contents.

6. All information concerning the Developer and the property within the District currently owned by the Developer, submitted in writing by, or on behalf of, the Developer to the Underwriter, the Appraiser and to the Special Tax Consultant in connection with the Rate and Method of Apportionment, was, to the best of our knowledge, true, complete, and correct at the time given, or as updated or modified as of the date hereof.
7. The statements relating to the Developer, its proposed development in the District, its property ownership and its contractual arrangements, if any, contained in the Preliminary Official Statement under the captions entitled “THE DEVELOPMENT AND PROPERTY OWNERSHIP” and “CONTINUING DISCLOSURE” and under the sub-caption entitled “SPECIAL RISK FACTORS, - Hazardous Substances” do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.
8. No proceedings are pending (with proper service of process having been accomplished) or, to the actual knowledge of the undersigned, after due inquiry, threatened in which the Developer may be adjudicated as bankrupt or discharged from any and all of its debts or obligations or granted an extension of time to pay its debts or a reorganization or readjustment of the debts.
9. No action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, is pending (based upon proper service of process having been accomplished) or, to the actual knowledge of the undersigned, after due inquiry, threatened in any way seeking to restrain or to enjoin the development of the property within the District owned by the Developer.
10. In consideration of the issuance of the Bonds by the District, the Developer agrees to indemnify and hold harmless, to the extent permitted by law, the City, the Underwriter and the District and their officers, employees and agents (each, an “Indemnified Party”) against any and all judgments, losses, claims, damages, liabilities and expenses (i) arising out of any statement or information provided in the portions of the Official Statement specified in Paragraph 7 above relating to the Developer, the property within the District currently owned by the Developer and the development thereof, that is found to be untrue or incorrect in any material respect or the omission or alleged omission therefrom of any statement or information that should be stated therein, or that is necessary, to make the statements therein not misleading in any material respect; and (ii) to the extent of the aggregate amount paid in settlement of any litigation commenced or threatened arising from a claim based upon any such material untrue statement or omission if such settlement is effected with the written consent of the Developer. In case any claim shall be made or action brought against an Indemnified Party based upon information in the Official Statement for which indemnity is applicable against the Developer, as provided above, the Indemnified Party shall



promptly notify the Developer in writing setting forth the particulars of such claim or action and the Developer shall assume the defense thereof, including the retaining of counsel reasonably acceptable to the Indemnified Party and the payment of all reasonable legal expenses. Notwithstanding the Developer's election to appoint counsel to represent the Indemnified Party in any such action, the Indemnified Party shall have the right to employ separate counsel (including local counsel), and the Developer shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the Developer to represent the Indemnified Party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the Indemnified Party and the Developer, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are materially different from or additional to those available to the Developer; (iii) the Developer shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action; or (iv) the Developer shall authorize the Indemnified Party to employ separate counsel at the expense of the Developer. The Developer will not, without the prior written consent of the applicable Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

11. Promptly after receipt by any Indemnified Party of notice of any complaint or the commencement of any action or proceeding in connection with any matter for which the Developer is obligated to indemnify an Indemnified Party as set forth in the preceding paragraph, the Indemnified Party shall notify the Developer in writing of such complaint or of the commencement of such action or proceeding and, if the Developer so elects or is requested by the Indemnified Party, the Developer shall assume the defense of such action or proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the reasonable fees and disbursements of such counsel, in which event, under the circumstances described in paragraph 10 above, the Developer shall not be obligated to pay the reasonable fees and disbursements of separate counsel for the Indemnified Party in such action. Each Indemnified Party is a third party beneficiary of the agreement by the Developer to indemnify and hold harmless the Indemnified Parties as set forth in this paragraph 11 and the preceding paragraph 10 and shall have the same right to enforce the contractual promises of the Developer herein to provide such indemnity.
12. The Developer is fully qualified by all necessary permits, licenses, and certifications, to conduct its business as presently being conducted and, except for such licenses, certificates, approvals, variances, and permits which may be

necessary for the construction of improvements within the District or have already been obtained and are in full force and effect, there is no license, consent, approval, authorization, or other order of, or filing with, or certification by, any regulatory authority having jurisdiction over the Developer necessary for the Developer to complete its planned development of property within the District as described in the Official Statement.

13. To the best knowledge of the undersigned, based upon due inquiry, the Developer is not in material default under, its operating agreement or any other material agreement, lease, or other contract to which the Developer is a party or by which its properties are bound, the material default under which would materially and adversely affect the business, properties, assets, liabilities, or conditions (financial or other) of the Developer.
14. The Developer has never failed to comply in all material respects with an obligation to file an annual disclosure report with the appropriate information repositories as required under Securities and Exchange Commission Rule 15c2-12.
15. Other than as set forth in the Official Statement, to the actual knowledge of the Developer, (i) no public debt secured by a special tax or assessment on the land in the District owned or controlled by the Developer exists or is in the process of being authorized; and (ii) no other assessment district or community facilities district exists or is in the process of being formed, in each case which would include any portion of the land within the District owned or controlled by the Developer.
16. None of the parcels of land within the District owned by the Developer is delinquent in the payment of any taxes or assessments.
17. The execution and delivery by the Developer of the Developers Documents and this Certificate and the performance by the Developer of its obligations thereunder and hereunder do not and will not result in violation of any provision of, or in default under, the Developer's operating agreement or any other material agreement, lease, or other contract to which the Developer is a party or by which its properties are bound.

Dated:

[DEVELOPER SIGNATURE BLOCK]

**EXHIBIT D**

**LENDER CERTIFICATE BY \_\_\_\_\_**

Re: Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley  
2011 Special Tax Bonds

The undersigned certifies that he is familiar with the facts herein certified and is authorized and qualified to certify the same on behalf of \_\_\_\_\_ (the "Lender"), and the undersigned, on behalf of the Lender, further certifies as follows:

1. The Lender has lent money to [Ridge Moreno Valley, LLC, a Delaware limited liability company] [Ridge Moreno Valley, LLC II, a Delaware limited liability company] (the "Borrower") pursuant to various loan documents relating thereto (collectively, the "Loan Documents").

2. The Borrower's obligations under the Loan Documents are secured by, among other things, a first lien on and security interest in all of the present and hereafter acquired right, title and interest of the Borrower in certain properties within Community Facilities District No. 4 - Infrastructure of the City of Moreno Valley (the "District").

3. The Lender acknowledges that pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (Sections 53311 *et seq.* of the Government Code of the State of California), special tax bonds may be issued on behalf of the District in the aggregate amount not to exceed \$ \_\_\_\_\_ (the "Bonds"), repayment of the Bonds being secured in part by special taxes (the "Special Taxes") levied against property located within the boundaries of the District and owned by the Borrower (the "Property") (said aggregate amount excluding amounts which may be issued to refund any of such Bonds). The Lender has been advised that approximately \$ \_\_\_\_\_ of the Bonds are being issued at this time.

4. The Lender acknowledges that if any default occurs in the payment of the Special Taxes levied against the Property, the District has the right to foreclose upon the Property. The Special Taxes are levied according to the Rate and Method of Apportionment of Special Tax previously provided to the Lender by the Borrower.

5. The Lender acknowledges that the lien securing the Special Taxes levied against the Property has priority over any interest the Lender may have in the Property pursuant to the Loan Documents.

6. To the Lender's knowledge, there is no event of default under the Loan Documents or any event which with notice might constitute an event of default under the Loan Documents.

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**CONTINUING DISCLOSURE AGREEMENT  
OF THE CITY OF MORENO VALLEY**

This Continuing Disclosure Agreement dated as of April 1, 2011 (the "Disclosure Agreement") is executed and delivered by the City of Moreno Valley (the "Issuer") for and on behalf of Community Facilities District No. 4 - Infrastructure and Wells Fargo Bank, National Association, as fiscal agent (the "Fiscal Agent") and as dissemination agent (the "Dissemination Agent"), in connection with the issuance and delivery by the Issuer of \$ \_\_\_\_\_ aggregate principal amount of its Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley 2011 Special Tax Bonds (the "Bonds"). The Bonds are being issued pursuant to a Fiscal Agent Agreement, dated as of April 1, 2011 (the "Fiscal Agent Agreement"), by and between the Issuer and the Fiscal Agent. The Issuer, the Fiscal Agent and the Dissemination Agent covenant as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer, the Fiscal Agent and the Dissemination Agent, for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Fiscal Agent Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"Beneficial Owner" shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income purposes.

"Disclosure Representative" shall mean the City Manager of the City of Moreno Valley or the Financial and Administrative Services Director, or their designee, or such other officer or employee as the Issuer shall designate in writing to the Dissemination Agent from time to time.

"Dissemination Agent" shall mean, initially, Wells Fargo Bank, National Association acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the then current Dissemination Agent a written acceptance of such designation.

"EMMA" shall mean the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures, maintained on the Internet at <http://emma.msrb.org/>.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

"Official Statement" shall mean the Official Statement dated \_\_\_\_\_, 2011 relating to the Bonds.

"Participating Underwriter" shall mean the original Underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds, which is De La Rosa & Co.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preferences or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax or environmental tax.

SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent by written direction to such Dissemination Agent to, not later than April 1 after the end of the Issuer’s fiscal year (which currently ends on June 30), commencing with the report due on April 1, 2012, provide to EMMA, the Fiscal Agent (if the Fiscal Agent is not the Dissemination Agent) and the Participating Underwriter an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer may be submitted separately from and later than the balance of the Annual Report if they are not available by the date required above for the filing of the Annual Report.

An Annual Report shall be provided at least annually notwithstanding any fiscal year longer than 12 calendar months. The Issuer’s fiscal year is currently effective from July 1 to the immediately succeeding June 30 of the following year. The Issuer will promptly notify EMMA, the Fiscal Agent and the Dissemination Agent of a change in the fiscal year dates.

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to EMMA, the Issuer shall provide the Annual Report to the Dissemination Agent and the Fiscal Agent (if the Fiscal Agent is not the Dissemination Agent). If by fifteen (15) Business Days prior to such date the Fiscal Agent has not received a copy of the Annual Report, the Fiscal Agent shall contact the Issuer and the Dissemination Agent to determine if the Issuer is in compliance with subsection (a). The Issuer shall provide a written certification with each Annual Report furnished to the Dissemination Agent and the Fiscal Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to EMMA by the date required in subsection (a), the Dissemination Agent shall send a notice to EMMA, in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall promptly after receipt of the Annual Report, file a report with the Issuer and (if the Dissemination Agent is not the Fiscal Agent) the Fiscal Agent certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing all the Repositories and other parties to which it was provided.

SECTION 4. Content of Annual Report. The Issuer’s Annual Report shall contain or include by reference:

(a) Financial Statements. The audited financial statements of the Issuer for the most recent fiscal year of the Issuer then ended. If the Issuer prepares audited financial statements and if the audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report shall contain any unaudited financial statements of the Issuer in a format similar to the financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available. Audited financial statements of the Issuer shall be audited by such auditor as shall then be required or permitted by State law or the Fiscal Agent Agreement. Audited financial statements, if prepared by the Issuer, shall be prepared in accordance with generally accepted accounting principles as prescribed for governmental units by the Governmental Accounting Standards Board; provided, however, that the Issuer may

from time to time, if required by federal or state legal requirements, modify the basis upon which its financial statements are prepared. In the event that the Issuer shall modify the basis upon which its financial statements are prepared, the Issuer shall provide the information referenced in Section 8(d) below.

(b) Financial and Operating Data. The Annual Report shall contain or incorporate by reference the following information.

(i) the principal amount of Bonds outstanding as of the September 2 preceding the filing of the Annual Report;

(ii) the balance in each fund under the Fiscal Agent Agreement following the September 1 debt service payment preceding the filing of the Annual Report;

(iii) any changes to the Rate and Method of Apportionment approved or submitted to the qualified electors for approval prior to the filing of the Annual Report and a description of any parcels for which the Special Taxes have been prepaid, including the amount prepaid, since the date of the last Annual Report;

(iv) a table setting forth the most recent assessed values of the property and the principal amount of the Bonds and any other land secured debt known by the City to be allocable to parcels within the District by property owner and a statement as to whether any of such taxpayers is delinquent in the payment of Special Taxes;

(vi) any event known to the Issuer which reduces the taxable acreage or which results in a moratorium on future building within the District;

(vii) a table setting forth for the five most recent fiscal years in which Special Taxes were levied, the amount of Special Taxes levied in each fiscal year and the percentage delinquent as of the date of the Annual Report, and a description of the status of any foreclosure actions being pursued by the Issuer with respect to delinquent Special Taxes;

(viii) any information not already included under (i) through (viii) above that the Issuer is required to file in its annual report to the California Debt and Investment Advisory Commission pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended.

(c) Any or all of the items listed in (a) or (b) above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to each of EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify each such other document so included by reference.

#### SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, not more than ten (10) Business Days after the event:

1. principal and interest payment delinquencies;
2. unscheduled draws on debt service reserves reflecting financial difficulties;
3. unscheduled draws on credit enhancements reflecting financial difficulties;

4. substitution of credit or liquidity providers, or their failure to perform;
5. adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds;
6. defeasances;
7. tender offers;
8. bankruptcy, insolvency, receivership or similar proceedings; and
9. ratings changes.

(b) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated persons or their termination;
2. appointment of a successor or additional trustee or the change of the name of a trustee;
3. non payment related defaults;
4. modifications to the rights of Bondholders;
5. notices of prepayment; and
6. release, substitution or sale of property securing repayment of the Bonds.

(c) The Fiscal Agent shall, promptly upon obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Issuer pursuant to the Fiscal Agent Agreement, inform such person of the event, and request that the Issuer promptly notify the Dissemination Agent to report the event pursuant to subsection (g). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Events shall mean actual knowledge by the officer at the corporate trust office of the Fiscal Agent with regular responsibility for the administration of matters related to the Fiscal Agent Agreement.

(d) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, whether because of a notice from the Fiscal Agent pursuant to subsection (c) or otherwise, the Issuer shall as soon as possible determine if such event would be material under applicable federal securities laws.

(e) If the Issuer has determined that knowledge of the occurrence of a Listed Event in subsection (b) would be material under applicable federal securities laws, the Issuer shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (f).

(f) If in response to a request under subsection (b), the Issuer determines that the Listed Event would not be material under applicable federal securities laws, the Issuer shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (g).



(g) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with EMMA.

(h) The Issuer hereby agrees that the undertaking set forth in this Disclosure Agreement is the responsibility of the Issuer and that the Fiscal Agent or the Dissemination Agent shall not be responsible for determining whether the Issuer's instructions to the Dissemination Agent under this Section 5 comply with the requirements of the Rule.

SECTION 6. Termination of Reporting Obligation. The obligation of the Issuer, the Fiscal Agent and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event under Section 5.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Fiscal Agent shall be the Dissemination Agent. The Dissemination Agent may resign by providing (i) thirty days written notice to the Issuer and the Fiscal Agent (if the Fiscal Agent is other than the Dissemination Agent) and (ii) upon appointment of a new Dissemination Agent hereunder.

SECTION 8. Amendment. (a) This Disclosure Agreement may be amended, by written agreement of the parties, without the consent of the Owners, if all of the following conditions are satisfied: (i) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Issuer or the type of business conducted thereby; (ii) this Disclosure Agreement as so amended would have complied with the requirements of the Rule as of the date of this Disclosure Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; (iii) the Issuer shall have delivered to the Fiscal Agent an opinion of a nationally recognized bond counsel or counsel expert in federal securities laws, addressed to the Issuer and the Fiscal Agent, to the same effect as set forth in clause (ii) above; (iv) the Issuer shall have delivered to the Dissemination Agent an opinion of nationally recognized bond counsel or counsel expert in federal securities laws, addressed to the Issuer, to the effect that the amendment does not materially impair the interests of the Owners or Beneficial Owners; and (v) the Issuer shall have delivered copies of such opinion and amendment to each Repository.

(b) This Disclosure Agreement may be amended, by written agreement of the parties, upon obtaining the consent of Owners in the same manner as provided in the Fiscal Agent Agreement for amendments to the Fiscal Agent Agreement with the consent of the Owners of the Bonds, provided that the conditions set forth in Section 8(a)(i), (ii), (iii) and (iv) have been satisfied.

(c) To the extent any amendment to this Disclosure Agreement results in a change in the type of financial information or operating data provided pursuant to this Disclosure Agreement, the first Annual Report provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change.

(d) If an amendment is made to the basis on which financial statements are prepared, the Annual Report for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a quantitative and, to the extent reasonably

feasible, qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

The Issuer acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Issuer, and that under some circumstances compliance with this Disclosure Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Issuer under such laws.

SECTION 10. Default. In the event of a failure of the Issuer or the Dissemination Agent to comply with any provision of this Disclosure Agreement, any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Fiscal Agent Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer or the Fiscal Agent to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Fiscal Agent and Dissemination Agent. Article VII of the Fiscal Agent Agreement is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Fiscal Agent Agreement and the Dissemination Agent and the Fiscal Agent shall be entitled to the same protections, limitations from liability and indemnification hereunder as are afforded the Fiscal Agent thereunder. The Dissemination Agent and the Fiscal Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Issuer agrees to indemnify and save the Dissemination Agent and the Fiscal Agent and their respective officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or the Fiscal Agent's respective negligence or willful misconduct. The Dissemination Agent shall be paid compensation by the Issuer for its services provided hereunder in accordance with its schedule of fees as amended from time to time and all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. The Dissemination Agent and the Fiscal Agent shall have no duty or obligation to review any information provided to them hereunder. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and Fiscal Agent and payment of the Bonds. No person shall have any right to commence any action against the Fiscal Agent or the Dissemination Agent seeking any remedy other than to compel specific performance of this Disclosure Agreement. The Dissemination Agent and the Fiscal Agent shall not be liable under any circumstances for monetary damages to any person for any breach under this Disclosure Agreement. Any company succeeding to all or substantially all of the Dissemination Agent's corporate trust business shall be the successor to the Dissemination Agent hereunder without the execution or filing of any paper or any further act.

SECTION 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Fiscal Agent, the Dissemination Agent, the Participating Underwriter and Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 13. Notices. Notices should be sent in writing to the following addresses. The following information may be conclusively relied upon until changed in writing.

Disclosure Representative:	City Manager City of Moreno Valley 14177 Frederick Street P.O. Box 88005 Moreno Valley, CA 92552-0805
	Special Districts Division Manager City of Moreno Valley 14325 Frederick Street, Suite 9 P.O. Box 88005 Moreno Valley, CA 92552-0805
Dissemination Agent:	Wells Fargo Bank, National Association 707 South Wilshire Boulevard Los Angeles, CA 90017
Fiscal Agent:	Wells Fargo Bank, National Association 707 South Wilshire Boulevard Los Angeles, CA 90017
Participating Underwriter:	De La Rosa & Co. 11900 West Olympic Boulevard, Suite 500 Los Angeles, CA 90064

SECTION 14. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

CITY OF MORENO VALLEY, for and on behalf  
of COMMUNITY FACILITIES DISTRICT NO. 4  
— INFRASTRUCTURE OF THE CITY OF  
MORENO VALLEY, COUNTY OF  
RIVERSIDE, STATE OF CALIFORNIA

By: \_\_\_\_\_  
Financial and Administrative Services Director

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Fiscal Agent and Dissemination  
Agent

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley,  
County of Riverside, State of California

Name of Bond Issue: \$ \_\_\_\_\_ Community Facilities District No. 4 — Infrastructure of the City of  
Moreno Valley 2011 Special Tax Bonds

Date of Issuance: \_\_\_\_\_, 2011

NOTICE IS HEREBY GIVEN that Community Facilities District No. 4 — Infrastructure of the City of Moreno Valley, County of Riverside, State of California (the “District”), has not provided an Annual Report with respect to the above-named Bonds as required by Section 3 of the Continuing Disclosure Agreement, dated as of April 1, 2011, by and between the District and Wells Fargo Bank, National Association as Fiscal Agent and Dissemination Agent. [The District anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Dissemination Agent

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cc: City of Moreno Valley

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**THIRD AMENDMENT TO AGREEMENT  
FOR PROFESSIONAL CONSULTANT SERVICES  
FINANCIAL ANALYST**

This Third Amendment to Agreement is made and entered into as of the date signed by the Mayor, by and between the City of Moreno Valley, California, a municipal corporation, hereinafter described as "City," and Fieldman, Rolapp & Associates, Inc., a (California corporation) hereinafter referred to as "Consultant."

**RECITALS**

WHEREAS, the City and Consultant entered into an Agreement entitled "AGREEMENT FOR PROFESSIONAL FINANCIAL ANALYST CONSULTANT SERVICES," hereinafter referred to as "Agreement," dated March 28, 2005; and,

WHEREAS, CFD No. 5 has been formed and bonds sold; and,

WHEREAS CFD No. 4, hereinafter referred to as CFD No. 4-I, has incurred significant changes in the project, including services related to the sale of a portion of taxable property within CFD No. 4-I to the United States Postal Service (USPS) and annexation of certain additional property to CFD No. 4-I after CFD No. 4-I was formed; and,

WHEREAS there have been a number of starts and stops in the project, which have required necessary duplication of services by the financial analyst, for the tasks as outlined in the Original Agreement.

**SECTION 1. AMENDMENT to ORIGINAL AGREEMENT:**

1.1 In consideration for the additional work resulting from halted progress prior to commencement of the bond proceeding, which has required the Consultant to revise and redo documentation necessary for an anticipated bond issuance on three separate occasions, the City

**AMENDMENT TO AGREEMENT FOR  
FOR PROFESSIONAL CONSULTANT SERVICES  
FINANCIAL ANALYST**

agrees to pay the Consultant and the Consultant agrees to receive a revised “Not-to-Exceed” fee of \$105,750 for CFD No. 4-I, which shall fund the continuation of services as provided by the financial analyst to proceed toward the bond sale.

1.2 Exhibit B, Terms of Payment , Section 1, to the Original Agreement shall be replaced by the following:

1. Fee for District Formation: Fees for financial advisory services performed for the formation of the District shall not exceed a total of \$34,500, which includes the amount of the Agreement \$12,500, the First Amendment amount of \$12,500, and the Second Amendment amount of \$9,500. No additional increases for District Formation shall be provided herein this Third Amendment to the Agreement.

1.3 Exhibit B, Terms of Payment, Section 2, to the Original Agreement shall be replaced by the following:

2. Fee for Debt Issuance Scope of Services: Financial advisory (Fiscal Analyst) services performed for debt issuance services pursuant to Exhibit A of the Original Agreement will be billed for at the amounts set forth below:

<u>Transaction Size</u>	<u>Fees</u>
\$1 to \$2,999,999	To be negotiated
\$3,000,000 to \$9,999,999	\$65,000
\$10,000,000 to \$19,999,999	To be negotiated
\$20,000,000 and above	To be negotiated

Payment of fees earned by the Consultant for debt issuance services shall be conditional and contingent upon the sale and closing of the issue of Bonds,



**AMENDMENT TO AGREEMENT FOR  
FOR PROFESSIONAL CONSULTANT SERVICES  
FINANCIAL ANALYST**

and are payable at the closing of the debt issue(s) undertaken to finance the  
Project.

1.4 Exhibit B, Terms of Payment, Section 3, to the Original Agreement shall be amended  
as follows:

3. A "Not-to-Exceed" fee of \$6,250, will be established for "Other Services" and  
"Expenses" incurred as a result of formation and bond issuance proceedings

**SECTION 2.**

2.1 Except as otherwise specifically provided in this Amendment, the terms and conditions  
of the Agreement shall remain in full force and effect.

**SIGNATURE PAGE TO FOLLOW**

**AMENDMENT TO AGREEMENT FOR  
FOR PROFESSIONAL CONSULTANT SERVICES  
FINANCIAL ANALYST**

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

City of Moreno Valley

Fieldman, Rolapp & Associates

BY: \_\_\_\_\_  
Mayor  
\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
(President or Vice President)  
\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
(Corporate Secretary)  
\_\_\_\_\_  
Date

**INTERNAL USE ONLY**

ATTEST:  
\_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:  
\_\_\_\_\_  
City Attorney  
\_\_\_\_\_  
Date

RECOMMENDED FOR APPROVAL:  
\_\_\_\_\_  
Department Head  
\_\_\_\_\_  
Date

## Jennifer Terry

---

**From:** Marshall Eyerman  
**Sent:** Thursday, January 27, 2011 10:53 AM  
**To:** Jennifer Terry  
**Subject:** FW: Moreno Valley CFD No. 4-I - Cost of Issuance

-----Original Message-----

From: James Fabian [mailto:jfabian@Fieldman.com]  
Sent: Thursday, November 11, 2010 3:40 PM  
To: Marshall Eyerman  
Cc: Paul Pender  
Subject: RE: Moreno Valley CFD No. 4-I - Cost of Issuance

Marshall,

As we discussed when we did our Amendment for the RMA modification we need to increase our fee due at closing to reflect the significant amount of time spent on the CFD financing issues over the past 4 years. I would like to request a contingent fee of \$65,000 plus expenses due at closing. This will enable me to recoup approximately 90% of our time. I would estimated our fee for the next series of Bonds to be \$40,000.

Thank you!

James V. Fabian  
Principal  
Direct: (949) 660-7307

Fieldman, Rolapp & Associates, Inc.  
1990 MacArthur Boulevard | Suite 1100 | Irvine, CA 92612  
Phone: (949) 660-7300 | Fax: (949) 474-8773 | Web: www.fieldman.com

Please consider the environment before printing this e-mail.

CONFIDENTIALITY NOTICE This e-mail message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone or return e-mail, delete the message from your computer system, and return any hard copies to us at the following address via the U.S. Postal Service: Fieldman, Rolapp & Associates 1990 MacArthur Blvd., Suite 1100, Irvine CA 92612-2433

-----Original Message-----

From: Marshall Eyerman [mailto:marshalle@moval.org]  
Sent: Wednesday, November 10, 2010 8:03 AM  
To: James Fabian  
Cc: Candace Cassel  
Subject: Moreno Valley CFD No. 4-I - Cost of Issuance

Jim,

Based on the last conference call there was some discussion about the estimated cost of issuance for the bonds. I have taken the liberty of updating a previous version of the COI, which I believe may have been prepared by your office. Please let me know if you have any comments or changes to the attached file.

Also, the property owner has inquired about any cost that may be incurred for any future

series of bonds. Could you please provide us an estimate for your cost for an future series of bonds. Thanks.

-Marshall

Marshall Eyerman  
Special Districts Program Manager  
City of Moreno Valley  
14325 Frederick Street, Suite 9  
P.O. Box 88005  
Moreno Valley, CA 92552-0805  
T: 951.413.3482  
F: 951.413.3498  
E: [marshalle@moval.org](mailto:marshalle@moval.org)<<mailto:marshalle@moval.org>>  
W: [www.moval.org](http://www.moval.org)<<http://www.moval.org>>

February 2, 2011

Marshall Eyerman  
Special Districts Program Manager  
City of Moreno Valley  
14325 Frederick Street, Suite 9  
P.O. Box 88005  
Moreno Valley, CA 92552-0805

Dear Marshall:

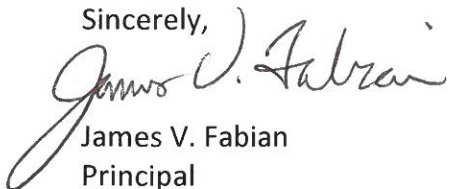
As you are aware, we have advised the City since 2005 on the formation of CFD No. 4-I and subsequent efforts to sell CFD bonds. We are requesting our contract be amended to account for the additional time we have incurred on this project over the past three years, due to an unforeseen number of delays and redundant efforts which were outside the City's or our control.

Since CFD formation, we have advised the City on all aspects of the process required for putting a bond financing in place for the CFD, including review of real estate studies and appraisals of the property, the bond legal documents, bond structuring, and the bond Official Statement. Due to circumstances beyond the City's or our control, this bond issuance process has been undertaken three separate and distinct times. In each prior case, the bond issuance process was unable to be completed due solely to changes or uncertainty with the CFD property which will secure the bonds. The current bond issuance process started in the 3<sup>rd</sup> quarter of 2010, and is presently anticipated to be completed this April.

As a result, the time required to provide our advisory services to the City to complete the bond transaction has exceeded our reasonable expectations. Based on the time we have incurred to date on solely advising the City on bond issuance, the cost of our services--for which we have not yet been paid--is approximately \$71,000. Under our existing contract, we have been paid approximately \$34,000, all relating to our time spent on the CFD formation. We are therefore requesting an amendment to reflect a total "not-to-exceed" amount of \$105,750. The balance of our fees is anticipated to be paid from CFD bond proceeds in April.

We greatly appreciate the City's consideration of this request and look forward to continuing our relationship with the City. Please feel free to contact me with any questions regarding this request.

Sincerely,

  
James V. Fabian  
Principal

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>RAH</i>
CITY MANAGER	<i>ms</i>

## Report to City Council

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**TO:** Mayor and City Council and Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley

**FROM:** Richard Teichert, Financial and Administrative Services Director

**AGENDA DATE:** March 8, 2011

**TITLE:** ADOPTION OF RESOLUTIONS APPROVING THE REDEMPTION OF 2007 TAXABLE TAX ALLOCATION BONDS, SERIES B

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### RECOMMENDED ACTION

Staff recommends that:

1. The City Council adopt Resolution No. 2011-20 approving the redemption of Moreno Valley Redevelopment Agency 2007 taxable tax allocation bonds in the amount of \$22,500,000; and
2. The City Council acting in the capacity as Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley adopt Resolution No. RDA 2011- 01 approving the redemption of Moreno Valley Redevelopment Agency 2007 taxable tax allocation bonds in the amount of \$22,500,000.

### BACKGROUND

The City of Moreno Valley Redevelopment Agency (Agency) issued tax exempt tax allocation bonds as Series A in 2007 in the amount of \$43,495,000 to fund a number of infrastructure and capital projects in the City's redevelopment area. In addition, the Agency structured taxable tax allocation bonds as Series B in the amount of \$22,500,000. The City of Moreno Valley (City) General Fund purchased 100% of the Series B bond issue with the funds invested in the City's investment pool pending public sale of the bonds in the future. The bonds were intended to be sold publicly when tax increment was available through growth in property tax increment revenue or pending a

lawsuit with the County over a tax increment pass through agreement. The General Fund was to be reimbursed when the bonds were sold to the public.

### **DISCUSSION**

Unfortunately, the lawsuit has been resolved in the County's favor. The economy also turned negative causing property tax increment to decrease for several years. At this time, the City's General Fund requires the funds for cash flow purposes to maintain adequate liquidity in the General Fund. In light of these factors, it is now appropriate for the Agency to redeem the bonds and return the amount of \$22,500,000 to the City's General Fund. The proposed draft of the three year Deficit Elimination Plan relies on this funding being returned to the General Fund to maintain required fund balances for the duration of the plan.

### **ALTERNATIVES**

1. Adopt the proposed resolution approving the redemption of Moreno Valley Redevelopment Agency 2007 taxable tax exempt bonds in the amount of \$22,500,000.
2. Do not adopt the proposed resolution and provide staff with further direction. This option risks that the funds may not be returned within a reasonable timeframe when needed for cash flow. The delays could be caused by the Governor's proposed plan to eliminate redevelopment agencies.

### **FISCAL IMPACT**

Redemption of the RDA Series B bonds is integral in the City's Deficit Elimination Plan to balance the City's General Fund. The \$22,500,000 in funding shall be used to support City services during the three year plan period and provides the necessary \$14,000,000 in minimum fund balance at the end of the three year period. The City will be forced to make dramatic cuts much sooner than it is prepared to and sooner than is prudent for providing a managed reduction in City services.

### **CITY COUNCIL GOALS**

Revenue diversification and preservation and Public Safety.

### **SUMMARY**

The intent that was present when the 2007 taxable tax allocation bonds were issued is no longer economically viable. The tax increment revenue from the Agency does not exist to support a public sale of these bonds. It is in the best interest of the City and the Agency to redeem the \$22,500,000 in bonds and reimburse the City General Fund as quickly as possible.

**NOTIFICATION**

Publication of the agenda

**ATTACHMENTS/EXHIBITS**

Exhibit A – Proposed resolution of the City Council the City of Moreno Valley authorizing and approving the redemption of its Moreno Valley Redevelopment Project, subordinate 2007 taxable tax allocation bonds and making certain determinations and approvals in connection therewith.

Exhibit B – Proposed resolution of the Community Redevelopment Agency of the City of Moreno Valley authorizing and approving the redemption of its Moreno Valley Redevelopment Project, subordinate 2007 taxable tax allocation bonds and making certain determinations and approvals in connection therewith.

Prepared By:  
Richard Teichert  
Financial and Administrative Services Director

Concurred By:  
Michelle Dawson  
Acting Assistant City Manager

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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RESOLUTION NO. 2011-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY REQUESTING, AUTHORIZING AND APPROVING THE REDEMPTION OF COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, MORENO VALLEY REDEVELOPMENT PROJECT, SUBORDINATE 2007 TAXABLE TAX ALLOCATION BONDS AND MAKING CERTAIN DETERMINATIONS AND APPROVALS IN CONNECTION THEREWITH

WHEREAS, the Community Redevelopment Agency of the City of Moreno Valley (the "Agency") is a redevelopment agency duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Community Redevelopment Law (Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California) and the powers of the Agency include the power to issue bonds for any of its corporate purposes;

WHEREAS, a Redevelopment Plan known as the "Moreno Valley Redevelopment Project" has been adopted and approved by ordinance of the City of Moreno Valley (the "City"), and all requirements of law for and precedent to the adoption and approval of said Redevelopment Plan have been duly complied with;

WHEREAS, the Agency authorized and issued its \$43,495,000 Community Redevelopment Agency of the City of Moreno Valley, 2007 Tax Allocation Refunding Bonds, Series A (Moreno Valley Redevelopment Project)(the "2007A Bonds") by its Resolution No. RDA 2007-11 dated October 23, 2007. No change or action with respect to the 2007A Bonds is intended or effected by this Resolution;

WHEREAS, the Agency, in addition, authorized and issued its \$22,500,000 Community Redevelopment Agency of the City of Moreno Valley, Subordinate 2007 Taxable Tax Allocation Bonds (the "2007B Bonds") by its Resolution No. RDA 2007-12 dated October 23, 2007 and pursuant to an Indenture of Trust by and between the Agency and the City dated as of October 1, 2007 relating to the 2007B Bonds (the "2007B Indenture");

WHEREAS, the City, which purchased and has owned the 2007B Bonds continuously since the 2007B Bonds were issued by Agency, desires that the 2007B Bonds be redeemed at this time and has requested that the Agency redeem the 2007B Bonds immediately upon approval of this Resolution;

WHEREAS, the City has a substantial, immediate need for funds that will be addressed, in part, by redemption of the 2007B Bonds at this time;

WHEREAS, the Agency is amenable to the redemption of the 2007B Bonds by repayment by Agency to City of all amounts outstanding under the 2007B Bonds (namely, the sum of \$22,500,000)(the "Redemption Amount");

WHEREAS, the 2007B Indenture provides, in part, in Section 2.3(a), that the 2007B Bonds are subject to redemption at the option of the Agency from any available source of funds on any date prior to maturity at a price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium;

WHEREAS, under Section 2.3(a) of the 2007B Indenture, the Agency is to give the trustee, as designated therein (the "City" or the "Trustee") written notice of its intention to redeem 2007B Bonds at least 60 days prior to the date fixed for such redemption. Such notice requirement can be waived by the City, as trustee, and the City hereby waives such requirement;

WHEREAS, under Section 2.3(b) of the 2007B Indenture, the Trustee shall mail notice of redemption at least 30 days prior to the redemption date to (i) Owners of any 2007B Bonds, and (ii) the Securities Depositories and to one or more Information Services designated in a Request of the Agency (as such capitalized terms are defined in the 2007B Indenture). Section 2.3(b) also provides that "that such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such 2007B Bonds or the cessation of the accrual of interest thereon." The 2007B Indenture further provides that the Agency and the City, as owner of 100% of the 2007B Bonds, may amend the 2007B Indenture.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY RESOLVES:

1. The foregoing recitals are true and correct.
2. The City, as Owner of 100% of the 2007B Bonds and as Trustee under the 2007B Indenture, hereby requests, authorizes and directs the redemption of the 2007B Bonds, effective as of the date hereof, provided that the Agency, as issuer, consents thereto. By this Resolution, the City, both as Owner of 100% of the 2007B Bonds and as Trustee under the 2007B Indenture, acknowledges receipt of notice of redemption from the Agency, and approves and authorizes the waivers and amendments as described herein.
3. Effective as of the approval hereof, subject to approval by the Agency, Section 2.3 of the 2007B Indenture is amended to provide that notice of redemption may be given on the day fixed for redemption, and that, so long as the City is the Owner of 100% of the 2007B Bonds, notice of redemption need not be mailed but shall be deemed to have been given so long as the City has requested that the redemption of the 2007B Bonds take place. This Resolution acknowledges receipt of notice of redemption under the 2007B Indenture as to the 2007B Bonds.
4. Effective immediately as of the approval hereof, the 2007B Bonds shall be redeemed on March 8, 2011, or such other date approved by an Authorized Officer (as defined below), subject to the terms of the 2007B Indenture and this Resolution, at the Redemption Amount, to be credited by Trustee for the account of the City. The City Council, acting through its Mayor, the City Manager and the Finance Director of the City or their authorized designee ("Authorized Officers") are hereby authorized and directed to execute a receipt for proceeds upon redemption of the 2007B Bonds, to deliver the 2007B Bonds to the Agency for cancellation (or to instruct the Trustee to cancel the 2007B Bonds upon transferring to City the Redemption Amount), and to undertake such actions as are necessary or convenient to effect such redemption and payment or release of moneys to the City, including without limitation the execution and delivery of any and all documents and instruments relating to the redemption of the 2007B Bonds.

PASSED and ADOPTED this 8<sup>th</sup> day of March, 2011.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Jane Halstead, City Clerk

STATE OF CALIFORNIA                    )  
COUNTY OF RIVERSIDE                ) ss.  
CITY OF MORENO VALLEY                )

I, Jane Halstead, City Clerk of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. RDA 2011-\_\_\_\_ was duly and regularly adopted by vote of the City Council of the City of Moreno Valley at its regular meeting held on the 8<sup>th</sup> day of March, 2011, by the following vote.

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Jane Halstead, City Clerk

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RESOLUTION NO. RDA 2011-01

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AUTHORIZING AND APPROVING THE REDEMPTION OF ITS MORENO VALLEY REDEVELOPMENT PROJECT, SUBORDINATE 2007 TAXABLE TAX ALLOCATION BONDS AND MAKING CERTAIN DETERMINATIONS AND APPROVALS IN CONNECTION THEREWITH.

WHEREAS, the Community Redevelopment Agency of the City of Moreno Valley (the "Agency") is a redevelopment agency duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Community Redevelopment Law (Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California) and the powers of the Agency include the power to issue bonds for any of its corporate purposes;

WHEREAS, a Redevelopment Plan known as the "Moreno Valley Redevelopment Project" has been adopted and approved by ordinance of the City of Moreno Valley (the "City"), and all requirements of law for and precedent to the adoption and approval of said Redevelopment Plan have been duly complied with;

WHEREAS, the Agency authorized and issued its \$43,495,000 Community Redevelopment Agency of the City of Moreno Valley, 2007 Tax Allocation Refunding Bonds, Series A (Moreno Valley Redevelopment Project)(the "2007A Bonds") by its Resolution No. RDA 2007-11 dated October 23, 2007. No change or action with respect to the 2007A Bonds is intended or effected by this Resolution;

WHEREAS, the Agency, in addition, authorized and issued its \$22,500,000 Community Redevelopment Agency of the City of Moreno Valley, Subordinate 2007 Taxable Tax Allocation Bonds (the "2007B Bonds") by its Resolution No. RDA 2007-12 dated October 23, 2007 and pursuant to an Indenture of Trust by and between the Agency and the City dated as of October 1, 2007 relating to the 2007B Bonds (the "2007B Indenture");

WHEREAS, the City, which purchased and has owned the 2007B Bonds continuously since the 2007B Bonds were issued by Agency, desires that the 2007B Bonds be redeemed at this time and has requested that the Agency redeem the 2007B Bonds immediately upon approval of this Resolution;

WHEREAS, the City has a substantial, immediate need for funds that will be addressed, in part, by redemption of the 2007B Bonds at this time;

WHEREAS, the Agency is amenable to the redemption of the 2007B Bonds by repayment by Agency to City of all amounts outstanding under the 2007B Bonds (namely, the sum of \$22,500,000) (the "Redemption Amount");

WHEREAS, the 2007B Indenture provides, in part, in Section 2.3(a), that the 2007B Bonds are subject to redemption at the option of the Agency from any available source of funds on any date prior to maturity at a price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium;

WHEREAS, under Section 2.3(a) of the 2007B Indenture, the Agency is to give the trustee, as designated therein (the "City" or the "Trustee") written notice of its intention to redeem 2007B Bonds at least 60 days prior to the date fixed for such redemption. Such notice requirement can be waived by the City, as trustee;

WHEREAS, under Section 2.3(b) of the 2007B Indenture, the Trustee shall mail notice of redemption at least 30 days prior to the redemption date to (i) Owners of any 2007B Bonds, and (ii) the Securities Depositories and to one or more Information Services designated in a Request of the Agency (as such capitalized terms are defined in the 2007B Indenture). Section 2.3(b) also provides that "that such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such 2007B Bonds or the cessation of the accrual of interest thereon." The 2007B Indenture further provides that the Agency and the City, as owner of 100% of the 2007B Bonds, may amend the 2007B Indenture.

NOW THEREFORE, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY RESOLVES:

1. The foregoing recitals are true and correct.
2. The Agency hereby authorizes and directs the redemption of the 2007B Bonds, effective as of the date hereof, provided that the City (as trustee under the 2007B Indenture and as Owner of 100% of the 2007B Bonds under the 2007B Indenture) consents thereto. By this Resolution, the Agency gives notice to each of the City (as Trustee under the 2007B Bonds) and the City (as Owner of 100% of the 2007B Bonds), and approves and authorizes the waivers and amendments as described herein.
3. Effective as of the approval hereof, subject to approval by the City, Section 2.3 of the 2007B Indenture is amended to provide that notice of redemption may be given on the day fixed for redemption, and that, so long as the City is the Owner of 100% of the 2007B Bonds, notice of redemption need not be mailed but shall be deemed to have been given so long as the City has requested that the redemption of the 2007B Bonds take place. This Resolution shall serve as the notice of redemption under the 2007B Indenture as to the 2007B Bonds.
4. Effective immediately as of the approval hereof, the 2007B Bonds shall be redeemed on March 8, 2011, or such other date approved by an Authorized Officer (as defined herein) subject to the terms of the 2007B Indenture and this Resolution, at the Redemption Amount, to be credited by Trustee for the account of the City. The Agency, acting through its Chairman, the Executive Director and the Finance Director of the Agency or their authorized designee ("Authorized Officers") are hereby authorized and directed to execute a receipt for the 2007B Bonds or an acknowledgment that the Trustee has informed Agency that the Trustee has cancelled, upon payment to City of the Redemption Amount, the 2007B Bonds, and to undertake such actions as are necessary or convenient to effect such redemption and payment or release of moneys to the City, including without limitation the execution and delivery of any and all documents and instruments relating to the redemption of the 2007B Bonds.

PASSED and ADOPTED this 8<sup>th</sup> day of March, 2011.

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Jane Halstead, Agency Secretary

STATE OF CALIFORNIA                    )  
COUNTY OF RIVERSIDE                ) ss.  
CITY OF MORENO VALLEY                )

I, Jane Halstead, Secretary of the Community Redevelopment Agency of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. RDA 2011-\_\_\_\_ was duly and regularly adopted by vote of the Community Redevelopment Agency of the City of Moreno Valley at its regular meeting held on the 8<sup>th</sup> day of March, 2011, by the following vote.

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Jane Halstead, Agency Secretary

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City of Moreno Valley  
**Community & Economic Development Department**

## **MEMORANDUM**

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To: Mayor and City Council  
From: Barry Foster, Community & Economic Development Director  
Date: March 8, 2011  
Subject: City Council Regular Meeting Agenda of March 8, 2011, Item G.5 -  
COOPERATION AGREEMENT BETWEEN THE CITY OF MORENO VALLEY  
AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF  
MORENO VALLEY

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cc: Agenda packet distribution list

Attached is the updated staff report and resolutions along with attachments for the above-mentioned subject item.



APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

## Report to City Council

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**TO:** Mayor and City Council and Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley

**FROM:** Barry Foster, Community & Economic Development Director

**AGENDA DATE:** March 8, 2011

**TITLE:** COOPERATION AGREEMENT BETWEEN THE CITY OF MORENO VALLEY AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY

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### **RECOMMENDED ACTION**

Staff recommends that the City Council:

1. Adopt Resolution No. 2011-22 making certain findings in support of a Cooperation Agreement between the Community Redevelopment Agency and the City of Moreno Valley to set forth indebtedness and security between the Agency and City; and
2. Authorize the City Manager or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

Staff recommends that the Community Redevelopment Agency:

1. Adopt Resolution No. RDA 2011-02 making certain findings in support of a Cooperation Agreement between the Agency and the City of Moreno Valley to set forth indebtedness and security between the Agency and City; and
2. Authorize the Executive Director or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

## **BACKGROUND**

The Community Redevelopment Agency of the City of Moreno Valley has been an important function for the City, through its adopted Redevelopment Plan, to fund and construct needed improvements and public facilities in the community. Since its inception in 1987, the Community Redevelopment Agency of the City of Moreno Valley has undertaken more than \$174,000,000 in redevelopment activities. The Community Redevelopment Agency of the City of Moreno Valley (Agency) and the City of Moreno Valley (City) have entered into numerous agreements which establish or evidence the indebtedness of the Agency to the City, all of which is immediately repayable by the Agency upon receipt of demand thereof by the City. Presently, the Agency owes the City a total of \$62,499,971.

## **DISCUSSION**

In consideration of the indebtedness in the amount of \$62,499,971 that is owed the City by the Agency, the City is amenable to forbearing the immediate repayment of the outstanding debt, provided the Agency pays a portion of its debt with cash fund balance and then encumbers its land property holdings with the use of by a deed of trust, thereby securing amounts owed to the City and the repayment of Agency indebtedness to the City. The payment of a portion of debt shall be in the amount of \$4,400,000. This payment shall be accomplished with existing Agency fund balance. The amount of the indebtedness, along with the repayment and terms of the debt by the Agency is consistent with and in compliance with California Redevelopment Law—specifically Section 33670 et seq. of California Community Redevelopment Law.

The security for the Agency's indebtedness consists of a number of properties owned by the Community Redevelopment Agency of the City of Moreno Valley. The list of the properties that are provided as security are identified in Exhibit "A" of the Cooperation Agreement between the two parties.

## **ALTERNATIVES**

1. Adopt the Resolutions making the proper findings in support of approving the Cooperation Agreement.
2. Decline to adopt Resolutions supporting the approval of the Cooperation Agreement.

## **FISCAL IMPACT**

There is NO negative impact to the City's General Fund in approving the Cooperation Agreement. Rather, the use of the Cooperation Agreement and utilization of the Agency properties as security only moves to solidify the repayment of the Agency's indebtedness to City.

**ATTACHMENTS/EXHIBITS**

Attachment A – Resolution No. 2011- 22

Attachment B – Resolution No. RDA 2011- 02

Attachment C – Cooperation Agreement

Prepared By:  
 Barry Foster  
 Community & Economic Development Department

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:



RESOLUTION NO. 2011-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY AUTHORIZING AND APPROVING A COOPERATION AGREEMENT BETWEEN THE CITY AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND MAKING CERTAIN DETERMINATIONS AND APPROVALS IN CONNECTION THEREWITH.

WHEREAS, the Community Redevelopment Agency of the City of Moreno Valley (the "Agency") is a redevelopment agency duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Community Redevelopment Law (Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California) and the powers of the Agency include the power to borrow moneys for any of its corporate purposes;

WHEREAS, a Redevelopment Plan known as the "Moreno Valley Redevelopment Project" has been adopted and approved by ordinance of the City of Moreno Valley (the "City"), and all requirements of law for and precedent to the adoption and approval of said Redevelopment Plan have been duly complied with;

WHEREAS, the Agency and the City have entered into previous agreements which establish or evidence certain indebtedness of the Agency to the City;

WHEREAS, under Section 33671.5 of the Redevelopment Law, the Agency is authorized to and may pledge taxes allocated to it to secure the repayment of obligations;

WHEREAS, under Section 33601 of the Redevelopment Law, the Agency may borrow money any may execute trust deeds or mortgages on any real or personal property owned or acquired by the Agency;

WHEREAS, the Agency has incurred a significant amount of indebtedness to the City, substantially all of which is immediately repayable by Agency upon receipt of demand therefor by the City;

WHEREAS, the City is amenable to forbearing from enforcing immediate repayment of certain amounts owed by Agency to City provided that Agency encumbers its properties, as more particularly provided in that certain agreement submitted herewith, entitled "Cooperation Agreement" (the "Cooperation Agreement") by a deed of trust or deeds of trust securing repayment of the indebtedness of the Agency to the City, in consideration of the provision of which security the City is amenable to the scheduling of repayments according to a repayment schedule as set forth in the Cooperation Agreement;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY RESOLVES:

1. The foregoing recitals are true and correct.

2. The City Council hereby authorizes and directs the Mayor, the City Manager and the Finance Director of the City or their authorized designees ("Authorized Officers") to execute the Cooperation Agreement and all instruments provided in connection therewith on behalf of the City.

3. The Authorized Officers, on behalf of the City, are hereby authorized and directed to take all actions necessary or convenient to implement the Cooperation Agreement.

PASSED and ADOPTED this 8<sup>th</sup> day of March, 2011.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Jane Halstead, City Clerk

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        ) ss.  
CITY OF MORENO VALLEY        )

I, Jane Halstead, City Clerk of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. 2011-\_\_\_\_ was duly and regularly adopted by vote of the City Council of the City of Moreno Valley at its regular meeting held on the 8<sup>th</sup> day of March, 2011, by the following vote.

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Jane Halstead, City Clerk

RESOLUTION NO. RDA 2011-02

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AUTHORIZING AND APPROVING A COOPERATION AGREEMENT BETWEEN THE AGENCY AND THE CITY OF MORENO VALLEY AND MAKING CERTAIN DETERMINATIONS AND APPROVALS IN CONNECTION THEREWITH.

WHEREAS, the Community Redevelopment Agency of the City of Moreno Valley (the "Agency") is a redevelopment agency duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Community Redevelopment Law (Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California) and the powers of the Agency include the power to borrow moneys for any of its corporate purposes;

WHEREAS, a Redevelopment Plan known as the "Moreno Valley Redevelopment Project" has been adopted and approved by ordinance of the City of Moreno Valley (the "City"), and all requirements of law for and precedent to the adoption and approval of said Redevelopment Plan have been duly complied with;

WHEREAS, the Agency and the City have entered into previous agreements which establish or evidence certain indebtedness of the Agency to the City;

WHEREAS, under Section 33671.5 of the Redevelopment Law, the Agency is authorized to and may pledge taxes allocated to it to secure the repayment of obligations;

WHEREAS, under Section 33601 of the Redevelopment Law, the Agency may borrow money any may execute trust deeds or mortgages on any real or personal property owned or acquired by the Agency;

WHEREAS, the Agency has incurred a significant amount of indebtedness to the City, substantially all of which is immediately repayable by Agency upon receipt of demand therefor by the City;

WHEREAS, the City is amenable to forbearing from enforcing immediate repayment of certain amounts owed by Agency to City provided that Agency encumbers its properties, as more particularly provided in that certain agreement submitted herewith, entitled "Cooperation Agreement" (the "Cooperation Agreement") by a deed of trust or deeds of trust securing repayment of the indebtedness of the Agency to the City, in consideration of the provision of which security the City is amenable to the scheduling of repayments according to a repayment schedule as set forth in the Cooperation Agreement;

NOW THEREFORE, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY RESOLVES:

1. The foregoing recitals are true and correct.

2. The Agency hereby authorizes and directs the Chair, the Executive Director and the Finance Director of the Agency or their authorized designees ("Authorized Officers") to execute the Cooperation Agreement and all instruments provided in connection therewith on behalf of the Agency.

3. The Authorized Officers, on behalf of the Agency, are hereby authorized and directed to take all actions necessary or convenient to implement the Cooperation Agreement.

PASSED and ADOPTED this 8<sup>th</sup> day of March, 2011.

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Jane Halstead, Agency Secretary

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        ) ss.  
CITY OF MORENO VALLEY        )

I, Jane Halstead, Secretary of the Community Redevelopment Agency of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. RDA 2011-\_\_\_\_ was duly and regularly adopted by vote of the Community Redevelopment Agency of the City of Moreno Valley at its regular meeting held on the 8<sup>th</sup> day of March, 2011, by the following vote.

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Jane Halstead, Agency Secretary

## COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (the “Agreement”) is entered into as of March 8, 2011 (the “Date of Agreement”), by and between the **CITY OF MORENO VALLEY** (herein the “City”) and the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY** (herein the “Agency”).

### R E C I T A L S

A. Pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the “Redevelopment Law”), the City Council of the City of Moreno Valley, activated the Agency and adopted the Redevelopment Plan (the “Redevelopment Plan”) for the Moreno Valley Redevelopment Project as heretofore merged and amended (the “Project”).

B. Pursuant to the Community Redevelopment Law, the Agency is performing a public function of the City and may have access to services and facilities of the City.

C. The Agency and the City have entered into previous agreements which establish or evidence the indebtedness of the Agency to the City.

D. Under Article XVI, Section 16 of the California Constitution and the Redevelopment Law, including without limitation Section 33671.5 of the Redevelopment Law, and under the Redevelopment Plan, the Agency is authorized to and may pledge taxes allocated to it to secure the repayment of obligations;

E. Under Section 33601 of the Redevelopment Law, the Agency may borrow money any may execute trust deeds or mortgages on any real or personal property owned or acquired by the Agency;

F. The Agency has incurred a significant amount of indebtedness to the City, substantially all of which is immediately repayable by Agency upon receipt of demand therefor by the City;

G. The City is amenable to forbearing from enforcing immediate repayment of certain amounts owed by Agency to City provided that Agency encumbers its properties (which properties are described in Exhibit “A” hereto, the “List of Properties”); each such property is referred to as a

“Listed Property”) by a deed of trust or deeds of trust securing repayment of the indebtedness of the Agency to the City. In consideration of the provision of such security, the City is amenable to the scheduling of repayments according to a repayment schedule, which is set forth as Exhibit “B” hereto (the “Repayment Schedule”);

H. The City and the Agency desire to enter into this Agreement:

(1) To set forth certain indebtedness of the Agency to the City as in effect prior to the Date of Agreement;

(2) To set forth a payment schedule for the repayment by Agency of such amounts as owing by Agency to City, as set forth in the Repayment Schedule;

(3) To provide for the execution and recording of a deed of trust or deeds of trust to be recorded as to property held by the Agency, as referenced in the List of Properties, to secure repayment of City by Agency for amounts owed;

(4) To provide that the Agency will reimburse the City for actions undertaken and costs and expenses incurred by it for and on behalf of the Agency.

## **AGREEMENTS**

1. As of the Date of Agreement, and exclusive of moneys which the Agency has repaid or by action taken on or after January 1, 2011 the Agency has agreed to repay the City forthwith, the Agency is indebted to the City in the amount of Fifty-seven million, Two hundred eighty-three thousand, Six hundred seventy-five Dollars (\$57,283,675)(the “Base Amount”) based upon agreements entered into prior to the Date of Agreement. Interest accrues on the Base Amount. The Base Amount and the Accruing Interest, as the latter is subject to adjustment from time to time in the event such amount(s) have not been fully repaid, constitutes the “Total Accrued Amount”.

2. Agency agrees to repay the Total Accrued Amount to City in accordance with the Schedule of Payments.

3. Agency agrees to record a deed of trust or deeds of trust, substantially in the form of Exhibit “C” hereto (the “Deed of Trust”) as to each of the Listed Properties among the official land

records of the County Recorder of the County of Riverside. City will, if necessary to effect recording of the Deed of Trust (or deeds of trust) execute a deed acceptance to be recorded with the Deed of Trust agreeing to accept the interest afforded City as a creditor thereunder.

4. City agrees to forbear from insisting upon the immediate repayment of the entire Base Amount and Accruing Interest in consideration of the promises and performance by Agency as described in Sections 3 and 5 hereof.

5. The Agency agrees to pay the City, with interest, an amount equal to the Total Accrued Amount and all expenditures made and obligations and liabilities incurred by the City pursuant to this Agreement from revenues allocated to Agency under Section 33670 of the Health and Safety Code (“Tax Increment”), and proceeds from the sale of properties for which deeds of trust are recorded pursuant to Section 3 hereof, and the Agency pledges, pursuant to Article XVI, Section 16 of the California Constitution, the Redevelopment Law (including without limitation Section 33671.5 of the Redevelopment Law) and the Redevelopment Plan, the Tax Increment to repayment of its indebtedness to the City hereunder. The foregoing pledge shall be subject to existing pledges of Tax Increment by the Agency. City will periodically compute amounts owing under this Agreement. Interest shall accrue on all amounts payable by the Agency pursuant to this Agreement at the rate of the lesser of (i) twelve percent (12%) per annum, or (ii) the highest legally-allowable interest rate for a redevelopment agency. Repayment shall be made in accordance with the Repayment Schedule.

6. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency within the meaning of Section 33670 *et seq.* of the Community Redevelopment Law.

7. If this agreement is for any reason invalid the parties will be returned to their prior position.

8. The City agrees to release and reconvey from the deed(s) of trust property in the event such deed of trust is determined to violate material agreements of the Agency.

9. The Agency agrees to and shall take all action and shall refrain from taking any action with respect to the property acquired with the proceeds of bonds issued as obligations exempt from the payment of federal income tax (“Exempt Obligations”), as required in each case to preserve

the tax exempt status of interest payable with respect to such Exempt Obligations for federal tax purposes.

10. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MORENO VALLEY

By: \_\_\_\_\_  
Richard A. Stewart  
Mayor

ATTEST:

\_\_\_\_\_  
Jane Halstead  
City Clerk

COMMUNITY REDEVELOPMENT AGENCY OF  
THE CITY OF MORENO VALLEY

By: \_\_\_\_\_  
Henry T. Garcia  
Executive Director

ATTEST:

\_\_\_\_\_  
Jane Halstead  
Agency Secretary

**EXHIBIT "A"**  
**LIST OF PROPERTIES**

<b>APN</b>	<b>SITE ADDRESS</b>
291-191-001	Alessandro and Day vacant land
291-191-002	Alessandro and Day vacant land
291-191-003	Alessandro and Day vacant land
291-191-005	Alessandro and Day vacant land
291-191-006	Alessandro and Day vacant land
291-191-007	Alessandro and Day vacant land
291-191-008	Alessandro and Day vacant land
291-191-009	Alessandro and Day vacant land
291-191-010	Alessandro and Day vacant land
291-191-011	Alessandro and Day vacant land
291-191-012	Alessandro and Day vacant land
291-191-013	Alessandro and Day vacant land
297-140-046	Vacant Land adjacent Rec. Center
297-140-047	Recreation Center
479-070-044	Senior Center
481-270-058	Eucalyptus
481-130-022	24108 Fir Avenue
481-130-023	24124 Fir Avenue
481-250-002	24265 Meyers
481-250-003	24265 Meyers
482-020-058	24176 Atwood
482-020-056	24214 Atwood
482-161-021	Cottonwood and Indian
482-161-022	Cottonwood and Indian
482-161-024	Cottonwood and Indian
482-161-023	Cottonwood and Indian
485-032-013	24181 John F. Kennedy
Parcel #1	Northerly of Cactus Ave & Easterly of 215 Freeway
Parcel #2	Northerly of Cactus Ave & Easterly of 215 Freeway
Parcel #3	Northerly of Cactus Ave & Easterly of 215 Freeway

EXHIBIT B

SCHEDULE OF PAYMENTS

Moreno Vally Community Redevelopment Agency  
 Bonded Debt Service  
 Master Payment Schedule

Fiscal Year	Principal	Interest	Total	Avg Daily Interest
2010-11		199,799	199,799	1,110
2011-12	1,020,484	1,368,412	2,388,897	3,801
2012-13	1,030,484	1,657,200	2,687,685	4,603
2013-14	1,035,484	1,656,055	2,691,540	4,600
2014-15	1,050,484	1,655,305	2,705,790	4,598
2015-16	1,055,484	1,654,330	2,709,815	4,595
2016-17	1,070,484	1,653,241	2,723,726	4,592
2017-18	1,080,484	1,651,820	2,732,305	4,588
2018-19	1,090,484	1,650,302	2,740,787	4,584
2019-20	1,105,484	1,649,895	2,755,380	4,583
2020-21	1,115,484	1,647,834	2,763,319	4,577
2021-22	1,130,484	1,644,054	2,774,539	4,567
2022-23	1,145,484	1,639,864	2,785,349	4,555
2023-24	1,041,799	1,604,980	2,646,779	4,458
2024-25	1,056,799	1,602,086	2,658,885	4,450
2025-26	32,241,629	1,598,905	33,840,534	4,441
2026-27	1,091,799	1,143,613	2,235,412	3,177
2027-28	1,106,799	1,125,725	2,232,524	3,127
2028-29	1,126,799	1,107,050	2,233,849	3,075
2029-30	1,141,799	1,087,588	2,229,387	3,021
2030-31	3,522,299	6,732,825	10,255,124	18,702
2031-32	480,000	104,563	584,563	290
2032-33	505,000	83,016	588,016	231
2033-34	525,000	60,484	585,484	168
2034-35	513,140	36,969	550,109	103
2035-36	0	12,469	12,469	35
Total	57,283,675	36,028,381	93,312,056	

**EXHIBIT "C"**

WHEN RECORDED MAIL TO:

City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
(This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.)

APN:

**DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(SHORT FORM)**

This **DEED OF TRUST** is made as of March 8, 2011 between the **MORENO VALLEY REDEVELOPMENT AGENCY**, a public body, corporate and politic herein called TRUSTOR or AGENCY, whose address is 14177 Frederick Street, Moreno Valley, California 92552-0805, **STEWART TITLE OF CALIFORNIA**, herein called TRUSTEE, and the **CITY OF MORENO VALLEY**, a municipal corporation herein called BENEFICIARY or CITY.

**WITNESSETH:** That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley, County of Riverside, State of California, described as:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) repayment under that certain Cooperation Agreement more particularly described below, executed by and between the Agency and the City dated as of March 8, 2011 (the "Agreement"; a copy of the Agreement is on file with the Beneficiary as a public record). All capitalized terms not defined herein shall have the meanings established therefore under the Agreement unless the context requires otherwise. This Deed of Trust secures payment by Agency to City under the Agreement, as to the Base Amount, together with interest as provided under the Agreement, (2) the performance by Agency under the Agreement and under each agreement of Trustor incorporated by reference or contained herein, and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his/her successors or assigns, or may otherwise become due hereunder.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
McFarlane	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	S. Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	S. Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	S. Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	S. Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	1964	149774			
						Series 5					

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him/her at his/her address hereinbefore set forth.

**MORENO VALLEY REDEVELOPMENT  
AGENCY, a public body, corporate and politic**

By: \_\_\_\_\_  
Executive Director

Attest:

\_\_\_\_\_  
Agency Secretary

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

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

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

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- Corporate Officer

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

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Title Or Type Of Document

- Partner(s)       Limited
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

**EXHIBIT "A" TO DEED OF TRUST**

**LEGAL DESCRIPTION**

[to come]

APN:



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the fee interest in real property conveyed under the foregoing deed of trust by the Moreno Valley Redevelopment Agency, a public body, corporate and politic, to the City of Moreno Valley, as to the following property:

Real property in the City of Moreno Valley, County of Riverside, State of California, described as follows:

[to come]

APN:

is hereby accepted by the City Manager of the City of Moreno Valley on behalf of the City Council of the City pursuant to authority conferred by action of the City council on March 8, 2011, and the Grantee consents to recordation thereof by its duly authorized officer.

CITY OF MORENO VALLEY

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By: Henry T. Garcia  
City Manager

ATTEST:

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Jane Halstead  
City Clerk

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City of Moreno Valley  
**Community & Economic Development Department**

## **MEMORANDUM**

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To: Mayor and City Council  
From: Barry Foster, Community & Economic Development Director  
Date: March 8, 2011  
Subject: City Council Regular Meeting Agenda of March 8, 2011, Item G.6 -  
COOPERATIVE AGREEMENT BETWEEN THE CITY OF MORENO VALLEY  
AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF  
MORENO VALLEY

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cc: Agenda packet distribution list

Attached is the updated staff report and resolutions along with attachments for the above-mentioned subject item.



APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

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## Report to City Council

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**TO:** Mayor and City Council and Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley

**FROM:** Barry Foster, Community & Economic Development Director

**AGENDA DATE:** March 8, 2011

**TITLE:** COOPERATIVE AGREEMENT BETWEEN THE CITY OF MORENO VALLEY AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY

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### **RECOMMENDED ACTION**

Staff recommends that the City Council:

1. Approve and authorize the execution of Resolution No. 2011-23 in support of a Cooperative Agreement between the City of Moreno Valley and the Community Redevelopment Agency and making certain findings in connection with the provision of public improvements and authorizing such improvements in connection therewith; and
2. Authorize the City Manager or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

Staff recommends that the Community Redevelopment Agency:

1. Approve and authorize the execution of Resolution No. RDA 2011-03 in support of a Cooperative Agreement with the City of Moreno Valley and making certain findings in connection with the provision of public improvements and authorizing such improvements in connection therewith; and
2. Authorize the Executive Director or his designee, to execute all documents and instruments including making minor-substantive changes necessary to support and carry out the transaction.

## **BACKGROUND**

The Community Redevelopment Agency of the City of Moreno Valley, through its adopted Redevelopment Plan, has been an important mechanism to fund and construct needed improvements and public facilities in Moreno Valley and specifically the Redevelopment Project Area. California Redevelopment Law provides for the Community Redevelopment Agency of the City of Moreno Valley (Agency) to undertake and fund these types of activities.

## **DISCUSSION**

The Agency's undertaking of capital improvements and public facilities has included a variety of projects that are included with those capital projects and buildings by which is addressed by the City's 2005 Lease Revenue Bonds, the Redevelopment Agency's 2007 Tax Allocation Bonds and the City's Capital Improvement Plan (and Agency's obligations to make payments to City for authorized improvements). Some of these projects have been completed, some are presently under construction and some are presently underway with project design. The funding of these projects has been established as an indebtedness on the part of the Agency to the City of Moreno Valley (City). This established indebtedness, along with the repayment and terms of the debt by the Agency is consistent with and in compliance with California Redevelopment Law—specifically Section 33670 et seq. of California Community Redevelopment Law.

Pursuant to California Redevelopment Law, Section 33445, the City and Agency have approved and made certain findings regarding the installation of the capital improvements and public facilities. The projects fully comply with Redevelopment Law and the Agency's approved Redevelopment Plan.

As part of its overall debt obligation to the City, the Agency should look to repay a portion of the amounts owed the City with existing Agency fund balance and then secure the remaining debt obligation with Agency owned properties. Staff recommends the Agency use \$4,400,000 of the Agency's existing fund balance to partially repay a portion of the Agency debt obligation.

The undertaking and completion of the capital projects identified to be funded under the 2007 RDA Tax Allocation Bonds-Series A are important components to the City's Capital Improvement Plan. Many of the projects are presently under way with construction and several finishing construction plans necessary to start construction. To more effectively manage and construct these important capital improvement projects, staff is recommending that the remaining proceeds of the RDA Tax Allocation Bonds be moved to City where they will be held in a segregated account to expend the bond proceeds in a manner consistent with requirements and limitations applicable to the Series A Bonds, including with out limitation—the 2007A Indenture, authorized under Resolution No. RDA 2007-12. Attached to the Cooperative Agreement are the designated projects to be completed by the City as part of the RDA Tax Allocation Bonds-Series A.

In addition to the projects to be funded under the RDA Bonds, several more capital improvement projects shall be funded by the RDA through other funding commitments. These projects include the completion of the Sunnymead Boulevard improvements, street improvements at the NE corner of Eucalyptus/Day and future recreation/sports fields at Ironwood-Festival. Under the terms of the Cooperative Agreement the undertaking of these projects shall be accomplished by the City and funded through the Agency.

Please note that all of the designated public improvements have been identified through the Cooperative Agreement and the Agency shall be obligated to make payment to the City for the cost of such improvements. The obligations under the Agreement shall constitute an indebtedness of the Agency within the meaning of Section 33670 et seq. of California Redevelopment Law.

**ALTERNATIVES**

1. Adopt the Resolutions making the findings in support of approving the Cooperative Agreement.
2. Decline to adopt Resolutions supporting the approval of the Cooperative Agreement.

**FISCAL IMPACT**

There is NO negative impact to the City’s General Fund associated with adopting the Cooperative Agreement. The approval and use of the Cooperative Agreement merely restates the Agency’s position of funding and completing the improvements and public facilities.

**ATTACHMENTS/EXHIBITS**

- Attachment A – Resolution No. 2011- 23
- Attachment B – Resolution No. RDA 2011- 03
- Attachment C – Cooperative Agreement

Prepared By:  
Barry Foster  
Community & Economic Development Department

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

**RESOLUTION NO. 2011-23**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY APPROVING AND AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT WITH THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND MAKING CERTAIN FINDINGS IN CONNECTION WITH THE PROVISION OF PUBLIC IMPROVEMENTS AND AUTHORIZING SUCH IMPROVEMENTS IN CONNECTION THEREWITH**

**WHEREAS**, the Community Redevelopment Agency of the City of Moreno Valley (the “Agency”) is a duly constituted redevelopment agency and is undertaking certain activities necessary for redevelopment under the provisions of the California Community Redevelopment Law (Health and Safety Code Sections 33000 et seq.) and pursuant to the Redevelopment Plan (the “Plan”) for the Moreno Valley Redevelopment Project, as amended (the “Project”); and

**WHEREAS**, the Agency has incurred a substantial amount of indebtedness to the City; and

**WHEREAS**, the City has immediate need of repayment of a portion of Agency’s indebtedness to the City and has demanded that certain amounts be repaid forthwith, as more particularly set forth in that agreement entitled “Cooperative Agreement” as submitted herewith (the “Cooperative Agreement”); and

**WHEREAS**, the Agency agrees to repay certain amounts to the City as set forth in the Cooperative Agreement;

**WHEREAS**, it is a policy of the Agency to improve and provide public improvements which are of benefit to the Project and the project area thereof (the “Project Area”); and

**WHEREAS**, each of the City Council of the City of Moreno Valley and the governing board of the Agency has determined that the public health and safety will be promoted by the provision of those certain public improvements described as “Designated Public Improvements” as well as “Additional Activities” as described in the Cooperative Agreement; and

**WHEREAS**, the Designated Public Improvements are located in and would be of benefit to the Project Area; and

**WHEREAS**, the Additional Activities will benefit the Project Area; and

**WHEREAS**, the City and the Agency have proposed to and desire to enter into the Cooperative Agreement in the form submitted herewith; and

**WHEREAS**, without amending, limiting, or modifying any prior agreements between the City and the Agency (“Prior Agreements”) and the ongoing effectiveness of such Prior Agreements, which shall remain in effect according to their terms for the greatest time legally allowable, the Agency and the City desire to approve the Cooperative Agreement; and

**WHEREAS**, the Agency has the general purpose of redevelopment and the elimination of blight and the provision of public facilities as set forth in the Plan; and

**WHEREAS**, pursuant to Health and Safety Code Section 33445, the Agency is authorized, as provided in its redevelopment plan, to assist in the payment for all or part of the value of land and the installation and construction of public improvements within the Project Area of the Project (the “Project Area”); and

**WHEREAS**, Section 33445 provides, in part, that notwithstanding Section 33440, an agency may, with the consent of the legislative body, pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned either within or without the project area, if the legislative body determines:

“(1) That the acquisition of land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned are of benefit to the project area by helping to eliminate blight within the project area or providing housing for low- or moderate-income persons.

(2) That no other reasonable means of financing the acquisition of the land or installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned, are available to the community.

(3) That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other improvements that are publicly owned is consistent with the implementation plan adopted pursuant to Section 33490.”; and

**WHEREAS**, the Agency desires to proceed to support the construction and provision of the Designated Public Improvements by bearing the cost thereof; and

**WHEREAS**, the Agency and the City of Moreno Valley (the “City”) have explored all possible funding sources for the Designated Public Improvements, including federal, state, and local sources, and the efforts of private property owners and developers; and

**WHEREAS**, the City has sought to obtain from private property owners and developers resources to provide for provision of the Designated Public Improvements; and

**WHEREAS**, there are no other reasonable means available to the Agency and the City to finance the Designated Public Improvements other than Agency funds; and

**WHEREAS**, the Agency has existing indebtedness to the City, including without limitation as set forth in the Cooperative Agreement,

**WHEREAS**, the Agency has reviewed evidence, including both oral testimony and writings, in connection with this matter, and has determined that the foregoing recitals, and each of them, are true and correct, and further has determined that the provision of the Designated Public Improvements is in the best interests of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY DOES RESOLVE AS FOLLOWS:**

Section 1. The freeing statements are true and correct.





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**RESOLUTION NO. RDA 2011-03**

**A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY APPROVING AND AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT WITH THE CITY OF MORENO VALLEY AND MAKING CERTAIN FINDINGS IN CONNECTION WITH THE PROVISION OF PUBLIC IMPROVEMENTS AND AUTHORIZING SUCH IMPROVEMENTS IN CONNECTION THEREWITH**

**WHEREAS**, the Community Redevelopment Agency of the City of Moreno Valley (the “Agency”) is a duly constituted redevelopment agency and is undertaking certain activities necessary for redevelopment under the provisions of the California Community Redevelopment Law (Health and Safety Code Sections 33000 et seq.) and pursuant to the Redevelopment Plan (the “Plan”) for the Moreno Valley Redevelopment Project, as amended (the “Project”); and

**WHEREAS**, the Agency has incurred a substantial amount of indebtedness to the City; and

**WHEREAS**, the City has immediate need of repayment of a portion of Agency’s indebtedness to the City and has demanded that certain amounts be repaid forthwith, as more particularly set forth in that agreement entitled “Cooperative Agreement” as submitted herewith (the “Cooperative Agreement”); and

**WHEREAS**, the Agency agrees to repay certain amounts to the City as set forth in the Cooperative Agreement;

**WHEREAS**, it is a policy of the Agency to improve and provide public improvements which are of benefit to the Project and the project area thereof (the “Project Area”); and

**WHEREAS**, each of the City Council of the City of Moreno Valley and the governing board of the Agency has determined that the public health and safety will be promoted by the provision of those certain public improvements described as “Designated Public Improvements” as well as “Additional Activities” as described in the Cooperative Agreement; and

**WHEREAS**, the Designated Public Improvements are located in and would be of benefit to the Project Area; and

**WHEREAS**, the Additional Activities will benefit the Project Area; and

**WHEREAS**, the City and the Agency have proposed to and desire to enter into the Cooperative Agreement in the form submitted herewith; and

**WHEREAS**, without amending, limiting, or modifying any prior agreements between the City and the Agency (“Prior Agreements”) and the ongoing effectiveness of such Prior Agreements, which shall remain in effect according to their terms for the greatest time legally allowable, the Agency and the City desire to approve the Cooperative Agreement; and

**WHEREAS**, the Agency has the general purpose of redevelopment and the elimination of blight and the provision of public facilities as set forth in the Plan; and

**WHEREAS**, pursuant to Health and Safety Code Section 33445, the Agency is authorized, as provided in its redevelopment plan, to assist in the payment for all or part of the value of land and the installation and construction of public improvements within the Project Area of the Project (the “Project Area”); and

**WHEREAS**, Section 33445 provides, in part, that notwithstanding Section 33440, an agency may, with the consent of the legislative body, pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned either within or without the project area, if the legislative body determines:

“(1) That the acquisition of land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned are of benefit to the project area by helping to eliminate blight within the project area or providing housing for low- or moderate-income persons.

(2) That no other reasonable means of financing the acquisition of the land or installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned, are available to the community.

(3) That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other improvements that are publicly owned is consistent with the implementation plan adopted pursuant to Section 33490.”; and

**WHEREAS**, the Agency desires to proceed to support the construction and provision of the Designated Public Improvements by bearing the cost thereof; and

**WHEREAS**, the Agency and the City of Moreno Valley (the “City”) have explored all possible funding sources for the Designated Public Improvements, including federal, state, and local sources, and the efforts of private property owners and developers; and

**WHEREAS**, the City has sought to obtain from private property owners and developers resources to provide for provision of the Designated Public Improvements; and

**WHEREAS**, there are no other reasonable means available to the Agency and the City to finance the Designated Public Improvements other than Agency funds; and

**WHEREAS**, the Agency has existing indebtedness to the City, including without limitation as set forth in the Cooperative Agreement,

**WHEREAS**, the Agency has reviewed evidence, including both oral testimony and writings, in connection with this matter, and has determined that the foregoing recitals, and each of them, are true and correct, and further has determined that the provision of the Designated Public Improvements is in the best interests of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements.

**NOW, THEREFORE, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY DOES RESOLVE AS FOLLOWS:**

Section 1. The foregoing statements are true and correct.

Section 2. The Agency finds and determines that: (i) the provision of the Designated Public Improvements constitutes the acquisition of land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned of benefit to the project area by helping to eliminate blight within the project area or providing housing for low- or moderate-income persons; (ii) That no other reasonable means of financing the acquisition of the land or installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned, are available to the community; (iii) the acquisition of property and installation or construction of the Designated Public Improvements is provided for in the Plan; and (iv) the payment by Agency of funds for the Designated Public Improvements constitutes the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other improvements that are publicly owned is consistent with the implementation plan adopted pursuant to Section 33490.

Section 3. The Agency authorizes and directs the Chairperson to execute on behalf of the Agency the Cooperative Agreement. The Agency further authorizes and directs staff to take all actions necessary and appropriate to implement the participation by the Agency pursuant to the Cooperative Agreement.

**APPROVED AND ADOPTED** this 8th day of March, 2011.

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

ATTEST:

\_\_\_\_\_  
Agency Secretary

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        )  
CITY OF MORENO VALLEY        )

I, Jane Halstead, Secretary of the Community Redevelopment Agency of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. \_\_\_\_ was introduced and adopted at a regular meeting provided by law of the Community Redevelopment Agency of the City of Moreno Valley held on the 8th day of March, 2011, by the following vote of the members thereof:

AYES:                   MEMBERS:  
NOES:                   MEMBERS:  
ABSENT:                MEMBERS:  
ABSTAIN:               MEMBERS:

\_\_\_\_\_  
Agency Secretary

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## COOPERATIVE AGREEMENT

THIS **COOPERATIVE AGREEMENT** (the “Agreement”) is entered into as of March 8, 2011, by and between the **CITY OF MORENO VALLEY** (herein the “City”) and the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY** (herein the “Agency”).

### RECITALS

A. Pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*), the City Council of the City of Moreno Valley, activated the Agency and adopted the Redevelopment Plan (the “Redevelopment Plan”) for the Moreno Valley Redevelopment Project (the “Project”).

B. Pursuant to the Community Redevelopment Law, the Agency is performing a public function of the City and may have access to services and facilities of the City.

C. The Agency and the City have entered into previous agreements which establish or evidence the indebtedness of the Agency to the City.

D. Under Article XVI, Section 16 of the California Constitution and the Redevelopment Law, including without limitation Section 33671.5 of the Redevelopment Law, and under the Redevelopment Plan, the Agency is authorized to and may pledge taxes allocated to it to secure the repayment of obligations;

E. The Agency has incurred a significant amount of indebtedness to the City, substantially all of which is immediately repayable by Agency upon receipt of demand therefor by the City;

F. The Agency desires to repay, and the City desires to receive immediate repayment of, certain amounts owing by Agency to City;

G. The Agency and City desire to restate the terms under which the City may and shall continue to provide services and construct projects approved by and of benefit to the Agency and under which Agency will remit payment to the City;

H. The City and the Agency desire to enter into this Agreement:

(1) To set forth certain indebtedness of the Agency to the City as in effect prior to the Date of Agreement;

(2) To set forth an amount which the Agency will immediately repay to City (the “Immediate Repayment Amount”, as more particularly described below), which Immediate Repayment Amount is a portion of the amounts due and owing by Agency to City prior to the Date of Agreement;

(3) To set forth a payment schedule for the repayment by Agency of amounts as shall remain owing by Agency to City after repayment of the Immediate Repayment Amount, which remaining amount is referred to herein as the “Remaining Amount”, as more fully described in Section 4, below. The schedule for repayment of the Remaining Accrued Amount is set forth at Exhibit “D” hereto, the “Schedule of Payments”; and

(4) To set forth activities, services and facilities which the City will render for and make available to the Agency in furtherance of activities and functions of the Agency under the Community Redevelopment Law (“Additional Activities”), and to establish a schedule for repayment of the Additional Amounts is set forth in the Schedule of Payments.

## **AGREEMENTS**

1. As of the Date of Agreement, and exclusive of moneys which the Agency has repaid or by action taken on or after January 1, 2011, and further without regard to moneys payable by Agency in connection with its \$22,500,000 Subordinate Tax Allocation Bonds (the “2007B Bonds”), which amounts the Agency has agreed to repay the City forthwith, the Agency is indebted to the City in the amount of Sixty-Two Million Four Hundred Ninety-Nine Thousand Nine Hundred Seventy-One Dollars (\$62,499,971)(the “Base Amount”) based upon agreements entered into prior to the Date of Agreement. Interest shall accrue (“Accruing Interest”). The Base Amount and the Accruing Interest, as the latter is subject to adjustment from time to time in the event such amount(s) have not been fully repaid, constitutes the “Accrued Amount”. Agency agrees to immediately disburse to City the sum of Four Million Four Hundred Thousand Dollars (\$4,400,000)(the “Cash Amount”).

2. City has requested and Agency agrees to transfer to City for administration all remaining proceeds of the Agency’s 2007 Tax Allocation Refunding Bonds, Series A (the “2007A Bonds”, as issued pursuant to an indenture of trust authorized by Resolution No. RDA 2007-12 of the



Agency [the “2007A Indenture”]); the amount of such remaining proceeds is referred to herein as the “Bond Amount.”

3. City agrees to hold the Bond Amount in a segregated account and to expend the Bond Amount in a manner consistent with the requirements and limitations applicable to the Series A Bonds, including without limitation, the 2007A Indenture.

4. The Base Amount less those amounts being immediately repaid hereunder constitutes the “Remaining Amount” for purposes of this Agreement. Remaining Amount and accruing interest thereon (“Accruing Interest”), as the latter is subject to adjustment from time to time in the event such amount(s) have not been fully repaid, constitutes the “Accrued Amount.”

5. Agency agrees to repay the Accrued Amount to City and amounts otherwise incurred under the remainder of this Agreement in accordance with the Schedule of Payments.

6. The City agrees to provide for the Agency such staff assistance, supplies, technical services and other services and facilities of the City as the Agency may require in carrying out its functions under the Community Redevelopment Law. Such assistance and services may include the services of officers and employees and special consultants.

7. The City may, to the extent permitted by law, but is not required to, advance necessary funds to the Agency or to expend funds on behalf of the Agency for implementation of the Redevelopment Plan, including, but not limited to, the costs of surveys, planning, studies and environmental assessments for implementation of the Redevelopment Plan, the costs of acquisition of the property within the Project, demolition and clearance of properties acquired, building and site preparation, public improvements and relocation assistance to displaced residential and nonresidential occupants, if any, as required by law.

8. The City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof in order that an accurate record of the Agency’s liability to the City can be ascertained. The City shall periodically, but not less than annually, submit to the Agency a statement of the costs incurred by the City in rendering activities and services of the City to the Agency pursuant to this Agreement. Such statement of costs may include a proration of the City’s administrative and salary expense attributable to services of City officials, employees and departments rendered for the Agency.

9. The City agrees to undertake, on behalf of the Agency, those certain public improvements designated in Exhibit “A” hereto (the “Designated Public Improvements”) together with additional activities (the “Additional Activities” and, together with the “Designated Public Improvements”, the “Designated Activities and Public Improvements”). Agency shall be obligated to make payment to City for the cost of such Designated Activities and Public Improvements, together with interest at the rate set forth in Section 10, hereof and as set forth at B of the Schedule of Payments.

10. The Agency agrees to pay the City, with interest, an amount equal to the Accrued Amount and all expenditures made and obligations and liabilities incurred by the City pursuant to this Agreement from funds allocated to the Agency pursuant to Section 33670 of the Health and Safety Code (“Tax Increment”) and the Agency pledges, pursuant to Under Article XVI, Section 16 of the California Constitution and the Redevelopment Law, including without limitation Section 33671.5 of the Redevelopment Law, and under the Redevelopment Plan, the Tax Increment to repayment of its indebtedness to the City hereunder. The foregoing pledge shall be subject and subordinate to existing pledges of Tax Increment by the Agency. City will periodically compute amounts owing under this Agreement. Interest shall accrue on all amounts payable by the Agency pursuant to this Agreement at the rate of the lesser of (i) twelve percent (12%) per annum, or (ii) the highest legally-allowable interest rate for a redevelopment agency. Payment shall be made in accordance with the Schedule of Payments.

11. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency within the meaning of Section 33670 *et seq.* of the Community Redevelopment Law.

12. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MORENO VALLEY

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

ATTEST:

\_\_\_\_\_  
City Clerk

COMMUNITY REDEVELOPMENT AGENCY OF  
THE CITY OF MORENO VALLEY

By: \_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_  
Agency Secretary

**EXHIBIT A  
DESIGNATED PUBLIC IMPROVEMENTS**

PROJECT	DESCRIPTION	OUTSTANDING AMOUNT <sup>1</sup>
<b>2007 TAX ALLOCATION BONDS *</b>		<b>\$ 83,920,389</b>
▪ Day Street Improvements	Street Improvements	
▪ Indian Basin	Storm Water and Street Improvements	
▪ Ironwood Improvement	Street Improvements	
▪ SR 60/Nason Bridge	New Freeway Bridge Overcrossing	
▪ Auto Mall Upgrades	Street and Signage Improvements	
▪ Morrison Park Fire Station	New Fire Station	
▪ Moreno Beach/SR 60	New Freeway Ramps	
<b>OTHER DESIGNATED PUBLIC IMPROVEMENTS</b>		
▪ Robertson's Day Street Improvements	Street Improvements	<b>\$ 840,000</b>
▪ Ironwood-Festival Multi-Use Fields	New Joint-Use Recreation & Sports Fields	<b>\$ 10,320,000</b>
<b>Total</b>		<b>\$ 95,080,389</b>

<sup>1</sup> Amounts shown are outstanding obligations including principal and interest

\* Includes establishing a re-prioritization of the projects funded with the 2007 RDA Tax Allocation Bonds

EXHIBIT B

Moreno Valley Community Redevelopment Agency  
 Designated Public Improvements  
 Payment Schedule

Fiscal Year	Principal	Interest	Total	Avg Daily Interest
2010-11				
2011-12		325,500	4,975,500	904
2012-13	0	325,500	5,301,000	904
2013-14	0	325,500	5,626,500	904
2014-15	0	325,500	5,952,000	904
2015-16	0	325,500	6,277,500	904
2016-17	0	325,500	6,603,000	904
2017-18	0	325,500	6,928,500	904
2018-19	0	325,500	7,254,000	904
2019-20	0	325,500	7,579,500	904
2020-21	0	325,500	7,905,000	904
2021-22	0	325,500	8,230,500	904
2022-23	0	325,500	8,556,000	904
2023-24	0	325,500	8,881,500	904
2024-25	0	325,500	9,207,000	904
2025-26	0	325,500	9,532,500	904
2026-27	0	325,500	9,858,000	904
2027-28	0	325,500	10,183,500	904
2028-29	0	325,500	10,509,000	904
2028-29	0	325,500	10,834,500	904
2030-31	4,650,000	325,500	11,160,000	904
Total	4,650,000	6,510,000	11,160,000	

**EXHIBIT C**

RDA Obligations

Project	Outstanding as of 3/1/11			Master Payment Schedule		
	Prin	Accrued Int @ 3/1/11	Tot	Prin	Int	Tot
Public Safety Building Bond	1,424,225	32,556	1,456,781	1,424,225	375,775	1,800,000
Conference and Recreation Center	31,169,830	298,513	31,468,343	31,169,830	5,100,490	36,270,320
2005 Lease Revenue Bonds-Sunnymead Blvd	8,293,140	199,799	8,492,939	8,293,140	6,036,916	14,330,056
Sears Mall Note	13,000,000	4,489,368	17,489,368	14,035,981	18,850,000	32,885,981
Cactus/Day/Old 215 Property	2,360,000	283,260	2,643,260	2,360,500	5,665,200	8,025,700
<b>Subtotal</b>	<b>56,247,195</b>	<b>5,303,496</b>	<b>61,550,691</b>	<b>57,283,676</b>	<b>36,028,381</b>	<b>93,312,057</b>
City Loan 1	518,520	248,890	767,410			0
City Loan 2	133,728	48,142	181,870			0
	<b>\$ 56,899,443</b>	<b>\$ 5,600,528</b>	<b>\$ 62,499,971</b>	<b>\$ 57,283,676</b>	<b>\$ 36,028,381</b>	<b>\$ 93,312,057</b>

EXHIBIT D

SCHEDULE OF PAYMENTS

Moreno Valley Community Redevelopment Agency  
 Bonded Debt Service  
 Master Payment Schedule

Fiscal Year	Principal	Interest	Total	Avg Daily Interest
2010-11		199,799	199,799	1,110
2011-12	1,020,484	1,368,412	2,388,897	3,801
2012-13	1,030,484	1,657,200	2,687,685	4,603
2013-14	1,035,484	1,656,055	2,691,540	4,600
2014-15	1,050,484	1,655,305	2,705,790	4,598
2015-16	1,055,484	1,654,330	2,709,815	4,595
2016-17	1,070,484	1,653,241	2,723,726	4,592
2017-18	1,080,484	1,651,820	2,732,305	4,588
2018-19	1,090,484	1,650,302	2,740,787	4,584
2019-20	1,105,484	1,649,895	2,755,380	4,583
2020-21	1,115,484	1,647,834	2,763,319	4,577
2021-22	1,130,484	1,644,054	2,774,539	4,567
2022-23	1,145,484	1,639,864	2,785,349	4,555
2023-24	1,041,799	1,604,980	2,646,779	4,458
2024-25	1,056,799	1,602,086	2,658,885	4,450
2025-26	32,241,629	1,598,905	33,840,534	4,441
2026-27	1,091,799	1,143,613	2,235,412	3,177
2027-28	1,106,799	1,125,725	2,232,524	3,127
2028-29	1,126,799	1,107,050	2,233,849	3,075
2029-30	1,141,799	1,087,588	2,229,387	3,021
2030-31	3,522,299	6,732,825	10,255,124	18,702
2031-32	480,000	104,563	584,563	290
2032-33	505,000	83,016	588,016	231
2033-34	525,000	60,484	585,484	168
2034-35	513,140	36,969	550,109	103
2035-36	0	12,469	12,469	35
Total	57,283,675	36,028,381	93,312,056	

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City of Moreno Valley  
**Community & Economic Development Department**

## **MEMORANDUM**

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To: Mayor and City Council  
From: Barry Foster, Community & Economic Development Director  
Date: March 8, 2011  
Subject: City Council Regular Meeting Agenda of March 8, 2011, Item G.7 -  
AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE  
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO  
VALLEY AND MV RANCHO DORADO II LIMITED PARTNERSHIP

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cc: Agenda packet distribution list

Attached is the updated Affordable Housing Agreement for the above-mentioned subject item.



APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

# Report to City Council

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**TO:** Mayor and City Council and Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley

**FROM:** Barry Foster, Community & Economic Development Director

**AGENDA DATE:** March 8, 2011

**TITLE:** AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND MV RANCHO DORADO II LIMITED PARTNERSHIP

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**RECOMMENDED ACTION**

Staff recommends that the City Council:

1. Adopt Resolution No. 2011-24 consenting to the approval by the Community Redevelopment Agency of the City of Moreno Valley of an Affordable Housing Agreement by and between the Agency and MV Rancho Dorado II Limited Partnership, a California Limited Partnership.

Staff recommends that the Redevelopment Agency of the City of Moreno Valley Board:

2. Adopt Resolution No. RDA 2011-04 approving an Affordable Housing Agreement by and between the Agency and MV Rancho Dorado II Limited Partnership.

**BACKGROUND**

The Rancho Dorado Apartment project is a planned 150 unit (including two manager units) affordable housing development to be situated near the SE corner of Perris Boulevard and JFK Drive. Because of increased competition in securing needed tax credit financing, Rancho Dorado was pursued in to phases of development. The Community Redevelopment Agency of the City of Moreno Valley and MV Rancho Dorado Limited Partnership previously entered into an Affordable Housing Agreement for the development of Phase I of the Rancho Dorado Apartments. The Developer of the

affordable housing complex is Palm Desert Development using a limited partnership structure for the project—MV Rancho Dorado Limited Partnership. This first phase, referred to as Rancho Dorado-North consists of 71 units and was completed and occupied in October 2010. Presently there is a waiting list of over 150 people for Rancho Dorado-North.

## **DISCUSSION**

The development of new affordable housing projects has always been important part of the Agency's Redevelopment Plan. The development of the Rancho Dorado Apartment project is consistent with the Agency's established Redevelopment Plan and the Agency's commitment to construct new quality affordable housing projects in Moreno Valley. The Agency Board previously approved both a loan (in May 2010) to facilitate the project and a funding commitment resolution in November 2010. The development of Rancho Dorado is pursuant and in compliance with California Health and Safety Code 33334.2(e) in the Agency's provision to carry out affordable housing activities.

Phase II of Rancho Dorado consists of 79-units (including 1 manager unit). Previously, the Agency has adopted funding resolutions to provide RDA housing set-aside financial assistance for the 2<sup>nd</sup> phase of Rancho Dorado. On November 30, 2010 the Agency adopted a funding resolution for the Agency to provide \$8.25 million in funding for Phase II of Rancho Dorado. The project proforma has been evaluated by a 3<sup>rd</sup> party financial consultant (with a reputation as a leader in the field) which determined to proposed project as sound and consistent with similar affordable housing projects.

An Affordable Housing Agreement (AHA) has been drafted to establish the terms and conditions of the Agency's financial assistance, along with the development of the affordable housing project. The AHA is in conformance with California Redevelopment Law and consistent with previous Affordable Housing Agreements used by other similar projects in Moreno Valley.

## **ALTERNATIVES**

1. Adopt the Resolutions consenting to the approval of the Affordable Housing Agreement by and between Agency and MV Rancho Dorado Limited Partnership.
2. Decline to adopt the Resolutions supporting the approval of the Affordable Housing Agreement.

## **FISCAL IMPACT**

The approval of the Affordable Housing Agreement has NO impact to the City's General Fund. The funding of the project shall be fully provided for by the Agency's Affordable Housing Set-aside Fund.

**ATTACHMENTS/EXHIBITS**

Attachment A – Resolution No. 2011-24

Attachment B – Resolution RDA No. 2011-04

Attachment C – Affordable Housing Agreement

Prepared By:  
 Barry Foster  
 Community & Economic Development Director

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

RESOLUTION NO. 2011-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY CONSENTING TO THE APPROVAL BY THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY APPROVING AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE AGENCY AND MV RANCHO DORADO LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP

WHEREAS, California Health and Safety Code Sections 33334.2 and 33334.6 authorize and direct the Community Redevelopment Agency of the City of Moreno Valley (the "Agency") to expend a certain percentage of all taxes which are allocated to the Agency pursuant to Section 33670 for the purposes of increasing, improving and preserving the community's supply of low and moderate income housing available at affordable housing cost to persons and families of low- and moderate-income, lower income, and very low income; and

WHEREAS, pursuant to applicable law the Agency has established a Low and Moderate Income Housing Fund (the "Housing Fund"); and

WHEREAS, pursuant to Health and Safety Code Section 33334.2(e), in carrying out its affordable housing activities, the Agency is authorized to provide subsidies to or for the benefit of very low income and lower income households, or persons and families of low or moderate income, to the extent those households cannot obtain housing at affordable costs on the open market, and to provide financial assistance for the construction and rehabilitation of housing which will be made available at an affordable housing cost to such persons; and

WHEREAS, pursuant to Sections 33334.2 and 33413(b) of the Health and Safety Code, the Agency is to encourage the provision of dwelling units to be available at affordable housing cost to persons and families of low or moderate income for substantial periods of time; and

WHEREAS, MV Rancho Dorado Limited Partnership, a California Limited Partnership (the "Participant") has acquired fee title to certain real property located at the southeast corner of Perris Boulevard and John F. Kennedy Boulevard (the "Site") and proposes to construct seventy-nine (79) apartment units at the Site, seventy-eight (78) of which would be restricted to availability at affordable rent to households of specified incomes, all as more particularly set forth in the draft agreement submitted herewith (the "Agreement"); such project is referred to herein as the "Project; and

WHEREAS, the Participant is experienced in the development and operation of affordable multi-family housing, including in Riverside County and represents that it owns the Site; and

WHEREAS, following receipt of a request therefore by the Participant, and upon review of Participant's request for the provision of financial assistance by the Agency in the amount of \$8,250,000 (exclusive of City fee waivers as to City fees in the amount of \$1,022,400), but less the sum of \$1,500,000 previously loaned by the Agency to the Participant, the Agency made certain determinations as to the Project, subject to Participant completing the development of seventy-nine (79) dwelling units and related improvements on the Site, and that the Participant shall, upon completion of such units, rent the rental units ("Units") as follows: (i) five (5) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than thirty percent (30%) of Median Income; (ii) three (3) three-bedroom Unit, which shall be available at Affordable Rent to households earning not greater than thirty percent (30%) of Median Income; (iii) five (5) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty percent (40%) of Median Income; (iv) three (3) three-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty percent (40%) of Median Income; (v) five (5) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty-five percent (45%) of Median Income; (vi) three (3) three-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty-five percent (45%) of Median Income; (vii) twenty (20) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than fifty percent (50%) of Median Income; (viii) eight (3) three-bedroom Units, all of which shall be available at Affordable Rent to households earning not greater than fifty percent (50%) of Median Income; (ix) nineteen (19) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than sixty percent (60%) of Median Income; (x) seven (7) three-bedroom Units, which shall be available at Affordable Rent to households earning not greater than sixty percent (60%) of Median Income; and (vii) one (1) Unit which shall not be restricted to occupancy on the basis of affordable rent or income, such unit to be occupied by an on-site manager, throughout the "Required Covenant Period" as those terms are defined within the draft Affordable and in conformity with such additional and greater requirements as may be imposed in connection with the provision of funding for the Project. Such development was intended to implement the Agency's goals and objectives under the Redevelopment Law to provide decent, safe and sanitary housing for persons of very low income, low income and moderate income and to increase, improve and preserve housing available at affordable rent to persons of very low income, low income and moderate income pursuant to the Redevelopment Plan and Health and Safety Code Sections 33334.2, et seq., and 33413; and

WHEREAS, Participant has agreed to seek a preliminary reservation for 9% Low Income Tax Credits as generally provided for under Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq. ("9% Tax Credits") and has requested that the Agency would loan certain funds to assist in the development of the Site to be repaid from "Residual Receipts" under the "Agency Note" as defined the Agreement; and

WHEREAS, the Legislature has declared in Health and Safety Code Section 36000, et seq., that new forms of cooperation with the private sector, such as leased housing, disposition of real property acquired through redevelopment, development approvals, and other forms of housing assistance may involve close participation with the private sector in meeting housing needs, without amounting to development, construction or acquisition of low rent housing projects as contemplated under Article XXXIV of the State Constitution; and

WHEREAS, at a duly-noticed public meeting, the Agency and the City Council of the City have found and determined that: (i) the Project is not a “low rent housing project” within the meaning of Article XXXIV of the State Constitution; (ii) the improvements to the Site are substantially complete; and (iii) the assistance to be provided with respect to the Project did not constitute development, construction or acquisition of a low-rent housing project within the meaning of Article XXXIV of the State Constitution; such determinations and approval of a proposal which may result in housing assistance benefiting persons of low income within the meaning of Health and Safety Code Section 36005 (which findings and determinations are referred to collectively herein as the “Prior Determinations”) constituted final approval; and

WHEREAS, the Participant has agreed to construct seventy-nine (79) dwelling units on the Site; and

WHEREAS, under the Agreement the Agency would disburse certain moneys defined in the Agreement as the “Agency Disbursement Amount” as a loan to the Participant to be paid from “Residual Receipts” as more fully provided in the Agreement, and the Participant would agree to construct the Project in accordance with the requirements of the Agreement, restrict occupancy of certain of the apartment units in the Project to very low and lower income households, and rent those units at an affordable rent, all as more particularly set forth in the Agreement; and

WHEREAS, the Agreement will leverage the investment of the Agency with an equity contribution by a limited partner investor of the Participant in consideration for 9% Tax Credits to be generated with respect to the Project and other funding to be obtained by the Participant from sources other than the Agency or the City of Moreno Valley (the “City”); and

WHEREAS, the Project is located within the project area of the Moreno Valley Redevelopment Project (the “Project Area” and the “Redevelopment Project”, respectively) and within the corporate limits of the City of Moreno Valley (the “City”). The acquisition, construction and operation of the Project pursuant to the Agreement would benefit the Project Area by providing affordable housing; and

WHEREAS, the Agency has adopted an Implementation Plan pursuant to Health and Safety Code Section 33490, which sets forth the objective of providing housing to satisfy the needs and desires of various constituent elements of the community; and

WHEREAS, the Agreement furthers the goals of the Agency set forth in the Implementation Plan as it will facilitate the creation of affordable housing which will serve the residents of the neighborhood and the City; and

WHEREAS, the Legislature declares in Health and Safety Code Section 37000, et seq., that new forms of cooperation with the private sector, such as leased housing, disposition of real property acquired through redevelopment, development approvals, and other forms of housing assistance may involve close participation with the private sector in meeting housing needs, without amounting to development, construction or acquisition of low rent housing projects as contemplated under Article XXXIV of the State Constitution; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed Agreement and believes that the Agreement is in the best interests of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements; and

WHEREAS, the financial participation by the Agency under the Agreement is in consideration of the particular uses required by the Agreement to be conducted by Participant on the Site as well as the Participant's undertakings concerning the development and operation of improvements for affordable rental housing; and

WHEREAS, the Participant has submitted to the Agency and the City Council of the City (the "City Council") copies of the Agreement substantially in the form submitted herewith; and

WHEREAS, the Agency will expend up to Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) under the Agreement (which amount is exclusive of City fee waivers, but is inclusive of \$1,500,000 previously loaned by Agency to Participant); and

WHEREAS, the Participant indicates that it has diligently attempted to obtain commitments for construction and permanent financing which would not require a substantial additional investment of public funds (over and above that provided in the Agreement) and which do not require subordination of affordability requirements, as described above, but has been unable to do so and has determined that no such commitments are available without such subordination. Accordingly, subject to the terms and conditions set forth in the Agreement, in the event foreclosure (or assignment in lieu of foreclosure) is completed pursuant to deeds of trust securing construction and permanent financing (as provided in the Agreement), the subsequent purchaser and all successors (but excepting from the effect of such exclusion the Participant, the principals of the Participant or any person having any financial interest in the Participant or its principals) will accede to the rights of the Participant under the Agreement with the exception that the requirements for affordability and limiting incomes of occupants under the "Agency Participant CC&Rs" (as defined in the Agreement) would no longer be applicable; and



WHEREAS, additional covenants (described in the Agreement as “City Covenants”) will be recorded on behalf of the City; and

WHEREAS, a joint public meeting of the Agency and City Council on the proposed Agreement was duly noticed in; and

WHEREAS, the proposed Agreement, and a staff report have been available for public inspection prior to the joint public meeting; and

WHEREAS, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

WHEREAS, the Agreement would further the goals of the Implementation Plan by providing for the provision of improvements and the provision of new affordable housing as provided in the Agreement; and

WHEREAS, the Agency and the City Council have duly considered all of the terms and conditions of the proposed Agreement and believes that the redevelopment of the Site pursuant to the Agreement is in the best interests of the City of Moreno Valley and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby finds that the use of funds from the Agency’s Low and Moderate Income Housing Fund pursuant to the Agreement will be of benefit to the Project Area for the reasons set forth above.

Section 2. The City Council approves and ratifies the City Fee Waiver, to be effective upon the City’s issuance of the Development’s building permit in consideration of the Participant’s development and operation of affordable housing units in conformity with the Agreement.

Section 3. The City Council reconfirms and ratifies the Prior Determinations and finds and determines that the Prior Determinations constitute valid, binding and final determinations. The City Council further finds and determines that the Project (as described in the Agreement) is not a “low rent housing project” within the meaning of Article XXXIV of the State Constitution, and that the assistance to be provided pursuant to the Agreement does not constitute development, construction or acquisition of a low-rent housing project within the meaning of Article XXXIV of the State Constitution. The City Council further determines that this resolution shall constitute a final approval of a proposal which may result in housing assistance benefiting persons of low income, within the meaning of Health and Safety Code Section 36005 and that, for the purposes of such enactment, the construction of improvements is sufficiently complete that improvements thereon constitute existing units.

Section 4. The City Council finds and determines that, based upon substantial evidence provided in the record before it, the level of support provided by the Agency under the Agreement is reasonable and necessary.

Section 5. The City Council finds and determines that, based upon substantial evidence provided in the record before it, that an economically feasible alternative method of financing or assisting the Development on substantially comparable terms and conditions, but without subordination of the Agency Participant CC&Rs (to the extent provided in the Agreement), is not available, and the Agreement provides for written commitments reasonably designed to protect the Agency's investment in the event of default, such as: (i) the right of the Agency to cure the default; and (ii) a right of the Agency to purchase the Site at any time after a default on the corresponding loan.

Section 6. The City Council hereby finds and determines that the Agreement will further the implementation of the Redevelopment Plan and the Implementation Plan by providing for the construction of new, affordable housing subject to long-term covenants.

Section 7. The City Council hereby consents to the approval by the Agency of the Agreement in substantially the form presented to the Agency, subject to such revisions as may be made by the Executive Director of the Agency or his designee. A copy of the Agreement when executed by the Agency shall be placed on file in the office of the Secretary of the Agency.

Section 8. The City Council agrees and acknowledges that, subject to approval thereof by the Agency, the Executive Director of the Agency (or his designee) is hereby authorized, on behalf of the Agency, to make revisions to the Agreement which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement and related documents.

PASSED and ADOPTED this 8th day of March, 2011.

By: \_\_\_\_\_  
Richard A. Stewart, Mayor

ATTEST:

\_\_\_\_\_  
Jane Halstead, City Clerk

STATE OF CALIFORNIA        )  
COUNTY OF RIVERSIDE       )  
CITY OF MORENO VALLEY       )

I, Jane Halstead, City Clerk of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. \_\_\_\_ was duly and regularly adopted by vote of the City Council of the City of Moreno Valley at its regular meeting held on the 8th day of March, 2011, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

By: \_\_\_\_\_  
Jane Halstead, City Clerk

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RESOLUTION NO. RDA 2011-04

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY APPROVING AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE AGENCY AND MV RANCHO DORADO LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP

WHEREAS, California Health and Safety Code Sections 33334.2 and 33334.6 authorize and direct the Community Redevelopment Agency of the City of Moreno Valley (the "Agency") to expend a certain percentage of all taxes which are allocated to the Agency pursuant to Section 33670 for the purposes of increasing, improving and preserving the community's supply of low and moderate income housing available at affordable housing cost to persons and families of low- and moderate-income, lower income, and very low income; and

WHEREAS, pursuant to applicable law the Agency has established a Low and Moderate Income Housing Fund (the "Housing Fund"); and

WHEREAS, pursuant to Health and Safety Code Section 33334.2(e), in carrying out its affordable housing activities, the Agency is authorized to provide subsidies to or for the benefit of very low income and lower income households, or persons and families of low or moderate income, to the extent those households cannot obtain housing at affordable costs on the open market, and to provide financial assistance for the construction and rehabilitation of housing which will be made available at an affordable housing cost to such persons; and

WHEREAS, pursuant to Sections 33334.2 and 33413(b) of the Health and Safety Code, the Agency is to encourage the provision of dwelling units to be available at affordable housing cost to persons and families of low or moderate income for substantial periods of time; and

WHEREAS, MV Rancho Dorado Limited Partnership, a California Limited Partnership (the "Participant") has acquired fee title to certain real property located at the southeast corner of Perris Boulevard and John F. Kennedy Boulevard (the "Site") and proposes to construct seventy-nine (79) apartment units at the Site, seventy-eight (78) of which would be restricted to availability at affordable rent to households of specified incomes, all as more particularly set forth in the draft agreement submitted herewith (the "Agreement"); such project is referred to herein as the "Project; and

WHEREAS, the Participant is experienced in the development and operation of affordable multi-family housing, including in Riverside County and represents that it owns the Site; and

WHEREAS, following receipt of a request therefore by the Participant, and upon review of Participant's request for the provision of financial assistance by the Agency in

the amount of \$8,250,000 (exclusive of City fee waivers as to City fees in the amount of \$1,022,400), but less the sum of \$1,500,000 previously loaned by the Agency to the Participant, the Agency made certain determinations as to the Project, subject to Participant completing the development of seventy-nine (79) dwelling units and related improvements on the Site, and that the Participant shall, upon completion of such units, rent the rental units ("Units") as follows: (i) five (5) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than thirty percent (30%) of Median Income; (ii) three (3) three-bedroom Unit, which shall be available at Affordable Rent to households earning not greater than thirty percent (30%) of Median Income; (iii) five (5) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty percent (40%) of Median Income; (iv) three (3) three-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty percent (40%) of Median Income; (v) five (5) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty-five percent (45%) of Median Income; (vi) three (3) three-bedroom Units, which shall be available at Affordable Rent to households earning not greater than forty-five percent (45%) of Median Income; (vii) twenty (20) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than fifty percent (50%) of Median Income; (viii) eight (3) three-bedroom Units, all of which shall be available at Affordable Rent to households earning not greater than fifty percent (50%) of Median Income; (ix) nineteen (19) two-bedroom Units, which shall be available at Affordable Rent to households earning not greater than sixty percent (60%) of Median Income; (x) seven (7) three-bedroom Units, which shall be available at Affordable Rent to households earning not greater than sixty percent (60%) of Median Income; and (vii) one (1) Unit which shall not be restricted to occupancy on the basis of affordable rent or income, such unit to be occupied by an on-site manager, throughout the "Required Covenant Period" as those terms are defined within the draft Affordable and in conformity with such additional and greater requirements as may be imposed in connection with the provision of funding for the Project. Such development was intended to implement the Agency's goals and objectives under the Redevelopment Law to provide decent, safe and sanitary housing for persons of very low income, low income and moderate income and to increase, improve and preserve housing available at affordable rent to persons of very low income, low income and moderate income pursuant to the Redevelopment Plan and Health and Safety Code Sections 33334.2, et seq., and 33413; and

WHEREAS, Participant has agreed to seek a preliminary reservation for 9% Low Income Tax Credits as generally provided for under Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq. ("9% Tax Credits") and has requested that the Agency would loan certain funds to assist in the development of the Site to be repaid from "Residual Receipts" under the "Agency Note" as defined the Agreement; and

WHEREAS, the Legislature has declared in Health and Safety Code Section 36000, et seq., that new forms of cooperation with the private sector, such as leased housing, disposition of real property acquired through redevelopment,

development approvals, and other forms of housing assistance may involve close participation with the private sector in meeting housing needs, without amounting to development, construction or acquisition of low rent housing projects as contemplated under Article XXXIV of the State Constitution; and

WHEREAS, at a duly-noticed public meeting, the Agency and the City Council of the City have found and determined that: (i) the Project is not a “low rent housing project” within the meaning of Article XXXIV of the State Constitution; (ii) the improvements to the Site are substantially complete; and (iii) the assistance to be provided with respect to the Project did not constitute development, construction or acquisition of a low-rent housing project within the meaning of Article XXXIV of the State Constitution; such determinations and approval of a proposal which may result in housing assistance benefiting persons of low income within the meaning of Health and Safety Code Section 36005 (which findings and determinations are referred to collectively herein as the “Prior Determinations”) constituted final approval; and

WHEREAS, the Participant has agreed to construct seventy-nine (79) dwelling units on the Site; and

WHEREAS, under the Agreement the Agency would disburse certain moneys defined in the Agreement as the “Agency Disbursement Amount” as a loan to the Participant to be paid from “Residual Receipts” as more fully provided in the Agreement, and the Participant would agree to construct the Project in accordance with the requirements of the Agreement, restrict occupancy of certain of the apartment units in the Project to very low and lower income households, and rent those units at an affordable rent, all as more particularly set forth in the Agreement; and

WHEREAS, the Agreement will leverage the investment of the Agency with an equity contribution by a limited partner investor of the Participant in consideration for 9% Tax Credits to be generated with respect to the Project and other funding to be obtained by the Participant from sources other than the Agency or the City of Moreno Valley (the “City”); and

WHEREAS, the Project is located within the project area of the Moreno Valley Redevelopment Project (the “Project Area” and the “Redevelopment Project”, respectively) and within the corporate limits of the City of Moreno Valley (the “City”). The acquisition, construction and operation of the Project pursuant to the Agreement would benefit the Project Area by providing affordable housing; and

WHEREAS, the Agency has adopted an Implementation Plan pursuant to Health and Safety Code Section 33490, which sets forth the objective of providing housing to satisfy the needs and desires of various constituent elements of the community; and

WHEREAS, the Agreement furthers the goals of the Agency set forth in the Implementation Plan as it will facilitate the creation of affordable housing which will serve the residents of the neighborhood and the City; and

WHEREAS, the Legislature declares in Health and Safety Code Section 37000, et seq., that new forms of cooperation with the private sector, such as leased housing, disposition of real property acquired through redevelopment, development approvals, and other forms of housing assistance may involve close participation with the private sector in meeting housing needs, without amounting to development, construction or acquisition of low rent housing projects as contemplated under Article XXXIV of the State Constitution; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed Agreement and believes that the Agreement is in the best interests of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements; and

WHEREAS, the financial participation by the Agency under the Agreement is in consideration of the particular uses required by the Agreement to be conducted by Participant on the Site as well as the Participant's undertakings concerning the development and operation of improvements for affordable rental housing; and

WHEREAS, the Participant has submitted to the Agency and the City Council of the City (the "City Council") copies of the Agreement substantially in the form submitted herewith; and

WHEREAS, the Agency will expend up to Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) under the Agreement (which amount is exclusive of City fee waivers, but is inclusive of \$1,500,000 previously loaned by Agency to Participant); and

WHEREAS, the Participant indicates that it has diligently attempted to obtain commitments for construction and permanent financing which would not require a substantial additional investment of public funds (over and above that provided in the Agreement) and which do not require subordination of affordability requirements, as described above, but has been unable to do so and has determined that no such commitments are available without such subordination. Accordingly, subject to the terms and conditions set forth in the Agreement, in the event foreclosure (or assignment in lieu of foreclosure) is completed pursuant to deeds of trust securing construction and permanent financing (as provided in the Agreement), the subsequent purchaser and all successors (but excepting from the effect of such exclusion the Participant, the principals of the Participant or any person having any financial interest in the Participant or its principals) will accede to the rights of the Participant under the Agreement with the exception that the requirements for affordability and limiting incomes of occupants under the "Agency Participant CC&Rs" (as defined in the Agreement) would no longer be applicable; and

WHEREAS, a joint public meeting of the Agency and City Council on the proposed Agreement was duly noticed in; and



WHEREAS, the proposed Agreement, and a staff report have been available for public inspection prior to the joint public meeting; and

WHEREAS, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

WHEREAS, the Agreement would further the goals of the Implementation Plan by providing for the provision of improvements and the provision of new affordable housing as provided in the Agreement; and

WHEREAS, the Agency and the City Council have duly considered all of the terms and conditions of the proposed Agreement and believes that the redevelopment of the Site pursuant to the Agreement is in the best interests of the City of Moreno Valley and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY DOES RESOLVE AS FOLLOWS:

Section 1. The Agency hereby finds that the use of funds from the Agency's Low and Moderate Income Housing Fund pursuant to the Agreement will be of benefit to the Project Area for the reasons set forth above.

Section 2. The Agency reconfirms and ratifies the Prior Determinations and finds and determines that the Prior Determinations constitute valid, binding and final determinations. The Agency further finds and determines that the Project (as described in the Agreement) is not a "low rent housing project" within the meaning of Article XXXIV of the State Constitution, and that the assistance to be provided pursuant to the Agreement does not constitute development, construction or acquisition of a low-rent housing project within the meaning of Article XXXIV of the State Constitution. The Agency further determines that this resolution shall constitute a final approval of a proposal which may result in housing assistance benefiting persons of low income, within the meaning of Health and Safety Code Section 36005 and that, for the purposes of such enactment, the construction of improvements is sufficiently complete that improvements thereon constitute existing units.

Section 3. The Agency finds and determines that, based upon substantial evidence provided in the record before it, the level of support provided under the Agreement is reasonable and necessary.

Section 4. The Agency finds and determines that, based upon substantial evidence provided in the record before it, that an economically feasible alternative method of financing or assisting the Development on substantially comparable terms and conditions, but without subordination (to the extent provided in the Agreement), is not available, and the Agreement provides for written commitments reasonably designed to protect the Agency's investment in the event of default, such as: (i) the right of the Agency to cure the default; and (ii) a right of the Agency to purchase the Site at any time after a default on the corresponding loan.

Section 5. The Agency hereby finds and determines that the Agreement will further the implementation of the Redevelopment Plan and the Implementation Plan by providing for the construction of new, affordable housing subject to long-term covenants.

Section 6. The Agency hereby approves the Agreement in substantially the form presented to the Agency, subject to such revisions as may be made by the Executive Director of the Agency or his designee. The Executive Director of the Agency is hereby authorized to execute the Agreement (including without limitation all attachments thereto) on behalf of the Agency. A copy of the Agreement when executed by the Agency shall be placed on file in the office of the Secretary of the Agency.

Section 7. The Executive Director of the Agency (or his designee) is hereby authorized, on behalf of the Agency, to make revisions to the Agreement which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement and related documents.

PASSED and ADOPTED this 8<sup>th</sup> day of March, 2011.

By: \_\_\_\_\_  
Richard A. Stewart, Chairperson

ATTEST:

\_\_\_\_\_  
Jane Halstead, Secretary

STATE OF CALIFORNIA        )  
COUNTY OF RIVERSIDE       )  
CITY OF MORENO VALLEY       )

I, Jane Halstead, Secretary of the Redevelopment Agency of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. \_\_\_\_\_ was duly and regularly adopted by vote of the Redevelopment Agency of the City of Moreno Valley at its regular meeting held on the 8<sup>th</sup> day of March, 2011, by the following vote:

AYES:                    AGENCY MEMBERS:  
NOES:                   AGENCY MEMBERS:  
ABSENT:                 AGENCY MEMBERS:  
ABSTAIN:                AGENCY MEMBERS:

By: \_\_\_\_\_  
Jane Halstead, Agency Secretary

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APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

# Report to City Council

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**TO:** Mayor and City Council and Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley

**FROM:** Barry Foster, Community & Economic Development Director

**AGENDA DATE:** March 8, 2011

**TITLE:** AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND MV RANCHO DORADO II LIMITED PARTNERSHIP

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**RECOMMENDED ACTION**

Staff recommends that the City Council:

1. Adopt Resolution No. 2011-24 consenting to the approval by the Community Redevelopment Agency of the City of Moreno Valley of an Affordable Housing Agreement by and between the Agency and MV Rancho Dorado II Limited Partnership, a California Limited Partnership.

Staff recommends that the Redevelopment Agency of the City of Moreno Valley Board:

2. Adopt Resolution No. RDA 2011-04 approving an Affordable Housing Agreement by and between the Agency and MV Rancho Dorado II Limited Partnership.

**BACKGROUND**

The Rancho Dorado Apartment project is a planned 150 unit (including two manager units) affordable housing development to be situated near the SE corner of Perris Boulevard and JFK Drive. Because of increased competition in securing needed tax credit financing, Rancho Dorado was pursued in to phases of development. The Community Redevelopment Agency of the City of Moreno Valley and MV Rancho Dorado Limited Partnership previously entered into an Affordable Housing Agreement for the development of Phase I of the Rancho Dorado Apartments. The Developer of the

affordable housing complex is Palm Desert Development using a limited partnership structure for the project—MV Rancho Dorado Limited Partnership. This first phase, referred to as Rancho Dorado-North consists of 71 units and was completed and occupied in October 2010. Presently there is a waiting list of over 150 people for Rancho Dorado-North.

## **DISCUSSION**

The development of new affordable housing projects has always been important part of the Agency's Redevelopment Plan. The development of the Rancho Dorado Apartment project is consistent with the Agency's established Redevelopment Plan and the Agency's commitment to construct new quality affordable housing projects in Moreno Valley. The Agency Board previously approved both a loan (in May 2010) to facilitate the project and a funding commitment resolution in November 2010. The development of Rancho Dorado is pursuant and in compliance with California Health and Safety Code 33334.2(e) in the Agency's provision to carry out affordable housing activities.

Phase II of Rancho Dorado consists of 79-units (including 1 manager unit). Previously, the Agency has adopted funding resolutions to provide RDA housing set-aside financial assistance for the 2<sup>nd</sup> phase of Rancho Dorado. On November 30, 2010 the Agency adopted a funding resolution for the Agency to provide \$8.25 million in funding for Phase II of Rancho Dorado. The project proforma has been evaluated by a 3<sup>rd</sup> party financial consultant (with a reputation as a leader in the field) which determined to proposed project as sound and consistent with similar affordable housing projects.

An Affordable Housing Agreement (AHA) has been drafted to establish the terms and conditions of the Agency's financial assistance, along with the development of the affordable housing project. The AHA is in conformance with California Redevelopment Law and consistent with previous Affordable Housing Agreements used by other similar projects in Moreno Valley.

## **ALTERNATIVES**

1. Adopt the Resolutions consenting to the approval of the Affordable Housing Agreement by and between Agency and MV Rancho Dorado Limited Partnership.
2. Decline to adopt the Resolutions supporting the approval of the Affordable Housing Agreement.

## **FISCAL IMPACT**

The approval of the Affordable Housing Agreement has NO impact to the City's General Fund. The funding of the project shall be fully provided for by the Agency's Affordable Housing Set-aside Fund.

**ATTACHMENTS/EXHIBITS**

- Attachment A – Resolution No. 2011-24
- Attachment B – Resolution RDA No. 2011-04
- Attachment C – Affordable Housing Agreement

Prepared By:  
 Barry Foster  
 Community & Economic Development Director

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>RAH</i>
CITY MANAGER	<i>ms</i>

## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Barry Foster, Community and Economic Development Director

**AGENDA DATE:** March 8, 2011

**TITLE:** CREATING A HOUSING AUTHORITY AND ESTABLISHING THE COMMISSIONERS AND DESIGNATING THE FIRST INTERIM CHAIRMAN

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### **RECOMMENDED ACTION**

1. Staff recommends that the City Council adopt Resolution No. 2011-25 declaring that there is a need for a Housing Authority to function in the City, along with declaring that the members of the City Council shall be the Commissioners of the Housing Authority and designating the first interim Chairman of the Housing Authority.

### **BACKGROUND**

The City Council is forming the Housing Authority to carry out responsibilities as delineated under the Housing Authority Law. Given current threats to redevelopment agencies and their ongoing functions, as alluded to in the Governor's budget proposal, it is important for the community to have appropriate legal tools in place to conduct housing activities, such as ongoing monitoring of covenanted units for compliance as to income limits and affordability, the maintenance of properties, the ability to enter into agreements with developers for the maintenance, construction and operation of housing developments, to enter into contracts, and to provide such other services and provide for such other activities as are authorized under the Housing Authority Law.

The action proposed does not commit the City to appropriate funds for the operation of the Housing Authority. The City does intend that the proposed Housing Authority constitutes a local housing authority for purposes of the Governor's budget proposal. Consistent with the City Council's action to form the Housing Authority, the purpose of this resolution is to accomplish the ministerial actions required by the Housing Authority Law once a housing authority is formed.

**DISCUSSION**

Pursuant to the provisions of California Health and Safety Code, the City Council is adopting this resolution declaring that there is a need for a Housing Authority to function in the City and declaring that the City Council Members are the Commissioners of the Housing Authority. Pursuant to the Housing Authority Law, once the legislative body forms a housing authority, it is necessary for the newly formed housing authority to designate officers, adopt personnel rules and regulations and a conflict of interest code and provide for the time and place of holding its regular meetings.

Consistent with the foregoing, the Commissioners will adopt a resolution at a future date that accomplishes the following:

**Officers of the Housing Authority:** The following City officials would be designated to serve as Housing Authority officers on an ex officio basis:

**City Position**

**Housing Authority Position**

Mayor:	Chair
Mayor Pro Tem:	Vice Chair
City Manager:	Executive Director
Director of Community & Economic Development:	Assistant Executive Director
City Clerk:	Housing Authority Secretary
Finance & Administrative Services Director:	Finance Officer
City Attorney:	Housing Authority Counsel
Special Counsel:	Housing Authority Special Counsel

**Personnel Rules and Regulations:** The personnel system, as set forth in the Moreno Valley Municipal Code (as that Article may be amended), would be adopted as the personnel rules and regulations applying to all employees of the Housing Authority.

**Conflicts of Interest:** The Conflict of Interest Code, as set forth in the Moreno Valley Municipal Code (as that Chapter may be amended), would be adopted as the procedures affecting conflicts of interest involving the Housing Authority.

**Meetings:** The second Tuesday of the month of December at 7:00 PM at the Moreno Valley City Hall Council Chambers located at 14177 Frederick Street, Moreno Valley, California, or at such other place as may be designated by the Housing Authority by Resolution would be selected as the time and place for the Housing Authority’s one regular meeting per year. By inference, the Housing Authority, consistent with California law, may conduct special meetings at any time, subject to the timely posting of its agendas and, as may be required by a particular matter, providing appropriate notice.

## **ALTERNATIVES**

1. Adopt the attached resolution forming a Housing Authority to properly administer and maintain the existing housing program in the City. *Staff recommends this alternative because it will allow the community to have appropriate legal tools in place to conduct housing activities.*
2. Decline to adopt the attached resolution which will prevent the formation of a Housing Authority which will make it difficult to properly administer and maintain a housing program in light of the Governor's budget proposal. *Staff does not recommend this alternative since not forming a Housing Authority could have a detrimental effect on the housing program and housing activities in the City.*

## **FISCAL IMPACT**

The recommended action does NOT cause a fiscal impact.

## **SUMMARY**

The City Council is forming the Housing Authority to carry out responsibilities as delineated under the Housing Authority Law. Given current threats to redevelopment agencies and their ongoing functions, as alluded to in the Governor's budget proposal, it is important for the community to have appropriate legal tools in place to conduct housing activities. The action proposed does not commit the City to appropriate funds for the operation of the Housing Authority; the City does intend that the Housing Authority constitute a local housing authority for purposes of the Governor's budget proposal. Consistent with the City Council's action to form the Housing Authority, the purpose of this resolution is to accomplish the ministerial actions required by the Housing Authority Law once a housing authority is formed.

## **NOTIFICATION**

No public notice is required prior to the City Council taking action on this item. However, the agenda for the meeting during which this item may be considered has been posted in the appropriate locations that have been designated for the posting of City Council agendas.

## **ATTACHMENTS/EXHIBITS**

Attachment A - Resolution No. 2011-25

Prepared By:  
Barry Foster  
Community & Economic Development Director

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

RESOLUTION NO. 2011-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DECLARING THAT THERE IS A NEED FOR A HOUSING AUTHORITY TO FUNCTION IN THE CITY, DECLARING THAT THE MEMBERS OF THE CITY COUNCIL SHALL BE THE COMMISSIONERS OF THE HOUSING AUTHORITY AND DESIGNATING THE FIRST INTERIM CHAIRMAN OF THE HOUSING AUTHORITY.

WHEREAS, the Housing Authority Law is codified in Health and Safety Code Sections 34200 et seq. (the "Law"); and

WHEREAS, Section 34240 of the Law provides that in every City there is a public body corporate and politic known as the Housing Authority of the City; and

WHEREAS, Section 34240 of the Law additionally provides that the Housing Authority shall not transact business or exercise its power unless the City Council of the City declares by Resolution that there is a need for a Housing Authority to function in the City; and

WHEREAS, Section 34242 of the Law provides for the adoption of a Resolution declaring that there is a need for a Housing Authority to function in the City if the City Council finds either: (1) that unsanitary or unsafe inhabited dwelling accommodations exist in the City; or (2) that there is a shortage of safe or sanitary dwelling accommodations in the City available to persons of low income at rentals they can afford; and

WHEREAS, Section 34290 of the Law provides that the City Council may declare by Resolution that the City Council shall be the Commissioners of the Housing Authority; and

WHEREAS, Section 34277 of the Law provides that the Mayor of the City shall designate the interim Chairman of the Housing Authority from among the Housing Authority Commissioners, and thereafter the Housing Authority shall select his/her successor among its commissioners; and

WHEREAS, it is the intent of this resolution to form a Housing Authority to develop or acquire and subsequently operate one or more rental housing projects within the corporate limits of the City of Moreno Valley.

NOW, THEREFORE, the City Council of the City of Moreno Valley, California does hereby resolve as follows:

Section 1. Findings. The City Council finds that there exist in the City both unsanitary and unsafe inhabited dwelling accommodations and a shortage of decent, safe, sanitary and affordable dwelling accommodations in the City which are available to persons of low income.

Section 2. Need for Housing Authority. There is a need for a Housing Authority to function in the City, and the Housing Authority hereby is permitted to transact any business and exercise any power inferred thereon by the provisions of the Housing Authority Law, commencing with Section 34200 of the Health and Safety Code.

Section 3. City Councilmembers to Serve as Housing Authority Commissioners. Pursuant to Section 34290 of the Health and Safety Code, the City Council of the City of Moreno Valley finds that the appointment of the members of the City Council, as the Commissioners of the Housing Authority will serve the public interest and promote the public safety and welfare in an effective manner and, therefore, the City Council Members of the City of Moreno Valley are hereby declared to be Commissioners of the Housing Authority and all the rights, powers, duties, privileges and immunities which are adjusted by the Housing Authority Law and such a Housing Authority shall be vested in such Commissioners, except as otherwise provided by the Housing Authority Law.

Section 4. Designation of Interim Chairman. The Mayor of the City of Moreno Valley shall serve as the interim Chairman of the Housing Authority, until a permanent Chairman is selected.

PASSED, APPROVED and ADOPTED this 8<sup>th</sup> day of March, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Mayor  
City of Moreno Valley

ATTEST:

---

Jane Halstead, City Clerk  
City of Moreno Valley

STATE OF CALIFORNIA        )  
COUNTY OF RIVERSIDE       )  
CITY OF MORENO VALLEY       )

I, Jane Halstead, City Clerk of the City of Moreno Valley, do hereby certify that the foregoing Resolution No. \_\_\_\_ was duly and regularly adopted by vote of the City Council of the City of Moreno Valley at its regular meeting held on the 24<sup>th</sup> day of February, 2009, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

By: \_\_\_\_\_  
Jane Halstead, City Clerk

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City of Moreno Valley  
**Community & Economic Development Department**

## **MEMORANDUM**

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To: Mayor and City Council  
From: Barry Foster, Community & Economic Development Director  
Date: March 8, 2011  
Subject: City Council Regular Meeting Agenda of March 8, 2011, Item G.9 -  
CONDITIONAL COMMITMENT LETTER AGREEMENT AMONG THE  
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO  
VALLEY, THE CITY OF MORENO VALLEY AND RANCHO BELAGO  
DEVELOPERS, INC.

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cc: Agenda packet distribution list

Attached is the updated staff report and amendment for the above-mentioned subject item.



APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

## Report to City Council

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**TO:** Mayor and City Council and Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley

**FROM:** Barry Foster, Community & Economic Development Director

**AGENDA DATE:** March 8, 2011

**TITLE:** CONDITIONAL COMMITMENT LETTER AGREEMENT AMONG THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, THE CITY OF MORENO VALLEY AND RANCHO BELAGO DEVELOPERS INC.

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### **RECOMMENDED ACTION**

Staff recommends that the City Council:

1. Approve the Conditional Commitment Letter Agreement Among the Community Redevelopment Agency of the City of Moreno Valley, the City of Moreno Valley and Rancho Belago Developers, Inc.

Staff recommends that the Redevelopment Agency of the City of Moreno Valley Board:

2. Approve the Conditional Commitment Letter Agreement Among the Community Redevelopment Agency of the City of Moreno Valley, the City of Moreno Valley and Rancho Belago Developers, Inc.

### **BACKGROUND**

The Hemlock Family Apartments is a proposed affordable housing project of 78 units (including a manager unit) to be situated on 5.37-acres on Hemlock Avenue, just west of Perris Boulevard. The developer of the project is Rancho Belago Developers Inc. The project has the necessary planning approvals. The Developer will pursue a 4% bond tax credit reservation in May 2011 and construction is targeted for fall 2011.

**DISCUSSION**

The development of new affordable housing projects and the creation of affordable housing opportunities has always been a high priority for the City of Moreno Valley and its Redevelopment Agency (the Agency). The proposed development of the Hemlock Family Apartments is consistent with the Agency’s adopted Redevelopment Plan and the need to create new affordable housing opportunities in Moreno Valley. The development of the Hemlock Family Apartments is pursuant and consistent with California Health and Safety code, as well as the Agency’s provision to carry out affordable housing activities.

The Developer—Rancho Belago Developers Inc. has requested \$6.5 million in assistance from the RDA, through Housing Set-aside funds, along with an additional \$1 million loan from the City’s HOME funds. A Conditional Commitment Letter Agreement has been drafted to establish the terms and conditions of the Agency and City financing the project, along with the development standards for the project.

**ALTERNATIVES**

1. Adopt the Commitment Agreement by and between the Agency and City with Rancho Belago Developers Inc.
2. Decline to adopt the Agreement, thereby not supporting the development of the affordable housing project.

**FISCAL IMPACT**

The approval of the Commitment Agreement shall have NO impact to the City’s General Fund. The funding of the project shall be fully borne by the Agency’s Affordable Housing Set-aside funding capacity and the City’s HOME funding.

**ATTACHMENTS/EXHIBITS**

Attachment A – Conditional Commitment Letter Agreement Among the Community Redevelopment Agency of the City of Moreno Valley, the City of Moreno Valley and Rancho Belago Developers, Inc.

Prepared By:  
Barry Foster  
Community & Economic Development Director

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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**CONDITIONAL COMMITMENT LETTER AGREEMENT AMONG THE  
MORENO VALLEY REDEVELOPMENT AGENCY, THE CITY OF MORENO  
VALLEY, AND RANCHO BELAGO DEVELOPERS, INC.**

March 8, 2011

James M. Jernigan  
***Rancho Belago Developers, Inc.***  
27700 Kalmia Avenue  
Rancho Belago, CA 92555-5200

Re: Hemlock Family Apartments ; Moreno Valley Redevelopment Agency and City of  
Moreno Valley Residual Receipts Loans for New Construction of Hemlock Family  
Apartments

Dear Mr. Jernigan:

We are pleased to offer these conditional commitments of funds on behalf of and from the Moreno Valley Redevelopment Agency, City of Moreno Valley, California (“Agency”) and the City of Moreno Valley (“City”) by this Conditional Commitment Letter (herein, “Conditional Commitment Letter”) to Rancho Belago Developers, Inc., and its affiliate Rancho Belago Developers, Inc. (“Developer”) for Developer’s consideration and acceptance, subject, however, to the approval of this Conditional Commitment Letter by the City Council of the City of Moreno Valley (“City Council” and “City, respectively) and the governing board of the Moreno Valley Redevelopment Agency, City of Moreno Valley, California (“Agency”) of the terms and conditions of that certain “Agency Loan” and that certain “City Loan”, respectively, as more fully detailed herein (together, “Loans”).

The Agency is a redevelopment agency organized, operating, and existing pursuant to the California Community Redevelopment Law, Health & Safety Code Section 33000, *et seq.* (“CRL”). City is a California municipal corporation and general law city. Pursuant to the CRL, the Agency maintains a low to moderate income housing to improve, increase and preserve the community’s supply of low to moderate income housing available at an affordable housing cost (“Housing Fund”). City is a participating jurisdiction with the United States Department of Housing and Urban Development that has received funds from HUD pursuant to the federal HOME Investment Partnerships Act and HOME Investment Partnerships Program, 42 U.S.C. Section 12701, *et seq.*, and the implementing regulations thereto set forth in 24 CFR § 92.1, *et seq.* for the purposes of strengthening public/private partnerships to provide more affordable housing, particularly decent, safe, sanitary, and affordable housing, with primary attention to housing for Very Low Income and Lower Income households in accordance with the HOME Program.

If approved by Agency and City Council, respectively and subject to their amendment of this Conditional Commitment Letter, if any, will be provided to you a conditional commitment for loans, subject to the Overriding Conditions (as set forth in #21, below) and subject further to the following terms and conditions:

## **1. Developer/Borrower**

Rancho Belago Developers, Inc., (or its approved affiliate) shall be the developer with Rancho Belago Developers, Inc., as the borrower and sole owner and operator (“Developer”). Rancho Belago Developers, Inc. may establish a single-asset entity for the purposes of developing the project (hereinafter the “Borrower”), and/or to be formed California limited partnership, with Rancho Belago Developers, Inc., a California corporation as its Administrative General Partner and Housing Corporation of America, a Utah nonprofit public benefit corporation as Managing General Partner, as approved by Agency. The identity of each limited partner of the partnership and/or member of the BORROWER and their respective roles and responsibilities, as member(s), general and/or limited partner(s), for the Project are subject to the approval of Agency and City. The documentation of the Borrower is subject to the approval by Agency, City and their respective Special Counsel and General Counsel(s). Hereinafter, the Borrower and Developer are referred to as “Developer”.

## **2. Amount of Loans**

*Agency Loan:* Subject to the deferred payment residual receipts loan not to exceed an original principal amount of \$6,500,00, which will be funded with moneys from the Agency’s Housing Fund per CRL Sections 33334.2, 33334.6, *et seq.* The Agency Loan shall be disbursed in accordance with a schedule to be approved by the Agency and stated in formal loan documentation for such loan (to be negotiated after allocation by the California Tax Credit Allocation Committee (“TCAC”) of Tax Credits to Developer for the Project, “Agency Loan Agreement”).

*City Loan (HOME Program Funds):* A deferred payment (residual receipts) loan not to exceed \$1,000,000. The City Loan shall be disbursed in accordance with a schedule to be approved by the City Council and stated in the loan documentation for such loan (to be negotiated after allocation of Tax Credits for the Project, “City Loan Agreement”).

Both the Agency Loan and the City Loan are expressly contingent upon the TCAC’s award of 4% Tax Credits to Developer for the Project and Developer’s securing other conditional funding commitments.

## **3. Project**

New construction of a 78-unit affordable apartment project referred to as *Hemlock Family Apartments* located on Hemlock Avenue, west of Perris Boulevard in Moreno Valley, California as described in and such Project received a land use entitlement from the City.

**4. Term of Affordability**

Not less than fifty-five (55) years.

**5. Affordability Restrictions**

Seventy-seven (77) of the seventy-eight (78) units shall be affordable to and occupied by persons and or households at or below sixty percent (60%) of the Area Median Income (AMI) referenced in Attachment No. 2 to the staff report included with the City Council and Agency’s consideration and approval of this Conditional Commitment Letter, in a mix of fifty-three (53) two-bedroom and twenty-four (24) three - bedroom units. The seven-eighth (78th) unit may be occupied by management personnel and need not be rent or occupancy restricted. A Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions (“Regulatory Agreement”) and a Notice of Affordability Restrictions per CRL Section 33334.3 restricting rents and occupancy of seventy-seven (77) of the seventy-eight (78) units for not less than fifty-five (55) years shall be recorded against the Site in favor of each of City and Agency. Such Regulatory Agreement and Notice of Affordability Restrictions shall be in a form and format acceptable to Agency, City and Special Counsel in their sole discretion. The Affordable Rent and occupancy restrictions shall include the following:

- Twenty-five (25) units affordable to residents with incomes at or below 50 percent (50%) of Area Median Income (AMI);
- Fifty-two (52) units affordable to residents with incomes at or below 60 percent (60%) of Area Median Income (AMI);

**5. Loan Terms/Repayment**

*Agency Loan:* The Agency Loan shall be evidenced by a Promissory Note in the amount of \$6,500,000 and shall be secured by a Deed of Trust recorded against the Site. The Agency Promissory Note shall provide for a scheduled annual repayment of a pro rata share of residual receipts taking into account the funding participation by Agency and the City. The first payment shall commence at the end of the first fiscal year following the date of the issuance of a Release of Construction Covenants by Agency.

*City Loan:* The City Loan shall be evidenced by a Promissory Note in the amount of \$1,000,000 and shall be secured by a Deed of Trust recorded against the Site. The City Promissory Note shall provide for a scheduled annual repayment of a pro rata share of residual receipts taking into account the funding participation by Agency and the City (the latter solely

from such moneys, if any, as become available to City under the HOME Program). The first payment shall commence at the end of the first fiscal year following the date of the issuance of a Release of Construction Covenants by City.

*Provisions Common to Agency Note and City Note:* Interest on each Promissory Note shall be 3% simple interest (or such other interest rate as may be established by mutual agreement). Interest shall accrue from the first disbursement and all payments shall be applied first to accrued interest then to principal. The Promissory Note shall contain due on sale and further encumbrance clauses and shall be in a form and content as approved by Special Counsel for the Agency and the City, respectively.

All principal and accrued interest shall be due and payable upon repayment in full of the permanent financing, except for a repayment resulting from a pre-approved refinancing of the permanent financing, in which no cash or other consideration is received by the Developer as a result of such refinancing.

## **6. Security**

*Agency Loan:* The Agency Loan shall be secured by a Deed of Trust, which Deed of Trust may, upon specific approval thereof by the governing board of the Agency, will be subordinated, to the construction and permanent financing and in a form and format acceptable to the Agency and its Special Counsel in their sole discretion.

*City Loan:* The City Loan shall be secured by a Deed of Trust, which Deed of Trust may, upon specific approval thereof by the City Council, will be subordinated, to the construction and permanent financing and in a form and format acceptable to the City, acting through its City Council, and its Special Counsel in their sole discretion.

## **7. Pro Forma/Expenses**

All expenses of this Project shall be approved by Agency and City in their reasonable discretion. The Developer's pro forma for the Project has been submitted to and reviewed by Keyser Marston Associates ("KMA"), Agency's and City's economic advisor. KMA's report on the Project, including assumptions, analysis and warranted subsidy, is based on the Developer's pro forma and such "KMA Report" and is a substantive and material basis under which both Agency and City are providing their conditional commitments to make the Agency Loan and City Loan, respectively. Observance of the parameters set forth in the KMA Report is an integral and fundamental



element of this conditional commitment and agreement, but for which Agency and City will have no duties hereunder.

**8. Reserves**

Subject to the approval of the construction and/or permanent lender(s), Developer shall deposit a minimum of \$500 per unit per year (\$39,000 per year) into a dedicated capital replacement reserve account as part of its annual operating expenses. Use of capital replacement reserves shall be subject to the approval of Agency and City.

**9. Recourse**

The Agency Loan shall be recourse until the timely completion of the Project, when it shall become non-recourse. The City Loan shall be recourse until the timely completion of the Project, when it shall become nonrecourse

**10. Notice/Cure Assumption Rights**

Each of Agency and City shall have the right, but not the obligation to cure, after notice of default, any and all defaults in any senior encumbrances. All subordination agreements shall be subject to the sole approval of Agency and City and shall include extended cure rights, separate notice to, and rights to assume senior encumbrances.

**11. Management Plan**

The Management Plan shall be subject to periodic approval by each of Agency and City, in their reasonable discretion.

**12. Management Approval**

Each of Agency and City reserves the right to declare Developer in default of the Agency Loan Agreement or the City Loan Agreement after an uncured ninety (90) day written notice of malfeasance and/or misfeasance in management of the Project.

**13. Time of Funding**

Agency will fund the Agency Loan upon satisfaction of all conditions set forth in the Agency Loan Agreement. All documentation, including any senior loan documents, shall be subject to review and approval of the governing board of the Agency. City will, from HOME Program funds, fund its loan upon satisfaction of all conditions set forth in the City Loan Agreement. All documentation, including any senior loan documents, shall be subject to review and approval of the City Council.

**14. Construction Contract**

Funding of each of the Agency Loan and the City Loan is subject to Agency and City approval of a guaranteed maximum “not-to-exceed” contract for the construction work. Developer shall comply, and shall cause its contractor and all subcontractors to comply, with all state and federal program

limitations and requirements, including without limitation those requirements commonly referred to as “Section 3”, including all reporting, meetings, and other compliance requirements thereof.

**15. Evidence of Financing;**

**Other Loans;**

**Tax Credit Equity**

Each of Agency and City shall have right to review and approve all evidence of financing, including the construction loan and the permanent loan documentation, along with solicitation for and selection of a tax credit equity investor, and in particular the provisions of any subordination of the Agency Loan and/or the City Loan to any such senior encumbrances.

**16. Partnership Related Fees**

The Partnership Related Fees, including management fee, asset management, general partner and/or limited partnership fees, shall not exceed an amount to be approved by Agency and City.

**17. Developer Fee**

The Developer Fee for the Project shall not exceed those limitations as stated in the California Tax Credit Committee Regulations. The Developer Fee shall be available for and shall be used, as necessary, to pay for any and all cost overruns in the construction of the Project prior to and as a condition to any disbursement thereof to Developer. Developer Fee disbursements shall be in increments as specified in the Tax Credit Partnership Agreement and shall be subject to approval by Agency, City and respective designees.

**18. Prevailing Wages**

If required by federal and/or state law or as a condition of obtaining funding, the Developer shall comply with the requirements for payment of both Federal Labor Wage Rates (Davis Bacon Act) and State Prevailing Wages (California Labor Code) and shall pay the higher of the two in the event of a conflict on a trade-by-trade basis.

**19. Time of Performance**

Construction shall commence within the timeframe required by TCAC. Construction shall be completed according to the schedule outlined in the Agency Loan Agreement and the City Loan Agreement (up to 18 months) and stabilized occupancy shall be achieved according to the requirements of TCAC and the other funding sources. Time is of the essence to each and every provision hereof; in the event one or more milestones is not met by the time established therefor hereunder, Agency or City may, at their sole discretion and without providing necessity of an extension or opportunity to cure, terminate their conditional commitments hereunder.

**20. Funds**

Agency may fund the Agency Loan from various sources including the Housing Fund, tax increment not held in the Housing Fund or any other local, State, and/or federal funding source. If funded from tax increment, then all applicable requirements of the CRL shall apply and construction and operation of the Project and the Project shall be subject to all applicable provisions of the CRL. City intends to fund the City Loan only from available HOME Program funds; therefore, because federal funds will be a source of funding then construction and operation of the Project shall be subject to all applicable federal program limitations, rules, and regulations.

**21. Overriding Conditions:**

Any conditional commitment hereunder and in addition to other conditions or limitations hereunder, is expressly conditioned upon and subject to: (i) Circumstances involving the threatened elimination of redevelopment agencies and activities in California: Developer acknowledges that the Governor of the State of California has proposed the elimination of redevelopment agencies throughout the State of California. The Agency Executive Director, City Manager and City make no representations or warranties as to the outcome of the Governor's proposal or the ability and authority of the Agency to operate or receive tax increment or other funding after March 8, 2011. Developer has informed itself of all matters it deems relevant in connection with such circumstances, acknowledges that any conditional commitment of the City and the Agency is subject to the Agency being allowed to continue to operate and receive tax increment revenues (including, without limitation, for the purposes described hereunder), and exonerates each of the Agency and the City from any responsibilities in relation thereto; (ii) completion of environmental processes and clearances for the project; (iii) the obtaining of planning approvals; (iv) the availability to the City of HOME moneys in the amounts described hereunder (the Agency and the City making no representations concerning the availability of such funds, in the amounts described hereunder or in any amount); (v) the availability of City HOME moneys has not been finally determined and any such availability of moneys for the proposed project are subject and subordinate to other conditional commitments. In addition, the availability of such moneys is contingent upon the availability and conditional commitment of housing set-aside revenues as described in (vi), below; (vi) the value of land is subject to confirmation as set forth in item #23, below; (vii) the availability of housing set-

aside revenues, as defined in Health and Code Section 33334.2, to the Agency, in amounts sufficient to fund those amounts described hereunder as the amount of the Agency loan, subject and subordinate to existing obligations of the Agency, together with any obligations of the Agency under a proposed Affordable Housing Agreement between the Agency and MV Rancho Dorado Limited partnership, a California limited partnership (a copy of which is on file with the Community Development Director of the City for consideration by the Agency governing board at the Agency's meeting of March 8, 2011, and a copy of which has been provided to Developer hereunder)(the "Dorado Agreement"). Agency and City make no representations whatsoever to Developer concerning the future availability of moneys to the City or the Agency.

**22. ALTA Lender's Policies**

Developer shall cause to be issued to City and Agency, at Developer's sole cost and expense, ALTA Lender's Policies for each of the Agency Loan and the City Loan, with endorsements acceptable to Agency and City and respective Special Counsel.

**23. Updated Appraisal**

Prior to funding, Developer shall cause to be prepared and shall submit to each of Agency and City for their respective approval, an updated, as constructed, appraisal, as a condition to funding. Appraised value shall reflect the then-current value of the appraised property in the Site's then-current condition in addition, City shall engage a separate appraisal or review appraisal by an independent appraiser of the City's choosing; Developer will defray City's costs in connection therewith.

**24. Contract Approval**

The funding of each of the Agency Loan and the City Loan is also subject to Agency's and City's approval of the necessary handicap accessibility design compliance provisions being stated within the project architect's contract.

**25. Assumption of Loan**

The Agency Loan and the City Loan may not be assumed without the prior written consent of each of Agency and City each acting at their sole and absolute discretion. It is contemplated that City and Agency will agree that such loans may be assumed by tax credit limited partnership, provided that the limited partnership is approved by each of Agency and City, provided that Developer (or Borrower as its approved affiliate) will be the general partner of the limited partnership, and further provided that such tax credit limited partnership shall agree to be further bound by the terms contained in a comprehensive transactional agreements, the Agency Loan Agreement and the City Loan Agreement and all implementing

documents thereof, to be entered into among Developer, Agency and City.

**26. TCAC**

Each of the Agency Loan and the City Loan is contingent upon TCAC award of the necessary 4% Tax Credits for the Project. Developer shall submit to TCAC and to the City and Agency all documents necessary to complete the Tax Credit application towards consideration and receipt of an allocation of Tax Credits. Developer is and shall be expressly limited to obtaining an allocation for private activity bonds and a preliminary reservation of 4% tax credits to August 1, 2011. Prior to funding, Developer shall submit to Agency and City a complete, legible copy of CDLAC's or TCAC's letter acknowledging that Developer has satisfied all applicable submittal requirements together with evidence of conditional funding commitments demonstrating funding is committed sufficient for the development of the Project with affordability covenants of not less than 55 years.

**27. Documentation**

All documentation of this transaction shall be subject to the approval of each of City and Agency acting through their respective governing boards.

**28. Additional Conditions**

Each of City and Agency reserves the right to impose such additional conditions, both conditions precedent and conditions subsequent, in the Agency Loan Agreement and the City Loan Agreement, and all attachments thereto, and other final documentation of the transaction as are reasonably necessary to protect the interests of the City and the Agency and fulfill the intent of this Conditional Commitment Letter. Included as additional conditions are the completion of a comprehensive transactional agreements, Agency Loan Agreement and City Loan Agreement, to be prepared by Agency and City and Special Counsel (as approved also by Agency General Counsel and City Attorney) containing terms customary to similar agreements by Agency and City and including, without limitation, provisions for: (i) demonstration of available and committed moneys sufficient (with the City Loan and the Agency Loan) for the acquisition of the Site and the construction through completion and lease-up of the Project; (ii) annual financing reports; (iii) satisfaction of Section 3 and other HOME Program requirements; (iv) bidding procedures and construction costs acceptable to each of Agency and City; (v) land acquisition cost acceptable to each of Agency and City; (vi) a leasing agreement form, tenant selection process, and reporting/monitoring program acceptable to City and Agency; and (vii) insurance and indemnity conforming to

requirements of Agency and City as set forth in Attachment No. 2 to the staff report for this Conditional Commitment Letter and also conforming to certain Agency/City requirements regarding insurance and indemnity as set forth in Attachment 5 to such staff report.

**29. Tax Credit Investor**

Agency and City must receive an acceptable binding commitment from a Tax Credit investor limited partner, that its Tax Credit investment and contribution to the Project will be not less than \$4,736,278. A Tax Credit commitment of less than the estimated \$4,736,278 will be subject to the sole approval of each of Agency and City. The Tax Credit Partnership Agreement shall be subject to approval by each of Agency and City.

**30. Possible Reduction to Agency Loan**

Should the cost of the Project be decreased, or should the funding sources increase from those anticipated herein (cost and source amounts as referenced in the staff report presented to the Agency and City Council on March 8, 2011) and/or should the contingency not be utilized, then the amount of increased sources and/or savings shall be allocated first to reduction of the General Partner's loan and deferred Developer fee then 50% to Developer and 50% as between Agency and City; the allocation as between Agency and City shall be determined by Agency and City notwithstanding the forgoing, the forgoing is subject to those conditions and limitations set forth below, including without limitation item #23.

**31. No Other Funds from City or Agency**

Agency and City are not hereby committing to provide any further funds to this Project beyond those referenced in this Conditional Commitment Letter or without satisfaction of any and all conditions contained herein (and specifically including the limitation that the City will use no moneys other than HOME Program funds in making the City Loan). Any need to purchase the Site prior to TCAC allocations must be and shall remain within Developer's sole responsibility and decision and with no obligation of Agency or City to provide any funds whatsoever for such early acquisition. Cost overruns, if any, must be addressed by use of the Developer Fee and/or other funding sources and/or other assets of the Developer and in no event from additional monies from the City and/or Agency.

**32. Agency/City Team**

In connection with the proposed project, the Agency or City will, subject to readiness to proceed, consider the issue of multifamily conduit revenue bonds ("Bonds") in connection

with the financing of the Development. The Developer agrees and acknowledges that; (i) the consideration of the issuance of Bonds requires approval after a public hearing of the City or Agency, apart from the approval of this Agreement, and that there is no assurance that such approval will be given; (ii) an allocation process administered by an agency of the State of California is required in connection with the issuance of Bonds, and the Developer and not the Agency would be fully responsible for preparing application with the participation of the Agency or the City, obtaining approval, and complying with conditions imposed as part of such a process; (iii) if bonds are obtained for the Improvements, they are to be issued by the Agency or the City; (iv) any Bonds issued by the Agency or City in connection with the Development would only be a conduit issuance, with no liability of the City or Agency excepting only the payment of moneys received from the Developer in accordance with the state law pursuant to which the Bonds are issued, and with credit support in the form of a letter of credit by one of the ten largest banks in California or another lender approved by the Executive Director at his sole discretion; (v) any Bonds issued by the Agency or City would be privately placed or rated by one of the two largest rating agencies with one of the three highest investment-grade ratings, and on terms customary and reasonably acceptable to the Agency Executive Director; (vi) all costs in connection with the issuance of such bonds, including without limitation costs of issuance, the cost of credit support, ratings, and insurance, shall be borne by the Developer directly or as part of the matters funded by the bonds and the City or Agency shall be entitled to an initial and annual issuer's fee of 14 points (based on the principal amount of the Bonds then outstanding until conversion, and 12 points annually thereafter, in addition to its out of pocket expenses and fees of Stradling Yocca Carlson & Rauth, a Professional Corporation, or other bond counsel designated by Agency or City at their sole discretion, and a financial adviser to the Agency; and (vi) the term of the Bond(s) shall not exceed forty (40) years nor be less than twenty (20) years but may be due in fifteen (15) years. The Agency is not obligated to modify, in any respect, the unit mix, affordability levels, or times for performance by virtue of the matters set forth in this paragraph.

### **33. Other Terms**

Each of Agency and City reserves the right to impose any additional conditions in the Agency Loan Agreement and/or the City Loan Agreement and other implementing loan documents that may be necessary, in the discretion of City or

Agency, as applicable, to protect the interests of Agency and City and fulfill the intent of this Conditional Commitment Letter. Such documentation shall be approved by the Agency and the City Council. The provision by Developer of an appraisal supporting a land value (based upon an unimproved state) within ten percent (10%) of that amount reflected for land cost in that pro forma on file with the City and designated in writing by City staff as the "Final Commitment Letter Pro Forma" shall be a condition to the Agency and/or City considering a comprehensive transactional agreement, Agency Loan Agreement and City Loan Agreement, as referenced in paragraph 28 hereof.

This conditional commitment of funds to provide the Agency Loan and the City Loan as set forth in this Conditional Commitment Letter is conditional upon Developer receiving commitments from its other sources of financing, including allocations from the State of California Tax Credit Allocation Committee.

If you are willing to proceed on the terms and conditions referenced herein, please execute this Conditional Commitment Letter and return it to the undersigned on March 8, 2011 so that the executed form thereof might be attached to the staff report accompanying this Conditional Commitment Letter.

Even after your execution, the Conditional Commitment Letter shall not be effective, unless and until approved by both the Agency and the City.

Sincerely,

Henry T. Garcia, Executive Director of the Community  
Redevelopment Agency, City of Moreno Valley

Henry T. Garcia, City Manager  
City of Moreno Valley

Agreed to and accepted this \_\_\_\_ day of \_\_\_\_\_, 2011 by:

\_\_\_\_\_  
James M. Jernigan, President  
Rancho Belago Developers, Inc.



## PARTICULAR MORENO VALLEY AGREEMENT PROVISIONS

[Numbering of sections is illustrative, only]

4.5 Insurance Requirements. In addition to the separate and severable indemnification covenants and provisions provided by the Developer to Agency and City hereinafter in this Section 4.5, *et seq.*, the Developer shall provide insurance according to these requirements. The Developer shall maintain the following coverages on behalf of Agency and City and any and all of their elected officials, boards, officers, employees, and agents for all claims, damages to property and injuries to persons, including death (including attorneys' fees and litigation costs), which may be caused by any of Developer's activities under this Agreement or related in any respect whatsoever to the Development, regardless of whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and regardless of whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall cause all requirements of this section, and the construction insurance requirements hereafter for such construction insurance, to be obtained and maintained until the completion of the Improvements.

The parties acknowledge and agree that the Loan Agreement includes and requires the Developer to obtain and maintain specific insurance regarding the Development. To the extent the insurance requirements of the Loan Agreement provide for and require policies of insurance coverage with and in amounts, types, and endorsements that exceed the requirements provided hereunder, then the Developer shall provide such increased coverage to the Agency and City and any and all certificates and endorsements therefor shall include both the Agency and City as more specifically set forth in this Section 4.5, *et seq.*

4.5.1 Categories of Coverage for the Development. The following insurance categories shall be caused to be provided by the Developer for the Development and evidence of such coverage and endorsements shall be provided by the time set forth herein.

(a) Commercial General Liability Insurance. Commercial General Liability Insurance shall be provided on Insurance Services Office CGL policy form No. CG 00 01 11 85 or equivalent policy form approved by City's risk management department. Policy limits shall be no less than Two Million Dollars (\$2,000,000) per occurrence for all coverages and not less than Five Million Dollars (\$5,000,000) in general aggregate. There shall be no cross liability exclusion. Coverage shall apply on a primary non contributing basis in relation to any other insurance or self insurance (primary or excess) available to City, Agency, and any and all of their boards, officials, employees or agents. City, Agency, and any and all of their boards, officials, employees and agents shall be added as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word "ongoing" before "operations" in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or the Developer may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion.

(b) Business Auto Coverage. Business Auto Coverage shall be written on Insurance Services Office Business Auto Coverage form CA 00 01 06 92 including owned, non

owned and hired autos. Limits shall be no less than One Million Dollars (\$1,000,000) per accident and not less than Two Million Dollars (\$2,000,000) in general aggregate. If the Developer owns no autos, a non owned auto endorsement to the General Liability policy described above is acceptable.

(c) Workers' Compensation/Employer's Liability. Workers' Compensation/Employer's Liability shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than One Million Dollars (\$1,000,000) per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City and Agency and any and all of their boards, officials, employees or agents.

(d) General Conditions Pertaining to Provision of Insurance Coverage by the Developer The Developer agrees to the following provisions regarding insurance provided by the Developer for the Development:

(i) The Developer agrees to provide insurance in accordance with the requirements set forth herein. If the Developer uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, the Developer agrees to amend, supplement or endorse the existing coverage to do so. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Agency will be promptly reimbursed by the Developer.

(ii) The coverage required here will be renewed annually by the Developer as long as the Developer continues to provide any services under this or any other contract or agreement with Agency. The Developer agrees to maintain liability coverage after the term of this Agreement so long as such coverage is reasonably available.

(iii) No liability insurance coverage provided to comply with this Agreement shall prohibit the Developer, or the Developer's employees, or agents, from waiving the right of subrogation prior to a loss. The Developer waives its right of subrogation against Agency and City.

(iv) The provisions of any workers' compensation or similar act will not limit the obligations of the Developer under this agreement. The Developer is and shall at all times be considered an Independent Contractor, and expressly agrees not to use any statutory immunity defenses under such laws with respect to Agency or City and their employees, officials and agents.

(v) No liability policy shall contain any provision or definition that would serve to eliminate so called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured.

(vi) All insurance coverage and limits provided by the Developer and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Agency or its operations limits the application of such insurance coverage.

(vii) Unless otherwise approved by Executive Director, insurance provided pursuant to these requirements shall be written by insurers authorized to do business in the State of

California and with a minimum “Best’s” Insurance Guide rating of A:VII. Self insurance will not be considered to comply with these insurance specifications.

(viii) Any “self insured retention” must be declared and approved by Agency. Self funding, policy fronting or other mechanisms to avoid risk transfer are not acceptable. If the Developer has such a program, the Developer must fully disclose such program to Agency.

(ix) The Developer shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from the Developer’s insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Agency within five (5) days of the expiration of the coverages.

(x) The Developer agrees to provide evidence of the insurance required herein, satisfactory to Executive Director and the City’s “Risk Manager”, consisting of: certificate(s) of insurance evidencing all of the coverages required and, an additional insured endorsement to the Developer’s general liability policy using Insurance Services Office endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or the Developer may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. The Developer agrees, upon request by Executive Director or City Risk Manager to provide complete, certified copies of any policies required by this section, within ten (10) days of such request. Any actual or alleged failure on the part of Agency or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of Agency or any additional insured, in this or any other regard.

(xi) Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to Agency of any cancellation of coverage. The Developer agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.

(xii) The Developer agrees to require all Contractors, subcontractors, or other parties hired for this Development to provide workers’ compensation, general liability and automobile liability insurance, unless otherwise agreed to by Agency with minimum liability limits of One Million Dollars (\$1,000,000). The Contractor’s general liability insurance shall add as additional insureds Agency and City and their designee(s), and any and all of their boards, officials, employees and agents using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or the Developer may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. The Developer agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here.

(xiii) Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(xiv) The Developer agrees to provide notice within ten (10) days to Executive Director and City's Risk Manager of the Developer's receipt of any claim or loss against the Developer that includes Agency or City as a defendant and of any claim or loss arising out of the work performed under this agreement in which the demand or probable ultimate cost exceeds \$10,000. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Agency.

(xv) The insurance requirements set forth in this section are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

(xvi) The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.

4.6 Construction Insurance Requirements; Contractor for Construction Contract. From the period commencing upon the earliest to occur of (i) the effective date of the Construction Contract between the Developer and Contractor for the Development, or (ii) the date the Contractor enters onto the Site, or (iii) the date of any work on the Site has been completed (without regard to whether the Agency has issued a Certificate of Completion), the Developer shall cause its Contractor to provide and maintain at no expense to Agency (or City), insurance policies meeting the requirements set forth in this Section 4.6. The insurance shall protect Contractor, Contractor's agents, representatives, employees, vendors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, and said insurance is in addition to the insurance provided by the Developer hereunder. The Developer, Agency and City and their officers, employees, and agents shall be named as additional insureds on such policies, which shall be evidenced in endorsements or certificates that meet the requirements of Section 4.5 above for additional insureds, or as otherwise approved by the City's Risk Manager.

4.6.1 Contractor Insurance Submittals. Developer shall cause USA Construction Management Inc. ("Contractor") to provide insurance according to the requirements set forth here. Contractor will maintain the following coverages on behalf of City and Agency and any and all of their boards, officials, employees and agents.

(a) Commercial General Liability. Commercial General Liability Insurance shall be provided on Insurance Services Office CGL policy form No. CG 00 01 11 85 or equivalent policy form approved by City's risk management department. Policy limits shall be no less than Two Million Dollars (\$2,000,000) per occurrence for all coverages and not less than Five Million Dollars (\$5,000,000) in general aggregate. There shall be no cross liability exclusion. Coverage shall apply on a primary non contributing basis in relation to any other insurance or self insurance (primary or excess) available to City, Agency, and any and all of their boards, officials, employees or agents. General liability insurance will not be limited to coverage for the vicarious liability or the supervisory role of the additional insureds. There shall be no contractor's limitation endorsement.

Coverage for the additional insureds shall apply to the fullest extent permitted by law excepting only the active negligence of the City or Agency, not caused or contributed to by the Developer, as established by agreement between the parties or by the findings of a court of competent jurisdiction. City, Agency, and any and all of their boards, officials, employees and agents shall be added as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide an additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion.

(b) Business Auto Coverage. Business Auto Coverage shall be written on Insurance Services Office Business Auto Coverage form CA 20 26 1185 including owned, non owned and hired autos. Limits shall be no less than One Million Dollars (\$1,000,000) per occurrence for all coverages and not less than Two Million Dollars (\$2,000,000) in general aggregate. the Developer may submit, and City risk management department may review and approve, another policy form and/or another form of additional insured endorsement, so long as the review and approval of such form of policy and/or endorsement is within City risk management department’s sole, reasonable discretion. If Contractor owns no autos, a non owned auto endorsement to the General Liability policy described above is acceptable.

(c) Workers’ Compensation/Employer’s Liability. Workers’ Compensation/Employer’s Liability shall be written on a policy form providing workers’ compensation statutory benefits as required by law. Employer’s liability limits shall be no less than One Million Dollars (\$1,000,000) per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City, Agency, and any and all of their boards, officials, employees or agents.

(d) Course of Construction (Builder’s Risk) Insurance. Course of Construction (Builder’s Risk) Insurance shall be provided by Contractor (or by the Developer) and shall include City, Agency, and any and all of their boards, officials, employees and agents as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. Coverage shall be for the full completed value of the project. Any deductible amounts shall be the responsibility of the first named insured on the policy and shall not be the responsibility of Agency or City. The policy shall cover all real and personal property for “all risks” of loss for all buildings, structures, fixtures, materials, supplies, machinery and equipment to be used in or incidental to the construction at the Site, off site, or in transit, for the full replacement value of such property, but expressly excluding the perils of floods and earthquakes. Coverage shall be included for property of others in the care, custody or control of the insured for which any insured may be liable.

(e) General Conditions Pertaining to Provision of Insurance Coverage by Contractor Contractor must agree to the following provisions regarding insurance provided by Contractor:

(i) Contractor agrees to provide insurance in accordance with the requirements set forth here. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Contractor agrees to amend, supplement or endorse the existing coverage to do so. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, Agency has the right to order contractor to discontinue work until suitable replacement coverage is obtained.

(ii) The coverage required here will be renewed annually by Contractor as long as Contractor continues to provide any services under this or any other contract or agreement with the Developer or Agency. Contractor agrees to maintain this coverage after the term of this Agreement so long as such coverage is reasonably available.

(iii) No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Agency and/or City.

(iv) No liability policy shall contain any provision or definition that would serve to eliminate so called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor. Contractor expressly agrees not to use any statutory immunity defenses under workers' compensation or related laws with respect to Agency and/or City, their respective employees, officials and agents, to avoid Contractor's indemnity obligation for such third party action over claims.

(v) All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Agency or its operations limits the application of such insurance coverage.

(vi) Unless otherwise approved by Agency, insurance provided pursuant to these requirements shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of A:VII.

(vii) Any "self insured retention" must be declared and approved by Agency. Agency reserves the right to require the self insured retention to be eliminated, reduced, or replaced by a deductible. Self funding, policy fronting or other mechanisms to avoid risk transfer shall be fully disclosed to Agency before any notice to proceed is issued.

(viii) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Agency within five (5) days of the expiration of the coverages.

(ix) Contractor agrees to provide evidence of the insurance required herein, satisfactory to Agency, consisting of: a) certificate(s) of insurance evidencing all of the coverages required and, b) additional insured endorsement to Contractor's liability policy using

Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide additional insured endorsement form No. CG 20 26 1185 or equivalent that is not restricted to Contractor’s “ongoing operations”, and/or or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. Contractor agrees, upon written request by Agency to provide complete, certified copies of any policies required by this section, within ten (10) days of such request. Any actual or alleged failure on the part of Agency or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of Agency or any additional insured, in this or any other regard.

(x) Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to Agency of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.

(xi) Contractor agrees to require all subcontractors or other parties hired for this project to provide workers’ compensation, general liability and automobile liability insurance, unless otherwise agreed to by Agency with minimum liability limits of \$1 million. The subcontractor’s general liability insurance shall add City and Agency as additional insureds using Insurance Services Office additional insured endorsement form CGL 027 00 01 04 (so long as that additional insured endorsement form omits the word “ongoing” before “operations” in line 2 of Section II from the form thereof provided for review by Agency prior to the Date of Agreement) or Contractor may provide additional insured endorsement form No. CG 20 26 1185 or another additional insured endorsement form presented to and reviewed and approved by the City risk management department in its sole, reasonable discretion. Contractor agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here.

(xii) Contractor agrees to require design professional liability insurance from any design professional engaged for the Development in an amount no less than \$1 million per claim and \$2 million in general aggregate. Contractor agrees to require that no contract, standard form or otherwise, used by any party in any way connected with this Agreement, or contracts Contractor enters into on behalf of Agency, will reserve the right to charge back to Agency the cost of insurance required by this or any other agreement.

(xiii) Contractor agrees that upon request, any agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of Agency, will be submitted to Agency for review. Failure of Agency to request copies of such agreements will not impose any liability on Agency, or its employees.

(xiv) Requirements of specific coverage features or limits contained in this Section 4.6.1 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(xv) Contractor agrees to provide immediate notice to Agency of any claim or loss against Contractor that includes Agency or City as a defendant and of any claim or loss arising out of the work performed under this agreement in which the demand or probable ultimate cost exceeds \$10,000. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Agency.

(xvi) The insurance requirements set forth in this Section 4.6.1 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

(xvii) The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.

For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

4.7 Knowledge of Claim. If at any time the Developer (or its Contractor) becomes aware of a claim or a potential claim, the Developer (or its Contractor) shall immediately provide written notice (“Claim Notice”) to Agency which sets forth the nature of the claim or potential claim and the date on which the Developer became aware of such claim or potential claim and shall provide Agency with copies of any documents relating to such claim or potential claim.

4.8 Notice of Change in Coverage. If, at any time, the Developer (or its Contractor) becomes aware that any of the coverages provided above are going to be canceled, limited in scope or coverage, terminated, or non renewed, then the Developer (or its Contractor) shall provide Agency with fifteen (15) days written notice (“Insurance Notice”) of such cancellation, limitation, termination or non renewal.

(a) Upon the receipt of the Insurance Notice or the Claim Notice, or at any time when Agency has knowledge of (i) the cancellation, limitation, termination or non renewal of one or more of the Developer’s (or its Contractor’s) insurance policies enumerated above or (ii) a claim or potential claim under one or more of such policies, then, in addition to its other rights and remedies pursuant to this Agreement, Agency shall have the right to suspend Agency’s obligations under this Agreement until such time as the Developer (or its Contractor) furnishes, or causes to be furnished to Agency, duplicate originals or appropriate certificates of insurance for coverages in the amounts not less than those specified above or until the time such claim or potential claim has been resolved to the reasonable satisfaction of Agency, respectively.

4.9 Waiver of Subrogation. The Developer (and its Contractor) hereby waives all rights to recover against Agency and/or City (or any officer, employee, agent or representative of Agency or City) for any loss incurred by the Developer (or its Contractor) from any cause insured against or required by any Project Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. The Developer (and its Contractor) shall use its best efforts to obtain only policies that permit the foregoing waiver of subrogation.



4.10 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to the provisions below, if the Development shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by the Developer, the Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, if and to the extent the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and the Developer shall complete the same as soon as possible thereafter so that the Improvements can be occupied in accordance with this Agreement. Subject to enforced delays as set forth in Section 7.10 herein, in no event shall the repair, replacement, or restoration period exceed one (1) year from the date the Developer obtains insurance proceeds unless Executive Director, in his reasonable discretion, approves a longer period of time. Agency shall cooperate with the Developer, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, the Developer may elect not to repair, replace, or restore the Improvements by giving notice to Agency (in which event Developer will be entitled to all insurance proceeds but the Developer shall be required to remove all debris from the applicable portion of the Site) or the Developer may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction.

4.11 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If the Improvements are completely destroyed or substantially damaged by a casualty for which the Developer is not required to (and has not) insured against, then the Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so, subject to any requirements of HUD and the Maker of the Primary Construction Loan by providing Agency with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, and subject to there being funds available after satisfying the Primary Construction Loan and all other senior debt, the Developer shall concurrently repay the full outstanding balance of the Agency Loan (as theretofore disbursed) to Agency and the full outstanding balance of the City HOME Loan (as theretofore disbursed) to City. As used in this Section 4.11, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Improvements. In the event the Developer does not timely elect not to repair, replace, or restore the Improvements as set forth in the first sentence of this Section 4.11, the Developer shall be conclusively deemed to have waived its right not to repair, replace, or restore the Improvements and thereafter the Developer shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Improvements in accordance with Section 4.10 above.

4.12 Indemnification.

4.12.1 General Indemnification. The Developer shall defend, indemnify, assume all responsibility for, and hold the Agency, the City and their elected officials, officers, employees, attorneys, and agents (together, "Indemnitees"), harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the validity, applicability, interpretation or implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be

caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury to the extent occasioned by the negligence or willful misconduct of Agency or City or their agents or employees. The Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that the Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case the Developer shall compromise or settle such action in a way that fully protects Agency and City from any liability or obligation. In this regard, the Developer's obligation and right to defend shall include the right to hire attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against the Developer, Agency, or City. If the Developer defends any such action, as set forth above, and except as provided to the contrary above: (i) the Developer shall indemnify and hold harmless Indemnitees from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Agency shall be entitled to settle any such claim only with the written consent of the Developer and any settlement without the Developer's consent shall release the Developer's obligations under this Section 4.12.1 with respect to such settled claim. Notwithstanding the foregoing, as long as the Primary Construction Loan is insured or held by HUD, the Developer's obligation to honor this indemnification obligation shall be limited to Residual Receipts.

4.12.2 Indemnity Re Challenge to Agreement. The Developer shall, at its expense, defend, indemnify, and hold harmless Agency and City and their elected officials, officers, employees, agents, attorneys and consultants harmless from any and all losses, liabilities, claims, lawsuits, causes of action, judgments, settlements, court costs, attorneys' fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other damages of whatsoever nature, including without limitation those (i) arising out of the validity or interpretation of, Agency's and/or City's authority to enter into, or payment by Agency and/or City to the Developer under this Agreement, (ii) arising out of the applicability or inapplicability of state and/or federal prevailing wage and public works requirements related to the Development, or (iii) arising out of, in connection with, or relating in any manner to any act or omission of the Developer or its agents, employees, contractors and subcontractors of any tier and employees thereof in connection with or arising from the Developer's performance or nonperformance of its obligations under this Agreement, the Developer's ownership of the Site, or the completion of the Development, except that arising from the sole gross negligence or intentional misconduct of Agency or City and their elected officials, officers, agents, employees or representatives.

(a) Joint Defense on Certain Claims and Lawsuits. The parties acknowledge and agree that for certain types of claims or lawsuits that may be asserted against the Developer, Agency, and/or City as described in (i) and (ii) of Section 4.12.2 above ("Joint Defense Claim"), there may be a common interest and mutual concern in the subject matter of such Joint Defense Claim and that a favorable resolution of a Joint Defense Claim related to (i) and (ii) described above would be mutually beneficial. Therefore, in the event of a Joint Defense Claim related to (i) or (ii) in Section 4.12.2 above against the Developer or Agency and/or City (including their elected officials, officers, employees, agents, attorneys and consultants), the parties agree to cooperate in the

resolution of such Joint Defense Claim and desire to set forth certain joint defense rights and obligations in the course of coordination of the defense thereof by this Section 4.12.2(a).

(i) In the course of coordinating their defense of the Joint Defense Claim, the parties might engage in communications and exchange information, documents and other materials (“Communicated Information”) and such Communicated Information may include confidential attorney client communications, attorney work product, and other information and materials that are protected from disclosure to third parties by the attorney client communication privilege, the work product doctrine or other applicable privileges. The parties wish to insure that the exchange and disclosure of Communicated Information in furtherance of a joint defense effort and the parties’ common interest does not diminish in any way the confidentiality of the Communicated Information and does not constitute a waiver of any privileges otherwise applicable.

(A) All Communicated Information shall be used solely in connection with the Joint Defense Claim, and shall be and remain confidential and privileged and may not be disclosed or made available to persons other than to the Developer, Agency and/or City and their respective counsel, and such counsels’ employees and agents without the written consent of all of the other parties unless disclosure of such Communicated Information is required by order of court after the privilege and work product doctrines are asserted. Each person to whom Communicated Information is disclosed will also be made aware of the existence of this Section 4.12.2(a) and any implementing joint defense agreement among the Developer, Agency and City and that Communicated Information is privileged, confidential, and not to be disclosed unless ordered by a court to be disclosed.

(B) If any other person or entity requests or demands, by subpoena or otherwise, any Communicated Information from the Developer, Agency, City, or their counsel, such party or counsel receiving said request or demand shall immediately notify all parties and their attorneys, provide them with a copy of said request or demand, assert all applicable rights, privileges and objections with respect to such requests or demands, and cooperate fully with the other party in making every reasonable effort to prevent or limit the disclosure of said Communicated Information.

(C) In the event the Developer, Agency or City enters into any agreement with any third party that is inconsistent with the continued sharing of information under this Section 4.12.2(a) or other implementing joint defense agreement, and/or with any continued joint defense effort, including without limitation any settlement agreement or dismissal, such party or its counsel shall: (a) immediately inform the other parties of the terms of such agreement or dismissal; (b) promptly return to the other parties hereto all copies of all documents provided by such other party pursuant hereto; and (c) refrain from disclosing to a third party any Communicated Information.

(D) In the event that a party enters into a settlement agreement or dismissal, such party is not to be relieved of its obligations hereunder to maintain the privileged nature and confidentiality of all Communicated Information.

(E) At the conclusion of the Joint Defense Claim or earlier termination of this Agreement, and upon the request of any counsel for a party who has furnished Communicated Information pursuant hereto, all such materials and copies, summaries or information referring to, memorializing or derived from Communicated Information shall be either returned to

that counsel or destroyed, at said counsel's option, and counsel returning or destroying such materials as requested shall promptly certify to the requesting counsel that this has been done.

(ii) Nothing in this Section 4.12.2(a) shall be construed as subjecting a party to the effect of any judgment, verdict or other determination on the merits in any lawsuit in which that party is not a party, whether by res judicata, collateral estoppel, law of the case, or otherwise.

(iii) All previously privileged communications between the Developer and Agency (or City) with respect to the Joint Defense Claim and all Communicated Information previously exchanged between counsel for the parties are subject to this Section 4.12.2(a) it having been understood that the Developer, Agency and City shared a common interest in pending or threatened litigation arising out of a Joint Defense Claim related to (i) or (ii) in Section 4.12.2 above.

(iv) The joint defense made possible by and Communicated Information shared hereunder shall not be grounds for any later disqualification of counsel for any party.

(v) A breach of this Section 4.12.2(a) or any implementing joint defense agreement may not adequately be remedied by an action for damages, and injunctive relief, both temporary and permanent, would be the appropriate remedy for any such breach, although all other equitable and legal remedies are reserved and are not waived.

(vi) Nothing contained herein shall limit the right of any counsel to disclose any documents or information independently obtained for his/her respective clients and not subject to a claim of privilege by another party.

(b) Cooperation in Defense of Claims or Lawsuits. The Developer, as indemnitor of Agency (and City) under Section 4.12.2(a) shall have the right to control and manage the defense of any Joint Defense Claim or other claim or lawsuit covered under the indemnity provided in Section 4.12.2(a) above. The Developer shall keep Agency (and City) through their counsel informed of all significant developments in such claim or lawsuit, including without limitation the date(s) for hearings on significant motions, discovery demands requiring the cooperation or participation of Agency or City officials and employees, settlement negotiations, the trial date, and any situations requiring the attendance of Agency or City officials or employees.

(c) Covenant Not to Sue. The following covenant relating to the Developer's obligation not to sue regarding the Development or the Site or any issues ancillary thereto is a material incentive for and a part of the consideration to Agency to provide to the Developer the Agency Loan and for the City to provide the City HOME Loan. Therefore, the Agency Loan proceeds and the proceeds of the City HOME Loan shall in no event be due, payable, or required, and the performance obligations of Agency under this Agreement shall automatically terminate, in the event from and after the Date of Agreement and until the close of escrow for the Developer's acquisition of the Site, the Developer, or any of its partners, officers, directors, employees, agents, representatives, consultants, attorneys, or any person acting at the direction of the Developer, undertakes any act to oppose, or to commence, participate in, prosecute, or otherwise object to, or to litigate, directly or indirectly, any permit or discretionary decision of Agency, City, City's Planning Commission, any other City board or commission relating to the Site and Development of whatever form or nature.

(i) Notwithstanding the foregoing portion of this Section 4.12.2(b), nothing set forth in this Section 4.12.2(b) shall prevent the Developer from asserting its rights relating to the performance and enforcement of this Agreement or due to the abuse of discretion by a governmental entity considering and acting upon a future discretionary decision related to the parameters of this covenant. Further, nothing in the foregoing covenant shall prevent the Developer from asserting the Developer's rights with respect to prospective action or future conduct by any person who interferes, opposes, or delays implementation and completion of the Development. Further, nothing in the foregoing covenant shall prevent the Developer from asserting the Developer's property rights pertaining to the Site; provided any such assertion of property rights does not interfere with nor impede any agreement(s) to which the Agency or City is a party (other than this Agreement).

4.12.3 Indemnity by the Developer of Agency and City Relating to Relocation. The Developer hereby covenants and agrees to indemnify, save, protect, hold harmless, and defend Agency and City and their respective representatives, volunteers, officers, employees, agents, and consultants (collectively, "Indemnitees") from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation penalties, fines, and monetary sanctions), losses, costs, or expenses, including without limitation consultants' and attorneys' fees, or relocation benefits claimed or payable under the Relocation Laws (for purposes of this Section 4.12.3, the foregoing shall be referred to as "Liabilities") which may now or in the future be incurred or suffered by Indemnitees by reason of, or resulting from, in full or in part, or in any respect whatsoever from the Relocation of residents of the Property pursuant to this Agreement.

The Developer, on behalf of itself and its affiliates, and any and all successors and assigns hereby fully and finally releases each of City, Agency and their past and present elective and appointive boards, commissions, officials and employees, representatives and agents from any and all manner of actions, causes of action, suits, obligations, liabilities, judgments, executions, debts, claims and demands of every kind and nature whatsoever, known and unknown, which the Developer and any of its affiliates, successors or assigns may now have or hereafter obtain against Agency and/or City or their past and present elective and appointive boards, commissions, officials and employees, representatives and agents by reason of, arising out of, relating to, or resulting from in full or in part, the election of the Developer to proceed with the Project pursuant to this Agreement (collectively, "Claims"), which release shall include but not be limited to any Claims for Relocation benefits under federal laws or any other applicable laws. The parties agree that, with respect to the release of Claims as set forth above, all rights under Section 1542 of the California Civil Code and any similar law of any state or territory of the United States are expressly waived. Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

4.12.4 Environmental Indemnification. The Developer shall save, protect, pay for, defend (with counsel acceptable to Agency), indemnify and hold harmless Agency and City and their officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation

and laboratory fees, attorneys' fees and remedial and response costs) (for purposes of this Section 300, the foregoing shall be collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by Agency or City or their officers, employees, representatives or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership of all or any part of the Property, (ii) any act or omission on the part of the Developer, or its agents, employees, representatives, agents, contractors, occupants, or invitees, (iii) the presence on, under, or about, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination, (iv) the environmental condition of the Property, and (v) any Liabilities incurred under any Governmental Requirements relating to Hazardous Materials. The Developer's obligations hereunder shall survive after the issuance of the Certificate of Completion, and shall be a covenant running with the land in perpetuity, binding on all successors and assigns of the Developer's interest in either this Agreement or any part of the Property. The Developer may assign its obligations hereunder to the successor or assign of the Developer's interest in this Agreement or the Property for those events or conditions related to the requirements in this Section that may occur subsequent to the Developer's conveyance to such successor or assign, provided that the Developer shall remain liable for all of its obligations hereunder.

4.13 Rights of Access. Prior to the issuance of the Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as Agency representatives comply with all safety rules. Agency representatives shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section 4.13.

4.14 Compliance With Laws. Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable state labor standards (including without limitation provisions for payment of prevailing wages in connection with all construction of the Improvements to the extent applicable), the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* (and 24 C.F.R. Part 100), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* Developer, including but not limited to its contractors and subcontractors, shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages (the "Prevailing Wage Law") with regard to the construction of the Improvements, to the extent such sections are applicable to the development of the Improvements. Developer shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Law, and the Agency or City make no final representation as to the applicability or non-applicability of the Prevailing Wage Law to the Improvements, or any part thereof. Developer hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold the Agency and the City, its officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Developer's acts or omissions pertaining to the compliance with the Prevailing Wage Law for the Improvements.

The Developer shall comply with the Tax Credit Regulatory Agreement.

Without limitation as to Section 4.12 of this Agreement, Developer shall indemnify, protect, defend and hold harmless the Agency and its officers, employees, contractors and agents, with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. “Increased costs,” as used in this Section 4.14, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Improvements by the Developer.

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# CITY MANAGER'S REPORT

**(Informational Oral Presentation only –  
not for Council action)**

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