

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

676



**FROM:** TLMA – Transportation Department

**SUBMITTAL DATE:**  
December 15, 2014

**SUBJECT:** Approval of Homeland/Romoland Area Drainage Plan Fee Credit Agreement between Riverside County Flood Control and Water Conservation District, the County of Riverside, and Homeland/Romoland ADP, Inc. 3<sup>rd</sup> and 5<sup>th</sup> Districts; [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Homeland/Romoland Area Drainage Plan Fee Credit Agreement between Riverside County Flood Control and Water Conservation District (District), the County of Riverside (County), and Homeland/Romoland ADP, Inc. (ADP, Inc.) a Delaware corporation; and
2. Authorize the Chairman of the Board to execute the same.

**BACKGROUND:**

**Summary**

This Area Drainage Plan Fee Credit Agreement (Agreement) grants Homeland/Romoland (H/R) Area Drainage Plan (ADP) fee credits to ADP, Inc. in the amount of \$22,167,878 and authorizes an initial distribution of that credit amongst the entities tentatively identified in Exhibit C thereto.

*Patricia Romo*

Patricia Romo  
Assistant Director of Transportation  
for Juan C. Perez  
Director of Transportation and Land Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** N/A

**Budget Adjustment:** No

**For Fiscal Year:** N/A

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Debra Cournoyer*  
Debra Cournoyer

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

- A-30
- 4/5 Vote
- Positions Added
- Change Order

**Prev. Agn. Ref.:**

**District:** 3 and 5

**Agenda Number:**

**3-49**

FORM APPROVED COUNTY COUNSEL  
BY: *Patricia Romo* 12-22-14  
ANITA C. WILLIS DATE  
Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FORM 11:** Approval of Homeland/Romoland Area Drainage Plan Fee Credit Agreement between Riverside County Flood Control and Water Conservation District, the County of Riverside, and Homeland/Romoland ADP, Inc. 3<sup>rd</sup> and 5<sup>th</sup> Districts; [\$0]

**DATE:** December 15, 2014

**PAGE:** 2 of 3

**BACKGROUND:**

**Summary (continued)**

Under the Agreement, ADP fee credits may be utilized to pay applicable H/R ADP fee obligations or transferred to other entities. Pursuant to Ordinance 460 and the Subdivision Map Act, the County first adopted the H/R ADP in 1988. The ADP establishes a one-time drainage fee for properties located within the boundaries of the H/R watersheds. ADP fees are paid directly to the District and utilized to construct the major flood protection and drainage facilities identified in the ADP.

Circa 2006, a group of developers that owned property within the ADP formed a corporation, ADP, Inc., to progress the planning, design, and construction of the principal H/R ADP facilities. ADP, Inc. subsequently petitioned the District to form Community Facilities District (CFD) F05-1, amongst other things, to finance the construction of the ADP facilities. Although the economic downturn of 2008 ultimately rendered the CFD bond financing program infeasible, ADP, Inc. had, nevertheless, made substantial progress toward construction of certain ADP facilities.

The District has now pledged to construct the major flood control and drainage facilities on an expedited schedule; thus, eliminating the need for CFD financing. Construction of the initial segment, westerly of Interstate 215, is currently underway. A contract for constructing the second segment, from Encanto Road to the Briggs Road Basin, is expected to be awarded in January 2015. A third segment, from the Briggs Road Basin up to the Juniper Flats Basin, is expected to be awarded in the summer of 2015. The District's Board of Supervisors took action dissolving CFD F05-1 on December 9, 2014.

The amount of ADP fee credit that is to be granted under this agreement (\$26,400,968) represents the ADP, Inc.'s actual, reasonable cost of i) designing and preparing the project plans and specifications; ii) environmental evaluations and mitigation; iii) fees actually paid by ADP, Inc. to governmental agencies in order to obtain permits, licenses, or other necessary governmental approvals; iv) plan check and inspection fees; v) the fair market value of easements, real property, or interests therein, necessary for the construction of the H/R ADP facilities. ADP, Inc. may earn up to an additional \$5,553,090 in ADP fee credit by removing additional material from the Juniper Flats Road Detention Basin and transferring the basin right-of-way to the District.

County Counsel has approved the Agreement as to legal form. A companion item appears on the Riverside County Flood Control and Water Conservation District's Board agenda this same date.

**Impact on Residents and Businesses**

Once construction of the major flood control and drainage facilities is complete, the flooding and drainage issues currently affecting the H/R area will be substantially mitigated. Completing construction of this critically needed infrastructure will remedy existing flooding issues and create an environment that is more favorable for economic growth. Properties within the former CFD F05-1 will be able to proceed with their development plans in accordance with their respective conditions of approval. Additionally, many other properties in the area will be able to move forward with their development plans.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

The District's H/R ADP construction program is funded by the District's Zone 4 ad-valorem property tax revenue and entails no new fees or taxes. However, it is anticipated that some borrowing will be necessary to meet the expedited construction schedule.

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**  
**FORM 11:** Approval of Homeland/Romoland Area Drainage Plan Fee Credit Agreement between Riverside County Flood Control and Water Conservation District, the County of Riverside, and Homeland/Romoland ADP, Inc. 3<sup>rd</sup> and 5<sup>th</sup> Districts; [\$0]

**DATE:** December 15, 2014

**PAGE:** 3 of 3

**Contract History and Price Reasonableness**

N/A

**ATTACHMENT:**

Area Drainage Plan Fee Credit Agreement

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**HOMELAND/ROMOLAND ADP FEE CREDIT AGREEMENT**

This HOMELAND/ROMOLAND ADP FEE CREDIT AGREEMENT ("Agreement") is entered into this 6<sup>th</sup> day of January, 2015 (the "Effective Date"), by and among the County of Riverside (the "County"), Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code (the "District") and Homeland/Romoland ADP, Inc., a Delaware corporation ("ADP Inc."). The County, District and ADP Inc. are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

**RECITALS**

WHEREAS, the District and ADP Inc. have entered into that certain "Infrastructure Funding, Acquisition and Reimbursement Agreement", dated May 26, 2006, as amended by that certain "First Amendment to Infrastructure Funding, Acquisition and Reimbursement Agreement" dated July 30, 2013 (the "IFAR") pursuant to which ADP Inc. has incurred costs directly related to, or advanced funds to the District for, the design, engineering, permitting and construction of the Flood Control Facilities in the amount of twenty-two million one hundred sixty-seven thousand eight hundred seventy-eight dollars (\$22,167,878); and

WHEREAS, the District and ADP Inc. also entered into that certain "Agreement for Corporation Advances [Land Acquisition-Community Facilities District No. 05-1 (Homeland/Romoland)]" dated May 8, 2007 (the "Land Acquisition Agreement"); and

WHEREAS, the District and ADP Inc. entered into that certain "Implementation Agreement (Homeland/Romoland ADP Inc.)" dated January 29, 2008 (the "Implementation Agreement"); and

WHEREAS, the District formed a community facilities district identified as "Community Facilities District No. F05-01 (Homeland/Romoland) of the Riverside County Flood Control and Water Conservation District" (the "Community Facilities District") under the authority of the Mello-Roos Community Facilities Act of 1982, commencing with Section 53311 of the California Government Code; and

WHEREAS, ADP Inc. is composed of stockholders (each a "Stockholder" and, collectively, the "Stockholders") who own real property in the unincorporated communities of Homeland and Romoland within the unincorporated area of the County or in the City of Menifee (the "City"), and all of which lies within the boundaries of the Homeland/Romoland Area Drainage Plan and the boundaries of the Community Facilities District; and

WHEREAS, ADP Inc. was incorporated for the purpose of accomplishing the design, engineering, permitting, acquisition, construction and installation of certain flood control and drainage facilities located within the "Line A" watershed together with appurtenances and appurtenant work, as described in further detail in Exhibit A (the "Flood Control Facilities"); and

WHEREAS, pursuant to the terms of the IFAR and Land Acquisition Agreement, the District accepted two deposits from ADP Inc. totaling \$10,930,000, on or

1 about, respectively, April 2007 and June 2007 and refunded a total of \$ 1,902,887 to ADP Inc.  
2 on or about March 14, 2013; and

3 WHEREAS, pursuant to the IFAR and Implementation Agreement, the District,  
4 on or about November 12, 2008, approved ADP Inc.'s claim in the amount of \$2,079,522 for  
5 certain engineering services and environmental evaluations furnished by Albert A. Webb and  
6 Associates directly related to the design, engineering, permitting and construction of the Flood  
7 Control Facilities for which ADP Inc. was reimbursed in cash by the District in the amount of  
8 \$1,893,936. The remaining \$185,586 was retained by the District as a credit against plan check  
9 charges incurred by ADP Inc.; and

10 WHEREAS, pursuant to the IFAR, Implementation Agreement and the Land  
11 Acquisition Agreement, ADP Inc. has incurred additional costs directly related to, or advanced  
12 funds to the District for, the design, engineering, permitting and construction of the Flood  
13 Control Facilities and which have not been previously reimbursed by the Flood Control District  
14 in the amount of \$22,167,878; and

15 WHEREAS, the County imposes a drainage fee within the Homeland/Romoland  
16 Area Drainage Plan area pursuant to Ordinance No. 460, codified at Riverside County Code  
17 Section 16.36.010 *et seq.*, to finance the construction of those certain flood control and  
18 drainage improvements identified in the Homeland/Romoland Area Drainage Plan (the "ADP  
19 Fees"); and

20 WHEREAS, the Homeland/Romoland Area Drainage Plan was established by  
21 the County Board of Supervisors in 1988; Amendment No. 1. was adopted in April 1993;  
22 Amendment No. 2 was adopted in March 2006; and Amendment No. 3 was adopted on July 15,  
23 2014; and

24 WHEREAS, the County has adopted Rules and Regulations for Administration  
25 of Area Drainage Plans pursuant to Resolution No. 80-244, as subsequently amended through  
26 Resolution No. 88-50 adopted by the County in 1988 (the "ADP Regulations") attached hereto  
27 as Exhibit D; and

28 WHEREAS, the City and County have entered into that certain "Cooperative  
Agreement by and between the County of Riverside and City of Menifee relating to the  
Implementation of the Homeland/Romoland Area Drainage Plan" dated as of July 15, 2014 (the  
"Menifee Cooperative Agreement") pursuant to which the City has authorized the County to  
collect Homeland/Romoland ADP Fees with respect to drainage fees that the City may impose  
upon land development projects pursuant to County Ordinance No. 460 and the ADP  
Regulations.; and

WHEREAS, the District, in its sole discretion, has determined that the District  
shall undertake the completion of the design, engineering, permitting, acquisition, construction,  
installation, operation and maintenance of the Flood Control Facilities; and that ADP Inc.  
agrees to convey to the District all right, title and interest it has to any real property, or interests  
therein, required for the completion of the design, engineering, permitting, acquisition,  
construction, installation, operation and maintenance of the Flood Control Facilities; and



1 be included as an item of cost relating to such Flood Control Facility for the category of cost  
2 specified in clause (f) of this definition and subject to the 5% limitation specified in clause (f).

3 2. Transfer of Real Property for Flood Control Facilities and Assignment of  
4 Permits. Within ninety (90) business days following the execution of this Agreement by all  
5 Parties, ADP Inc. shall convey to the District "Acceptable Title" to any real property, or  
6 interests therein, owned or controlled by ADP Inc. that are required for the construction,  
7 operation and/or maintenance of the Flood Control Facilities and shall also assign to District, to  
8 the extent assignment is permitted, any permits, licenses, agreements or governmental  
9 approvals obtained by ADP Inc. for the construction, operation and/or maintenance of the  
10 Flood Control Facilities. For purposes of this Agreement, the term "Acceptable Title" means  
11 title to land, or an easement therein, delivered free and clear of all liens, taxes, assessments,  
12 leases, easements and encumbrances, whether any such item is recorded or unrecorded, except  
13 those non-monetary items which are reasonably determined by the District not to interfere with  
14 the intended use of such land or easements and therefore are not required to be cleared from  
15 title.

16 3. Termination of Agreements. Immediately upon execution of this Agreement by  
17 all Parties, the IFAR, Land Acquisition Agreement and Implementation Agreement shall be  
18 rescinded and of no further force and effect.

19 4. Dissolution of Community Facilities District. Prior to, or concurrent with, the  
20 approval of this Agreement by the Board of Supervisors of the District, that same body acting  
21 as the legislative body of the Community Facilities District, shall have adopted an ordinance  
22 dissolving the Community Facilities District. Within thirty-five (35) days following the  
23 adoption of such ordinance, the District shall record an addendum to the Notice of Special Tax  
24 Lien for the Community Facilities District stating that the Community Facilities District and all  
25 associated liens have been dissolved in accordance with Government Code Section 53338.5.

26 5. ADP Fee Credit. ADP Inc. is hereby granted ADP Fee Credit  
27 (Homeland/Romoland ADP) in the amount of \$22,167,878. In accordance with the ADP  
28 Regulations, such credit may be applied dollar for dollar in satisfaction of the applicable ADP  
Fee obligation applicable for any real property within the "Line A" watershed of the  
Homeland/Romoland ADP, irrespective of whether such property is located within the County  
or the City. Such ADP Fee Credit may be used at any time within fifteen (15) years following  
the approval of this Agreement by the Board of Supervisors.

29 6. Additional ADP Fee Credit - Juniper Flats Basin. ADP Inc. anticipates  
30 entering into a contract with one or more entities for the removal of surplus material from the  
31 Juniper Flats Basin site prior to transferring the right of way to the District. Upon transfer of  
32 the Juniper Flats Basin right of way to the District, ADP Inc. shall receive i) \$4,233,090  
33 additional ADP Fee Credit for the basin right of way; plus, ii) an additional amount of ADP Fee  
34 Credit for the removal of the surplus material as determined by the District's General Manager-  
35 Chief Engineer in accordance with ADP Regulations based on the actual amount of material  
36 removed. The amount of material removed shall not exceed two hundred thousand (200,000)  
37 cubic yards. The total amount of additional ADP Fee Credit granted pursuant to this paragraph  
38 shall not exceed five million five hundred fifty three thousand and ninety dollars (\$5,553,090).  
Within thirty (30) days following the completion of the removal of the surplus material from

1 the Juniper Flats Basin site and the transfer of the site to the District, the District's General  
2 Manager- Chief Engineer shall provide written notice to ADP Inc. of the amount of additional  
ADP Fee Credit granted pursuant to this Section 6.

3 7. Transfer of ADP Fee Credit. ADP Inc. or any other entity that has received an  
4 initial distribution of ADP Fee Credit pursuant to this Agreement, may transfer all or a portion  
5 of its ADP Fee Credit to any other person or entity; provided, however, that no such transfer  
6 shall be deemed effective until and unless an ADP Fee Transfer Agreement is executed by and  
7 between the transferer (i.e., ADP Inc. or other entity) and the transferee and the same is  
8 countersigned by the District's Chief of Planning Division. The form of the ADP Fee Transfer  
9 Agreement is attached hereto as Exhibit B and shall constitute the form required per Section  
10 IV.i of the ADP Regulations to transfer ADP Fee Credit. The provisions of ADP Regulations  
Section IV.i notwithstanding, once transferred, the ADP Fee Credit specified in the ADP Fee  
Transfer Agreement may be used in connection with development of the real property  
described in the ADP Fee Transfer Agreement by the original transferee, or any successor  
owner of such real property, at any time whatsoever without limitation to satisfy the payment of  
applicable ADP fees associated with the development of said real property.

11 8. Miscellaneous.

12 8.1. Assignment. This Agreement shall be binding upon and inure to the  
13 benefit of the successors and assigns of the Parties.

14 8.2. Relationship between the Parties. The Parties hereby mutually agree that  
15 this Agreement shall not operate to create the relationship of partnership, joint venture, or  
agency among the Parties.

16 8.3. Authority to Enter Agreement. All Parties warrant that the individual(s)  
17 who have signed this Agreement and each Party has the legal power, right, and authority to  
18 enter into this Agreement and the individual(s) signing this Agreement have been duly  
authorized to do so on behalf of said Party.

19 8.4. Notices. All notices, demands, invoices, and written communications  
20 shall be in writing and delivered to the following addresses or such other addresses as the  
Parties may designate by written notice:

21  
22 To District:  
23 Riverside County Flood Control  
24 and Water Conservation District  
25 1995 Market Street  
26 Riverside, CA 92591  
27 Attn: General Manager-Chief Engineer  
28 Telephone No. 951.955.1250  
Fax No. 951.788.9965



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To ADP Inc.:  
c/o Brookfield Residential  
3090 Bristol Street, Suite 220  
Costa Mesa, CA 92626  
Attn: Adrian Peters  
Telephone No. 714.200.1603  
Fax No. 714.200.1861

To County:  
County of Riverside  
Transportation and Land Management Agency  
4080 Lemon Street  
Riverside, CA 92501  
Attn: Agency Director  
Telephone No. 951.955.4608

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

8.5. Cooperation; Further Acts. All Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

8.6. Construction; References; Captions. It is agreed that the Parties and their agents, including legal counsel, have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and that any ambiguity shall not be construed against any Party as the Party responsible for drafting this Agreement. Any term referencing time, days, or period for performance shall be deemed calendar days and not business days unless expressly stated to the contrary. All references to the District and City include their elected officials, officers, employees, and agents except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

8.7. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all Parties.

8.8. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Parties any contractual right by custom, estoppel, or otherwise.

8.9. Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or authorized assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

1           8.10. No Third Party Beneficiaries. This Agreement is intended solely for the  
2 benefit of the Parties hereto. No person or entity shall be deemed a third party beneficiary  
3 hereof. Nothing in this Agreement (either express or implied) is intended to confer on any  
4 person or entity other than the Parties hereto any rights, duties, obligations, liabilities or  
5 remedies.

6           8.11. Consent to Jurisdiction and Venue. This Agreement shall be construed  
7 in accordance with and governed by the laws of the State of California. Any legal action or  
8 proceeding brought to interpret or enforce this Agreement, or which in any way arises out of  
9 the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in  
10 the appropriate California State Court in the County of Riverside, California. Each Party  
11 waives the benefit of any provision of state or federal law providing for a change of venue to  
12 any other court or jurisdiction including, without limitation, a change of venue based on the  
13 fact that a governmental entity is a party to the action or proceeding, or that a federal right or  
14 question is involved or alleged to be involved in the action or proceeding. Without limiting the  
15 generality of the foregoing waiver, ADP Inc. expressly waives any right to have venue  
16 transferred pursuant to California Code of Civil Procedure Section 394.

17           8.12. Time is of the Essence. Time is of the essence in this Agreement, and  
18 the Parties agree to execute all documents and proceed with due diligence to complete all  
19 covenants and conditions.

20           8.13. Counterparts. This Agreement may be signed in counterparts, each of  
21 which shall constitute an original and which collectively shall constitute one instrument.

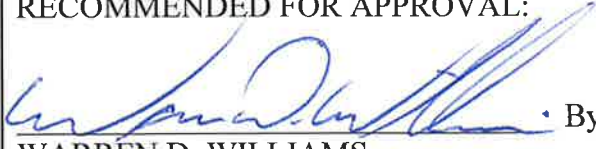
22           8.14. Entire Agreement. This Agreement represents the entire agreement  
23 among the Parties with respect to the matters provided for and the subject matter contained  
24 therein.

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[SIGNATURES ON THE NEXT PAGE]

1 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
2 day and year first above written.

3 RIVERSIDE COUNTY FLOOD CONTROL  
4 AND WATER CONSERVATION DISTRICT

5 RECOMMENDED FOR APPROVAL:

6 

7 WARREN D. WILLIAMS  
8 General Manager-Chief Engineer

• By

MARION ASHLEY, Chairman  
Board of Supervisors of the Flood Control  
and Water Conservation District

9  
10 ATTEST:  
11 KECIA HARPER-IHEM  
12 Clerk to the  
13 Riverside County Flood Control and Water  
Conservation District Board of Supervisors

14 By \_\_\_\_\_  
15 Deputy Clerk

16 APPROVED AS TO FORM:  
17 GREGORY P. PRIAMOS  
18 County Counsel

19   
By Dale A. Gardner  
20 Deputy County Counsel

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26 Homeland/Romoland ADP Fee Credit Agreement  
12/18/14  
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**COUNTY OF RIVERSIDE  
BOARD OF SUPERVISORS**

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RECOMMENDED FOR APPROVAL:

  
\_\_\_\_\_  
JUAN C. PEREZ


Director of Transportation  
Land Management  
**Patricia Romo**  
Assistant Director of Transportation

By \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

ATTEST:  
KECIA HARPER-IHEM  
Clerk of the Board

By \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:  
GREGORY P. PRIAMOS  
County Counsel

  
By Dale A. Gardner  
Deputy County Counsel

Homeland/Romoland ADP Fee Credit Agreement  
12/18/14  
MHW:blm

Date: 12-22-14

HOMELAND/ROMOLAND ADP, INC.,  
a Delaware corporation

By   
ADRIAN PETERS  
Executive Committee Member

Date: 12-23-14

By   
MICHAEL D. O'DONNELL  
Executive Committee Member

Homeland/Romoland ADP Fee Credit Agreement  
12/18/14  
MHW:blm

## EXHIBIT A

### **DESCRIPTION OF FLOOD CONTROL FACILITIES**

#### PHASE 1

Line A, Stage 3 (Project No. 4-0-310), Open Channel (varies in height from 0 feet to 12 feet and a base width from 38 feet to 50 feet) and a 4 cell RCB (varies in height from 10 feet to 11 feet and 14 feet in width); located immediately west of 1-215 bridge crossing of Ethanac Wash and traversing in a northwesterly direction across Barnett Road, Ethanac Road, and Murrieta Road to the "Watson Ditch" (located within the San Jacinto River floodplain). Approximately 10,020 linear feet of channel and 680 linear feet of RCB.

#### PHASE 2A

A portion of Line A, Stage 4 (Project No. 4-0-310), Open Channel (varies in height from 3 feet to 8.67 feet and a base width from 28 feet to 42 feet) and a 4 cell RCB (10.75 feet in height and 12 feet in width); located immediately north of the Southern California Edison right-of-way adjacent to McLaughlin Road from the west side of the 1-215 bridge crossing and traversing easterly across the 1-215, to a point about 400 feet upstream of Encanto Road.

#### PHASE 2B

The remainder of Line A, Stage 4 (Project No. 4-0-310), Open Channel (varies in height from 7.67 feet to 8.67 feet and a base width from 30 feet to 42 feet) and a 2 cell RCB (7 feet in height and 11 feet in width); located immediately north of the Southern California Edison right-of-way adjacent to McLaughlin Road from a point approximately 400 feet east of Encanto Road traversing easterly to Trumble Road, Sherman Road, Dawson Road, Antelope Road, San Jacinto Road, Palomar Road, and Matthews Road. Approximately 8,100 linear feet of channel and 1,050 linear feet of RCB.

Line A-3, Stage 1 (Project No. 4-0-00431), Open Channel (5 feet in height and 6 feet in base width) and a 1 cell RCB (varies in height from 6 feet to 6.5 feet and varies in base width from 10 feet to 12 feet); located in the Palomar Road right-of-way from Line A, Stage 4 (Project No. 4-0-310) to a point approximately 4,800 feet north, then easterly along the prolongation of Varela Lane to Menifee Road. Then continuing easterly and immediately adjacent to the southerly side of the Varela Lane right-of-way to Malone Avenue. Approximately 4,600 linear feet of channel and 5,530 linear feet of RCB.

Line A-16 (Project No. 4-0-310), 48" RCP; located within right-of-way of Sherman Road from the connection to Line A, Stage 4 (Project No. 4-0-310) to approximately 48 feet south.

Line A-17 (Project No. 4-0-310), 66" RCP; located within right-of-way of Dawson Road from the connection to Line A, Stage 4 (Project No. 4-0-310) to approximately 47 feet south.

Line A-18 (Project No. 4-0-310), 60" RCP; located within right-of-way of Antelope Road from the connection to Line A, Stage 4 (Project No. 4-0-310) to approximately 52 feet south.

### PHASE 3

Line A, Stage 5 (Project No. 4-0-310) and a 2 cell RCB (7 feet in height and varies in base width from 10 feet to 11 feet); located immediately east of Matthews Road (the terminus of Line A, Stage 4) and traversing in an easterly direction across Junipero Road, then continuing easterly and immediately adjacent to McLaughlin Road to the eastern side of Menifee Road, approximately 1,860 linear feet.

Line A, Stage 6 (Project No. 4-0-310), a 1 cell RCB (varies in height from 5 feet to 8 feet and varies in base width from 6 feet to 12 feet), 102" RCP, and 96" RCP; located immediately east of Menifee Road (the terminus of Line A, Stage 5) and traversing in a easterly direction and within the McLaughlin Road right-of-way to the eastern side of Briggs Road, approximately 2,820 linear feet of RCB and 2,615 linear feet of RCP.

Line A-2 (Project No. 4-0-00312), Open Channel (varies in height from 6 feet to 7 feet and in base width from 6 feet to 12 feet), a 2 cell RCB (6 feet in height and 10 feet in width), and a 1 cell RCB (6 feet in height and 8 feet in width); located between San Jacinto Road and Palomar Road at the connection stub for Line A, Stage 4 (Project No. 4-0-310) and then traversing approximately 3,015 feet southerly to the easterly side of Rouse Road within Tentative Tract No. 29835, then traversing easterly within Tentative Tract No. 29835 to the easterly side of Palomar Road, approximately 3,425 linear feet of channel and 615 linear feet of RCB.

### PHASE 4

Line 1, Stage 1 (Project No. 4-0-00345), Open Channel (6 feet in height and 6 feet in base width), a 2 cell RCB (7 feet in height and 10 feet in width), a 1 cell RCB (varies in height from 6 feet to 7 feet and 12 feet in width), 96" RCP, and 72" RCP; located in the northwest corner of the Briggs Road Detention Basin (Project No. 4-0-00346) and traversing northerly within the Briggs Road right-of-way to the southerly side of Watson Road, then traversing easterly immediately south of Watson Road to the west side of Sultanas Road, then continuing easterly within the Watson Road right-of-way to the easterly side of Juniper Flats Road into the southwest corner of the Juniper Flats Detention Basin (Project No. 4-0-00347), approximately 2,100 linear feet of channel, 4,595 linear feet of RCB, and 4,115 linear feet of RCP.

Line 4, Stage 1 (Project No. 4-0-00346) and a 2 cell RCB (8 feet in height and 10 feet in width); located on the eastern side of the Briggs Road Detention Basin (Project No. 4-0-00346) and traversing in an easterly direction across Emperor Road approximately 200 linear feet.

Briggs Road Detention Basin (Project No. 4-0-00346); located at the northeast corner of Briggs Road and McLaughlin Road, approximately 35.7 acres.

Juniper Flats Detention Basin (Project No. 4-0-00347); located at the northeast corner of Juniper Flats Road and Watson Road, approximately 30.8 acres.

Line 1B (Project No. 4-0-0336) and a 1 cell RCB (5 feet in height and 8 feet in width); located within right-of-way of Emperor Road from the connection to Line 1, Stage 1 (Project No. 4-0-00345) to approximately 61 feet north to connect to the existing RCB in Emperor Road.

**EXHIBIT B**

**TRANSFER AGREEMENT: ADP CREDIT  
HOMELAND/ROMOLAND ADP – LINE "A" WATERSHED**

Pursuant to that certain Homeland/Romoland ADP Fee Credit Agreement dated January 6, 2015, between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and HOMELAND/ROMOLAND ADP INC., a Delaware corporation which is hereby incorporated herein by this reference and hereinafter called "AGREEMENT", and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned agree as follows:

1. As of [DATE], \_\_\_\_\_, a \_\_\_\_\_, hereinafter called "ASSIGNOR", currently owns \$ \_\_\_\_\_ of Homeland/Romoland Area Drainage Plan Fee Credit, hereinafter called "ADP FEE CREDIT", originally granted pursuant to the Agreement.

2. ASSIGNOR hereby transfers, sells, grants and conveys \$ \_\_\_\_\_ of said ADP FEE CREDIT and all of the rights, title, interest, benefits and privileges of said ADP FEE CREDIT to [Company Name, a <describe entity>], hereinafter called "ASSIGNEE", to satisfy the requirement to pay drainage fees for the real property described in Attachment No. 1 to this Transfer Agreement located within the Line "A" watershed of the Homeland/Romoland Area Drainage Plan and hereinafter called the "Property".

3. ASSIGNEE hereby accepts the foregoing transfer of ADP FEE CREDIT and certifies that the foregoing is correct and is aware of and understands the terms of the AGREEMENT.

4. The transfer or sale of ADP FEE CREDIT provided for under this Transfer Agreement may be the subject of additional agreements between ASSIGNOR and ASSIGNEE. Notwithstanding any term, condition or provision of such additional agreements, the rights of DISTRICT arising under or from the AGREEMENT, and this Transfer Agreement shall not be affected, diminished or defeated in any way, except upon the express written agreement of DISTRICT.

5. The transfer or sale of ADP FEE CREDIT provided for under this Transfer Agreement shall not be deemed effective until a fully executed original copy of this Transfer Agreement is provided to DISTRICT and countersigned by DISTRICT'S Chief of Planning Division. The provisions of ADP Rules and Regulations Section IV.i notwithstanding, the ADP Fee Credit transferred pursuant to this Transfer Agreement may be used in connection with development of the Property by the Assignee or any successor owner of such real property at any time whatsoever without limitation to satisfy the payment of applicable ADP fees associated with the development of said Property.

6. Assignor and Assignee agree to protect, indemnify, defend and hold the District, the County, and their respective directors, officers, Board of Supervisors, Legislative



Body, elected officials, employees, representatives and agents (the "Indemnified Parties"), and each of them, harmless from and against any and all claims, liabilities, losses expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees, and court costs which the Indemnified Parties, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, or any combination thereof, as a result of, or by reason of, or arising out of, or in consequence of this Agreement. If the Assignor and/or Assignee fails to do so, the Indemnified Parties, or each of them, shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorneys' fees or court costs, to and recover the same from the Assignor and Assignee.

No indemnification is required to be paid for any claims, liabilities, losses expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees, and court costs as a result of, or by reason of, or arising out of, or in consequence of the willful misconduct or sole or active negligence of the Indemnified Parties.

The provisions of this Section shall survive the termination of this Agreement.

**"ASSIGNOR"**

[Insert Signature Block]

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

**"ASSIGNEE"**

[Insert Signature Block]

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

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

By \_\_\_\_\_  
Chief of Planning Division

Dated \_\_\_\_\_

**ATTACHMENT NO. 1**  
**TO TRANSFER AGREEMENT**

**[Insert legal description of Property]**

**EXHIBIT C**

**Form of Initial Distribution of ADP Fee Credit**

<b>Entity Receiving Distribution</b>	<b>Distribution Amount</b>	<b>Contact Name, Address, Phone No.</b>
Minor Ranch LLC	\$ [TBD]	12265 El Camino Real, #180 San Diego, CA 92130
TTLT Talavera, LLC	\$ [TBD]	23 Corporate Plaza, #150 Newport Beach, CA 92660
WSI Land Holdings, LLC	\$ [TBD]	3161 Michelson Drive, #425 Irvine, CA 92612
Romoland Watson 206, LLC	\$ [TBD]	10621 Civic Center Drive Rancho Cucamonga, CA 91730
CV Communities, LLC	\$ [TBD]	1900 Quail Street Newport Beach, CA 92660
Robert L. Mayer, Trustee of the Robert L. Mayer Trust of 1982	\$ [TBD]	660 Newport Center Drive, #1050 Newport Beach, CA 92660
Strata McCall, LLC	\$ [TBD]	4370 La Jolla Village Drive, #960 San Diego, CA 92122
Heritage Square, LP	\$ [TBD]	41391 Kalmia Street, #200 Murrieta, CA 92562
North Bayport Industrial Park II, Ltd.	\$ [TBD]	2780 Skypark Drive, #410 Torrance, CA 90505
Emperor North, LLC	\$ [TBD]	10920 Via Frontera, #510 San Diego, CA 92127

Note: The amount distributed and the entity receiving each distribution shall be determined by ADP Inc. upon determination of the final ADP Fee Credit amount in accordance with Section 6 of the Agreement. ADP Inc. may remove entities from this list or add entities in the Initial Distribution submitted to the District at that time.

[SIGNATURES ON THE NEXT PAGE]

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

HOMELAND/ROMOLAND ADP, INC.,  
a Delaware corporation

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

ADRIAN PETER  
Executive Committee Member

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

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

MICHAEL D. O'DONNELL  
Executive Committee Member

**EXHIBIT D**

**RULES AND REGULATIONS FOR THE ADMINISTRATION OF AREA DRAINAGE  
PLANS**

RIVERSIDE COUNTY

RULES AND REGULATIONS  
FOR  
ADMINISTRATION OF  
AREA DRAINAGE PLANS

ADOPTED JUNE 10, 1980  
BY RESOLUTION NO. 80-244

AMENDMENTS	RESOLUTION NO.
May 26, 1981	81-148
Nov. 9, 1982	82-320
July 3, 1984	84-220
Feb. 16, 1988	88-50

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## GENERAL

These Rules and Regulations are adopted by the Board of Supervisors for the purpose of providing policy guidelines to be used in the administration of adopted area drainage plans, and to define the design and construction responsibilities of drainage facilities to be financed or constructed by developers pursuant to Section 10.25 of Riverside County Ordinance No. 460.

Variations in the application of these guidelines may occur as the result of specific language used in the Board Resolution adopting the individual Area Drainage Plans or by the specific condition of development adopted by the County in approving tentative maps within the Drainage Plans. As area drainage plans are adopted or amended the Resolution of Adoption will be incorporated as part of this policy statement.

If advance construction of Area Drainage Plan facilities is proposed by a developer within an approved Specific Plan, the Specific Plan shall be treated, in the context of these Rules and Regulations as if it were a "Tract" and all other rules set forth herein shall be applied accordingly except as otherwise provided in this document.

Drainage fees collected by the County, within County areas, shall not be used by the District to construct any portion of required facilities within City areas unless the City affected has by ordinance established a comparable fee schedule that is simultaneously adjusted whenever the Board determines, after appropriate public hearings to which the City has been notified and invited to comment, that the fee is to be adjusted.

Situations not covered by these guidelines will be handled by further directives from the Board when required.

## GUIDELINES

### I. MAINTENANCE

All Area Drainage Plan facilities (except inlets within public maintained roads) will be permanently maintained by the Riverside County Flood Control and Water Conservation District (District) upon satisfactory completion of the project and acceptance by the District unless alternative maintenance agreements are provided. Inlets to Area Drainage Plan facilities within public maintained roads will be maintained by the Riverside County Road Department or the City within which they are located.

### II. MINOR PLAN REVISIONS

The alignment, type of construction, design discharge, or design standard may be altered by the Chief Engineer of the District from that shown in the published Area Drainage Plan provided the original purpose is achieved with the altered design.

### III. DESIGN AND CONTRACT ADMINISTRATION

The primary responsibility for design and construction of all Area Drainage Plan facilities lies with the District so the maximum control and accountability for costs accruing to the Area Drainage Plan funds can be maintained. The following criteria will be applied by the Chief Engineer to assist in his evaluation of engineering and administration responsibility for construction contracts:

#### a. Design Responsibility

- (1) Major Facilities - All channels, retention basins and storm drains with diameters of more than 60 inches will be designed by the District (or through private engineering contracts administered by the District), unless otherwise authorized in writing by the Chief Engineer.
- (2) Local Facilities - Local facilities and lateral storm drains with diameters of 60 inches or less will normally be designed by the developer's engineer using District standards providing the Chief Engineer has authorized the developer (in writing) to proceed in this manner. Final plans must be presented on 22" x 36" cronaflex sheets and be approved by the Chief Engineer.

b. Construction Responsibility

- (1) Public Works Project if Reimbursement or Tract to Tract Transfer of Excess Earned Credit Anticipated - The District will cause all facilities to be constructed through contracts administered by the District whenever reimbursement for facility costs beyond the developer's total acreage fees is anticipated, or whenever tract to tract transfer of excess earned credit is anticipated.

A project agreement shall be executed between the developer and the District setting forth all terms and conditions of the project, including contract timing, project credit, amount of construction deposit, right of way transfers, reimbursement, and other provisions. An agreement will be initiated by the District upon receiving a written request from the developer setting forth a realistic construction schedule (recordation, tract grading, home construction, utility installation and street improvements) after construction drawings are sufficiently completed.

- (2) Developer Project if Reimbursement Not Anticipated - A developer may construct or cause to be constructed the required Area Drainage Plan facilities in partial or full satisfaction of his drainage fees, provided, however, no reimbursement shall be made to the developer even if the facility cost exceeds the amount of developer's total drainage fee. Developer constructed facilities can be used as a credit against drainage fees for future units recorded on the same property as provided in subsections b, c, and i of Section IV.

c. Construction Staking Responsibility

- (1) District Administered Contracts - All contracts administered by the District shall have basic construction staking surveys provided by the District.
- (2) Developer Administered Contracts - All contracts administered by the developer shall have basic construction staking surveys provided by the developer.

d. Construction Inspection Responsibility

- (1) District Administered Contracts – Construction inspection for all Area Drainage Plan facilities to be constructed under District administered contracts shall be done by the District at cost, out of construction funds deposited by the developer as provided in the project agreement. A duplicate inspection fee shall not be required by the County.
- (2) Developer Administered Contracts – Construction inspection for Area Drainage Plan facilities to be constructed under developer administered contracts shall be done by the County using inspection fees collected under provisions of County Ordinance No. 460. The Road Commissioner will notify the District in writing before the project is accepted; the bonds held by the County for these facilities shall not be released until the Chief Engineer has approved the release in writing.

When it is mutually advantageous to the County and the District, the District may provide the construction inspection. Inspection fees collected by the Road Commissioner for this purpose will then be transferred to the appropriate Area Drainage Plan fund and District inspection costs will be charged to that fund.

e. Conveyance of Rights of Way

- (1) District Administered Contracts - Conditions for transfer of rights of way for all facilities constructed by the District will be established in the project agreement between the developer and the District. Rights of way for facilities within the boundaries of the tract will be offered for dedication to the County at the time of recordation of the final map and thereafter be conveyed by the County to the District. Credit for said rights of way shall be established as defined in Section IV. Rights of way for facilities outside the boundaries of the tract will be conveyed directly to the District free and clear of conflicting encumbrances and encroachments and be guaranteed by a policy of title insurance. The boundary will be monumented by the developer's engineer to the satisfaction of the District.

- (2) Developer Administered Contracts - Rights of way for developer constructed facilities shall be offered for dedication to the County at the time of recordation of the final map requiring these facilities; upon completion of the facilities the County shall accept the offer of dedication and convey the rights of way to the District.
- (3) When No Construction Required - When no facilities are required to be constructed but dedication of rights of way is nonetheless required, the offer of dedication shall be made to the County at time of recordation of the final map; upon request of the District the County shall accept the offer and convey the rights of way to the District.

#### IV. PROJECT CREDIT

##### a. Construction Cost Credit, District Administered Contracts

- (1) Credit Equals Actual Cost - The construction cost credit given to a developer for construction of Area Drainage Plan facilities, constructed under contracts administered by the District, shall be the actual cost of the facilities including those allowable design costs, construction surveys, contract administration and inspection costs accrued for that segment of the project.
- (2) No Credit for Developer Convenience Appurtenances - The cost of appurtenant facilities included in the contract for localized drainage, or developer's convenience will not be included in the construction cost credit.
- (3) No Credit for Interim Inlets or Unplanned Facilities - The cost of special requirements including, but not limited to, interim collection dikes, interim outlet structures, bridges not shown in the published plan or facilities which are not considered integral to the ultimate area plan project but are included only to fit the specific type or time of development, will not be included in the construction cost credit.

b. Construction Cost Credit, Developer Administered Contracts

(1) Credit Equals Estimated Cost in the Published Area Drainage Plan - The construction cost credit, given to a developer for construction of Area Drainage Plan facilities constructed under contracts administered by the developer, shall be determined by the Chief Engineer using the estimated construction costs (including contingencies and engineering) published in the Area Drainage Plan for the segment of the project being constructed.

c. Rights of Way Credit for Required Facilities Constructed Substantially Within a Stream, Watercourse or Flood Plain; or Constructed to Salvage Developer's Flood Prone Property

(1) District Appraisal - Rights of way credit will be determined by the District. A property valuation will be made using the assessed value of the property as shown on the last equalized assessment roll. A distinction will be made in this appraisal between bench lands not subject to flooding and lands in the flood plain. Lands within the flood plain will be assigned 1/4 the unit values of the bench lands.

The area within the flood plain shall be determined by the Chief Engineer using such maps, photographs, calculations, field observations or other means as may be readily available to him.

The resulting calculation formula to determine indicated fee value is:

$$(1/4 P \times A1) + (P \times A2) = \text{Assessed Value}$$

Areas A1 and A2 are the acreage of the flood plain and bench lands, respectively; and P, the indicated unit value for fee title on bench lands not subject to flooding.

Flowage easements, or flooding easements will be valued at 50% of the indicated values computed above. Severance damages and special benefits will not be considered in the evaluation.

The resulting rights of way credit is not intended to reflect precisely the highest and best use or current market value, but is intended to bring order and equity to the right of way crediting process, which can be readily determined and administered without undue delays to the developer. Valuation appeals will not be considered.

- (2) Valuation Date - The appraisal valuation date will be established as the date of recordation of the final map that requires the dedication with the condition of property being defined as the raw land condition without consideration of the intended recordation of the subject tract.
- (3) Underground Easements - No value will be placed upon underground storm drain easements.
- (4) Time of Establishing Right of Way Credit - Credit for rights of way conveyed for area plan facilities will be established by the District upon written request of the developer prior to tract recordation.
- d. Rights of Way Valuation for Offstream Facilities - Rights of way for retention basins, diversion channels or other facilities located offstream, i.e., properties not subject to flood hazard, but required primarily to achieve system economics in the Area Drainage Plan, will be valued by the District in a formal appraisal of highest and best use.

Recordation of the final map shall be deferred until the appraisal is complete. Upon completion of the appraisal, the Chief Engineer shall recommend and the Board shall determine a final valuation of the rights of way granted for the project based upon the District's appraisal and any other relevant information presented by the Chief Engineer or the developer.

- e. Developer Responsibility for Offsite Rights of Way - When the conditions of approval of a tentative map require offsite improvements, the developer shall acquire offsite rights of way by negotiation with the affected property owners. The rights of way credit allowed developer will be established as provided in subsection c or d of Section IV above, and will not be based upon actual payment by the developer for the land.
- f. District Condemnation of Offsite Rights of Way - Use of the District's powers of condemnation will be considered only on public projects where clear public need and necessity can be established. When condemnation proceedings are required, such proceedings will be initiated only after the appropriate public hearings and approval by the Board.



Property owners of lands within the Area Drainage Plan which must be acquired by the District for the construction of required facilities, may elect, at the sole discretion of the landowner, to be compensated in cash or with an equivalent drainage fee credit statement prepared by the District which waives future Area Drainage Plan fees in the amount equal to the right of way offer, on the parcels of lands designated by the landowner which lie within the Area Drainage Plan. The letter(s) of drainage fee credit shall be signed by both the Chief Engineer and the affected landowner, and be duly recorded by the District in the Office of the County Recorder at the time of issuance.

- g. Total Project Credit; District Administered Contracts - The total project credit shall be the sum of construction cost credit and rights of way credit.
- h. Total Project Credit; Developer Administered Contracts - The total project credit shall be the sum of construction cost credit and rights of way credit; however, the total project credit shall not exceed the drainage fees on the tract for which the facilities are being constructed or the amount of the estimated construction cost of the required facility as determined by the published Area Drainage Plan.
- i. Expiration of Project Credits - The right to a credit, used to pay or reduce fees for units of a tract or Specific Plan, expires 15 years after the date the credit was earned.

In order to use earned credits, the developer shall file, upon the form supplied by the District, a verified request that the unused credit be applied to the new development, which request shall include the consent of the owners of the original earned credit.

- j. Transfer Excess Earned Credit - Tract to Tract Within Area Drainage Plan - In order to transfer excess earned credit from tract to tract within a specific Area Drainage Plan, a public works contract administered by the District (i.e., developer administered contracts will not qualify) must first be completed to establish the amount of the excess earned credit. When excess earned credit is to be transferred from tract to tract, evidence indicating that an agreement has been reached between developers shall be submitted to the District and shall include tract number transferring excess earned credit, tract number receiving excess earned credit, amount of excess earned credit being transferred, certification that contents of agreement is Correct and notarized signatures of both developers. No successive transfer of excess earned credit will be allowed. No transfer of excess earned credit from a tract in one Area Drainage Plan to a tract in another Area Drainage Plan will be allowed.

V. MEANS OF PAYING DRAINAGE FEES

- a. Standard Acreage Fees when no Construction Required - Owners of developments which do not require the construction of Area Drainage Plan facilities pay the applicable drainage fees to the Road Commissioner at time of recording the final map except as provided in Section IX herein.
  
- b. District Administered Contracts - Tracts and Specific Plans - Credit may be granted for the actual cost of Area Drainage Plan facilities funded by developers using a District administered contract, provided however that:
  - (1) A construction agreement must be executed with the District prior to beginning of construction.
  
  - (2) The construction agreement will require an advance deposit of cash or an approved letter of credit from an acceptable financial institution in the amount of 110% of the District's estimated cost of construction including the estimated costs of survey staking, inspection and contract administration. The agreement would also establish provisions to return any excess deposit (or the release of the financial responsibility established in the letter of credit) for any funds remaining within 90 days of completion of the project.
  
  - (3) Credit for the cost of constructed Area Drainage Plan facilities may be transferred or used to offset Area Drainage Plan fees required to be paid on any other development in the Area Drainage Plan.
  
- c. Developer Administered Contracts - Tracts and Specific Plans - Credit may be granted for Area Drainage Plan facilities constructed by developers using a developer administered contract, provided however that:
  - (1) Credit is limited to the Area Drainage Plan cost estimate for the facilities being constructed as determined by the Chief Engineer.
  
  - (2) Credit for the cost of facilities may be used only to offset developer's fees required at time of recordation for other development units of respective tract or specific plan.

(3) Faithful performance, and materials and labor bonds must be posted in the amount and type required for all other tract improvements prior to recording a final tract map. If the construction is being done as part of a specific plan, an agreement may be required with the District prior to proceeding with construction, setting forth the terms and conditions of inspection, maintenance, right of way transfer, posting and release of bonds and all other related matters.

- d. Assessment District Obligation - Property included in an Assessment District which has been obligated to pay off bonded indebtedness to finance the construction of Area Drainage Plan facilities shall be relieved from paying Area Drainage Plan fees at time of development up to an amount equal to the pro rata amount of the original assessment assigned to that property, providing however if the fee in effect when the assessment was applied was more than the assessment, then the incremental balance due (inflated at rates similar to the change which has occurred to the whole fee) shall be required to be paid as a condition of the development.

Excess credit may not be earned by obligations incurred on a parcel of land within the Assessment District, unless that assessment is paid in full prior to the sale of bonds.

## VI. CREDIT STATEMENT

The District will prepare a statement authorizing the County to credit drainage fees for the published Area Drainage Plan value of facilities constructed, or bonded for construction, prior to recording the final map. Said statement will be prepared for tracts where construction of any segment of Area Drainage Plan facilities or dedication of rights of way is required or transfer of excess earned credit has been proposed and approved.

A similar statement will be provided by the District to both the developer and County for the status of excess credit earned by advance construction of Area Drainage Plan facilities within approved Specific Plans. This statement will be prepared after the project is completed and accepted by the District, or at such time as a contractual commitment (with acceptable provisions for bonding, construction deposit, or letter of credit) has been made between the developer and the District.

## VII. DEVELOPER'S CREDIT BALANCE

- a. Definition - A developer's credit balance in the Area Drainage Plan fund is equal to the amount his total project credits exceed his drainage fees.

- b. Transfers, Tract to Tract - A credit balance obtained on one tract, through construction of Area Drainage Plan facilities, may not be used to waive drainage fees required for another tract except as provided in Sections IV, i and j herein.
- c. Transfers, Unit to Unit - Credit balances obtained on one unit of a tract may be used by the developer in payment of drainage fees required to record subsequent units of the same tract.
- d. Fees Paid on Early Units will not be Reserved for Required Facilities on a Later Unit - Fees collected from a developer on an early unit of a tract will not be held in an Area Drainage Plan fund for specific construction of area plan facilities required in a subsequent unit of the developer's tract.
- e. Interest Income Accrues to the Fund - Monies in an Area Drainage Plan fund may be invested by the District in approved interest drawing accounts. The revenue from such investments shall accrue to the Area Drainage Plan fund and does not accrue to any developer's account.
- f. Accounting by District - The District will keep, and make available, an accurate accounting of all developer credit balances in Area Drainage Plan funds.
- g. Reimbursement of Credit Balances - Uncommitted monies in an Area Drainage Plan fund may be disbursed by the Auditor upon recommendation of the Chief Engineer and approval by the County Board of Supervisors, to developers holding a construction credit balance subject to rules defined herein, and on a first established, first returned basis.

In order to provide continuity in completing Area Drainage Plan facilities the County Board of Supervisors may define CRITICAL SEGMENTS of an Area Drainage Plan required to be funded out of existing or future uncommitted revenues prior to the authorization for reimbursement of any developer's credit balance. Any such disbursement of uncommitted monies shall be made only after the construction of CRITICAL SEGMENTS of a plan, as defined by the Board, has been funded and committed. Such disbursements are also subject to the following reimbursement guidelines:

- (1) Date of Establishing a Credit Balance - The date of establishing a credit balance shall be the date of the NOTICE OF COMPLETION of the project for facilities constructed by the District.

- (2) Earliest Reimbursement Date, Tracts - Reimbursement of a credit balance shall not be considered by the Board until all units of the tentative tract have been recorded, or the time for recordation of all units of the tentative tract has expired.
- (3) Specific Plan Restrictions - Reimbursement of a credit balance earned by construction of facilities within a specific plan of development shall be considered by the Board only on a case by case basis, using the reimbursement rules for tracts as a general guide, and making its decision after receiving input at a public hearing scheduled for this matter.
- (4) Other Reimbursement Restrictions – Additional reimbursement restrictions may be established in a project agreement.

#### VIII. APPLICATION OF DRAINAGE FEES

- a. Tracts Overlapping a Drainage Boundary - If a tract is partially within and partially outside of an Area Drainage Plan, drainage fees shall be applied only to that portion of the tract within the drainage boundary of the adopted Area Drainage Plan.
- b. Disputes Over Location of Drainage Boundary – The Chief Engineer shall determine the location of the published Area Drainage Plan boundary if the location of the boundary is in dispute. In determining the location of the boundary, the Chief Engineer shall fix the location of the natural drainage boundary that existed on the date of adoption of the Area Drainage Plan, or the location of such other boundary as may have been intended by the Board when adopting the Area Drainage Plan.

#### IX. DRAINAGE FEE DETERMINATIONS

- a. Adopted Drainage Fees

Each Area Drainage Plan adopted by the Board establishes the drainage fee per acre currently in effect for all new land divisions within that plan.

- b. Time of Payment

Drainage fees shall be paid as follows:

- (1) Drainage fees shall be paid to the Road Commissioner as a part of the filing for record of the subdivision final map or parcel map, or if the recording of a final parcel map is waived, drainage fees shall be paid as a condition of the waiver prior to recording a certificate of compliance evidencing the waiver of the parcel map; or

- (2) At the option of the land divider, upon filing a required affidavit requesting deferment of the payment of fees, the drainage fees may be paid to the Building Director at the time of issuance of a grading permit or building permit for each approved parcel, whichever may be first obtained after the recording of the subdivision final map or parcel map; provided however, this option to defer the fees may not be exercised for any parcel where grading or structures have been initiated on the parcel within the prior 3 year period, or permits for either activity have been issued on that parcel which remain active.

c. Notice to Owners

When the land divider elects at time of recordation to have payment of the drainage fees made at the time of issuance of grading or building permits on individual lots, the following notifications shall be made:

- (1) The recorded final map or parcel map or certificate of compliance evidencing the waiver of the filing of a parcel map shall specifically state that a drainage fee is required to be paid by the owner of parcels created by the land division prior to issuance of the first grading permit or building permit for each created parcel; and
- (2) A separate instrument shall be recorded by the land divider in the Office of the County Recorder of Riverside County which gives notice that the drainage fees have been deferred to the grading or building permit stage. The instrument shall be recorded at the time of filing for record of the final map or parcel map, or the certificate of compliance evidencing the waiver of the parcel map. The instrument shall give notice that a substantial drainage fee is required to be paid to the Riverside County Building Director by the owners of the created parcels prior to issuance of the first grading or building permit for each parcel for which a drainage fee is required; and
- (3) Upon payment of any deferred land division drainage fee, the Building Director shall record a Notice in the Office of the County Recorder of Riverside County that the land division drainage fees have been paid, stating the amount and date of payment.

d. Computation of Lot Drainage Fees

A lot drainage fee shall be established for each lot at time of approval for recordation or waiver of recordation of the subdivision final map or parcel map. The fee shall be computed as follows:

(1) For subdivisions into small lots (1 acre net or less), the lot drainage fee will be determined by multiplying the gross acreage being divided into small lots, times the drainage fee per acre in effect at time of recordation, divided by the total number of small lots.

(2) For subdivisions into large lots (lots greater than 1 acre net), the drainage fee for each lot will be the fee established for one acre regardless of the lot size, except that:

On land zoned for commercial, industrial, or manufacturing use as defined by Riverside County Zoning Ordinance No. 348, the lot drainage fee shall always be computed as if it were a small lot land division; the amount due for each lot shall be established by multiplying the gross lot area times the drainage fee per acre in effect at time of recordation.

(3) Drainage fees for lots within a nonstatutory condominium subdivision shall be calculated as if the development were a small lot subdivision, multiplying the gross acreage being developed times the drainage fee per acre at time of recordation, divided by the number of individual lots (not counting the common areas as a lot); the drainage fee for common use areas shall be allocated proportionately to the individual lots and no fee shall be separately collected for the lots designated for common use.

(4) Drainage fees for units of a statutory condominium shall be calculated as provided herein for nonstatutory condominiums, treating units of the development as if they were lots, and allocating drainage fees for the lot of common area proportionately to the units; no fee shall be separately collected for the common area lot.

(5) Credits granted to a developer for construction of Area Drainage Plan facilities required in order to record a land division shall be used to reduce the lot drainage fees established herein for subsequent units of the development as assigned by the developer who established the credit. No allowance for inflation or depreciation of the value of the constructed facility shall be made. Written verification of the assignment from the original developer to the owner requesting the credit will be required prior to the use of this credit to waive the subsequent fee.

- (6) Payment of drainage fees on a large lot which is subsequently divided into smaller lots shall be treated as a credit against the new drainage fees. No allowance for interest earned will be granted. The credit shall be used to reduce the lot drainage fee on all lots within the new land division, as assigned by the developer who established the credit, upon presentation of a written verification of the assignment from the original developer. On lots created prior to February 16, 1988, for which the fee was also paid prior to that date, the current owner shall be given the option to elect to receive a proportional credit of the prior Area Drainage Plan fee paid by the parent lot owner.
- (7) Drainage fees shall not be required to be paid as a condition to the division of any parcel of land for which a drainage fee has previously been paid as a small lot (1 acre net or less) land division.
- (8) Public agency owners shall be exempt from the payment of deferred lot drainage fees established herein.
- (9) Deferred lot drainage fees shall not be required to be collected at time of issuance of a subsequent building permit for a lot, when the building permit requested does not create additional impervious surface area. If the permit to be granted is for any grading, or if it is for a building permit which creates any additional impervious surface area, the drainage fee shall be required to be paid in full before the permit is issued.

e. Adjustments to Deferred Lot Drainage Fees

The amount of the drainage fee within an adopted Area Drainage Plan may be amended at any time by the Board of Supervisors upon a determination that it is necessary to do so in order to correctly reflect the estimated cost of facilities required in the plan.



When a developer elects to defer the payment of the lot drainage fees to the grading or building permit stage, the fee to be paid for each lot shall be the amount established at time of recordation as set forth herein, increased or decreased proportionately to reflect adopted changes in the drainage fee since the date of recordation of the subdivision final map or parcel map which created the parcel.

- f. Mitigation Fees on Other Discretionary Land Uses - Whenever a discretionary land use permit is issued within an Area Drainage Plan, and a determination has been made that the approved land use will increase runoff which may require earlier construction of downstream Area Drainage Plan facilities, a mitigation fee may be required to be paid for deposit into the Area Drainage Plan fund, or facilities may be required to help mitigate the impacts. When a mitigation is required, and a fee is considered to be an appropriate means to provide the mitigation, the amount of the fee and time of its collection shall be recommended by the Chief Engineer in his report to the permitting agency, using as his guide, the fee structures set forth herein for land divisions having comparable anticipated impervious surface areas. Upon its collection, the fee shall be placed in the Area Drainage Plan fund for use in the construction of future Area Drainage Plan Facilities.

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