
JOINT COMMUNITY FACILITIES AGREEMENT

by and among

CITY OF FONTANA

**CITY OF FONTANA
COMMUNITY FACILITIES DISTRICT NO. 109
(NARRA HILLS)**

and

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

Dated as of June 14, 2022

JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this “Facilities Agreement”), dated as of June 14, 2022, is by and among the CITY OF FONTANA, a general law city organized and existing under the laws of the State of California (the “City”), CITY OF FONTANA COMMUNITY FACILITIES DISTRICT NO. 109 (NARRA HILLS), a community facilities district organized and existing under the laws of the State of California (the “Community Facilities District”), and the SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, a flood control district organized and existing under the laws of the State of California (the “Flood Control District”).

W I T N E S S E T H:

WHEREAS, the City Council of the City (the “City Council”) has, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the “Act”), established the Community Facilities District;

WHEREAS, pursuant to the Act, the proceedings of the City Council and an election held within the Community Facilities District, the Community Facilities District is authorized to issue special tax bonds (the “Bonds”) secured by special taxes (the “Special Taxes”) levied within the Community Facilities District to finance certain public facilities (the “Facilities”);

WHEREAS, the Facilities proposed to be financed by the Community Facilities District include certain Facilities to be owned and operated by the City (the “City Facilities”), certain Facilities to be owned and operated by the Flood Control District (the “Flood Control District Facilities”) and certain Facilities to be owned and operated by certain other public agencies (the “Other Agency Facilities”);

WHEREAS, Section 53316.2 of the Act provides that a community facilities district may finance facilities to be owned or operated by a public agency other than the agency that created the community facilities district only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to said Section;

WHEREAS, Section 53316.2 of the Act further provides that at any time prior to the adoption of the resolution of formation creating a community facilities district or a resolution of change to alter a district, or a resolution or resolutions authorizing issuance of bonds pursuant to Section 53356 of the Act, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to said Section and Sections 53316.4 and 53316.6 of the Act to exercise any power authorized by the Act with respect to the community facilities district being created if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to the residents of that entity;

WHEREAS, no resolution authorizing the issuance of any Bonds has been adopted;

WHEREAS, the City Council and the Board of Supervisors of the Flood Control District have each adopted a resolution declaring that such a joint agreement would be beneficial to the residents of that entity;

WHEREAS, LS-FONTANA LLC (the “Developer”) is developing the property within the boundaries of the Community Facilities District;

WHEREAS, development of such property will require the acquisition, construction and installation of certain Flood Control District Facilities;

WHEREAS, in order to provide for the acquisition, construction and installation of such Flood Control District Facilities, the Flood Control District and the Developer are entering into an Acquisition and Funding Agreement (the “Acquisition Agreement”), pursuant to which the Developer will acquire, construct and install, or cause to be acquired, constructed and installed, certain of the Flood Control District Facilities and, upon satisfaction of the conditions specified therein, the Flood Control District will acquire and take title to such Flood Control District Facilities and that the Developer will be paid the purchase price thereof from proceeds of Special Taxes or Bonds (collectively, “District Proceeds”) made available for such purpose by the Community Facilities District; and

WHEREAS, the City, the Community Facilities District and the Flood Control District desire to enter into this Facilities Agreement in accordance with Sections 53316.2, 53316.4 and 53316.6 of the Act in order to provide for the financing of the Flood Control District Facilities with District Proceeds;

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

Section 1. Issuance of Bonds. (a) It is anticipated that the Community Facilities District will issue Bonds to finance the acquisition, construction and installation of the City Facilities, the Flood Control District Facilities and the Other Agency Facilities. The City Council, acting as the legislative body of the Community Facilities District, shall, in its sole discretion, determine whether, when, under what conditions and to what extent Bonds shall be issued to finance the acquisition, construction and installation of the City Facilities, the Flood Control District Facilities or the Other Agency Facilities, or any combination thereof. In no event shall the Flood Control District have any right to compel the Community Facilities District to issue Bonds to finance the acquisition, construction and installation of Flood Control District Facilities or to disburse Bond proceeds to pay the costs of the acquisition, construction and installation of Flood Control District Facilities.

(b) It is anticipated that the Community Facilities District may make proceeds of Special Taxes available to finance the acquisition, construction and installation of the City Facilities, the Flood Control District Facilities and the Other Agency Facilities. The City Council, acting as the legislative body of the Community Facilities District, shall, in its sole discretion, determine whether, when, under what conditions and to what extent any such Special Tax proceeds shall be made available to finance the acquisition, construction and installation of the City Facilities, the Flood Control District Facilities or the Other Agency Facilities, or any combination thereof. In no event shall the Flood Control District have any right to compel the Community Facilities District to make proceeds of Special Taxes available to finance the acquisition, construction and installation of Flood Control District Facilities or to disburse such Special Tax

proceeds to pay the costs of the acquisition, construction and installation of Flood Control District Facilities.

Section 2. Flood Control District Facilities. (a) The Flood Control District Facilities, including any real or tangible property that is to be purchased, constructed, expanded or rehabilitated, are described in Exhibit A attached hereto.

(b) It is anticipated that the Community Facilities District will make District Proceeds available to finance the acquisition, construction and installation of the Flood Control District Facilities. If the Community Facilities District makes District Proceeds available for such purpose, the Community Facilities District shall notify the Flood Control District of the amount of such District Proceeds available for such purpose within 15 days of such District Proceeds becoming so available. The Community Facilities District makes no representation that, if District Proceeds are made available to finance the acquisition, construction and installation of the Flood Control District Facilities, such District Proceeds will be sufficient to finance the acquisition, construction and installation of all of the Flood Control District Facilities, and neither the City nor the Community Facilities District shall have any liability to the Flood Control District if such District Proceeds are insufficient for such purpose. If the Community Facilities District determines not to make District Proceeds available to finance the acquisition, construction and installation of the Flood Control District Facilities, neither the City nor the Community Facilities District shall have any obligation to provide any amounts to finance or pay the costs of the acquisition, construction and installation of the Flood Control District Facilities.

Section 3. Disbursements. (a) District Proceeds available for the acquisition, construction and installation of the Flood Control District Facilities shall be deposited in a special account (howsoever denominated, the "Flood Control District Facilities Account"), which (i) prior to the issuance of Bonds, is to be established and held by or on behalf of the Community Facilities District, and (ii) upon the issuance of Bonds is to be established and held under the Indenture pursuant to which the Bonds are issued. Moneys on deposit in the Flood Control District Facilities Account shall be invested and disbursed at the direction of the Community Facilities District.

(b) To the extent that moneys are available therein, the Community Facilities District shall cause disbursements to be made from the Flood Control District Facilities Account from time to time to pay the costs of the acquisition, construction and installation of the Flood Control District Facilities upon submission of a written request of the Flood Control District stating (i) the name and address of the person to whom payment is to be made, (ii) the amount to be paid, (iii) that an obligation in such amount has been incurred by the Flood Control District, (iv) the purpose for which the obligation to be paid was incurred, (v) that each item of the obligation to be paid constitutes a cost of the Flood Control District Facilities, (vi) that the obligation to be paid has not been the subject of a prior Flood Control District request for disbursement from the Flood Control District Facilities Account, (vii) that each portion of the Flood Control District Facilities for which payment is requested was constructed under the direction and supervision, or under the authority of, the Flood Control District or was constructed as if it had been constructed under the direction and supervision, or under the authority of, the Flood Control District, and (viii) that each portion of the Flood Control District Facilities for which payment is requested is being acquired and purchased in accordance the provisions of the Act and the Acquisition Agreement.

The Community Facilities District shall process in a timely manner written requests for disbursements received from the Flood Control District that conform to the requirements hereof.

Section 4. Construction, Ownership and Maintenance of City Facilities and Flood Control District Facilities. (a) The Flood Control District shall have no responsibility for the acquisition, construction and installation of the City Facilities. The City Facilities shall be and remain the sole and separate property of the City and shall be operated, maintained and utilized by the City. The Flood Control District shall not have any ownership interest in the City Facilities, and the Flood Control District shall have no responsibility for the operation, maintenance or utilization of the City Facilities.

(b) Neither the City nor the Community Facilities District shall have any responsibility for the acquisition, construction and installation of the Flood Control District Facilities or the Other Agency Facilities. The Flood Control District Facilities shall be and remain the sole and separate property of the Flood Control District and shall be operated, maintained and utilized by the Flood Control District, and the Other Agency Facilities financed by the Community Facilities District for a local agency shall be and remain the sole and separate property of such local agency and shall be operated, maintained and utilized by such local agency. Neither the City nor the Community Facilities District shall have any ownership interest in the Flood Control District Facilities or the Other Agency Facilities, and neither the City nor the Community Facilities District shall have any responsibility for the operation, maintenance or utilization of the Flood Control District Facilities or the Other Agency Facilities.

Section 5. Tax Matters. In connection with the issuance of any Bonds, a portion of the proceeds of which are to be made available to finance the acquisition, construction and installation of the Flood Control District Facilities, the Flood Control District shall execute and deliver such certifications and agreements as may be reasonably required in order for bond counsel to conclude that interest on such Bonds will be excluded from gross income under Section 103 of the Internal Revenue Code of 1986.

Section 6. Indemnification. (a) The City agrees to protect, indemnify, defend and hold the Flood Control District, and its officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits actions, decrees, judgments, awards, attorneys' fees and court costs which the Flood Control District, or its officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Flood Control District, or its officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of the acquisition, construction, installation, operation, maintenance or utilization of the City Facilities. If the City fails to do so, the Flood Control District shall have the right, but not the obligation, to defend the same and charge all of the direct and incidental costs of such defense, including any attorneys' fees or court costs, to and recover the same from the City.

No indemnification is required to be paid by the City for any claim, loss or expense arising from the willful misconduct or negligence of the Flood Control District, or its officers, employees or agents.

(b) The Flood Control District agrees to protect, indemnify, defend and hold the City and the Community Facilities District, and their respective officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits actions, decrees, judgments, awards, attorneys' fees and court costs which the City or the Community Facilities District, or their respective officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the City or the Community Facilities District, or their respective officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of the acquisition, construction, installation, operation, maintenance or utilization of the Flood Control District Facilities. If the Flood Control District fails to do so, the City and the Community Facilities District shall have the right, but not the obligation, to defend the same and charge all of the direct and incidental costs of such defense, including any attorneys' fees or court costs, to and recover the same from the Flood Control District.

No indemnification is required to be paid by the Flood Control District for any claim, loss or expense arising from the willful misconduct or negligence of the City or the Community Facilities District, or their respective officers, employees or agents.

Section 7. Nature of Agreement; Allocation of Special Taxes. This Facilities Agreement shall constitute a joint community facilities agreement entered into pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Act. The entire amount of the proceeds of the Special Taxes shall be allocated and distributed to the City.

Section 8. Limitation of Rights to Parties. Nothing in this Facilities Agreement expressed or implied is intended or shall be construed to give to any person other than the City, the Community Facilities District and the Flood Control District any legal or equitable right, remedy or claim under or in respect of this Facilities Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Community Facilities District and the Flood Control District.

Section 9. Notices. All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attention: Chief Financial Officer, Management Services

If to the Community Facilities District:

City of Fontana Community Facilities
District No. 109 (Narra Hills)
c/o City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attention: Chief Financial Officer, Management Services

If to the Flood Control District:

San Bernardino County Flood Control District
825 East Third Street, Room 122
San Bernardino, CA 92415-0835
Attention: Chief Flood Control Engineer

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by electronic mail, on the date sent, but only if confirmation of the receipt of such electronic mail is received or if notice is concurrently sent by another means specified herein, (d) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 10. Waiver. The failure by any party hereto to insist on the strict performance of any of the provisions of this Facilities Agreement by any other party hereto, or the failure by any party hereto to exercise its rights upon the default of any other party hereto, shall not constitute a waiver of such party's right to insist and demand strict compliance thereafter by such party with the provisions of this Facilities Agreement.

Section 11. Severability. If any part of this Facilities Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Facilities Agreement shall be given effect to the fullest extent reasonably possible.

Section 12. Successors. This Facilities Agreement shall be binding upon and inure to the benefit of the successors of the parties hereto.

Section 13. Amendments. This Facilities Agreement may be amended, supplemented or otherwise modified only by an instrument in writing executed and delivered by each of the parties hereto.

Section 14. Attorneys' Fees. In the event of litigation arising from this Facilities Agreement, each party shall bear its own costs, including attorneys' fees and expenses; provided, however, that this Section shall not apply such costs that are subject to the indemnification provisions of Section 6 of this Facilities Agreement.

Section 15. Governing Laws; Jurisdiction. (a) This Facilities Agreement shall be governed and construed in accordance with the laws of the State of California.

(b) In the event of any legal action to enforce or interpret this Facilities Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in San Bernardino County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding California Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

Section 16. Electronic Signatures. Each of the parties hereto agrees that the electronic signature of a party to this Facilities Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Facilities Agreement. For purposes hereof (a) “electronic signature” means a manually signed original signature that is then transmitted by electronic means, and (b) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

Section 17. Counterparts. This Facilities Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Facilities Agreement as of the date first written above.

CITY OF FONTANA

By: _____
Matthew C. Ballantyne,
City Manager

**CITY OF FONTANA COMMUNITY
FACILITIES DISTRICT NO. 109
(NARRA HILLS)**

By: _____
Matthew C. Ballantyne,
City Manager of the City of Fontana

**SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT**

By: _____
Curt Hagman, Board Chairman

Dated: _____

Signed and Certified that a Copy of this
Document has been Delivered to the
Chairman of the Board

By: _____
Lynna Monell, Clerk of the Board

EXHIBIT A

DESCRIPTION OF FLOOD CONTROL DISTRICT FACILITIES

The types of facilities to be owned and operated by the Flood Control District and financed by the District Proceeds are flood control facilities consisting of the relocation and construction of the Hawker Crawford flood control channel in the vicinity of the Community Facilities District in accordance with plans and specifications approved by the Flood Control District under the Flood Control District's File 1-806/2.04 and Permit No. P-12019118.