

CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT

REIMBURSEMENT AGREEMENT


1. PARTIES. Effective November 3, 2009, the Contra Costa County Flood Control and Water Conservation District, a public body corporate and politic (hereinafter called "DISTRICT"), and William Lyon Homes, Inc., a California Corporation (hereinafter called "DEVELOPER"), mutually agree as follows:

2. INTRODUCTION.
 - A. DEVELOPER has subdivided the property designated as Subdivision 8424 (hereinafter called "DEVELOPMENT") within Drainage Area 52C. Said DEVELOPMENT is within the jurisdiction of the City of Brentwood (hereinafter called "CITY"). CITY's conditions of approval for said DEVELOPMENT require installation by DEVELOPER of a portion of the drainage facilities shown on the adopted Drainage Plan for Drainage Area 52C.
 - B. The cost to install these facilities exceeds the amount of drainage fee required by the drainage fee ordinance for said drainage area, Ordinance No. 2001-09.
 - C. DISTRICT has adopted a Drainage Area Credit and Reimbursement Policy for said drainage area.
 - D. Since DISTRICT has an effective Drainage Plan and a Drainage Area Credit and Reimbursement Policy for said drainage area, the DEVELOPER has requested that the DISTRICT enter into this agreement with the DEVELOPER, pursuant to said policy.

3. TERMS. DISTRICT shall reimburse DEVELOPER for eligible costs exceeding the amount of fees required by said ordinance, in accordance with the terms of this agreement and the DISTRICT's above-mentioned Drainage Plan and the Drainage Area Credit and Reimbursement Policy for said drainage area, which policy is attached as Exhibit "A," and made a part hereof by this reference.

4. ELIGIBLE COSTS. The items eligible for reimbursement and their agreed upon final costs are outlined on Exhibit "B", attached hereto and incorporated herein by this reference.
5. CONFORMANCE TO PLANS AND SPECIFICATIONS. The drainage facilities covered by this agreement have been installed in conformance with the plans and specifications prepared by DEVELOPER and reviewed by the DISTRICT, and accepted as complete by the CITY
6. HOLD HARMLESS. DEVELOPER shall defend, indemnify, save and hold DISTRICT, its governing body, officers, agents and employees absolutely free, clear, and harmless from any claims, actions, or costs arising from any property and/or rights acquisition necessary hereunder, or arising from any and all damage to property, injury to persons, including death, or any other type of liability arising as a result of DEVELOPER's installation of the drainage facilities required by the conditions of approval for said DEVELOPMENT.
7. NON-RESPONSIBILITY OF DISTRICT. The installation of drainage facilities covered by this agreement is the sole responsibility of DEVELOPER. DISTRICT assumes no responsibility whatsoever for construction procedures and methods utilized by DEVELOPER in constructing the drainage facilities.
8. PAYMENT. Payment terms are set forth in Exhibit "A", except that the first payment shall not be made until the DEVELOPER submits to DISTRICT acceptable evidence that DEVELOPER has paid for installation of the drainage facilities covered by this agreement.
9. TERMINATION. This agreement shall remain in effect either (1) for the time as provided in Section V.B. of Exhibit "A" or (2) until DEVELOPER has been reimbursed for the total eligible reimbursement amount, whichever first occurs. Non-submittal of the acceptable evidence of payment required by Section 9 shall not result in an extension of the termination date. The obligations contained in Sections 7 and 8 will survive termination of this Agreement.
10. NO OTHER RECOURSE AGAINST DISTRICT.
 - A. This agreement constitutes the total statement of rights between DISTRICT and DEVELOPER concerning payment or reimbursement for costs of installing the drainage facilities exceeding the required drainage fees.
 - B. If, after the expiration of the time described in Section V.B. of Exhibit "A", DEVELOPER has not received the total reimbursement amount, DEVELOPER shall have no right to further reimbursement by DISTRICT from any drainage fees thereafter collected by the DISTRICT, or from any other source of DISTRICT funding.

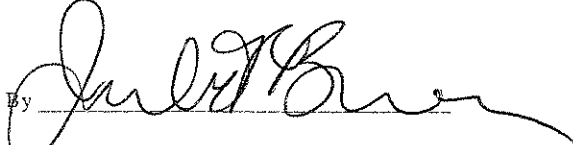
CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By 
Chair of the Board of Supervisors, as governing body of
the Contra Costa County Flood Control and Water
Conservation District

ATTEST: NOVEMBER 03, 2009
David Twa, Clerk of the Board of Supervisors and
County Administrator

By 
Deputy Clerk

RECOMMENDED FOR APPROVAL:
Julia R. Bueren
Chief Engineer

By 

APPROVED AS TO FORM:
Silvano B. Marchesi
County Counsel

By 
Deputy

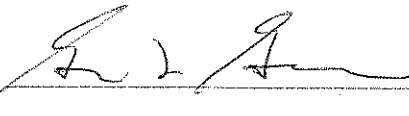
- Exhibit "A" - Drainage Area Credit and Reimbursement Policy
- Exhibit "B" - Calculation of Reimbursement Amount

DEVELOPER*
William Lyon Homes, Inc., a California Corporation

2603 Camino Ramon, Ste. 150

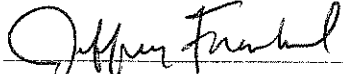
San Ramon, CA 94583

By: _____

By: 

Name: Gary L. Galindo

Title: Vice President

And By: 

Name: Jeffrey D. Frankel

Title: Assistant Secretary

Taxpayer I.D. # 33-0253855

* If DEVELOPER is a corporation, two officers must sign. The first must be the chairman if the board, president or any vice president; the second must be the secretary, assistant secretary, chief financial officer or any assistant treasurer. (Corp. Code § 313; Civ. Code § 1190.) If DEVELOPER is a limited liability company, DEVELOPER shall sign in the manner required of corporations, or by two managers, or by one manager, pursuant to the articles of organization (see Corp. Code §§ 17151, 17154, 17157.) If DEVELOPER is a partnership, any authorized partner may sign. Signatures by DEVELOPER must be notarized.

State of California _____

County of Contra Costa

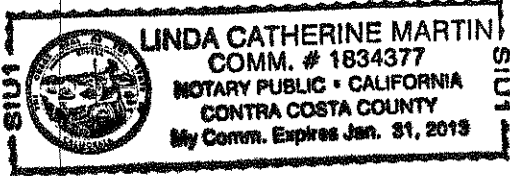
On 9/30/09 before me Linda Catherine Martin
DATE NAME, TITLE OF OFFICER -E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Gary L. Galindo and Jeffrey D. Franke
NAME(S) SIGNER(S)

in the capacity as Vice President and Assistant Secretary
INDIVIDUAL, GENERAL PARTNER, CORPORATE OFFICER - E.G., VICE PRESIDENT

who proved to me on the basis of satisfactory evidence to be the person(s) whose name 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.

" He/She/They also acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.



WITNESS my hand and official seal,

[Signature]
Signature of Notary

SIGNATURE REQUIREMENTS

Signatures required on documents must comply with the following to be acceptable to Contra Costa County.

- I. FOR ALL SIGNATURES - The name and interest of the signer should be typed or printed in the space provided. The name must be signed exactly as it is typed or printed.
- II. SIGNATURES FOR INDIVIDUALS - The name must be signed exactly as it is printed or typed. The signer's interest in the property must be stated.
- III. SIGNATURES FOR PARTNERSHIPS - Signing party must be either a general partner or be authorized in writing to have the authority to sign for and bind the partnership.
- IV. SIGNATURES FOR CORPORATIONS

Documents should be signed by two officers, one from each of the following two groups:

GROUP 1. (a) The Chair of the Board
(b) The President
(c) Any Vice-President

GROUP 2. (a) The Secretary
(b) An Assistant Secretary
(c) The Chief Financial Officer
(d) The Assistant Treasurer

If signatures of officers from each of the above two groups do not appear on the instrument, a certified copy of a resolution of the Board of Directors authorizing the person signing the instrument to execute instruments of the type in question is required. A currently valid power of attorney, notarized, will suffice.

Notarization of only one corporate signature or signatures from only one group, must contain the following phrase:

"...and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors."

EXHIBIT "A"

DRAINAGE AREA CREDIT AND REIMBURSEMENT POLICY

Adopted June, 1989
Revised December 1999

The following policy adopted by the Board of Supervisors, as the governing body of the Contra Costa County Flood Control and Water Conservation District, shall be used to determine credits and reimbursements as provided for in various Drainage Area Fee Ordinances.

I. Definitions:

1. Drainage Area Plan: The engineering plan, which shows and lists the size, length, and location of drainage facilities adopted for a Drainage Area.
2. Drainage Area Fee Ordinance: An ordinance adopted for a Drainage Area specifying the drainage fee necessary to complete construction of the planned facilities.
3. Drainage Area Fee Obligation: The drainage fee due on a development as determined from the Drainage Fee Ordinance.
4. Eligible Costs: The cost of installing drainage facilities, which are part of the Drainage Area Plan.
5. In-tract Drainage Facilities: Drainage facilities required within the limits of the development.
6. Off-tract Drainage Facilities: Drainage facilities required outside the limits of the development.
7. Credit: When a Drainage Fee Ordinance allows construction of drainage facilities in lieu of the payment of drainage fees, the eligible construction costs may be applied as a credit against the drainage area fee obligation.
8. Reimbursement: Payment to the developer for the eligible cost of installing drainage area facilities in excess of the drainage area fee obligation.

II. GENERAL: Installation of drainage facilities required as a condition of property development can be very costly, and in many cases benefits other properties within the watershed. A Drainage Fee Ordinance spreads the costs of the drainage facilities to all of the benefiting properties and ensures, through a system of fees, credits, and reimbursements, equitable financial participation.

The drainage fee ordinance creates a fee obligation on all properties within the Drainage Area. The ordinance becomes operative upon a request to develop or improve a parcel of land. The drainage area fee obligation is limited to the fee due and is payable either in the form of cash or the installation of a portion of the drainage facilities shown on the adopted drainage plan.

When a condition of development requires the construction of drainage facilities with a cost in excess of the drainage fee obligation imposed by the fee ordinance, a portion of the excess cost may be eligible for reimbursement.

III. Eligible Costs: A portion of the cost to install drainage facilities shown on the adopted drainage area plan may be eligible for credit against the required drainage fees and for reimbursement of costs in excess of the drainage fee obligation. Credit or reimbursement shall be limited to the following eligible costs:

1. Actual in-tract and off-tract construction costs plus a fixed amount of 7 percent of the in-tract construction cost and 14 percent of the off-tract construction cost for allowance of miscellaneous developer's costs, including contract preparation, engineering, bonding, etc. Construction costs do not include utility relocations or the acquisition of rights of way.
2. Actual public agency project inspection fees for only those drainage area facilities shown on the adopted drainage plan.
3. Actual off-tract utility relocation costs.
4. Actual off-tract right of way acquisition costs needed for the installation of drainage area facilities, provided the developer does not have a beneficial interest in the off-tract property.

The determination of construction cost will be based on at least three independent bids. The developer shall submit said bids to the District for review and concurrence. Upon District concurrence with the bids, the lowest bid shall be the basis for determination of the credit and reimbursement amount.

The District reserves the right to reject the developer's bids or any other proposed value of said eligible costs and to calculate said costs and the fixed markups using then current prices.

If the developer elects to install a more costly drainage system than shown on the adopted drainage area plan, the District reserves the right to calculate said eligible costs using the then current prices for only the facilities shown on the adopted plan.

IV. Credit: The developer may apply as a credit toward the drainage fee obligation the eligible costs to construct drainage area facilities.

V. Reimbursement:

- A. Where the amount of said eligible costs exceed the drainage fee due, the developer, upon entering into a reimbursement agreement with the District, shall be eligible for a percentage reimbursement on the amount of the eligible costs determined by Section III above, in excess of the drainage fee due as follows:

Off-tract work:	100% (One hundred percent)
In-tract work:	50% (Fifty percent)

Prior to the application of the above percentages, the eligible costs in excess of the drainage fee due shall be prorated between off-tract work and in-tract work in the same proportion as the total eligible costs for off-tract work and in-tract work are to the total eligible costs.

B. The reimbursement shall be subject to the following limitations:

1. Reimbursements shall be paid only from drainage fees collected pursuant to a Drainage Fee Ordinance.
2. If more than one reimbursement agreement is in effect in a Drainage Area, the reimbursement payment to each agreement shall be based on the ratio of each agreement's original amount to the total original amount of all outstanding reimbursement agreements.
3. The District reserves the right to utilize not more than 80 percent of the drainage fees collected annually, on a fiscal year basis, for the purpose of making reimbursement payments.
4. Reimbursement payments shall be made quarterly, except that, during any quarter the District reserves the right not to make said payments if the amount of available funds to be disbursed is less than \$5,000.00.
5. Reimbursement agreements shall remain in effect for a base period of ten years (forty quarters). The first quarter shall be the one following the quarter in which the first reimbursement payment is made. The developer shall forfeit any outstanding balance owed at the end of the ten years if 80% or more of the money has been reimbursed. If at the end of the ten years, less than 80% of the money has been reimbursed, the agreement shall be extended for five years. If after a period of five years the developer has not been reimbursed 80% of the amount due, the agreement shall be extended for another period of five years. Any remaining balance owed after twenty years shall be forfeited.
6. Reimbursement agreements executed subsequent to a government loan(s) shall have payments "calculated" using the pro-rata basis of paragraph B.2. above. However, in order to accelerate repayment of the government loan(s), the "calculated" payment shall be applied to repayment of the government loan(s), rather than be disbursed to the subsequent reimbursement agreement(s). Upon full repayment of the government loan(s), reimbursement payments shall commence to the subsequent reimbursement agreement(s). The 40 quarter time limit for a subsequent reimbursement agreement shall not start until the date the first payment is made to the reimbursement agreement.

VI. Applicability: Upon adoption by a drainage area, this policy shall be the basis for all subsequent reimbursement agreements in that drainage area. This policy will not alter any reimbursement agreement executed pursuant to a different policy.

EXHIBIT "B" - COST WORKSHEET

Drainage Area: 52C
 Development: Subdivision 8424
 Developer: William Lyon Homes
 2603 Camino Ramon, Ste. 150
 San Ramon, CA 94583
 Attn: Jeff Frankel
 Site Location: Line A, Line H and Basin 2, Sycamore Avenue and Garin Parkway in Brentwood
 Assessor's Parcel Number: 013-350-048

In-Tract Construction Costs: Line A, Line H, and Basin 2

Item No.	Description	Quantity	Unit	Unit Price	Total Cost
1	36" RCP - Line A	2,445	LF	\$ 120.00	\$ 293,400.00
2	Manhole - Line A	7	EA	\$ 7,500.00	\$ 52,500.00
3	Outfall Structure - Line A	1	EA	\$ 180,680.00	\$ 180,680.00
4	66" CIPP - Line H	484	LF	\$ 102.00	\$ 49,368.00
5	60" CIPP - Line H	71	LF	\$ 101.00	\$ 7,171.00
6	54" CIPP - Line H	1,605	LF	\$ 79.00	\$ 126,795.00
7	48" CIPP - Line H	330	LF	\$ 102.00	\$ 33,660.00
8	Manhole - Line H	5	EA	\$ 4,500.00	\$ 22,500.00
9	Outfall Structure - Line H	1	EA	\$ 5,675.00	\$ 5,675.00
10	Excavation - Basin 2	90,000	CY	\$ 2.00	\$ 180,000.00

Subtotal \$ 951,749.00
 Engineering (7% of Subtotal)* \$ 66,622.43
 Inspection \$ -
 In-Tract Cost Subtotal \$ 1,018,371.43

Off-Tract Construction Costs: Line A

Item No.	Description	Quantity	Unit	Unit Price	Total Cost
1	12" RCP - Line A	112	LF	\$ 95.00	\$ 10,640.00
2	24" RCP - Line A	56	LF	\$ 100.00	\$ 5,600.00
3	36" RCP - Line A	1,397	LF	\$ 120.00	\$ 167,640.00
4	Manholes - Line A	4	EA	\$ 7,500.00	\$ 30,000.00

Subtotal \$ 213,880.00
 Engineering (14% of Subtotal)* \$ 29,943.20
 Inspection \$ -
 Off-Tract Cost Subtotal \$ 243,823.20

SUMMARY:

In-Tract Cost Subtotal	80.68%	\$ 1,018,371.43
Off-Tract Cost Subtotal	19.32%	\$ 243,823.20
Total Construction Cost	100%	\$ 1,262,194.63

FEE OBLIGATION /CONSTRUCTION CREDIT:

	Total	FCZ1	DA 52C
DA 52C Fee Ordinance %	100%	7.50%	92.50%
Fee Obligation	\$ (924,163.00)	\$ (69,312.23)	\$ (854,850.78)
Fee Paid/Credit	\$	\$ -	\$ -
Total Construction Cost	\$ 1,262,194.63	\$ -	\$ 1,262,194.63
Subtotal		\$ (69,312.23)	\$ 407,343.85

REIMBURSEMENT - PRORATED:

	FCZ1	DA 52C
In-Tract Reimbursement (In-Tract% x Subtotal x 50%)	\$ -	\$ 164,322.51
Off-Tract Reimbursement (Off-Tract% x Subtotal x 100%)	\$ -	\$ 78,698.83
Total Reimbursement (In-Tract Reimbursement + Off-Tract Reimbursement)	\$ -	\$ 243,021.34

REIMBURSEMENT - ADJUSTED (deduct FCZ 1 fee portion):

	FCZ1	DA 52C
Total Deficiency and Reimbursement	\$ (69,312.23)	\$ 243,021.34
Transfer funds to FCZ1 from DA 52C	\$ 69,312.23	\$ (69,312.23)
Total Reimbursement after deducting FCZ 1 fee portion	\$ -	\$ 173,709.11

TOTAL REIMBURSEMENT (ROUNDED)	\$ 173,710
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* Allowance of miscellaneous developer's costs, including contract preparation, engineering, bonding, etc.

JH
5/7/2009