

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



ITEM
11.2
(ID # 2230)

MEETING DATE:
Tuesday, December 13, 2016

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approve Supplemental Agreement for Release of Funds for Eastvale MDP Line E-1, Stage 2; Project No. 2-0-00324-02 (PM 36487); 2nd District; [Not-to-Exceed \$1,059,819.33]; District Funds 100%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Supplemental Agreement for Release of Funds between the District and Tarpon Property Ownership 2 LLC; and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

Bob Cullen
Bob Cullen, Assistant Chief Engineer 12/1/2016

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 201100-60110-947140 (Accounts Payable – Special Subdivision Trust Fund)			Budget Adjustment: N/A	
			For Fiscal Year: 16/17	

C.E.O. RECOMMENDATION: APPROVE

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Ashley, seconded by Supervisor Jeffries and duly carried,
IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Ashley
Nays: None
Absent: Benoit
Date: December 13, 2016
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

11-2

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

BACKGROUND:

Summary

Tarpon Property Ownership 2 LLC (Tarpon) is the developer of Parcel Map No. 36487 located in the city of Eastvale. In conjunction with its development of the Parcel Map, Tarpon constructed a segment of the Eastvale Master Drainage Plan (MDP) Line E-1. As a result of its constructing Line E-1, Tarpon has earned Eastvale Area Drainage Plan (ADP) Fee Credit in excess of its ADP Fee Obligation in the amount of \$41,351.63. This fee credit is to be used against the future ADP Fee Obligation for Assessor's Parcel No. 160-020-024.

Prior to Tarpon's acquisition of the subject property, SC Eastvale Development Corporation (SCEDC) was processing Parcel Map No. 31645 in the County of Riverside. In August 2006, SDEDC deposited one million three hundred thirty-one thousand nine hundred sixty-six dollars and seventy-nine cents (\$1,331,966.79) with the District in a Trust Account, as a condition and security for obtaining a grading permit in advance of completing final engineering plans for Line E-1 to ensure payment of the ADP Fee Obligation. In September 2008, the District refunded a portion of the initial deposit, in the amount of two hundred seventy-two thousand one hundred forty-seven dollars and forty-six cents (\$272,147.46), to SCEDC. Now that the construction of Line E-1 is complete, it is appropriate to refund from the Trust Account the remaining deposit of one million fifty-nine thousand eight hundred nineteen dollars and thirty-three cents (\$1,059,819.33) to Tarpon, SCEDC's successor in interest.

County Counsel has approved the Agreement as to legal form.

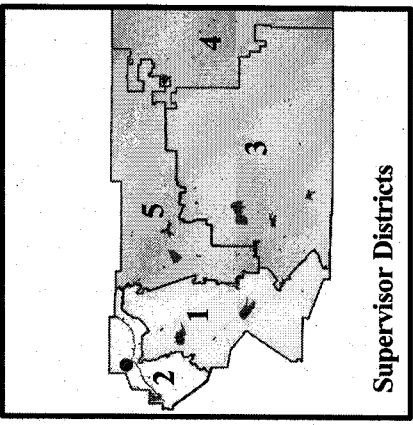
Impact on Residents and Businesses

The grant of Eastvale ADP Fee Credit and the refund of the remaining deposit is consistent with the implementation of the District's Eastvale Master Drainage Plan which provides for the installation of critical flood control and drainage infrastructure throughout the community of Eastvale.

Additional Fiscal Information

Sufficient funds are available in the Trust account previously set up by Developer.


Steve C. Horn 12/5/2016



Supervisor Districts

LEGEND:

Project Vicinity

DESCRIPTION:

Supplemental Agreement for Release of Funds
 Eastvale MDP Line E-1, Stage 2
 Project No 2-0-00324-02
 Tent. PM 36487



SUPPLEMENTAL AGREEMENT FOR RELEASE OF FUNDS

Eastvale MDP Line E-1, Stage 2; Project No. 2-0-00324-02

Tentative Parcel Map No. 36487

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a public agency ("DISTRICT"), and TARPON PROPERTY OWNERSHIP 2, LLC, a Delaware limited liability company ("DEVELOPER"), hereby agree as follows:

RECITALS

A. In March of 2005, SC EASTVALE DEVELOPMENT CORPORATION, a California corporation ("CORPORATION"), submitted for approval tentative Parcel Map No. 31645 ("MAP"), consisting of approximately 196 gross acres located in the unincorporated Eastvale area of western Riverside County and, as a condition of final approval for said MAP, CORPORATION was required to i) construct certain flood control and drainage facilities in order to provide flood protection and drainage for CORPORATION'S proposed subdivision and ii) pay Eastvale Area Drainage Plan fees; and

B. The flood control and drainage facilities required for final approval of the MAP include an extension of DISTRICT'S Eastvale Master Drainage Plan (MDP) Line E-1 ("LINE E-1") consisting of approximately 4,000 lineal feet of underground storm drain system, as shown on District Drawing Number 2-0402; and

C. The lands comprising MAP include Riverside County Assessor's Parcel Nos. 160-020-006, 160-020-025, 160-020-029, 160-020-023, 160-020-030, 160-020-005, 160-020-031 and 160-020-032; and

D. On August 23, 2006, CORPORATION deposited one million three hundred thirty-one thousand nine hundred sixty-six dollars and seventy-nine cents (\$1,331,966.79) ("DEPOSIT"), with DISTRICT in order to satisfy CORPORATION'S Eastvale Area Drainage Plan fee obligation and subsequently proceed with grading of the various parcels located within

1 MAP. DISTRICT placed DEPOSIT into a Special Account ("ACCOUNT") from which
2 CORPORATION could be reimbursed pending the completion of further actions of i) obtaining
3 final approval of improvement plans for LINE E-1, ii) executing a cooperative agreement
4 establishing the terms and conditions regarding the construction of LINE E-1 and iii) furnishing
5 surety for LINE E-1; and
6

7 E. In accordance with Riverside County Ordinance No. 460 and DISTRICT'S "Rules
8 and Regulations for Administration of Area Drainage Plans" ("ADP RULES"), dated June 10,
9 1980, as amended, DEPOSIT represented an amount equivalent to CORPORATION'S total ADP
10 Fee Obligation associated with the properties included within the boundaries of MAP; and
11

12 F. On September 17, 2008, CORPORATION acquired two hundred seventy-two
13 thousand one hundred forty-seven dollars and forty-six cents (\$272,147.46) of Eastvale ADP Fee
14 Credit from Lennar Homes of California, a California corporation; and

15 G. On November 20, 2008, DISTRICT refunded in cash two hundred seventy-two
16 thousand one hundred forty-seven dollars and forty-six cents (\$272,147.46) from ACCOUNT to
17 CORPORATION; and

18 H. On December 17, 2008, CORPORATION assigned to SC Eastvale Development
19 Company ("COMPANY"), by means of a General Assignment executed between
20 CORPORATION and COMPANY, all of CORPORATION'S right, title and interest in MAP
21 together with certain personal property, including the remaining monies held in ACCOUNT in
22 the amount of one million fifty-nine thousand eight hundred nineteen dollars and thirty-three cents
23 (\$1,059,819.33); and
24

25 I. CORPORATION subsequently conveyed its ownership interest in those lands
26 comprising MAP to COMPANY by execution of a Grant Deed recorded December 22, 2008, as
27 Instrument No. 2008-0665795 of the Official Records of Riverside County; and
28

1 J. On October 1, 2010, the lands comprising MAP were incorporated into the City of
2 Eastvale ("CITY"); and

3 K. On May 25, 2010, DISTRICT and COMPANY entered into an Agreement.
4 DISTRICT and COMPANY agreed that the total amount of Eastvale ADP Fee Credit obtained
5 from Lennar Homes of California (\$272,147.46) was to be applied against the total Eastvale ADP
6 Fee Obligation associated with Assessor's Parcel No. 160-020-023; and

7 L. COMPANY subsequently conveyed its ownership interest in those lands comprising
8 MAP to DEVELOPER by execution of a Grant Deed recorded August 10, 2012, as Instrument
9 No. 2012-0395469 of the Official Records of Riverside County; and DISTRICT, COMPANY and
10 DEVELOPER entered into that certain Assignment and Assumption Agreement dated December
11 4, 2012 whereby COMPANY assigned to DEVELOPER its interest in that certain Amended and
12 Restated Agreement between DISTRICT and COMPANY dated May 15, 2012.

13 M. On December 4, 2012, DISTRICT and DEVELOPER entered into an Agreement to
14 move forward with the design and construction of LINE E-1; and

15 N. On or about June 3, 2014, DEVELOPER submitted Parcel Map No. 36487 ("NEW
16 MAP") to the City of Eastvale for approval. NEW MAP includes Assessor's Parcel No. 160-020-
17 023 for which Eastvale ADP Fee Credit in the amount of \$272,147.46 was previously applied;
18 and
19

20 O. DISTRICT has determined that the total ADP Fee Obligation associated with NEW
21 MAP is one million four hundred ninety-nine thousand three hundred twenty-seven dollars and
22 eighty-three cents (\$1,499,327.83). After applying the ADP Fee Credit associated with Assessor's
23 Parcel No. 160-020-023 (\$272,147.46), the net ADP Fee Obligation associated with NEW MAP
24 is one million two hundred twenty-seven thousand one hundred eighty dollars and thirty-seven
25 cents (\$1,227,180.27); and
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1 P. On December 10, 2015, DISTRICT, DEVELOPER and City of Eastvale entered into
2 a Right of Entry and Inspection Agreement with DISTRICT allowing DEVELOPER to
3 commence construction of LINE E-1 drainage improvements. On March 1, 2016, DISTRICT,
4 DEVELOPER and the City of Eastvale entered into a Cooperative Agreement providing for
5 DISTRICT acceptance of LINE E-1 for ownership, operation and maintenance; and
6

7 Q. LINE E-1 is an eligible component of the Eastvale ADP. DISTRICT has determined
8 that the Eastvale ADP "book value" for construction of LINE E-1 pursuant to a privately
9 administered construction contract is equal to one million, two hundred sixty-eight thousand, five
10 hundred thirty-two dollars (\$1,268,532.00); and
11

12 R. The credit earned for construction of LINE E-1 (\$1,268,532.00) exceeds the net ADP
13 Fee Obligation associated with NEW MAP (\$1,227,180.27); therefore, DISTRICT is willing to
14 grant DEVELOPER Eastvale ADP Fee Credit in the amount of forty-one thousand three hundred
15 fifty-one dollars and sixty-three cents (\$41,351.63). As stipulated in this Agreement, the ADP
16 Fee Credit granted to DEVELOPER pursuant to this Agreement may be used to satisfy the
17 requirement to pay the ADP Fee Obligation for certain real property as designated herein; and
18

19 S. In addition, DISTRICT is willing to refund all monies remaining in ACCOUNT, in
20 the sum of one million fifty-nine thousand eight hundred nineteen dollars and thirty-three cents
21 (\$1,059,819.33) to DEVELOPER.

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

- 23 1. The above recitals are true and correct.
- 24 2. Pursuant to this Agreement and ADP RULES, DISTRICT grants DEVELOPER
25 Eastvale ADP Fee Credit in the amount of forty-one thousand three hundred fifty-one dollars and
26 sixty-three cents (\$41,351.63).
27
28

1 3. It is mutually understood and agreed that DEVELOPER may only utilize the ADP
2 FEE Credit granted above to satisfy the applicable Eastvale ADP Fee Obligation associated with
3 Assessor's Parcel No. 160-020-024 [Parcel 1 of Parcel Map 14348, as Per Map on File in Book
4 74 of Parcel Maps, Pages 11 and 12 Records of Riverside County, California].
5

6 4. Following the execution of this Agreement, DISTRICT shall refund all monies
7 remaining in ACCOUNT, in the sum of one million fifty-nine thousand eight hundred nineteen
8 dollars and thirty-three cents (\$1,059,819.33), to DEVELOPER. DEVELOPER warrants and
9 affirms that DEVELOPER is now the proper party legally entitled to receive these funds from
10 DISTRICT.

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

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

19 7. Any and all notices sent or required to be sent to the parties of this Agreement will
20 be mailed by first class mail, postage prepaid, to the following addresses:
21

22 RIVERSIDE COUNTY FLOOD CONTROL 23 AND WATER CONSERVATION DISTRICT 24 1995 Market Street 25 Riverside, CA 92501 26 Attn: Chief of Planning Division	27 TARPON PROPERTY 28 OWNERSHIP 2 LLC 18201 Von Karman, Suite 1170 Irvine, CA 92612 Attn: Ward Mace
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29 8. Any action at law or in equity brought by any of the parties hereto for the purpose
30 of enforcing a right or rights provided for by the Agreement shall be tried in a court of competent
31

1 jurisdiction in the County of Riverside, State of California, and the parties hereto waive all
2 provisions of law providing for a change of venue in such proceedings to any other county.

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

8
9 10. The rights and obligations of DEVELOPER shall inure to and be binding upon all
10 heirs, successors and assignees.

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

16
17 12. The individual(s) executing this Agreement on behalf of DEVELOPER hereby
18 certify that they have the authority within their respective company(ies) to enter into and execute
19 this Agreement, and have been authorized to do so by any and all boards of directors, legal
20 counsel, and or any other board, committee or other entity within their respective company(ies)
21 which have the authority to authorize or deny entering this Agreement.

22
23 13. This Agreement is intended by the parties hereto as a final expression of their
24 understanding with respect to the subject matter hereof and as a complete and exclusive statement
25 of the terms and conditions thereof and supersedes any and all prior and contemporaneous
26 agreements and understandings, oral or written, in connection therewith. This Agreement may be
27 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

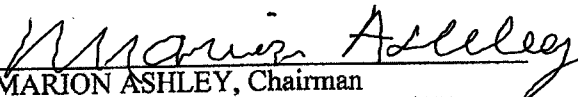
DEC 13 2016

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
JASON E. UHLEY
General Manager-Chief Engineer

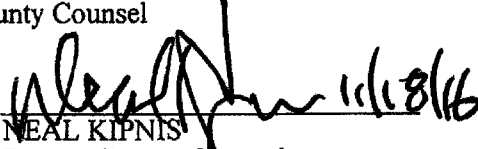
By 
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

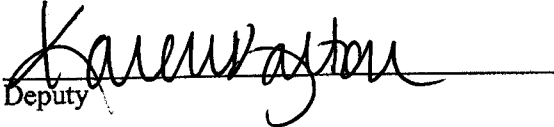
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL KIPNIS
Deputy County Counsel


By 
Deputy

(SEAL)

Cooperative Agreement: PM 36487
CSS:bjp:bad
10/05/16

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TARPON PROPERTY OWNERSHIP 2 LLC
a Delaware limited liability company

By 
AARON MORGAN
President

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Agreement: PM 36487
CSS:blm
8/02/16

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)

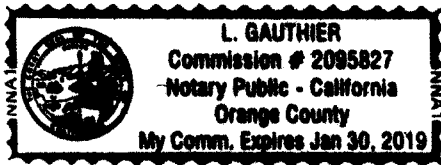
On August 26, 2016 before me, L. Gauthier, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Aaron Morgan
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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Amended Agree Document Date: 8-26-16
Number of Pages: 11 Signer(s) Other Than Named Above: Jason Willey, Kacia, Ashley Ripins

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

ADMITTED
COMMERCIAL & INDUSTRIAL
PROPERTY - CUSTOMS
FRANCO COUNTY
NO DUTY EXPIRES JAN 31 2001

