

**RESOLUTION NUMBER 4797**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS APPROVING AND AUTHORIZING EXECUTION OF A FUNDING AGREEMENT AND A JOINT COMMUNITY FACILITIES AGREEMENT IN CONNECTION WITH THE FORMATION OF COMMUNITY FACILITIES DISTRICT 2014-1 (AVELINA) OF THE CITY OF PERRIS; AND MAKING FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the City of Perris (the “City”) is taking proceedings pursuant to the Mello-Roos Community Facilities Act of 1982 (constituting Sections 53311 et. seq. of the Government Code of the State of California) for the formation of Community Facilities District 2014-1 (Avelina) of the City of Perris (“District”) and for the issuance of bonds by the District; and

**WHEREAS**, Centex Homes, a Nevada general partnership, is the owner of 88.94 out of 89.1 acres of property within the District (the “Developer” and, together with the owner of the remaining 0.16 acres, the “Owners”); and

**WHEREAS**, pursuant to Section 53316.2 of the Act, a community facilities district is authorized to finance facilities to be owned or operated by an entity other than the agency that created the community facilities district pursuant to a joint community facilities agreement; and

**WHEREAS**, there is attached hereto as Exhibit A, a Joint Community Facilities Agreement (the “EMWD Agreement”), among the Developers, the City, and Eastern Municipal Water District (“EMWD”); and

**WHEREAS**, there is attached hereto as Exhibit B a Funding Agreement (the “Funding Agreement”) among the Developer and the City, relating to facilities and fees to be acquired and funded by the City; and

**WHEREAS**, the governing board of EMWD has approved the EMWD Agreement presented at this meeting; and

**WHEREAS**, the Developer has approved the EMWD Agreement and the Funding Agreement; and

**WHEREAS**, the City has determined that it is necessary and desirable to enter into the EMWD Agreement and the Funding Agreement;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PERRIS DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1.** That the recitals set forth hereinabove are true and correct in all respects.

**Section 2.** That said forms of EMWD Agreement and the Funding Agreement on file with the City Clerk be and are each hereby approved, with such changes as may be approved by the Mayor, City Manager, Assistant City Manager or Finance Director (each, an "Authorized Officer"), said Authorized Officer's execution thereof to constitute conclusive evidence of said Authorized Officer's approval of all such changes, and each of said Authorized Officers be and is hereby authorized, together or alone to execute and deliver said EMWD Agreement and said Funding Agreement. The City Clerk or a duly authorized Deputy or Assistant City Clerk is hereby authorized to attest to said Authorized Officer's signature.

***ADOPTED, SIGNED and APPROVED*** this 13th day of January, 2015.

\_\_\_\_\_  
Mayor, Daryl R. Busch

ATTEST:

\_\_\_\_\_  
City Clerk, Nancy Salazar

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) §  
CITY OF PERRIS )

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Resolution Number 4797 was duly and regularly adopted by the City Council of the City of Perris at a regular meeting held the 13th day of January, 2015, by the following called vote:

AYES: BURKE, RABB, RODRIGUEZ, ROGERS, BUSCH  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

\_\_\_\_\_  
City Clerk, Nancy Salazar

Exhibit A

Joint Community Facilities Agreement

**JOINT COMMUNITY FACILITIES AGREEMENT**

THIS JOINT COMMUNITY FACILITIES AGREEMENT (the “Agreement”) is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and among the CITY OF PERRIS, California, an incorporated municipality (“City”), EASTERN MUNICIPAL WATER DISTRICT, a public agency organized and existing pursuant to Division 20 of the California Water Code (“EMWD”), and CENTEX HOMES, a Nevada general partnership (the “Property Owner”) and relates to the proposed formation by the City of a community facilities district to be known as “Community Facilities District No. 2014-1 (Avelina) of the City of Perris” (the “CFD”), including the designation of three improvement areas therein (each an “Improvement Area” or the “Improvement Areas”), for the purpose of financing certain facilities to be owned, operated or maintained by the City or EMWD from proceeds of bonds issued by and special taxes levied within the proposed CFD, or an Improvement Area therein.

**RECITALS:**

A. The property (“Property”) depicted in Exhibit “A” attached hereto and described in Exhibit “B” attached hereto, is located in the City, County of Riverside, State of California, and proposed to constitute the land within the boundaries of the CFD.

B. The Property Owner owns the Property and intends to develop the Property for residential purposes.

C. The Property Owner petitioned the City to form the CFD for the purpose of financing, among other things, certain public facilities to be constructed and owned and operated by EMWD (the “EMWD Facilities”) in lieu of the payment of EMWD Fees (defined herein).

D. In conjunction with the issuance of building permits for the construction of homes on the Property and/or receipt of water meters for such homes, the Property Owner, or its successors or assigns, may elect to advance EMWD Facilities costs in lieu of payment of EMWD Fees (the “Advances”) before Bond Proceeds (defined herein) or Special Taxes (defined herein) are available in sufficient amounts to pay for EMWD Facilities. In such case, the Property Owner shall be entitled to (i) reimbursement of such Advances and (ii) credit against EMWD Fees which would otherwise be due to EMWD equal to the amount of Bond Proceeds and/or Special Taxes disbursed to EMWD for EMWD Facilities, all as further described herein.

E. The City will have sole discretion and responsibility for the formation and administration of the CFD.

F. The City has adopted a resolution declaring its intention to form and establish the CFD pursuant to the provisions of the Act (defined below).

G. The City is authorized by Section 53313.5 of the Act to assist in the financing of the acquisition and/or construction of the EMWD Facilities. This Agreement constitutes a joint community facilities agreement, within the meaning of Section 53316.2 of the Act, by and among EMWD, the City and the Property Owner, pursuant to which the CFD, when and if formed, will be authorized to finance the acquisition and/or construction of all or a portion of the EMWD Facilities. As authorized by Section 53316.6 of the Act, responsibility for constructing, providing for and operating the EMWD Facilities is delegated to EMWD.

H. The parties hereto find and determine that the residents residing within the boundaries of EMWD, the City and the CFD will be benefited by the construction and/or acquisition of the EMWD Facilities and that this Agreement is beneficial to the interests of such residents.

### **AGREEMENT**

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

1. **Recitals.** Each of the above recitals is incorporated herein and is true and correct.

2. **Definitions.** Unless the context clearly otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified.

a. “Act” means the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code.

b. “Advances” means an amount paid by Property Owner for EMWD Facilities in lieu of payment of EMWD Fees prior to the availability of sufficient Bond Proceeds or Special Taxes.

c. “Bond Proceeds” or “Proceeds of the Bonds” shall mean those net funds generated by the sale of the Bonds and investment earnings thereon.

d. “Bond Resolution” means the applicable Resolution, Resolution Supplement, Fiscal Agent Agreement, Indenture of Trust or other equivalent document(s) providing for the issuance of the applicable Bonds.

e. “Bonds” shall mean those bonds, or other securities, issued by, or on behalf of the CFD, or an Improvement Area therein, in one or more series, as authorized by the qualified electors within the CFD or an Improvement Area therein.

f. “Disbursement Request” means a request for payment relating to EMWD Facilities in the form attached hereto as Exhibit “D.”

g. “EMWD Fees” means water supply development fees, water backup fees, sewer backup fees, sewer treatment capacity charges and all components thereof imposed by EMWD upon the Property to finance EMWD Facilities.

h. “EMWD Facilities” means those sewer and water facilities listed on Exhibit “C” hereto, which are necessary for the provision of water and sewer services to the Property and paid for with Bond Proceeds in lieu of the payment of EMWD Fees.

i. “EMWD Representative” means the EMWD Engineer or his designee.

j. “Other Facilities Account of the Improvement Fund” means the applicable fund, account or sub-account of the CFD established for an Improvement Area under the applicable Bond Resolution (regardless of its designation within such Bond Resolution) into which a portion of the Bond Proceeds and Special Taxes may be deposited in accordance with the Bond Resolution to finance EMWD Facilities and which may have subaccounts.

k. “Party” or “Parties” shall mean anyone or all of the parties to this Agreement.

l. “Rate and Method” means the Rate and Method of Apportionment of the Special Tax of the CFD for the applicable Improvement Area authorizing the levy and collection of Special Taxes within such Improvement Area pursuant to proceedings undertaken for the formation of the CFD pursuant to the Act.

m. “State” means the State of California.

n. “Special Taxes” means the special taxes authorized to be levied and collected within the CFD, or an Improvement Area therein, pursuant to the applicable Rate and Method.

3. Proposed Formation of the CFD. The City will undertake to analyze the appropriateness of forming the CFD, including the designation of the Improvement Areas therein, to finance the EMWD Facilities and other facilities. The City will retain, at the expense of the Property Owner, the necessary consultants to analyze the proposed formation of the CFD.

4. Sale of Bonds and Use of Proceeds. In the event that the CFD is formed and Bonds are issued, the CFD, in consultation with the Property Owner, shall determine the amount of Bond Proceeds to be deposited in the applicable Other Facilities Account of the Improvement Fund and each subaccount thereof. As Bond Proceeds or Special Taxes are transferred to EMWD and reserved to fund EMWD Facilities, as described in Section 5 below, the Property shall receive a credit in the amount transferred against the payment of EMWD Fees. Nothing herein shall supersede the obligation of an owner of the Property to make an Advance or pay EMWD Fees to EMWD when due. The purpose of this Agreement

is to provide a mechanism by which the CFD may issue the Bonds and/or levy Special Taxes to provide a source of funds to finance EMWD Facilities in lieu of the payment of EMWD Fees. In the event that Bond Proceeds or Special Taxes, including investment earnings thereon, are not available or sufficient to satisfy the obligation, then the Property Owner shall remain obligated to make an Advance or pay EMWD Fees to EMWD as a condition of receiving water and sewer service to the Property.

5. Disbursements for EMWD Facilities.

a. Upon the funding of any Other Facilities Account of the Improvement Fund, the City shall notify EMWD of the amount of Bond Proceeds and/or Special Taxes to be reserved to fund EMWD Facilities and EMWD may execute and submit a Disbursement Request for payment to the City requesting disbursement of an amount equal to all Advances from such Other Facilities Account of the Improvement Fund to the extent such funds are available therein. Upon EMWD's receipt of funds pursuant to such Disbursement Request, Property Owner shall receive reimbursement of the Advances from EMWD. EMWD shall use all such Bond Proceeds disbursed to EMWD for EMWD Facilities.

b. From time to time following the funding of any Other Facilities Account of the Improvement Fund, the Property Owner may notify EMWD in writing and request a disbursement from such Other Facilities Account of the Improvement Fund to fund EMWD Facilities by executing and submitting an executed Disbursement Request to the CFD. Upon receipt of such Disbursement Request completed in accordance with the terms of this Agreement, the CFD shall wire transfer or otherwise pay to EMWD such requested funds to the extent that Bond Proceeds or Special Taxes are available in such Other Facilities Account of the Improvement Fund for such purpose. Upon such notice and EMWD's receipt of such disbursement relating to EMWD Facilities, Property Owner shall be deemed to have satisfied the applicable EMWD Fees with respect to the number of dwelling units or lots for which the EMWD Fees would otherwise have been required in an amount equal to such disbursement.

c. EMWD agrees that prior to submitting a Disbursement Request requesting payment from the CFD it shall review and approve all costs included in its request and will have already paid or incurred such costs of EMWD Facilities from its own funds subsequent to the date of this Agreement, or will disburse such amounts to pay the costs of EMWD Facilities following receipt of funds from the CFD. In the event that EMWD does not disburse any Bond Proceeds received by it to third parties within five banking days of receipt, it will trace and report to the CFD all earnings, if any, earned by EMWD, from the date of receipt of such Bond Proceeds by EMWD to the date of expenditure by EMWD for capital costs of the EMWD Facilities. Such report shall be delivered at least semiannually until all Bond Proceeds are expended by EMWD. EMWD agrees that in processing the above disbursements it will comply with all legal requirements for the expenditure of Bond Proceeds under the Internal Revenue Code of 1986 and any amendments thereto.

d. EMWD agrees to maintain adequate internal controls over its payment function and to maintain accounting records in accordance with generally accepted accounting procedures. EMWD will, upon request, provide City and/or Property Owner with

access to EMWD's records related to the EMWD Facilities and will provide to City its annual financial report certified by an independent certified public accountant for purposes of assisting City in calculating the arbitrage rebate obligation of the CFD or assist in any Internal Revenue Service audit or other agency compliance check, if any.

e. City or the CFD agrees to maintain full and accurate records of all amounts, and investment earnings, if any, expended from any Other Facilities Account of the Improvement Fund. Based on the Property Owner's reasonable expected base sales prices for the homes proposed to be constructed in the CFD at the time of Bond sale (currently anticipated to occur in January 2016), the Property Owner represents that it does not currently anticipate that the Maximum Special Tax Rates in Table 1 of the Rate and Method when added to the current levies of assessments and property taxes on property within the area of the CFD, will exceed 2% of the expected assessed value of property within the CFD. City acknowledges that it is in receipt of and has reviewed the EMWD land secured policies ("Financing Policies"). Based on the Property Owner's representations, it is anticipated that City and the CFD will be in conformance with Section IIE of the Financing Policies at the time of Bond sale; provided, however, nothing herein requires the City to comply the Financing Policies at the time of bond sale or otherwise. City or the CFD will, upon request, provide EMWD and/or Property Owner with access to City's or the CFD's records related to any Other Facilities Account of the Improvement Fund. However, City and EMWD acknowledge that the City has the ultimate responsibility for issuance of the Bonds, the administration of the CFD, and the tax-exempt status of any Bonds issued by the CFD. Accordingly, the City Council shall have ultimate responsibility for making all decisions with respect to the issuance of any Bonds by the CFD and the levy of Special Taxes within the CFD, or an Improvement Area therein.

f. All expenditures for EMWD Facilities shall be capital expenditures for public facilities.

g. At the time of issuance of the Bonds, EMWD, if requested by CFD or City, will certify as to its expectations regarding the expenditure of Bond Proceeds upon receipt of a payment request.

6. Ownership of EMWD Facilities. The EMWD Facilities shall be and remain the property of EMWD.

7. Indemnification.

a. **Indemnification by City.** CFD shall indemnify and save harmless, EMWD, and its respective officers, and employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of City with respect to this Agreement and the issuance of the Bonds; provided, however, that City shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents or employees.

b. **Indemnification by EMWD.** EMWD shall assume the defense of, indemnify and save harmless, the City, the CFD and the Property Owner, and their respective officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of EMWD with respect to this Agreement, and the design, engineering and construction of the EMWD Facilities constructed by EMWD; provided, however, that EMWD shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents or employees.

c. **Indemnification by Property Owner.** Property Owner shall assume the defense of, indemnify and save harmless, the City, the CFD and EMWD, and their respective officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the Property Owner; provided, however, that the Property Owner shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents or employees.

8. Amendment and Assignment. This Agreement may be amended at any time but only in writing signed by each Party hereto. This Agreement may be assigned, in whole or in part, by the Property Owner to the purchaser of any parcel of land within the Property, provided, however, such assignment shall not be effective unless and until EMWD has been notified, in writing, of such assignment, and City has consented to such Assignment.

9. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the Parties with respect to the subject matter of this Agreement.

10. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any Party shall be deemed to have received when personally delivered or seventy-two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

11. If to the City:

12. City of Perris  
101 N. "D" Street  
Perris, California 92570  
Attention: City Manager

13. If to EMWD:

14. Eastern Municipal Water District  
P.O. Box 8300  
2270 Trumble Road  
Perris, California 92572-8300  
Attention: General Manager



15. If to the Property Owner:  
16. Centex Homes  
27101 Puerta Real, Suite 300  
Mission Viejo, CA 92691  
Attention: \_\_\_\_\_

Each Party may change its address for delivery of notice by delivering written notice of such change of address to the other Parties hereto.

17. Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

18. Attorney's Fees. In the event of the bringing of any action or suit by any Party against any other Party arising out of this Agreement, the Party in whose favor final judgment shall be entered shall be entitled to recover from the losing Party all costs and expenses of suit, including reasonable attorneys' fees.

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

20. Governing Law. This Agreement and any dispute arising hereunder shall be governed by interpreted in accordance with the laws of the State of California.

21. Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party hereto, or the failure by a Party to exercise its rights upon the default of another Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the terms of this Agreement thereafter.

22. No Third Party Beneficiaries. No person or entity other than the CFD, when and if formed, shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than EMWD, City, the CFD, and the Property Owner (and their respective successors and assigns, exclusive of individual homebuyers), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

23. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

**CITY OF PERRIS**

\_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
Clerk of the Board

**EASTERN MUNICIPAL WATER DISTRICT**

\_\_\_\_\_  
Paul D. Jones II, P.E., General Manager

ATTEST:

By: \_\_\_\_\_  
Rosemarie V. Howard, Board Secretary

**PROPERTY OWNER**  
CENTEX HOMES,  
a Nevada general partnership

By: Centex Real Estate Corporation,  
a Nevada corporation  
Its: Managing Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**DEPICTION OF PROPERTY**

All of the property in the County of Riverside, State of California, which is located within, is the subject of and is shown on the final subdivision map for Tract No. 30850-1, 30850-2, 30850-3, 30850-4, 30850 in said county.

**EXHIBIT B**  
 ELIGIBLE PUBLIC FEES LIST  
 COMMUNITY FACILITIES DISTRICT NO. 2014-1  
 (AVELINA)  
 OF THE CITY OF PERRIS  
 BOND FINANCED FACILITIES SUMMARY <sup>(1)</sup>

<b><u>Description</u></b>	<b><u>Total</u></b>
City Fees	
CFD Fee	\$488,000
Master Drainage Plan Fee	<i>TBD</i>
TUMF Fee	4,330,024
MSHCP Fee	\$945,744
Subtotal City Fees	\$5,763,768
EMWD Fees	
Water Fees	\$2,318,000
Sewer Fee	\$3,730,272
Water Development Fee	\$146,400
Meter Drop In Fee	\$183,976
Subtotal EMWD Fees	\$6,378,648
Total CFD Fees	\$12,142,416

<sup>(1)</sup> The description of authorized fees is subject to change. The actual fees to be financed through the District may include additional fees or improvements not listed in the above description provided such fees are for the construction and/or acquisition of public infrastructure and/or other governmental facilities with an estimated useful life of five years or longer. Estimated costs are subject to change. Any EMWD fees must be funded pursuant to the EMWD JCFA.

## **EXHIBIT C**

### **EMWD FACILITIES DESCRIPTION**

The type of EMWD Facilities eligible to be financed by the CFD under the Act are as follows:

Those water and sewer facilities included in EMWD's water and sewer capacity and connection fee programs used to finance expansion projects, exclusive of in-tract facilities contributed by Property Owner. EMWD Facilities include, but are not limited to the following: water and sewer transmission pipelines, sewer treatment plants, disposal ponds, pumping plants, lift stations, and water reservoirs, including all costs of site acquisition, planning, design, engineering, legal services, materials testing, coordination, surveying, construction staking, construction, inspection and any and all appurtenant facilities and appurtenant work relating to the foregoing.

**EXHIBIT D**

**DISBURSEMENT REQUEST FORM**

(EMWD Facilities)

1. City of Perris Community Facilities District No. 2014-1 ("CFD") is hereby requested to pay from the Bond Proceeds for Improvement Area \_\_\_ of the CFD to Eastern Municipal Water District ("EMWD"), as Payee, the sum set forth in 3 below.

2. The undersigned certifies that the amount requested for EMWD Fees is due and payable, has not formed the basis of prior request or payment, and is being made with respect to the connection of the property described below to the EMWD system.

3. Amount requested: \$ \_\_\_\_\_  
For Tract/Lot Nos: \_\_\_\_\_

4. The amount set forth in 3 above is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement by and among the City of Perris, Centex Homes and EMWD, dated \_\_\_\_\_, 2014 (the "Agreement"). Capitalized terms not defined herein shall have the meaning set forth in the Agreement. By requisitioning Bond Proceeds, EMWD is not passing upon the tax-exempt status of the Bonds for federal or California income tax purposes.

5. The amount is payable to EMWD.

**6. [PROPERTY OWNER]**

7.

8. By: \_\_\_\_\_

9. Name: \_\_\_\_\_

10. Title: \_\_\_\_\_

11. Date: \_\_\_\_\_

12.

13. EASTERN MUNICIPAL WATER  
DISTRICT

14. By: \_\_\_\_\_

15. Name: \_\_\_\_\_

16. Title: \_\_\_\_\_

17. Date: \_\_\_\_\_

cc: EMWD Special Funding Districts

DRAFT

Exhibit B

Funding Agreement

**FUNDING AGREEMENT**

THIS FUNDING AGREEMENT, dated as of January \_\_\_\_, 2015, is by and between the City of Perris, California (the “City”), acting on behalf of Community Facilities District No. 2014-1 (Avelina) of the City of Perris (the “District”), and CENTEX HOMES, a Nevada general partnership (the “Owner”).

**RECITALS**

**WHEREAS**, pursuant to Resolution No. \_\_ adopted on \_\_, the City has formed the Community Facilities District No. 2014-1 (Avelina) of the City of Perris (the “District”), designated three improvement areas therein (each, an “Improvement Area” and, collectively, the “Improvement Areas”), authorized the levy of special taxes within each Improvement Area (the “Improvement Area Special Taxes”), and authorized the issuance of bonds for each Improvement Area (the “Improvement Area Bonds”), all pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”) to fund the payment of Public Facilities (as herein defined) by the payment of Public Fees (as herein defined) and related costs; and

**WHEREAS**, Owner is the owner of the property located in the District described on the map on Exhibit A hereto, consisting of Tract Nos. 30850-1, 30850-2, 30850-3, 30850-4, and 30850 approved for 496 residential lots (the “Property”); and

**WHEREAS**, the City and Owner will benefit from a coordinated plan of financing of the Public Facilities, the development of the Property and the payment of the Public Fees in connection therewith; and

**WHEREAS**, the Owner and the City wish to enter into this Agreement (as it may be amended and supplemented) to finance the Public Facilities with the moneys from the payment of the Public Fees deposited in the Improvement Fund (as defined herein) for the applicable Improvement Area Bonds and from available Facilities Special Tax Revenue (as defined herein); and

**WHEREAS**, Owner and City have entered into a Joint Community Facilities Agreement (“EMWD JCFA”) with Eastern Municipal Water District (“EMWD”) in order to fund certain fees used to construct facilities of EMWD; and

**WHEREAS**, the City intends to eventually authorize the issuance of the Improvement Area Bonds under the Act and the applicable Fiscal Agent Agreement (defined herein), the proceeds of which shall be used, in part, by City to pay for Public Facilities in the amount of the Public Fees; and

**WHEREAS**, in consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Owner agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein;



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

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Definitions.** The following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the applicable Fiscal Agent Agreement (as hereinafter defined).

“Act” means The Mello-Roos Community Facilities Act of 1982, being Chapter 2.5 of Part 1 of Division 2 of title 5 (commencing with Section 53311) of the California Government Code.

“Agreement” means this Funding Agreement, together with any Supplement hereto.

“City” means the City of Perris, California.

“County” means the County of Riverside, California.

“Deposits” mean an amount deposited with the City or another public agency by the Owner as security for the payment of Public Fees and which are eligible for refund by the City or other public agency upon the issuance of Improvement Area Bonds and the payment of such Public Fees from the proceeds of the Improvement Area Bonds deposited in the applicable Improvement Fund or from the collection of Facilities Special Tax Revenues and the payment of Public Fees therefrom prior to the issuance of Improvement Area Bonds for the applicable Improvement Area pursuant to this Agreement, the EMWD JCFA or any other agreement between the City and the Owner.

“District” means Community Facilities District No. 2014-1 (Avelina) of the City of Perris, a community facilities district organized and existing under the laws of the State of California.

“District Representative” means the City Manager, Assistant City Manager or Finance Director or his/her designee.

“Facilities Special Tax Revenues” means Improvement Area Special Taxes levied on and collected from Developed Property (as defined in the Improvement Area Rate and Method) that are not needed to pay debt service on outstanding Improvement Area Bonds or to pay such Improvement Area’s allocable share of other administrative costs of the District, and are levied prior to the issuance of the last series of Improvement Area Bonds.

“Fiscal Agent” means the fiscal agent identified in the applicable Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under such Fiscal Agent Agreement.

“Fiscal Agent Agreement” means the fiscal agent agreement between the District (or an Improvement Area thereof) and the Fiscal Agent, providing for, among other matters, the issuance of the applicable Improvement Area Bonds and the establishment of an Improvement Fund, as it may be amended or supplemented from time to time.

“Improvement Area Bonds” means the bonds, notes or other “debt” as such term is defined in Government Code Section 53317(d) secured by the levy of Improvement Area Special Taxes issued to generate proceeds for deposit into the applicable Improvement Fund.

“Improvement Area Rate and Method” means the particular Rate and Method of Apportionment of Special Taxes approved with respect to an Improvement Area by the qualified electors within such Improvement Area.

“Improvement Area Special Taxes” means the special taxes authorized to be levied in an Improvement Area pursuant to the applicable Improvement Area Rate and Method.

“Improvement Fund” means the Improvement Fund established by the applicable Fiscal Agent Agreement relating to the issuance of Improvement Area Bonds, which shall include a City Facilities Account and EMWD Facilities Account, from which the Public Fees or Public Facilities shall be paid.

“Owner” means Centex Homes, a Nevada general partnership, its successors and assigns, as applicable, other than individual homebuyers.

“Party” means either the City or the Owner.

“Parties” mean the Owner and the City.

“Payment Request” means a document, substantially in the form of Exhibit C hereto, to be used in requesting a payment of a Public Fee for a Public Facility.

“Public Facility” or “Public Facilities” means any facility or facilities described in the resolution of intention relating to the District and in the fee programs of the City or another public entity, as applicable.

“Public Fees” means (i) fees imposed by EMWD pursuant to the EMWD JCFA and (ii) development, impact or other fees imposed by the City as show in Exhibit B hereto, which are eligible to be financed out of Facilities Special Tax Revenues and funds in an Improvement Fund and which are traceable to a Public Facility.

“Supplement” means a written document amending, supplementing or otherwise modifying this Agreement and any exhibit hereto, including any amendments to the list of Public Fees in Exhibit B, and/or the addition to Exhibit B of additional Public Fees to be financed with the proceeds of Improvement Area Bonds deposited in the applicable Improvement Fund.

## ARTICLE II

### FUNDING

**Section 2.01 Proceedings.** The City shall, in its discretion, conduct all necessary proceedings under the Act for the issuance, sale and delivery of the Improvement Area Bonds.

**Section 2.02 Improvement Area Bonds.** The City shall not be obligated to pay the Public Fees thereof except from amounts on deposit in the Improvement Fund and from Facilities Special Tax Revenues. The City makes no warranty, express or implied, that the proceeds of Improvement Area Bonds deposited and held in an Improvement Fund, and any investment earnings thereon to remain in the Improvement Fund, will be sufficient to pay for all of the Public Fees.

**Section 2.03 Bond Issuance Matters.** The City will undertake proceedings for the issuance of one or more series of Improvement Area Bonds for each Improvement Area upon the terms and conditions set forth herein. The Improvement Area Bonds for an Improvement Area will be issued in one or more series as the City and the District, in consultation with the Owner, shall determine. The terms and conditions upon which each series of Improvement Area Bonds for an Improvement Area shall be issued and sold, the method of sale of such Improvement Area Bonds and the pricing of such Improvement Area Bonds shall be determined solely by the City in its reasonable discretion in conformance with the requirements of the Act and this Agreement. The Improvement Area Bonds shall be issued with a term not to exceed 30 years and include two-percent escalating debt service consistent with the escalation of the Improvement Area Special Taxes in the Improvement Area Rate and Method. The proceeds of the Improvement Area Bonds shall be used in the following priority to (1) fund a reserve fund for the payment of principal and interest with respect to the Improvement Area Bonds in an amount equal to the least of (i) ten percent (10%) of the total bond issue, (ii) maximum annual debt service on the Improvement Area Bonds, or (iii) 125% of average annual debt service on the Improvement Area Bonds; (2) fund up to eighteen (18) months of capitalized interest; (3) pay for costs of issuance of the Improvement Area Bonds including, without limitation, underwriter's discount, bond counsel and disclosure counsel fees, appraisal and special tax consultant fees, printing, and fiscal agent fees; (4) fund the first year's estimated administrative expenses; and (5) pay for the Public Fees listed in Exhibit B and EMWD fees pursuant to the EMWD JCFA.

**Section 2.04 Proceeds.** The proceeds of Improvement Area Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the applicable Fiscal Agent Agreement and this Agreement. A portion of the proceeds of each series of Improvement Area Bonds will be deposited in the Improvement Fund established under the applicable Fiscal Agent Agreement. The amount of proceeds of Improvement Area Bonds deposited in the Improvement Fund shall then be further allocated to and deposited in the City Facilities Account and EMWD Facilities Account in amounts determined by the City in consultation with Owner. Each Fiscal Agent Agreement shall allow funds in the Improvement Fund to be transferred from one account or subaccount to another upon the written request of the Owner and the City. Moneys in the Improvement Fund shall be deposited, held, invested, reinvested and disbursed therefrom in accordance with the provisions of the applicable Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the Public Fees from the applicable account

or subaccount, all as herein provided. Neither the City nor the District shall incur any liability for the insufficiency of proceeds or allocation of proceeds with respect to a particular account or subaccount of the Improvement Fund.

The funds on deposit in the funds and accounts established by or pursuant to a Fiscal Agent Agreement including the Improvement Fund, shall be invested in accordance with the Fiscal Agent Agreement.

The Owner acknowledges that any lack of availability of amounts in an Improvement Fund to pay the Public Fees shall in no way diminish any obligation of the Owner with respect to the public facilities and mitigation measures required in connection with the development of the Property by any development or other agreement to which the Owner is a party, or any governmental approval to which the Owner is subject (collectively, the "Improvement Agreements"). In addition, Owner acknowledges that payment of Public Fees hereunder shall in no manner diminish Owner's obligation to pay any increases in said Public Fees otherwise applicable to Owner for the Property pursuant to the ordinances and resolutions enacting such increased Public Fees.

**Section 2.05 Continuing Disclosure Agreement and Cooperation.** Owner agrees to provide to the City, and to require each transferee or assignee (other than individual homebuyers) to provide to the City, all information regarding its development of the property within an Improvement Area for which Improvement Area Bonds are issued, including the financing plan for such development, which is necessary in the reasonable professional opinion of disclosure counsel to the City and District or counsel to the underwriter of the applicable Improvement Area Bonds to ensure that the City complies with its continuing disclosure obligations in the official statement for the applicable Improvement Area Bonds under Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") and all other applicable federal and state securities laws. In addition, if Owner is deemed to be an "obligated person" pursuant to the Rule at the time of issuance and sale of Improvement Area Bonds, Owner agrees to enter into a continuing disclosure agreement at the time of issuance and sale of such Improvement Area Bonds to provide continuing disclosure pertaining to the Improvement Area, the development thereof and the Owner, as necessary to ensure ongoing compliance with the continuing disclosure obligations under the Rule and all other applicable federal and state securities laws. Owner shall cooperate with the City and the District with respect to the foregoing disclosure requirements related to any series of Improvement Area Bonds regardless if Owner receives any proceeds from a series of Improvement Area Bonds.

**Section 2.06 Prevailing Wages.** Owner acknowledges that payment of Public Fees for Public Facilities with proceeds of Improvement Area Bonds constitutes a public subsidy and that the Owner shall be required to pay prevailing wages for the construction of public improvements associated with its project to the extent said improvements are "public works" as required by the California Labor Code and California Department of Industrial Relations, and any regulations or rules promulgated by said agency. Owner shall comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. Owner shall or shall cause its developer contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City)

the City, and the District against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Owner, its contractors and subcontractors) to pay prevailing wages in connection with the construction of public improvements associated with its project to the extent said improvements are “public works” as required by the California Labor Code and California Department of Industrial Relations, and any regulations or rules promulgated by said agency, including to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations.

**Section 2.06 Levy of Improvement Area Special Taxes.** The City agrees to levy Improvement Area Special Taxes on all Developed Property both prior to and after the issuance of the Improvement Area Bonds, in accordance with the applicable Improvement Area Rate and Method, for the purpose of accruing funds to be used for financing Public Fees used to construct Public Facilities. Such Improvement Area Special Taxes shall be known as Facilities Special Tax Revenues. Prior to the issuance of the first series of Improvement Area Bonds for an Improvement Area, the assigned annual special tax shall be levied on Developed Property within such Improvement Area only pursuant to the applicable Improvement Area Rate and Method and, after funding of reasonable Administrative Expenses (as defined in the Improvement Area Rate and Method), the remaining proceeds of such levy shall be deposited in a City Facilities Account established by the City. Between the issuance of the first series of Improvement Area Bonds and final series of Improvement Area Bonds of an Improvement Area, any Facilities Special Tax Revenues collected within the Improvement Area shall be deposited in the City Facilities Account of the Improvement Fund established under the applicable Fiscal Agent Agreement. The amount of such funds deposited in the City Facilities Account pursuant to the two preceding sentences shall be disbursed to pay for Public Facilities and shall be applied as a credit against Public Fees required to be funded out of the proceeds of the Improvement Area Bonds by an equal amount. Once the amount of such funds deposited in the City Facilities Account equals the Public Fees for the applicable Improvement Area, all additional funds shall be available to fund EMWD fees and/or facilities.

### **ARTICLE III PAYMENT OF PUBLIC FEES**

**Section 3.01 Verification.** No payment hereunder shall be made by the City to or on behalf of the Owner for a Public Fee until the amount has been verified by the District Representative.

**Section 3.02 Requests.** In order to cause a Public Fee to be paid from the Improvement Fund, or any account or subaccount therein, Owner, in accordance with the terms of Section 3.03 hereof, shall deliver to the District Representative: (i) a Payment Request in the form of Exhibit C hereto for such Public Fee and (ii) such invoices or documentation to evidence said Payment Request.

**Section 3.03 Rights of Respective Parties.** Owner shall be entitled to submit Payment Requests for the payment of Public Fees from funds deposited in the Improvement Fund and

accounts and subaccounts therein and as may be provided by the EMWD JCFA, for the payment of EMWD fees used to construct EMWD facilities. City and District shall be entitled to rely completely on the Payment Request submitted by Owner in the form of Exhibit C hereto, wherein the Owner certifies to its obligations and the ownership in the applicable Improvement Area in connection with payment of the Public Fees or otherwise. The Payment Requests under this Article shall refer to the Improvement Fund and applicable account or subaccount therein from which to fulfill the Payment Request and the City shall be entitled to rely on said Payment Request.

**Section 3.04 Payment Requests.** Upon receipt of a Payment Request to pay the Public Fees (and all accompanying documentation), the District Representative shall conduct a review in order to confirm that such request is complete, and to verify and approve the amount of the Public Fee specified in such Payment Request. The District Representative shall conduct each such review in an expeditious manner and the Owner agrees to reasonably cooperate with the District Representative in conducting each such review and to provide the District Representative with such additional information and documentation as is reasonably necessary for the District Representative to conclude each such review. Within thirty (30) business days of receipt of any Payment Request, the District Representative shall notify Owner whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the District Representative will provide a written approval or denial of the request within thirty (30) days of its submittal. If the District Representative disapproves any Payment Request, it shall provide written notice of disapproval to Owner within such thirty (30) day period stating in reasonable detail the reasons for such disapproval and the changes to the Payment Request necessary to obtain the District Representative's approval. The District Representative's review of any Payment Request shall be made on an individual fee basis such that the District Representative shall approve for payment any Public Fee covered by a Payment Request that complies with the requirements of this Agreement even if the District Representative disapproves other Public Fees included as part of the same Payment Request; provided, however, that the District representative may request that a new Payment Request be submitted evidencing solely the approved Public Fees.

The City shall be entitled to withhold payment for any Public Fees to be paid to a public entity other than the City if Owner does not provide the District Representative with evidence that such entity has verified the amount to be paid as such Public Fee. Payment of Public Fees to EMWD shall also be made pursuant to the terms of the EMWD JCFA.

Following the issuance of Improvement Area Bonds, Owner shall cause a Payment Request to be submitted to the City for the payment of all of the facilities fees of City that are Public Fees for the applicable Improvement Area subject to this Agreement and requested by the City. Owner agrees such Public Fees may be funded from the proceeds of the Improvement Area Bonds immediately upon issuance of the Improvement Area Bonds and prior to the payment of any Public Fees for the Improvement Area due and owing to other public agencies. Notwithstanding the previous sentence, Owner shall be responsible for any increases in Public Fees subsequent to payment hereunder to the extent such increases apply to Owner's Property within the District pursuant to the ordinances and resolutions enacting such increased Public Fees.

**Section 3.05 Payment.** Upon approval of the Payment Request (or any portion thereof) by the District Representative, the District Representative shall sign the Payment Request and shall, within five (5) business days of receipt of the approved Payment Request, cause the same to be paid, to the extent of funds then on deposit in the corresponding Improvement Fund, or applicable account or subaccount therein. Any approved Payment Request not paid due to an insufficiency of funds in the corresponding Improvement Fund, or account or subaccount therein, shall be paid promptly following receipt of a new Payment Request for the funds following the deposit of additional proceeds of Improvement Area Bonds in the corresponding Improvement Fund or account or subaccount therein, earnings on such funds deposited therein, or other funds transferred pursuant to the Fiscal Agent Agreement. Upon the exhaustion of funds deposited in the corresponding Improvement Fund, or account or subaccount therein, as a result of paying Public Fees to the governmental entity charging such Public Fees, all remaining Public Fees shall be paid directly by Owner from its own funds at the time such fees are normally required to be paid.

**Section 3.06 Payment For Facilities.** Owner has petitioned the City to form the District for the purpose of financing the Public Fees of certain public agencies in lieu of construction of certain public facilities, which fees shall be used pursuant to the law to finance, the acquisition and/or construction of various public facilities to be owned and operated by said public agencies. Owner shall not own any of the Public Facilities. City or other public agencies shall own the Public Facilities related to the Public Fees.

**Section 3.07 Payment of Deposits Prior to Issuance of Bonds.** Owner shall not be reimbursed for the payment of any Public Fees prior to issuance of Improvement Area Bonds except from any Facilities Special Tax Revenues collected and available for such purposes. However, in conjunction with the recording of the final subdivision map(s) for the Property, and the issuance of building permits for the construction of homes within the Property, it may be necessary for Owner, or its successors or assigns, to make Deposits either prior to or subsequent to the date of this Agreement equal to the amount of Public Fees then required prior to the issuance of Improvement Area Bonds or the deposit of sufficient funds in the corresponding Improvement Fund or account or subaccount therein, or the availability of Facilities Special Tax Revenues, if any. Upon and following the issuance and sale of the applicable Improvement Area Bonds, Owner may execute and submit a Payment Request to the District requesting payment of such Public Fees to the City or other public agency of an amount equal to the Deposits made by Owner from the proceeds of the Improvement Area Bonds. Within ten (10) business days of the City's receipt of funds pursuant to such Payment Request, the City shall return the Deposits to Owner. In the event Improvement Area Bonds are not issued within twenty-four (24) months of the date of such Deposit, such Deposits may at the written discretion of the City, be applied to pay the Public Fees, and shall no longer be reflected as a deposit on the accounts of City and shall not be eligible for payment through the proceeds of the Improvement Area Bonds. Owner has entered into an agreement with EMWD relating to Deposits made to EMWD.

**Section 3.08 Community Facilities Fee.** Owner agrees to pay \$1,000 per unit described as the "City Fee" in Exhibit B hereto, for city facilities. Such fee may be paid from funds allocated to the City Facilities subaccount of the applicable Improvement Fund. Such fees shall be used for city facilities described in the resolution to establish the District.

## ARTICLE IV

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 4.01 Covenants and Warranties of the Owner.** Owner represents and warrants for the benefit of the City with respect to the Owner as follows:

A. Organization. Owner is a Nevada general partnership formed under the laws of the State of Nevada, is in good standing and authorized to transact business under the laws of the State of California, and has the power and authority to own the Property and to carry on its business as now being conducted and as now contemplated.

B. Authority. Owner has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered by Owner, and this Agreement has been duly and validly executed and delivered by Owner.

C. Binding Obligation. This Agreement is a legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

D. Financial Records. Until one year after final occupancy of the homes constructed by Owner within the Property, Owner covenants to maintain proper books of record and account for the payment of Public Fees. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

E. Tax Exemption. The Owner shall not take any action with respect to this Agreement, or the Improvement Area Bonds which shall cause the interest on the Improvement Area Bonds to be included in gross income of the holders thereof for federal income tax purposes under the Internal Revenue Code of 1986, as amended.

**Section 4.02 Indemnification and Hold Harmless.** Owner shall assume the defense of, indemnify, and hold harmless the City, its officers, directors, employees and agents and each of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from this Agreement and the Improvement Area Bonds. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or gross negligence of the City, or its officers, directors, employees or agents hereunder or otherwise with respect to the public facilities or payment therefor.

No provision of this Agreement shall in any way limit Owner's responsibility for payment of damages resulting from the operations of the Owner and its agents, employees or contractors.



## ARTICLE V

### DEFAULT AND REMEDIES

**Section 5.01 Default Remedies.** Subject to the extensions of time as agreed to in writing by the parties hereto, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and failure to cure as described hereafter, constitutes a “Default” under this Agreement. A Party claiming a Default shall give written Notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such party within thirty (30) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

Owner acknowledges that neither the District nor the City would have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement. Any and all obligations of the District and the City hereunder shall be payable only from proceeds of Improvement Area Bonds, to the extent such proceeds may become available. Neither the District nor the City shall have any pecuniary liability for any act or omission of the District or the City, except as set forth in this Article 5. In no event will an act, or an omission or failure to act, by the District or the City with respect to the sale or proposed sale of Improvement Area Bonds subject the District or the City to pecuniary liability therefor.

In light of the foregoing, Owner covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement, other than to compel payment by the District to the Owner of the amount of Improvement Area Bond proceeds or Facilities Special Tax Revenues, if any, to be applied to the payment of Public Fees in accordance with the provisions hereof.

**Section 5.02 Institution of Legal Actions.** The Parties shall be entitled to seek any remedy available at law and in equity for the other Party’s Default. All legal actions must be instituted in the Superior Court of the County of Riverside, State of California, in an appropriate municipal court in Riverside County, or in the United States District Court for the District of California in which Riverside County is located.

**Section 5.03 Acceptance of Service of Process.** In the event that any legal action is commenced by Owner against City, service of process on City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Owner, service of process on Owner shall be made in such manner as may be provided by law.

**Section 5.04 Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

**Section 5.05 Inaction Not a Waiver of Default.** Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**Section 5.06 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**Section 5.07 Attorneys' Fees.** In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

## ARTICLE VI

### GENERAL

**Section 6.01 Mutual Consent.** This Agreement may be amended or terminated by the mutual written consent of the City and the Owner, and, upon such termination, Owner shall have no claim or right to any portions of moneys in the Improvement Fund except as otherwise may be provided in such written consent and subject to Federal and State law.

**Section 6.02 Audit.** The City shall have the right, during normal business hours and upon the giving of five (5) business days' prior written notice to the Owner, to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner in relation to any of the Public Fees for which Owner seeks reimbursement out of Improvement Area Bond proceeds or Facilities Special Tax Revenues.

**Section 6.03 Notices, Demands and Communications Between the Parties.** Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one Party to the other Party (collectively, "Notices") may be personally delivered, transmitted by facsimile (FAX) transmission, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery or FAX transmission or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent as follows:

If to City: City of Perris  
Attn: City Manager  
101 N. "D" Street  
Perris, CA 92570  
Fax No. (909) 943-4246

With a copy to: Aleshire & Wynder, LLP  
Attn: \_\_\_\_\_  
18881 Von Karman Avenue, Suite 400  
Irvine, CA 92612  
Fax No. (949) 223-1180

If to Centex: Centex Homes  
Attn: \_\_\_\_\_  
1265 Corona Pointe Court  
Corona, California 92879  
Telephone: (951) 479-9630  
Fax No. (909) 479-9591

With a copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_  
Fax No. (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**Section 6.04 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The Owner, upon consent of City, may assign its rights pursuant to this Agreement to a purchaser (an "Assignee") of a portion or portions of the Property. The Owner and Assignee shall provide to City such reasonable proof as it may require that such Assignee is the purchaser of such portion(s) of the Property. Such Assignee shall, as a condition to receiving payment of a Public Fee, enter into an assignment and assumption agreement with the Owner and the reasonable consent of the City, in the form attached hereto as Exhibit D, whereby such Assignee agrees, except as may be otherwise specifically provided therein, to assume the obligations of the Owner pursuant to this Agreement with respect to the portion of the Property acquired by Assignee, and to be bound thereby.

**Section 6.05 Relationship Between City and Owner.** It is hereby acknowledged by Owner and City that the relationship between City and Owner is not that of a partnership or joint venture and that City and Owner shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the attachments hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Property. Owner agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Owner with respect to the development, operation, maintenance or management of the Property.

**Section 6.06 No Third Party Rights.** The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

**Section 6.07 Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

**Section 6.08 Other Agreements.** The obligations of the Owner hereunder shall be that of a party hereto. Nothing herein shall be construed as affecting the City's or Owner's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development. This Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

**Section 6.09 Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**Section 6.10 Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

**Section 6.11 No Waiver.** A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**Section 6.12 Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

**Section 6.13 Severability.** 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.

**Section 6.14 Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**Section 6.15 Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**Section 6.16 Cooperation.** Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**Section 6.17 Conflicts of Interest.** No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**Section 6.18 Non-Liability of Officials and Employees of City and Owner.** No member, official or employee of a Party to this Agreement shall be personally liable to the other Party, or any successor in interest, in the event of any Default or breach by a Party or for any amount which may become due to the other Party or its successors, or on any obligations under the terms of this Agreement. Each Party hereby waives and releases any claim it may have against the members, officials or employees of the other Party with respect to any Default or breach by it or for any amount which may become due to the other Party or its successors, or on any obligations under the terms of this Agreement. Each Party hereto makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

**Section 6.19 Effectiveness of Agreement.** This Agreement shall be effective when authorized and executed by Owner and City.

[Signatures on following pages]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date set forth above.

**“CITY”**

**CITY OF PERRIS**, a municipal corporation

By: \_\_\_\_\_  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

**ALESHIRE & WYNDER, LLP**  
City Attorney

By: \_\_\_\_\_  
Eric L. Dunn

**“OWNER”**

CENTEX HOMES,  
a Nevada general partnership

By: Centex Real Estate Corporation,  
a Nevada corporation,  
Managing General Partner

By: \_\_\_\_\_  
Name: David L. Hahn  
Its: Division President

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT A

PROPERTY DESCRIPTION

All of the property in the County of Riverside, State of California, which is located within, is the subject of and is shown on the final subdivision map for Tract No. 30850-1, 30850-2, 30850-3, 30850-4, 30850 in said county.



**EXHIBIT B**  
**ELIGIBLE PUBLIC FEES LIST**  
**COMMUNITY FACILITIES DISTRICT NO. 2014-1**  
**(AVELINA)**  
**OF THE CITY OF PERRIS**  
**BOND FINANCED FACILITIES SUMMARY**

<b><u>Description</u></b>	<b><u>Total</u></b>
<b>City Fees</b>	
CFD Fee	\$488,000
Master Drainage Plan Fee	<i>TBD</i>
TUMF Fee	4,330,024
MSHCP Fee	\$945,744
Subtotal City Fees	\$5,763,768
 <b>EMWD Fees</b>	
Water Fees	\$2,318,000
Sewer Fee	\$3,730,272
Water Development Fee	\$146,400
Meter Drop In Fee	\$183,976
Subtotal EMWD Fees	\$6,378,648
Total CFD Fees	\$12,142,416

<sup>(1)</sup> The description of authorized fees is subject to change. The actual fees to be financed through the District may include additional fees or improvements not listed in the above description provided such fees are for the construction and/or acquisition of public infrastructure and/or other governmental facilities with an estimated useful life of five years or longer. Estimated costs are subject to change. Any EMWD fees must be funded pursuant to the EMWD JCFA.

EXHIBIT C  
PAYMENT REQUEST NO. \_\_\_\_\_

The undersigned, Centex Homes, a Nevada general partnership (the "Owner") hereby requests Community Facilities District No. 2014-1 (Avelina) of the City of Perris (the "District") to pay from the \_\_\_\_\_ Account, or any applicable account or sub-account thereof, of the Improvement Fund, established by the District in connection with its Improvement Area \_\_\_\_\_ Special Tax Bonds (the "Bonds"), the total amount of \$\_\_\_\_\_ (the "Requested Amount"), which is authorized and payable pursuant to the Funding Agreement, dated as of January \_\_, 2015, by and between the City of Perris (the "City") and Owner (the "Funding Agreement"). In connection with this Payment Request, the undersigned hereby represents and warrants to the City and the District as follows:

1. He (she) is a duly authorized officer or authorized representative of the Owner, qualified to execute this Payment Request for payment of the Requested Amount on behalf of the Owner and is knowledgeable as to the matters set forth herein.
2. Owner is the owner of the property subject to this request and located in Improvement Area \_\_ of the District.
3. The Requested Amount represents the payment of Public Fees described in Exhibit B to the Funding Agreement, all as more fully described in Attachment 1 hereto.
3. The Requested Amount represents actual costs, now due and payable, and has not been inflated in any respect. The Requested Amount has not been the subject of any prior payment request submitted to the City.
4. Supporting documentation is attached with respect to each Public Fee for which payment is requested.
5. The Owner is in compliance with the terms and provisions of the Funding Agreement and no portion of the Requested Amount to be paid was previously paid.
6. [If items have been assigned-description here]

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

OWNER:

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation,  
a Nevada corporation  
Its: Managing General Partner

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date:

CITY:

Payment Request Approved for Submission to Fiscal Agent

By:  
City Manager

Date:  
County of Riverside Entity, consents to Payment Request Herein

By:  
City Manager

Date:

ATTACHMENT 1  
SUMMARY OF PUBLIC FEES  
TO BE PAID AS PART OF PAYMENT REQUEST NO. \_\_\_\_\_

Charging Entity	Title of Fee	Actual Cost	Disbursement Requested	Tract Account/Subaccount	Pay to (Owner or Charging Entity)

[List here all Fees for which payment is requested, and attach support documentation]

[Include wire instruction for payee]

EXHIBIT D  
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Pursuant to a Funding Agreement dated as of January \_\_\_\_, 2015 (the "Agreement") by and between the City of Perris ("City") and Centex Homes, a Nevada general partnership (the "Owner"), which Agreement is hereby incorporated herein by this reference, and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned agree as follows:

1. The assignment and assumption provided for under this Assignment and Assumption Agreement ("Assignment") is made together with the sale, transfer or assignment of all or a part of the property subject to the Agreement. The property sold, transferred or assigned together with this Assignment is included within Improvement Area \_\_ of the District and described in "Attachment 1" attached hereto and incorporated herein by this reference (the "Subject Property").

2. Owner, as the assignor hereof (the "Assignor") hereby grants, sells, transfers, conveys assigns and delegates to \_\_\_\_\_ ("Assignee"), all of Assignor's rights, title, interest, benefits, privileges, duties and obligations arising under or from the Agreement with respect to the Subject Property and the Public Fees authorized to be funded by the District with respect to the Subject Property except for the following:

\_\_\_\_\_.

3. Assignee hereby accepts the foregoing assignment and unconditionally assumes and agrees to perform all of the duties and obligations and liabilities of Assignor arising under or from the Agreement as owner of the Subject Property.

4. The sale, transfer or assignment of the Subject Property and the assignment and assumption provided for under this Assignment are the subject of additional agreements between Assignor and Assignee. Notwithstanding any term, condition or provision of such additional agreements, the rights of the City arising under or from the Agreement and this Assignment shall not be affected, diminished or defeated in any way, except upon the express written agreement of the City.

5. Assignor and Assignee execute this Assignment pursuant to Section 6.04 of the Agreement, and the City evidences its consent to this Assignment by signing below.

IN WITNESS WHEREOF, the parties have executed this Assignment on

\_\_\_\_\_.

ASSIGNOR:

CENTEX HOMES,  
a Nevada general partnership

By: Centex Real Estate Corporation,  
a Nevada corporation,  
Managing General Partner

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

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

Its: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_

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

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

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

CONSENT OF CITY:

CITY OF PERRIS

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

Its: City Manager