

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

801B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

May 25, 2010

SUBJECT: Eastvale MDP Line E-1, Stage 2
Project No. 2-0-00324-02
Tentative Parcel Map 31645
Agreement

RECOMMENDED MOTION:

Approve the Agreement between the District and SC Eastvale Development Company, LLC (Developer), and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which the Developer may earn Area Drainage Plan Fee credits through the construction of a segment of District's Eastvale MDP Line E-1 as a condition of development for Tentative Parcel Map 31645, and subsequently transfer any excess credit amounts so

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Alex Cann

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: May 25, 2010
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.:

District: 2nd

Agenda Number:

11.1

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
BY:
NEAL R. KIPNIS DATE

Policy Policy
Consent Consent
Dep't Recomm.: Per Exec. Ofc.:

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Eastvale MDP Line E-1, Stage 2
Project No. 2-0-00324-02
Tentative Parcel Map 31645
Agreement

SUBMITTAL DATE: May 25, 2010
Page 2

BACKGROUND (continued):

earned to other developments located with District's Eastvale Master Drainage Plan which are owned by other companies affiliated with the Developer.

County Counsel has approved the Agreement as to legal form and the Developer has executed the Agreement.

JPS:rlp

AGREEMENT

Eastvale MDP Line E-1, Stage 2
(Project No. 2-0-00324-02)
(Tentative Parcel Map 31645)

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The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and SC EASTVALE DEVELOPMENT COMPANY, LLC a Delaware limited liability company, hereinafter called "EASTVALE LLC", hereby agree as follows:

RECITALS

A. SC EASTVALE DEVELOPMENT CORPORATION, a California corporation, hereinafter called "CORPORATION", has previously submitted for approval Tentative Parcel Map 31645 in the unincorporated Eastvale area of western Riverside County and as a condition for approval CORPORATION must construct certain flood control and drainage facilities in order to provide flood protection and drainage for CORPORATION'S planned development; and

B. CORPORATION has subsequently conveyed its ownership interest in those lands comprising Tentative Parcel Map 31645 to EASTVALE LLC by Grant Deed recorded December 22, 2008, as Instrument No. 2008-0665795 in the Official Records of Riverside County. By acquiring such interest, EASTVALE LLC has also acquired the responsibility to construct those certain flood control and drainage facilities required in order to provide flood protection and drainage for the planned development of Tentative Parcel Map 31645; and

C. Among the required flood control and drainage facilities for Tentative Parcel Map 31645 is an extension of DISTRICT'S Eastvale Master Drainage Plan (MDP) Line E-1, hereinafter called "LINE E-1", consisting of an estimated 4,000 lineal feet of underground

1 storm drain system, as shown in concept in Exhibit "A" attached hereto and made a part hereof;
2 and

3 D. LINE E-1 is an eligible component of the Eastvale Area Drainage Plan
4 (ADP) and EASTVALE LLC desires to construct LINE E-1 pursuant to a construction contract
5 administered by EASTVALE LLC and earn ADP Fee Credits in accordance with the "Rules and
6 Regulations for Administration of Area Drainage Plans", dated June 10, 1980, as amended, and
7 hereinafter called "RULES". Pursuant to this Agreement, the earned ADP Fee credits may be
8 used to satisfy the requirement to pay ADP fees for Tentative Parcel Map 31645 and certain
9 properties as set forth herein; and
10

11 E. DISTRICT has estimated that upon constructing LINE E-1, EASTVALE
12 LLC would earn ADP Fee credits, hereinafter called "CREDITS", in the amount of one million
13 two hundred sixty-five thousand nine hundred seventeen dollars and forty-three cents
14 (\$1,265,917.43). Such CREDITS are normally granted to a Developer by DISTRICT when a
15 Cooperative Agreement has been executed, improvement plans have been signed and bonds are
16 in place guaranteeing the construction of the facility for which CREDITS are being granted; and
17

18 F. On December 17, 2008, CORPORATION assigned to EASTVALE LLC, by
19 means of a General Assignment executed between CORPORATION and EASTVALE LLC, all
20 of CORPORATION'S right, title and interest in and to all of the personal property, including a
21 Special Subdivision Account deposited with DISTRICT on August 23, 2006, to secure approval
22 to grade Tentative Parcel Map 31645; and
23

24 G. DISTRICT is willing to grant CREDITS to EASTVALE LLC, as successor
25 in interest to CORPORATION, provided the following actions are completed on or before June
26 1, 2012; (i) a Cooperative Agreement for Parcel Map 31645 is executed by DISTRICT, the
27 County of Riverside and EASTVALE LLC, (ii) material and labor bonds required in association
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1 with the construction of flood control drainage facilities for Parcel Map 31645 have been posted
2 with and approved by the County of Riverside, and (iii) the design plans for LINE E-1 have been
3 signed. In the event that EASTVALE LLC fails to fully complete all three (3) of the above
4 described actions by June 1, 2012, EASTVALE LLC understands and agrees that the entire
5 amount in the Special Subdivision Account for Tentative Parcel Map 31645 will be transferred to
6 the DISTRICT'S Eastvale Area Drainage Plan fund; and

7
8 H. DISTRICT is also willing to allow EASTVALE LLC to transfer portions of any
9 earned CREDITS to WLPX EASTVALE, LLC, a Delaware limited liability company,
10 hereinafter called "WLPX", for its planned development known as Tentative Tract No. 35400,
11 and/or to LEWIS INVESTMENT COMPANY, LLC, a California limited liability company,
12 hereinafter called "LEWIS", for its planned development known as Tentative Parcel Map 35933
13 pursuant to RULES.

14 NOW, THEREFORE, the parties hereto do hereby mutually agree as follows:

- 15 1. The above recitals are true and correct.
- 16 2. The locations of Tentative Parcel Map 31645, Tentative Parcel Map 35933
17 and Tentative Tract No. 35400 in the Area Drainage Plan are shown in concept in Exhibit "B"
18 attached hereto and made a part hereof.
- 19 3. Pursuant to this Agreement and the RULES, DISTRICT will allow
20 EASTVALE LLC to transfer (i) to LEWIS on behalf of Tentative Parcel Map 35933, and/or (ii)
21 to WLPX on behalf of Tentative Tract No. 35400, any available CREDITS earned in association
22 with Parcel Map 31645 in an amount not to exceed one million two hundred sixty-five thousand
23 nine hundred seventeen dollars and forty-three cents (\$1,265,917.43), provided the following
24 actions are completed on or before June 1, 2012; (i) EASTVALE LLC has completed storm
25 drain plans for Parcel Map 31645, including LINE E-1, (ii) a Cooperative Agreement has been
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1 executed between DISTRICT, the County of Riverside and EASTVALE LLC covering the terms
2 and conditions for the construction of storm drain facilities for Parcel Map 31645, including
3 LINE E-1, (iii) EASTVALE LLC has posted and the County of Riverside has approved material
4 and labor bonds for construction of Parcel Map 31645 storm drain facilities, including LINE E-1,
5 and (iv) EASTVALE LLC has executed with LEWIS and/or WLPX, as applicable, the ADP
6 Credits Transfer/Sale Agreement as set forth in concept in Exhibit "C", attached hereto and made
7 a part hereof, and submitted the fully executed original(s) of said Agreement(s) to DISTRICT for
8 approval.
9

10 4. It is mutually understood and agreed that excess CREDITS earned by
11 EASTVALE LLC in association with Parcel Map 31645 may only be transferred to Parcel Map
12 35933 and/or Tract 35400. The foregoing notwithstanding, no transfer of ADP Fee Credits shall
13 become effective until an original copy of the fully executed Transfer/Sales Agreement is
14 provided to DISTRICT and countersigned by DISTRICT'S Chief of the Planning Division.
15

16 5. Any waiver by DISTRICT of any breach of any one or more of the terms of
17 this Agreement shall not be construed to be a waiver of any subsequent or other breach of the
18 same or of any other term hereof. Failure on the part of DISTRICT to require exact, full and
19 complete compliance with any terms of this Agreement shall not be construed as in any manner
20 changing the terms hereof, or estopping DISTRICT from enforcement hereof.
21

22 6. This Agreement is to be construed in accordance with the laws of the State
23 of California.

24 7. Any and all notices sent or required to be sent to the parties of this
25 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:
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1 RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
2 1995 Market Street
Riverside, CA 92501

SC EASTVALE DEVELOPMENT
COMPANY, LLC
c/o Lewis Operating Corporation
Post Office Box 670
1156 N. Mountain Avenue
Upland, CA 91785-0670
Attn: Bryan Goodman

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4
5 8. Any action at law or in equity brought by any of the parties hereto for the
6 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
7 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
8 waive all provisions of law providing for a change of venue in such proceedings to any other
9 county.

10 9. This Agreement is the result of negotiations between the parties hereto, and
11 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
12 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
13 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
14 prepared this Agreement in its final form.

15
16 10. The rights and obligations of EASTVALE LLC shall inure to and be
17 binding upon all heirs, successors and assignees.

18 11. EASTVALE LLC shall not assign or otherwise transfer any of its respective
19 rights, duties or obligations hereunder to any person or entity without the written consent of the
20 other parties hereto being first obtained. In the event of any such transfer or assignment,
21 EASTVALE LLC expressly understands and agrees that it shall remain liable with respect to any
22 and all of the obligations and duties contained in this Agreement.

23
24 12. The individual(s) executing this Agreement on behalf of EASTVALE LLC
25 hereby certify that they have the authority within their respective company(ies) to enter into and
26 execute this Agreement, and have been authorized to do so by any and all boards of directors,
27
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1 legal counsel, and or any other board, committee or other entity within their respective
2 company(ies) which have the authority to authorize or deny entering this Agreement.

3 13. This Agreement is intended by the parties hereto as a final expression of
4 their understanding with respect to the subject matter hereof and as a complete and exclusive
5 statement of the terms and conditions thereof and supersedes any and all prior and
6 contemporaneous agreements and understandings, oral or written, in connection therewith. This
7 Agreement may be changed or modified only upon the written consent of the parties hereto.
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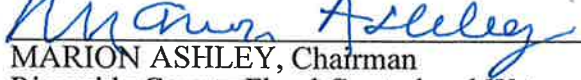
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
MAY 25 2010

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

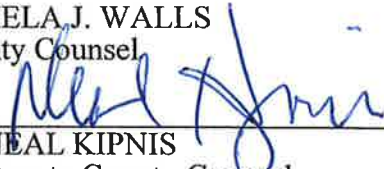
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

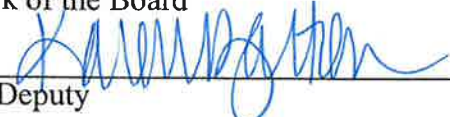
By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

By 
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By 
NEAL KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By 
Deputy

(SEAL)

Cooperative Agreement: TPM 31654
JPS
8/12/09

SC EASTVALE DEVELOPMENT COMPANY, LLC,
a Delaware limited liability company

By: LEWIS OPERATING CORP.,
a California corporation,
Its Managing Member

By 

Name Leon Swartz

Its Authorized Agent
Chief Operating Officer

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

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Cooperative Agreement: TPM 31654
JPS:seb
8/12/09

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On May 11, 2010 before me, Diane M. Simmons, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared LEON SWAILS
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Diane M. Simmons
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement - Eastvale MDP Line E-1, Stage 2
(Project No. 2-0-00324-02) (Tentative Parcel Map 31645)

Document Date: to be filled in by Clerk of the Board Number of Pages: 8+Exhibits A,B,C

Signer(s) Other Than Named Above: Riverside County Flood Control and Water Conservation District

Capacity(ies) Claimed by Signer(s)

Signer's Name: LEON SWAILS

- Individual
- Corporate Officer — Title(s): Authorized Agent Chief Operating Officer
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: Lewis Operating Corp., managing member for SC EASTVALE DEVELOPMENT COMPANY, LLC

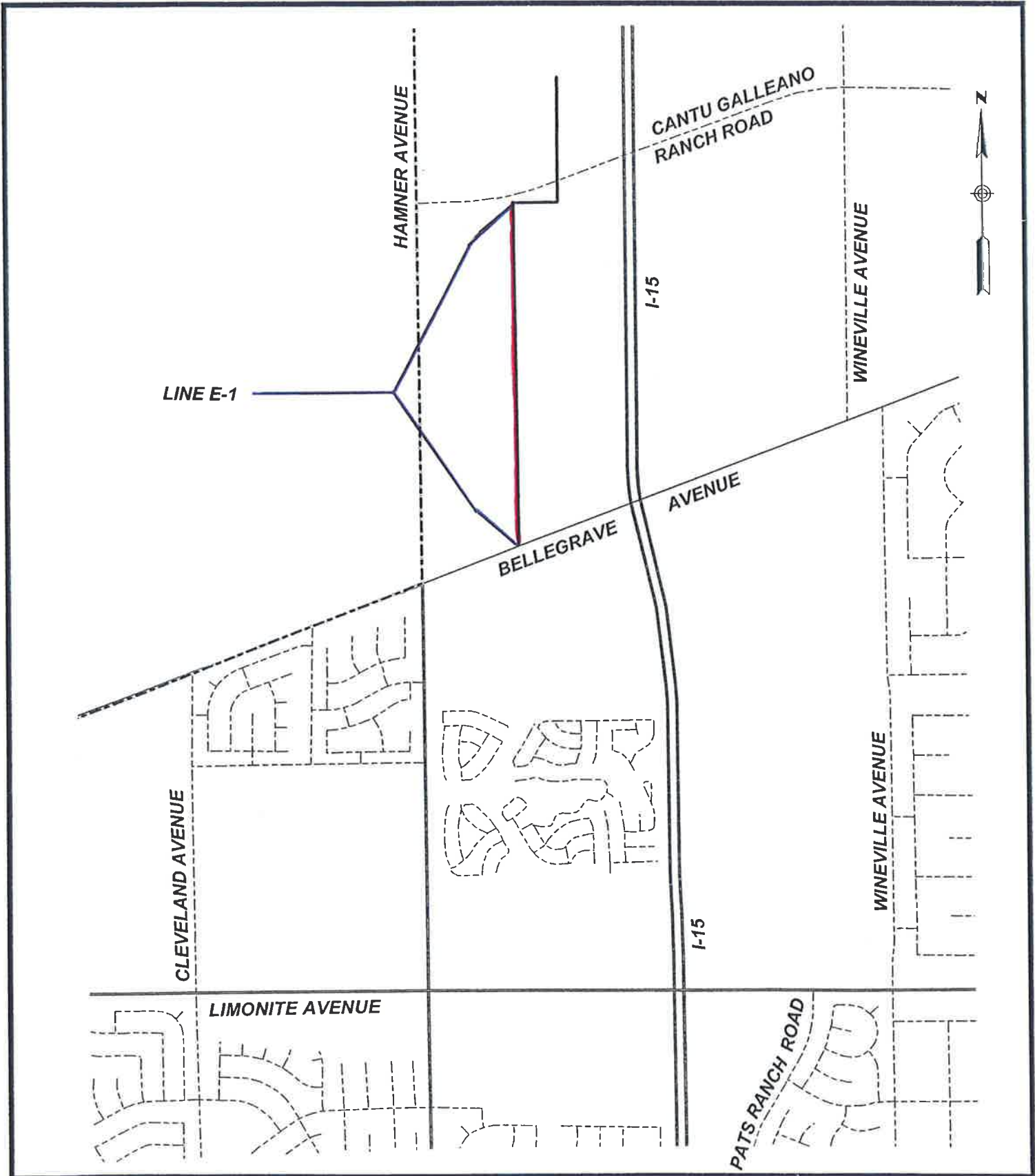
Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



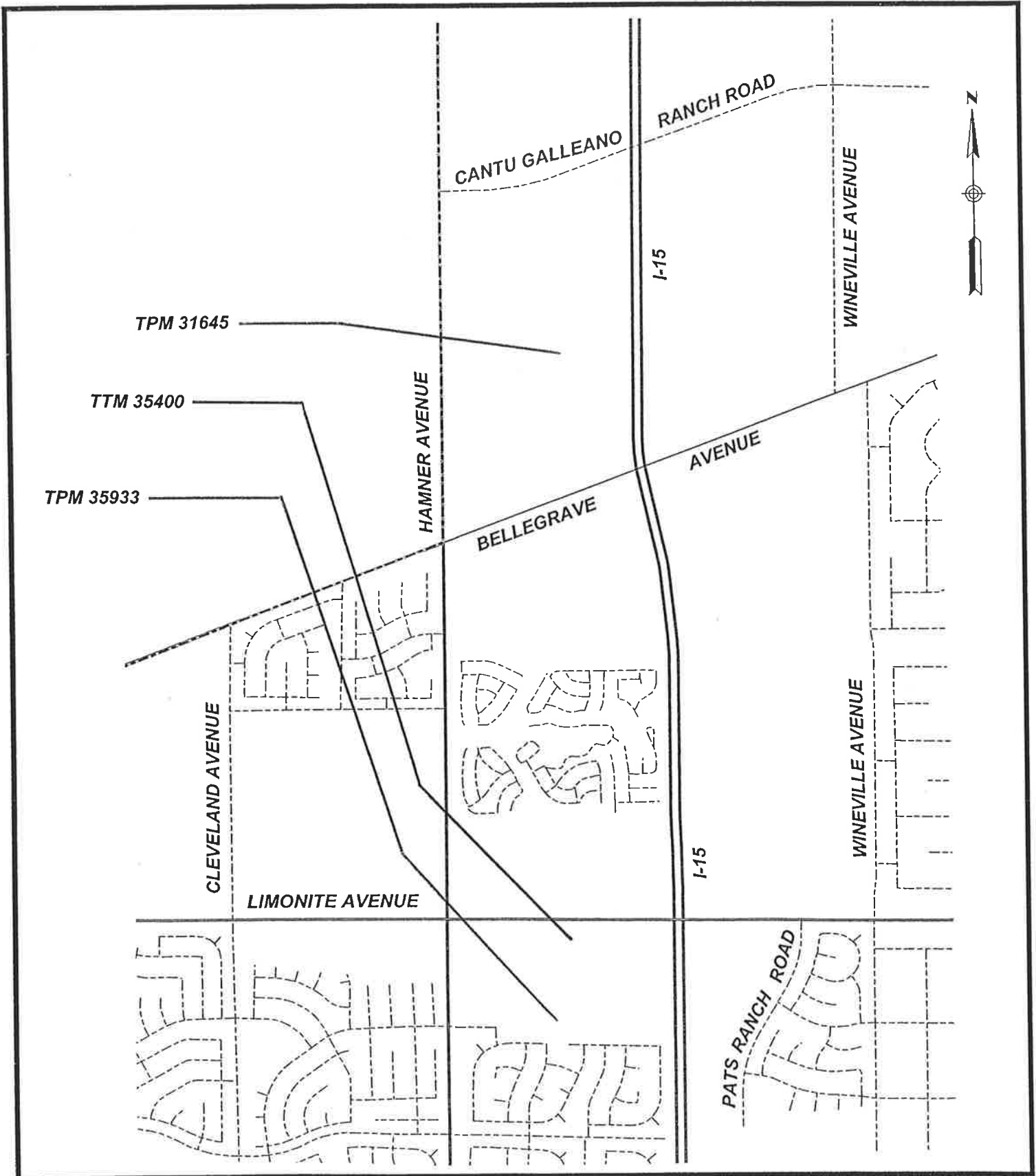
Signer Is Representing: _____

Exhibit A



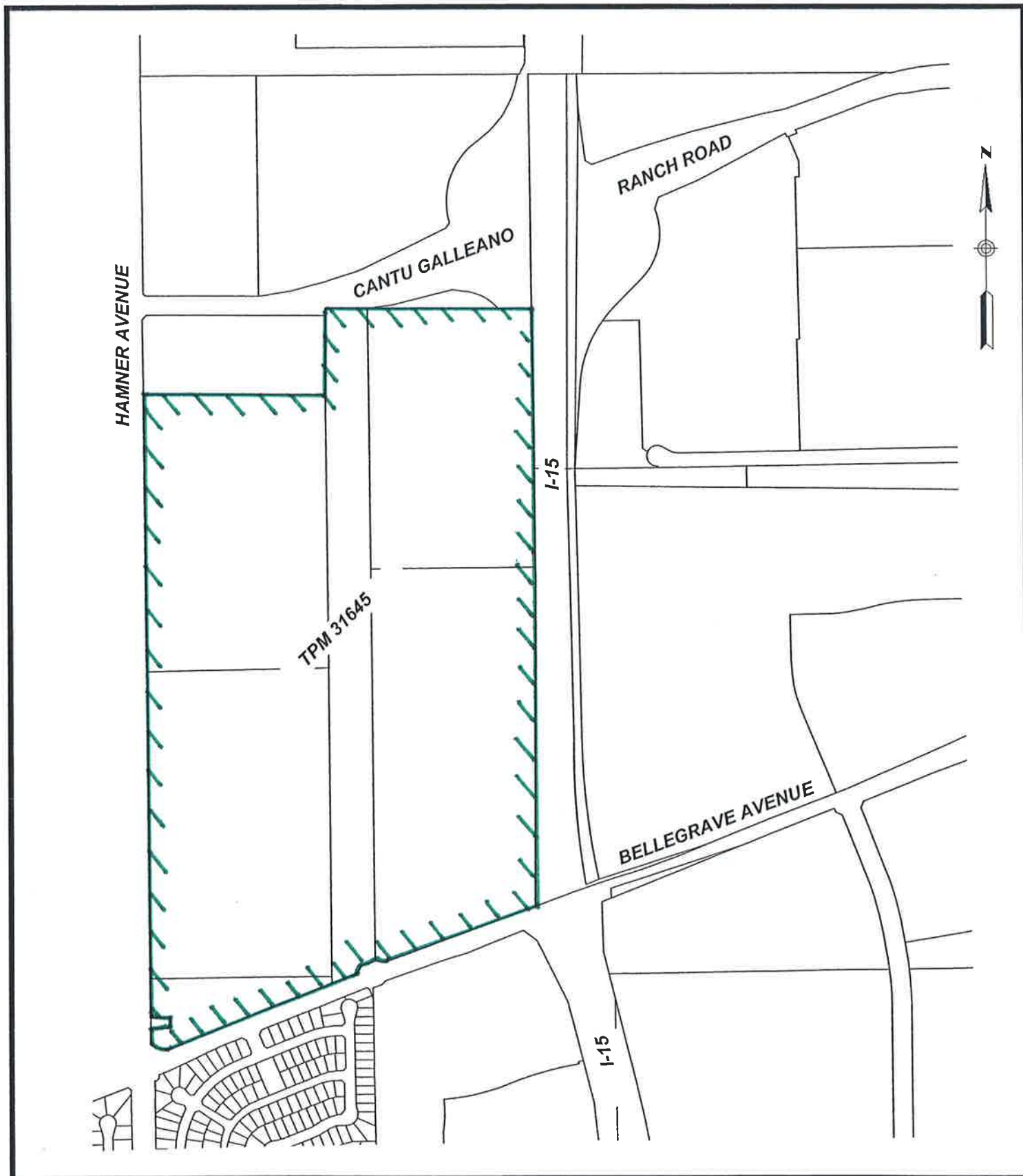
Cooperative Agreement
Tentative Parcel Map 31645

Exhibit B



Cooperative Agreement
Tentative Parcel Map 31645

Exhibit B



Cooperative Agreement
Tentative Parcel Map 31645

Exhibit B

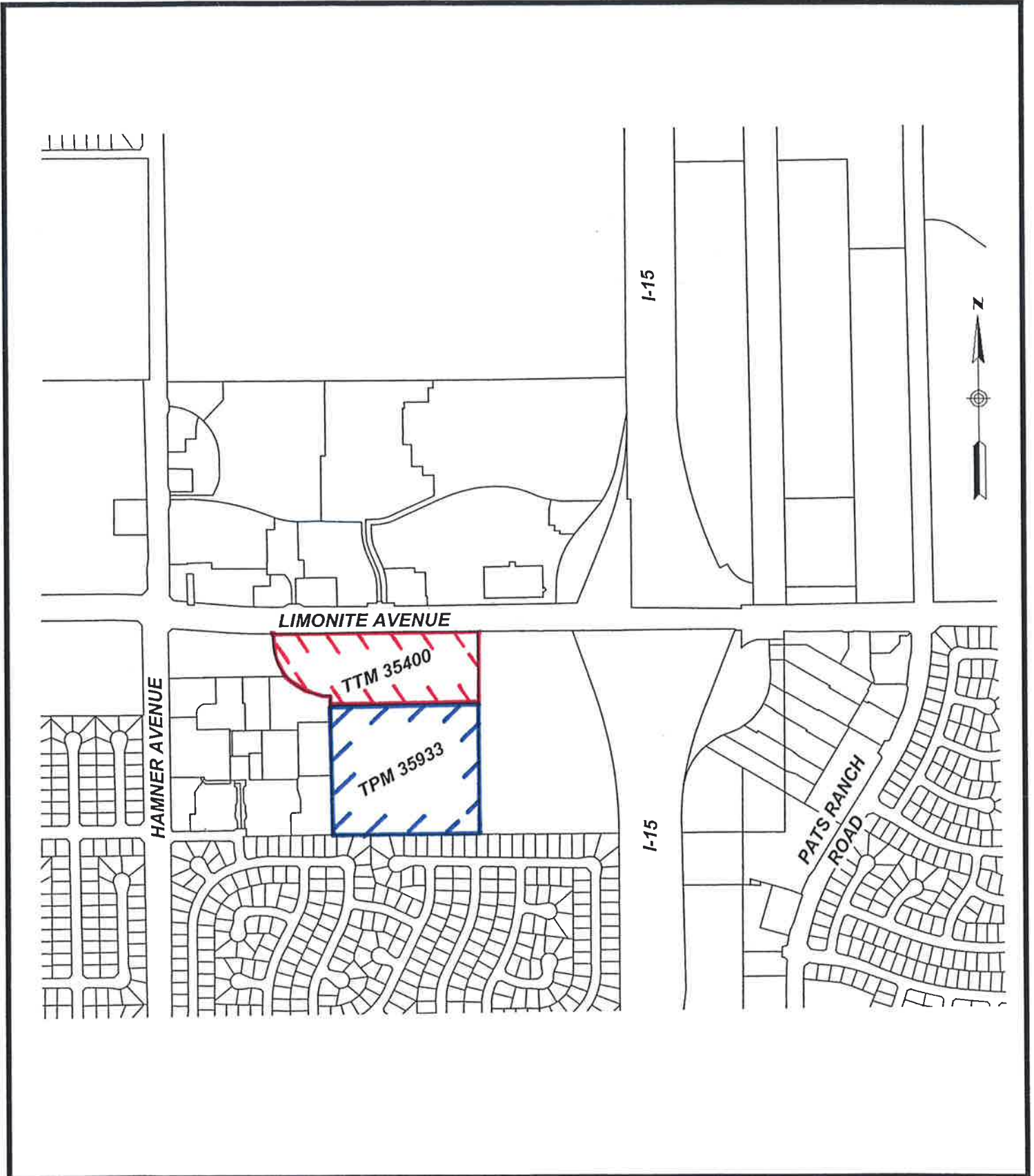


EXHIBIT "C"

SAMPLE:
ADP CREDITS Transfer/Sale Agreement

Pursuant to an Agreement dated _____, 20____, between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and SC EASTVALE DEVELOPMENT COMPANY, LLC, hereinafter called "EASTVALE LLC", 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. EASTVALE LLC, hereinafter called "ASSIGNOR", currently owns \$_____ of Eastvale Area Drainage Plan Credits, hereinafter called "CREDITS", originally earned on _____ as evidenced by the attached CREDIT STATEMENT.

2. ASSIGNOR hereby transfers, sells, grants and conveys \$_____ of said CREDITS and all of the rights, title, interest, benefits and privileges of said CREDITS to _____, hereinafter called "ASSIGNEE", to satisfy the requirement to pay drainage fees for APN [List all applicable: _____] located within the Eastvale Area Drainage Plan.

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

4. The transfer or sale of CREDITS provided for under this Transfer/Sale 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 AGREEMENT, and this Transfer/Sale 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 CREDITS provided for under this Transfer/Sale Agreement shall not be deemed effective until a fully executed original copy of this document is provided to DISTRICT and countersigned by DISTRICT'S Chief of Planning Division.

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EXHIBIT "C"

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"ASSIGNOR"

SC EASTVALE DEVELOPMENT COMPANY, LLC

a Delaware limited liability company

By: LEWIS OPERATING CORP.,
a California corporation,
Its Managing member

By _____

Name _____

Title _____

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

"ASSIGNEE"

COMPANY NAME

By _____

Title _____

Dated _____

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

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

By _____

CHIEF OF PLANNING DIVISION

Date: _____