

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

Sept. 17, 2019

19-199

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I. PREFACE

These "Rules and Regulations for Administration of Area Drainage Plans" are adopted by the Board of Supervisors for the purpose of establishing policy regarding the administration of adopted Area Drainage Plans (ADPs) and to define the design and construction responsibilities for ADP facilities that are to be funded or constructed by private development interests ("Developers") or private subdivision of land ("Subdividers") pursuant to the applicable provisions of the Subdivision Map Act (Gov't Code Section 66410, et seq.) and Section 10.25 of County of Riverside Ordinance No. 460.

Variations in the application of these guidelines may occur as the result of (i) specific language used in the Board Resolution adopting a particular ADP; (ii) by the specific conditions of development adopted by the County or local land-use authority in approving tentative subdivision maps within an ADP; (iii) by the specific provisions of a fully executed Cooperative Agreement by and between the Riverside County Flood Control and Water Conservation District (District) and the Developer; or (iv) by the terms of a Joint Communities Facilities Agreement (JCFA). As specific ADPs are adopted or amended, the Resolution of Adoption will be incorporated as part of this policy statement by reference.

If a Developer proposes to construct ADP facilities within an approved Specific Plan in advance of the adoption of an approved tentative map, the Specific Plan shall be treated, in the context of these Rules and Regulations, as if it were a tentative subdivision map and all other rules set forth herein shall be applied accordingly.

ADP fees that are collected and held by the District shall not be used to construct facilities located within an incorporated City except where the subject City has, through local ordinance, adopted the respective ADP and established an ADP fee schedule. The City adopted ADP fee schedule should be adjusted whenever the Riverside County Board of Supervisors determines - after giving notice, coordinating with City staff and conducting appropriate public hearings - that the currently effective ADP fee is to be adjusted.

Any situation that is not covered by the policies set forth herein will be handled by further directives from the District's Board of Supervisors, as necessary, or through a Board-approved Cooperative Agreement.

II. DEFINITIONS

- 1) Area Drainage Plan (ADP): Area Drainage Plan as adopted by the Riverside County Board of Supervisors pursuant to Ordinance No. 460.
- 2) ADP Facility: A distinct drainage facility, or segment thereof, that is identified in an adopted ADP.
- 3) ADP Fee: The effective per acre drainage fee established by the Riverside County Board of Supervisors pursuant to the Subdivision Map Act and County Ordinance No. 460.
- 4) ADP Fee Credit: As further described in Section VI, an entity may receive drainage fee credit for specific actions undertaken within an ADP. Additionally, an entity may transfer drainage fee credit to another entity. The aggregate amount of such drainage fee credit is termed "ADP Fee Credit". ADP Fee Credit may be used to satisfy an ADP Fee Obligation subject to the conditions and limitations described herein.
- 5) ADP Fee Obligation: The aggregate drainage fee applicable to a specific parcel or parcels as a result of a land division or discretionary land-use entitlement at the time of filing for permits.
- 6) Appurtenant Drainage Facilities: Appurtenant drainage facilities include catch basins, inlets, basins, connector pipes and non-ADP storm drains that are associated with ADP facilities.
- 7) Book Value: Estimated construction cost of an ADP Facility (including engineering, contract administration and contingencies) as published in the ADP
- 8) Developer: Any landowner, agent of such landowner, and its successors and assigns, who makes or causes to be made, a subdivision of land or a land development.
- 9) Developer's Credit Balance: A developer's excess credit balance in the Area Drainage Plan fund is equal to the amount the total project credits exceeds the drainage fee

obligations. This credit does not run with the land, but belongs to the developers as indicted in the cooperative agreement.

- 10) Gross Acreage: Open space lots, park sites, water quality basins and detention basins are excluded from the subdivision Gross Acreage calculation. Public and private streets are impervious and therefore are included in the Gross Acreage calculation. Easements are not considered in the acreage determination.
- 11) Large Lot: As pertains to a residential subdivision, a lot that is greater than 1 acre in size.
- 12) MOU: Memorandum of Understanding for Design, Construction, Operation and Maintenance of Flood Control Drainage Facilities.
- 13) Non-Public Works Contract: Developer-issued Private Works Project construction contract that foregoes the public bidding process.
- 14) Per Lot Drainage Fee: As pertains to a residential subdivision or condominium project, the ADP fee per individual lot.
- 15) Public Works Contract: Developer or District issued construction contract for the construction of an ADP Facility that pursuant to the Public Contract Code shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s). The Specifications, Bid and Contract documents shall require all contractors to pay prevailing wages, furnish Certified Payroll records and to otherwise comply with the applicable provisions of the Labor Code, Government Code and Public Contracts Code relating to public works projects.
- 16) Small Lot: As pertains to a residential subdivision, a lot that is less than or equal to 1 acre in size.
- 17) Subdivider: Any person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision for himself or others except that employees and consultants of such persons or entities, acting in such capacity, are not "subdividers."

III. GENERAL PROVISIONS

A. Design and Construction of ADP Facilities - Developer Project

1. Agreement Required

Prior to commencing construction of an ADP Facility, the District, the Developer, the Subdivider and, typically, the appropriate local land-use authority (County, City or JPA) will enter into a Cooperative Agreement setting forth the parties' mutual understandings, commitments and obligations pertaining to the design, construction, inspection and acceptance of the subject facility, including but not limited to contract timing, the granting of ADP Fee Credit, payment of plan check and inspection deposits, construction inspection, furnishing appropriate surety, all necessary right of way transfers, required insurance coverage, indemnification and hold harmless and any other pertinent considerations. In most cases, District staff will prepare and process the necessary Cooperative Agreement in conjunction with the improvement plan review process following receipt of a completed "Application for Agreement Preparation" from the Developer. The application form along with other useful information is available from the District's website at www.rcflood.org/DevelopmentReview.aspx.

Facility construction shall not commence until: (i) the Cooperative Agreement is executed; (ii) the improvement plans are signed by the District's General Manager-Chief Engineer; (iii) all necessary rights of way are secured to the District's satisfaction and, (iv) the District issues a Notice to Proceed. Unless otherwise provided by written agreement, construction inspection for a privately constructed ADP Facility shall be performed by the District on a fee deposit basis.

2. Privately Administered Non-Public Works Contract

Non-Public Works Contract, as discussed in this document, refers to a Developer-issued Private Works Project contract that foregoes the public bidding process. For these types of contracts, the Developer shall comply with all of the following requirements:

- a) Plans shall be approved by the District prior to issuance of a Notice to Proceed.
- b) Construction specifications shall be in accordance with the latest edition of the "Memorandum of Understanding (MOU) For Design, Construction, Operation and Maintenance of Flood Control Drainage Facilities" between the District and Riverside County Transportation Department.
- c) The Developer, or its contractor(s), shall furnish (i) labor and (ii) material payment bonds and contract performance bonds in amounts equal to 120% of the estimated construction cost naming Developer, District and County of Riverside as obligees and issued by insurance or surety companies approved by District and County. All bonds shall be in a form approved by County's legal counsel.

3. Privately Administered Construction Contract with Public Works Bid Process

In order to ensure that an ADP Facility is constructed by the Developer as though it had been constructed under the direction and supervision, or under the authority of the District, the Developer shall comply with all of the following requirements:

- a) Plans and Specifications shall be approved by the District prior to the solicitation of bids for construction.
- b) The Bid and Contract Documents shall be approved by the District prior to the solicitation of bids for construction.
- c) Developer shall publicly solicit bids for the construction of the ADP facilities in conformance with the standard procedures and requirements of the District and will be completed in compliance with the California Public Contract Code.
- d) The contract or contracts for the construction of a facility shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) and will be completed in compliance with the California Public Contract Code.
- e) The Developer shall require, and the Specifications, Bid and Contract documents shall require all contractors involved with the construction of the

facility to pay prevailing wages, furnish Certified Payroll records to the District and to otherwise comply with the applicable provisions of the Labor Code, Government Code and Public Contracts Code relating to public works projects.

- f) The Developer, or its contractor(s), shall furnish (i) labor and (ii) material payment bonds and contract performance bonds in amounts equal to 120% of the contract price naming Developer, District and County as obligees and issued by insurance or surety companies approved by District and County. All bonds shall be in a form approved by District's legal counsel.
- g) Throughout the duration of the construction activity, the Developer, or its contractor(s), shall maintain insurance coverage, including General Liability, Workers Compensation, and Vehicle Liability as deemed appropriate by District and County Risk Management.
- h) The Developer and its contractor(s) shall comply with such other requirements relating to the construction of the facility as the District may require by written notification delivered to Developer and each such contractor at any time prior to the receipt of bids by Developer for the construction of the facilities or during the progress of construction thereof.

4. District Administered Construction Contract

Occasionally, a Developer may wish to furnish plans, advance funds or provide other consideration (e.g., right of way) to the District for construction of an ADP Facility. In such instances, the District will prepare the contract specifications, bid documents, advertise for bids and administer the construction contract. The amount of ADP Fee Credit that is to be credited to the Developer shall be specified in an agreement using these Rules and Regulations as a guide.

B. Operation and Maintenance of ADP Facilities

In general, the District will accept responsibility for the operation and maintenance of privately constructed ADP Facilities pursuant to the provisions of a Cooperative Agreement executed by and between the District, the County of Riverside (or the appropriate local land-use authority) and the Developer.

Catch basins, inlets, connector pipes and non-ADP storm drains that are associated with Area Drainage Plan facilities and located within publicly maintained County roads or dedicated easements ("Appurtenant Drainage Facilities") will typically be maintained by the Riverside County Transportation Department in accordance with the MOU between the District and the Riverside County Transportation Department. Appurtenant Drainage Facilities that are located within incorporated Cities will typically be maintained by the City within which said facilities are located. Any exceptions to the typical maintenance responsibilities set forth above will be formalized in a Cooperative Agreement.

IV. **ADP REVISIONS**

A. Plan Revisions

Occasionally, for reasons of necessity or convenience, a developer may seek to alter the design features of an ADP Facility. The following types of ADP Facility deviations may be approved by the District's General Manager-Chief Engineer provided that the original facility's purpose and function is achieved with the proposed alternate design:

- (1) Changes to a facility's alignment (including off-site improvements) to be constructed by the development proposal seeking the proposed alteration; and
- (2) Changes in facility type (e.g. open channel, underground storm drain, design discharge, regional attenuation facilities or design standard).

In determining whether or not a proposed Plan Revision shall be approved, the General Manager-Chief Engineer shall consider various factors including but not limited to overall project cost and future operation and maintenance considerations. Plan revisions may require an update to the Master Drainage Plan and corresponding CEQA documents and be pursuant to a public hearing process conducted by the Riverside County Board of Supervisors and/or corresponding local land-use authority governing board.

V. CALCULATIONS OF ADP FEE OBLIGATION

A. Establishment of ADP Fees

The Riverside County Board of Supervisors, pursuant to Article 5 of the Subdivision Map Act and Section 10.25 of Riverside County Ordinance No. 460, establishes drainage fees on a per acre basis for each ADP. Similarly, certain incorporated cities within Riverside County may have established and adopted drainage fees pursuant to municipal ordinance. The Board of Supervisors - after giving notice, and conducting appropriate public hearings - may amend the currently effective ADP Fee at any time, subject to its determination that a fee update is necessary in order to correctly reflect the estimated cost of the ADP Facilities.

B. Basis

The calculation of a Developer's ADP Fee Obligation shall be determined on the basis of the ADP Fee of the local land-use authority that is in effect at the time payment of the ADP Fee Obligation is made.

C. ADP Fee Obligation Computation

The Developer's ADP Fee Obligation is a sum of the "per lot" drainage fee [PLDF] multiplied by the number of lots included in each scenario outlined in Section V.D and V.E. [OBLIGATION = $\sum(\text{PLDF} * \text{No. of Lots})$].

D. Computation of Per Lot Drainage Fees Located Entirely Within an ADP (Residential Subdivisions)

A "per lot" drainage fee shall be established for each lot within a subdivision. The per lot drainage fee shall be computed as follows:

- (1) For a residential subdivision consisting of multiple "small lots" (1 acre net or less), the per lot drainage fee is determined by multiplying the Gross Acreage¹ of the small lot subdivision by the established "per acre" ADP Fee, divided by the total number of small lots [$PLDF = GA^1 * ADP \text{ Fee} / \text{No. of Lots}$].
- (2) For a residential subdivision consisting of a single "small lot" (1 acre net or less), the per lot drainage fee is determined by multiplying the Gross Acreage¹ of the small lot subdivision by the established "per acre" ADP Fee.
- (3) For a residential subdivision consisting of multiple "large lots" (i.e., lots that are greater than 1 acre), the per lot drainage fee is equal to the established per acre ADP Fee applied to a 1-acre lot, irrespective of the actual lot size [$PLDF = ADP \text{ Fee} * 1\text{-acre}$].
- (4) For a residential subdivision consisting of a combination of large residential lots and small residential lots, the per lot drainage fee is calculated as follows:
 - (i) Establish the "small lot acreage (SLA)" by subtracting the large lot acreage (LLA) for lots greater than 1 acre from the subdivision Gross Acreage [$SLA = GA - LLA$];

¹ Open space lots, park sites, flood control channels, water quality basins and detention basins are excluded from the subdivision Gross Acreage calculation. New public streets are impervious and therefore are included in the Gross Acreage calculation.

- (ii) Multiply the small lot acreage in (i) by the established per acre ADP fee and divide by the total number of small residential lots (≤ 1 acre) to obtain the per lot drainage fee applicable to the small lots [PLDF=SLA*ADP Fee/ No. of Small Lots]; and
- (iii) The per lot drainage fee applicable to the large residential lots is the established per acre ADP fee applied to a 1-acre lot, irrespective of actual lot size [PLDF=ADP Fee*1 acre].

E. Computation of Per Lot Drainage Fees (Non-Residential Subdivisions or Condominiums)

A "per lot" drainage fee shall be established for each lot within a subdivision. The per lot drainage fee shall be computed as follows:

- (1) For a subdivision of property zoned for commercial, industrial, or manufacturing use as defined by Riverside County Zoning Ordinance No. 348 or local land-use authority, the per lot drainage fee is determined by multiplying the Gross² Lot Acreage times the established per acre ADP Fee [PLDF=GLA x ADP Fee].
- (2) For a condominium subdivision the per lot drainage fee shall be calculated as follows:

Multiply the Gross² Acreage of the non-statutory condominium subdivision by the established per acre ADP Fee to obtain the Gross Drainage Fee [GDF=GA*ADP Fee];

² Open space lots, park sites, flood control channels, water quality basins and detention basins are excluded from the subdivision Gross Acreage calculation. New public streets are impervious and therefore are included in the Gross Acreage calculation.

Divide Gross Drainage Fee by the total number of individual condominium lots (exclusive of any common area lots) to obtain the Prorated Individual Lot Drainage Fee. [$PILDF = GA * ADP \text{ Fee} / \text{No. of Individual Lots}$];
No fee shall be separately collected for the lots designated for common use. Instead, the Aggregate Drainage Fee For Common Use Areas (ADFCUA) shall be calculated by multiplying the gross acreage of the common use areas times the per acre ADP Fee [$ADFCUA = GACUA * ADP \text{ Fee}$]. The ADFCUA is then divided equally amongst the individual condominium lots. Thus, the per lot drainage fee equals the Prorated Individual Lot Drainage Fee plus the apportioned ADFCUA [$PLDF = PILD + ADFCUA / \text{No. of Individual Lots}$].

F. Subsequent Land Divisions

- (1) When a large lot is subsequently subdivided into smaller lots and drainage fees have been previously paid for the large lot subdivision, the amount of the drainage fee previously paid shall be credited against the new ADP Fee Obligation. No allowance for interest earned will be granted. The full amount of the previously paid drainage fee shall be pro-rated and credited against the per lot ADP Fee Obligation of each lot within the subsequent subdivision.
- (2) Any parcel of land for which a small lot subdivision, commercial parcel map or condominium drainage fee has previously been paid shall be exempt from any subsequent ADP Fee Obligation.

G. Mitigation Drainage Fees for Discretionary Land Uses

Certain discretionary land use permits (e.g., Plot Plan, Conditional Use Permit, etc.) issued within an ADP may require construction of ADP facilities by the Developer to mitigate project impacts such as an increase in the rate or volume of runoff. Moreover, if the project is deemed to be benefited by virtue of having ADP facilities already in place or planned

within the watershed, payment of a mitigation drainage fee may be imposed by the District and is considered an appropriate mitigation measure. The drainage fee amount shall be recommended by the General Manager-Chief Engineer in his report to the decision-making body using the fee structures set forth herein for land divisions as a guide. Upon its collection, the mitigation drainage fee shall be placed into the ADP fund for use in the future construction of ADP facilities.

H. Subdivisions Overlapping an ADP Boundary

Where a proposed subdivision is located partially within and partially outside of an adopted ADP, the ADP Fee Obligation shall be computed for only those portions that are located within the ADP. Where a proposed lot lies within more than one ADP, the ADP Fee Obligation shall be computed on a pro rata basis. If the total acreage of such a lot exceeds one (1) acre, then the ADP Fee Obligation shall be computed on the basis of an individual "large lot" and prorated over the entire lot.

I. Disputes Concerning Location of an ADP Boundary

Should a dispute arise concerning the precise location of an ADP boundary, the District's General Manager-Chief Engineer shall make the final determination. In determining the precise location of the effective ADP boundary, the General Manager-Chief Engineer shall consider the location of any natural drainage boundary as it existed on the date of adoption of the ADP, or the location of such other boundary as may have been intended by the Board of Supervisors when adopting the ADP.

J. Drainage Fees for Schedule J Maps

Schedule J Financing Maps as defined in Ordinance No. 460 do not allow grading or building permits, therefore, the ADP Fee Obligation will not apply until subsequent development is proposed.

K. ADP Drainage Fee Exemption

Public agency owners (e.g., County Depts., Incorporated Cities, Schools, Water Districts, Parks Districts, U.S. Forest, etc.) are exempt from the payment of ADP drainage fees.

L. Minimum ADP Obligation

When the calculated ADP Fee Obligation is less than \$100.00, the Developer is exempt from paying the obligation.

VI. PAYMENT OF ADP FEE OBLIGATION

A. Time of Payment

In accordance with the provisions of Riverside County Ordinance No. 460, a Developer's ADP Fee Obligation shall:

"... be paid at the time of the issuance of grading permits for the approved parcels or at the time of issuance of building permits if no grading permits are issued for the parcels and may be paid, at the option of the land owner, in pro rata amounts. The amount of the drainage fee required to be paid shall be the amount that is in effect for the particular Area Drainage Plan at the time of issuance of the grading permits or prior to issuance of the building permits if grading permits are not issued."

B. Forms of Payment

Acceptable forms of payment include Cashier's Check, Money Order, Wire Transfer, Credit Card accepted by the District (service fee), Debit Card (service fee) or Electronic Check (\$100,000 maximum). Personal or corporate checks will not be accepted for payment.

Additionally, a Developer's ADP Fee Obligation may be satisfied by utilizing ADP Fee Credit (Appendix A) or an executed ADP Fee Credit Assignment Agreement [see Section VIII.B].

C. Location of Payment

Developer's ADP Fee Obligation shall be paid to Riverside County Flood Control and Water Conservation District or to the local land-use authority in accordance with local ordinance.

D. Payment of ADP Fee Obligation in Advance of Facility Construction: Deposits into a Special Subdivision Account

In some instances, a Developer may wish to commence grading or building in advance of being granted ADP Fee Credit associated with its pending construction of an ADP Facility that is otherwise required by the Conditions of Approval for its proposed subdivision or discretionary land-use case (e.g., conditional use permit, plot plan). In such cases, the Developer shall pay the full amount of its ADP Fee Obligation in advance of constructing the required ADP facilities and the funds deposited will be placed into a Special Subdivision Account and held by the District for a period not to exceed one (1) calendar year unless a time extension is granted by the General Manager-Chief Engineer.

The deposit, less the amount of any remaining ADP Fee Obligation, will be refunded to the Developer provided each of the following items are accomplished within one (1) calendar year from the time the ADP Fees are deposited into the Special Subdivision Account:

- (1) A Cooperative Agreement is executed between the District and the Developer or Subdivider that, at a minimum, sets terms for improvement plan approval, transfer of all necessary rights of way, construction inspections, and acceptance by the

District of the required ADP Facility(ies) for ownership, operation and maintenance;

- (2) The improvement plans for the ADP Facility(ies) are signed by the General Manager-Chief Engineer; and
- (3) The requisite performance and material and labor bonds guaranteeing the construction of the ADP Facility(ies) are furnished by the Developer or Subdivider and accepted by the County of Riverside in accordance with Ordinance No. 460.

After two (2) calendar years, any deposit held in a Special Subdivision Account will be transferred to the appropriate ADP fund. Once the deposit is transferred into the ADP Fund it cannot be refunded. The interest earned by any funds held in a Special Subdivision Account shall accrue to the District.

E. Notice to Owners

All land divisions located within an adopted ADP shall place a Notice of Drainage Fees on the Environmental Constraint Sheet and Final Map when the project is conditioned to pay the Area Drainage Plan Fees following tentative map approval by the Board of Supervisors or local land-use authority and prior to the issuance of grading or building permit, whichever occurs first. The exact wording of the Notice of Drainage Fees for projects within unincorporated Riverside County shall be as follows:

NOTICE OF DRAINAGE FEES

Notice is hereby given that this property is located in the _____ Area Drainage Plan which was adopted by the Board of Supervisors of the County of Riverside pursuant to Section 10.25 of Ordinance No. 460 and Section 66483, et seq, of the Government Code and that said property is subject to fees for said drainage area. Notice is further given that, pursuant to Section 10.25 of Ordinance No. 460, payment of the drainage fees shall

be paid to the Riverside County Flood Control and Water Conservation District at the time of issuance of the grading or building permit for said parcels, whichever occurs first, and that the owner of each parcel, at the time of issuance of either the grading or building permit, shall pay the fee required at the rate in effect at the time of issuance of the permit.

The wording of the Notice of Drainage Fees for projects within incorporated Cities or other local land-use authority shall be as directed by the jurisdiction and will include language similar to the following:

NOTICE OF DRAINAGE FEES

Notice is hereby given that this property is located in the _____ Area Drainage Plan which was adopted by the City of ___ pursuant to Section ___ of Ordinance/Municipal Code ___ and Section 66483, et seq, of the Government Code and that said property is subject to fees for said drainage area. Notice is further given that, pursuant to Section 10.25 of Ordinance 460, payment of the drainage fees shall be paid to the Riverside County Flood Control and Water Conservation District or local agency at the time of issuance of the grading or building permit for said parcels, whichever occurs first, and that the owner of each parcel, at the time of issuance of either the grading or building permit, shall pay the fee required at the rate in effect at the time of issuance of the actual permit.

VII. EARNING ADP FEE CREDIT

When determining the amount of ADP Fee Credit that is to be granted, the cost of constructing appurtenant facilities to address localized drainage or the Developer's "convenience" shall be excluded. Likewise, the cost of constructing non-ADP components, including but not limited to interim collection dikes, interim outlet structures, upsized facilities for interim hydrologic conditions, bridges not shown in the published plan or other facilities and "betterments" that are

principally included to accommodate the specific type or timing of the proposed development, shall be excluded.

The District may grant ADP Fee Credit under any the following circumstances:

- A. Construction of an ADP Facility pursuant to a privately administered construction contract;
- B. Construction of an ADP Facility pursuant to a privately administered construction contract conforming to the requirements of a District administered public works contract;
- C. Construction of an ADP Facility pursuant to a District administered public works contract;
- D. Inclusion of property in an Assessment District (AD) or Communities Facilities District (CFD) formed to construct ADP Facilities;
- E. Dedication of rights of way necessary for the construction of an ADP Facility;
- F. Construction of an alternative ADP facility (e.g., detention basin) that achieves an overall net cost savings to the ADP; and
- G. Accepting ADP Fee Credit in lieu of a cash payment pursuant to a District initiated right of way acquisition.

Each of the above listed scenarios is discussed in greater detail below. The manner in which the ADP Fee Credit is earned or granted determines: (i) the effective date of the credit issuance; (ii) how the ADP Fee Credit may be subsequently assigned or otherwise allocated to satisfy an ADP Fee Obligation; and (iii) whether the ADP Fee Credit may be redeemed for cash.

A. Tracts and Specific Plans: Construction Credit Pursuant to a Privately Administered Construction Contract

ADP Fee Credit may be earned by constructing an ADP Facility pursuant to a privately administered (non-public works) construction contract provided that:

- (1) A Cooperative Agreement, setting forth all matters pertaining to the design, construction, inspection, transfer of right of way and acceptance of the subject facility by the District for ownership, operation and maintenance, has been executed between the District, County and Developer or Subdivider *prior to* recordation of the final map, the payment of the applicable ADP Fee Obligation and the Developer or Subdivider proceeding with construction of the ADP Facility; and
- (2) The Developer or Subdivider furnishes to the District faithful performance and materials and labor bonds for the ADP Facility, in such amount(s) as the District deems appropriate, prior to the recordation of the final tract map.

ADP Fee Credit earned pursuant to this Section VII.A is subject to the following conditions and limitations:

1. *ADP Fee Credit for construction of the subject facility will be granted subsequent to the execution of a Cooperative Agreement and credited to the Subdivision at the time the required bonds are approved by the County;*
2. *The amount of ADP Fee Credit granted for construction of the subject facility shall be determined by the General Manager-Chief Engineer using the estimated construction costs (including engineering, contract administration and contingencies) as published in the ADP (i.e., "Book Value"). The total ADP fee credit granted shall not exceed the Book Value;*
3. *ADP Fee Credit for onsite right of way (fee-interest only) will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer or Subdivider at the time of map recordation. ADP Fee Credit for any offsite right of way, including both fee-interest and easements, will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer or Subdivider at the time the right of way interests are conveyed to the District. The valuation of all rights of way shall be in accordance with Section X;*

4. *In the event the total ADP Fee Credit granted hereunder exceeds the Developer's or Subdivider's specific ADP Fee Obligation, if approved by the Board of Supervisors in the cooperative agreement, the remaining ADP Fee Credit may be transferred or used to offset ADP Fees on any other development in the Area Drainage Plan or ADP Subwatershed per Section VIII.*

B. Tracts and Specific Plans: Construction Credit Pursuant to a Privately Administered Public Works Contract

A Developer or Subdivider may earn ADP fee credits by constructing an ADP Facility pursuant to a privately administered construction contract conforming to the requirements of a District administered public works contract provided that:

- (1) A Cooperative Agreement, setting forth all matters pertaining to the design, construction, inspection, transfer of right of way and acceptance of the subject facility by the District for ownership, operation and maintenance, shall be executed between the District, County and Developer/Subdivider *prior to* recordation of the final map, the payment of applicable ADP fees and the Developer/Subdivider proceeding with construction of the ADP Facility;
- (2) The project plans, specifications and construction contract documents, including bond forms and amounts, must be approved by the District prior to advertising for bids;
- (3) District approved bidding procedures, including public notice and public bid opening, are followed;
- (4) District reviews and approves all contract change orders.
- (5) District or Developer provides Construction Management; verification of quantities.

ADP Fee Credit earned pursuant to this Section VII.B is subject to the following conditions and limitations:

1. *Initial ADP Fee Credit for construction of the subject facility will be credited to the Developer subsequent to the execution of a Cooperative Agreement and upon award of the construction contract;*
2. *The final amount of ADP Fee Credit granted for construction of the subject facility shall be equal to the Actual Construction Cost including engineering, construction survey, utility relocations, bid and contract administration and inspection costs;*
3. *ADP Fee Credit for onsite right of way (fee-interest only) will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer/Subdivider at the time of map recordation. ADP Fee Credit for any offsite right of way, including both fee-interest and easements, will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer/Subdivider at the time the right of way interests are conveyed to the District. The valuation of all rights of shall be in accordance with Section X;*
4. *In the event the total ADP Fee Credit granted hereunder exceeds the Developer's specific ADP Fee Obligation, the remaining ADP Fee Credit may be transferred or used to offset ADP Fees on any other development in the Area Drainage Plan or ADP Subwatershed per Section VIII.*

C. Tracts and Specific Plans: Construction Credit Pursuant to a District Administered Public Works Contract

A Developer or Subdivider may earn ADP fee credits through construction of an ADP Facility pursuant to a District administered public works construction contract provided that:

- (1) A Cooperative Agreement, setting forth the terms and conditions of plan approval, inspection, maintenance, right of way transfer, posting and release of bonds and all other related matters, shall be executed between the District and Developer

prior to recordation of the final map, the payment of applicable ADP fees and the District proceeding with construction of the drainage facility; and

- (2) Prior to advertising for construction bids, the Developer/Subdivider provides District with an advance deposit of cash, or an approved letter of credit from an acceptable financial institution, in the amount of 120% of the estimated cost of construction including the District's estimated costs for survey staking, construction inspection and contract administration.

The agreement will also include provisions for returning any excess deposit (or the release of the financial responsibility established in the letter of credit) for any funds remaining after notice of completion.

ADP Fee Credit earned pursuant to this Section VII.C is subject to the following conditions and limitations:

1. *Initial ADP Fee Credit for construction of the subject facility will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer/Subdivider upon District award of a construction contract for the ADP Facility;*
2. *The Final amount of ADP Fee Credit granted for construction of the subject facility shall be equal to the District's Actual Construction Cost including engineering, construction survey, bid and contract administration and construction inspection costs;*
3. *ADP Fee Credit for onsite right of way (fee-interest only) will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer/Subdivider at the time of map recordation. ADP Fee Credit for any offsite right of way, including both fee-interest and easements, will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer/Subdivider at the time the right of way interests are conveyed to the District. The valuation of all rights of shall be in accordance with Section IX;*

4. *In the event the total ADP Fee Credit granted hereunder exceeds the Developer's or Subdivider's specific ADP Fee Obligation, the remaining ADP Fee Credit may be transferred or used to offset ADP Fees on any other development in the Area Drainage Plan or ADP Subwatershed per Section VIII.*

D. Credit for Property Located Within an Assessment District (AD) or Community Facilities District (CFD)

AD and CFD Property shall include all property which is: i) included within an Assessment District or Community Facilities District and ii) obligated to pay off bonded indebtedness that was incurred in order to finance the construction of an ADP Facility. The terms for the grant, assignment and use of ADP credit shall be covered by the associated Joint Community Facilities Agreement, Infrastructure Funding and Acquisition Agreement or other appropriate legal instrument. The District must be signatory to the agreement for ADP fee credit to be granted, assigned and used to satisfy a property's ADP fee obligation. The terms and procedures for granting, assigning or using ADP fee credit shall use the Rules and Regulations as a guide.

ADP Fee Credit earned pursuant to this Section VII.D is subject to the following conditions and limitations:

1. *Prior to the granting of any ADP Fee Credit pursuant to this Section, the Assessment District or CFD Administrator shall provide the Flood Control District with written confirmation of the amount of bonded indebtedness incurred by the subject property for the construction of ADP Facilities.*

E. Credit for Right of Way Transfers

A Developer/Subdivider may earn ADP Fee credit by conveying the necessary fee-interest or off-site easements necessary for the construction and maintenance of an ADP Facility to

the District through Board of Supervisors action, either executing a Cooperative Agreement or Separate Resolution setting forth the amount of ADP Fee credit to be granted.

ADP Fee Credit earned pursuant to this Section VII.E is subject to the following conditions and limitations:

1. *The valuation of the right of way shall be in accordance with Section X;*
2. *ADP Fee Credit for the transfer of right of way will be credited pursuant to the recordation of the Irrevocable Offer of Dedication;*
3. *In the event the total ADP right of way Fee Credit exceeds the Developer's or Subdivider's specific ADP Fee Obligation, the remaining ADP Fee Credit may be assigned (transferred) or used to offset ADP Fees on any other development in the Area Drainage Plan or ADP Subwatershed per Section VIII.*

F. Credit for Construction of an Alternative Facility

A Developer or Subdivider may earn ADP Fee credit by constructing a District approved Alternative Facility that is: i) deemed to be functionally equivalent to the ADP; and ii) achieves an overall cost reduction to the ADP and iii) the plans have been reviewed and approved by the District. Facility costs are determined using the unit costs in the ADP report published on the District website. Typically, construction of Alternative Facilities will be accomplished in conjunction with a Plan Revision (see Section IV).

1. Change in Facility Size or Alignment

Where the ADP cost savings is achieved through a change in the facility size or alignment, the amount of ADP Fee Credit granted pursuant to a privately administered ("non-public works") construction contract shall not exceed the published construction cost, including administrative and engineering costs, for the ADP Facility(ies) adopted by the District.

2. Detention Basins

ADP Fee Credit may also be earned by constructing additional detention basins within the ADP to reduce the cost of downstream facilities. The amount of ADP Fee Credit granted shall be calculated based on the incremental difference between the adopted ADP unit construction costs for the adopted ADP facility and the proposed downsized facility. In order to earn ADP Fee Credit pursuant to this Section VII.F.2, the detention basin must be maintained by a public entity.

ADP Fee Credit earned pursuant to this Section VII.F is subject to the following conditions and limitations:

1. *ADP Fee Credit for construction of the subject facility will be granted subsequent to the execution of a Cooperative Agreement and credited to the Developer/ Subdivider at the time the necessary payment and performance bonds are approved;*
2. *Unless authorized by the Board of Supervisors in the cooperative agreement, the total ADP fee credit shall not exceed the Developer's or Subdivider's specific ADP fee obligation.*
3. *The total amount of ADP Fee Credit granted pursuant to this Section VII.F.2 shall not exceed the aggregate cost (construction plus right of way) of the original ADP Facility.*

G. ADP Fee Credit in Lieu of Cash Payment

Where the District proceeds with an acquisition of real property located within an ADP, the property owner may, at his or her sole discretion, elect to be compensated in cash or with an equivalent amount of ADP Fee Credit. In the event a property owner elects to receive ADP Fee Credit in lieu of a cash payment, the District shall prepare an ADP Fee Credit

Statement designating the amount of ADP Fee Credit earned and the parcel(s) of land located within the ADP or ADP Subwatershed, if applicable, for which the ADP Fee Credit may be used to satisfy a future ADP Fee Obligation. The ADP Credit Statement shall be included in the Purchase and Sale Agreement and shall be recorded by the District in the Office of the County Recorder.

VIII. ADP ADMINISTRATION: ACCOUNTING, ASSIGNMENTS & DISBURSEMENT

A. ADP Fee Credit Accounting

For each ADP or ADP Subwatershed, the District shall keep an accurate accounting of all grants, assignments, transfers, allocations and use of ADP Fee Credit. Any person or entity that has been granted, assigned, transferred, received an assignment or allocated ADP Fee Credit shall be provided with an ADP Fee Credit Statement. No adjustment to this fee credit amount will be made due to changes in ADP unit fee or facility cost. In addition, the District will make available to the public via its website rcflood.org a list of all persons who have been granted or assigned ADP Fee Credit, the amount of the ADP Fee Credit and the ADP or ADP Subwatershed in which it was earned, applicable uses and limitations.

B. ADP Fee Credit Assignment Agreement

In order to assign ADP Fee Credit from one entity to another, an "ADP Fee Credit Assignment Agreement" (Assignment Agreement) shall be executed between the original entity which holds ADP Fee Credit (Assignor) and the entity and associated land use case that is to receive ADP Fee Credit (Assignee). The form of the Assignment Agreement is attached hereto as Appendix "B". Equivalent documentation providing evidence of the transfer signed by both parties may be submitted in lieu of the Assignment Agreement form. Once ADP Fee Credit has been granted by the District, it may be assigned in any amount(s) to any number of entities until the ADP Fee Credit balance is exhausted;

however, no assignment of ADP Fee Credit shall be deemed effective until the District's Chief of Planning has countersigned a fully executed copy of the Assignment Agreement.

C. Assignment Prohibitions

The assignment of ADP Fee Credit from one ADP to another ADP, or from one ADP subwatershed to another ADP subwatershed, is prohibited. Once an assignment has occurred, no further assignment will be accepted. The assigned ADP Fee Credit will remain with the land until such time as the credit is applied to the property's ADP Fee Obligation or a refund has been timely requested.

D. Disbursement of Unused ADP Fee Fund Balance

Once all ADP facilities within an ADP have either been constructed, funded in the 5-year Capital Improvement Plan or bonded for, the District may then commence disbursement of uncommitted monies in the ADP fund to eligible fee credit owners. ADP Fee Credit earned according to Section VII.B, VII.C, VII.E, and VII.G is eligible for disbursement on a first established, first returned basis. ADP Fee Credit earned by Specific Plan of development according to VII.A shall be considered by the Board of Supervisors for disbursement only on a case by case basis, using the disbursement rules for tracts as a general guide, and making its decision after receiving input at a public hearing scheduled for this matter. Any disbursement of ADP Fee Credit shall be subject to the recommendation of the General Manager-Chief Engineer and approval by the County Board of Supervisors or the local land-use authority's governing board. ADP fees will continue to be collected for a maximum of 5 years unless all eligible ADP fee credit holders have been reimbursed and then the District will terminate the ADP fee and remove from Ordinance No. 460 Section 10.25 and/or Ordinance of the local governing jurisdiction regulating the division of land and any associated adopted area drainage fees. Disbursements are subject to the Subdivision Map Act (Gov't Code Section 66483, 66483.1 and 66483.2). Such disbursements are also subject to the following disbursement guidelines:

- (1) Date of Establishing a Credit Balance - The date of establishing a credit balance for a Public Works Contract shall be the date of the NOTICE OF COMPLETION of the ADP Facility. The date of establishing a credit balance for right of way transfers shall be the date of recordation of the Irrevocable Offer of Dedication.
- (2) Other Disbursement Conditions - Additional disbursement conditions may be established pursuant to a Cooperative Agreement approved by the Board of Supervisors.
- (3) At the termination of the ADP fee in Ordinance of the local governing jurisdiction regulating the division of land and any associated adopted area drainage fees, interest earned on the ADP fund will be assigned to the appropriate District Zone Fund in which the ADP fund was located, or to an appropriate fund as determined by the District and the local governing jurisdiction.
- (4) At the termination of the ADP fee in Ordinance of the local governing jurisdiction regulating the division of land and any associated adopted area drainage fees, unclaimed disbursements remaining in the ADP fund will be assigned to the appropriate District Zone Fund in which the ADP fund was located pursuant to the Subdivision Map Act (Gov't Code 66483.1.a or 66483.1.b).

E. Expiration of ADP Fee Credit

The right to a credit, used to pay or reduce fees for units of a Tract or Specific Plan, expires fifteen years after the date the agreement was entered into, and any subsequent money paid into the fund shall accrue to the fund without obligation to developers whose agreements have expired.

F. ADP Fund Accounting

Monies in an Area Drainage Plan fund or special subdivision account may be invested by the District in approved interest drawing accounts. The revenue from such investments

shall accrue to the Area Drainage Plan fund or special subdivision fund and does not accrue to any Developer's account. Pursuant to Section 66006N(b) of the Government Code, the District, on behalf of the County, prepares an annual report of fees collected for development project within 180 days after the last day of each fiscal year. The annual report provides to the public the following financial information on each of the County's currently adopted Area Drainage Plans: the beginning and ending balances, fees collected, interest earned, transfers to zones, refunds and expenditures.

IX. RIGHT OF WAY – GENERAL PROVISIONS (SUBDIVISIONS)

The conveyance of all rights of way associated with the construction of ADP Facilities shall be in accordance with the provisions of this Section. All rights of way conveyed to the District shall be free and clear of any conflicting encumbrances and encroachments and shall be underwritten by a policy of title insurance in such an amount as the District deems appropriate. The boundaries of all parcels conveyed to the District shall be adequately monumented by the Developer's land surveyor to the satisfaction of the District.

A. Construction of an ADP Facility is Required

Where the Conditions of Approval for a proposed subdivision require the construction of an ADP Facility, the terms and conditions for the conveyance of all necessary rights of way will be established pursuant to a Cooperative Agreement. Rights of way for ADP facilities located within the boundaries of the subdivision shall be offered for dedication to the County at the time of recordation of the final map. The District may accept the facility for ownership, and operation and maintenance of the facility, following the completion of construction of the ADP Facility, acceptance of the offer of dedication by the County and conveyance of the right of way to the District.

Rights of way for ADP Facilities located outside the boundaries of the proposed subdivision shall: (1) have Offers of Dedication to the County on behalf of the District per

separate instrument, prior to recordation of the Final Map, which shall be free and clear of conflicting encumbrances and encroachments and; (2) have offers accepted by the County and conveyed to the District after construction of the ADP Facility is complete, and (3) have appropriate conveyance documents recorded and be guaranteed by a policy of title insurance to the District prior to acceptance for ownership, operation and maintenance. The boundary for all right of way shall be monumented by the Developer's land surveyor to the satisfaction of the District.

B. Dedication Only (No Construction Required)

Where the Conditions of Approval for a proposed subdivision require dedication of right of way for an ADP Facility (but not the actual construction of the facility), 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 subsequently convey said rights of way to the District.

C. Developer Responsibility for Acquiring Offsite Rights of Way

When an approved tentative subdivision map requires construction of offsite improvements, the Developer or Subdivider shall acquire all necessary offsite rights of way through negotiation with the affected property owners. Otherwise, the tentative map shall be redesigned to eliminate the need for the offsite right of way.

X. RIGHT OF WAY - VALUATION

A. Valuation of Easements

- (1) Onsite Easements for Underground Storm Drains - No value shall be granted for underground storm drain easements located within a proposed subdivision.

- (2) Onsite Flowage or Flooding Easements - shall be valued at 50% of the underlying fee value of the property as determined by the District using the assessed value of the property as shown on the latest equalized assessment roll.
- (3) Offsite Easements - value shall be determined by District through a formal appraisal.

B. Valuation of Fee Simple Rights of Way for Required ADP Facilities Constructed Onsite and Located Substantially within a Stream, Watercourse or Floodplain; or Constructed to Salvage Developer's Flood Prone Property

A distinction will be made between (i) "flood plain", i.e., the portion of the property that is deemed subject to flooding and (ii) "bench lands", i.e., the portion of the property that is not subject to flooding. The District's General Manager-Chief Engineer shall determine the area that is subject to flooding on the basis of topographic maps, Ordinance No. 458 floodplains, photographs, calculations, field observations or by such other means as may be readily available.

The resulting right of way valuation is not intended to reflect the property's "highest and best use" or "current market value", but rather it is intended to provide a predictable, equitable and expedited means of determining right of way values.

- (1) Onsite Fee Simple Flood Prone Lands shall be valued at 25% of the underlying fee value as determined by the District using the assessed value of the bench land property as shown on the latest equalized assessment roll. Severance damages and special benefits will be excluded from consideration.
- (2) Onsite Fee Simple Bench Lands value shall be determined by the District using the assessed value of the property as shown on the latest equalized assessment roll. Severance damages and special benefits will be excluded from consideration.

Thus, the resulting formula to calculate the combined value of Fee Simple Rights of Way is as follows:

$$\text{Value of Fee Simple Rights of Way} = P * [(0.25 * A1) + A2]$$

Where **A1** represents the acreage of the land subject to flooding; **A2** represents the bench lands; and **P** represents assessed value per acre on the latest equalized assessment roll.

C. Valuation of Fee Simple Rights of Way for Off-Stream Facilities

Right of way for ADP Facilities (e.g., detention basins, collection dikes) that are located "off-stream" (i.e., outside of a designated flood hazard area but which are nonetheless required to achieve overall economy within the ADP) will be valued on the basis of a formal appraisal of the property's highest and best use. The appraisal shall be conducted by a qualified appraiser selected and paid for by the District. The appraisal Valuation Date must be established within the 12 month period prior to execution of the Cooperative Agreement with the condition of property being defined as the raw land condition without consideration of the intended recordation of the subject tract.

The recordation of any final subdivision map associated with an off-stream facility shall be deferred until the appraisal is completed and approved by the District's General Manager-Chief Engineer. Upon completion of the appraisal, the General Manager-Chief Engineer shall present the recommended valuation of the property to the District's Board of Supervisors for approval. The Board of Supervisors shall determine the 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 General Manager-Chief Engineer or the Developer.

XI. APPENDIX "A"

**Allocation of ADP Fee Credit Granted Form [SAMPLE]
(Development Case Type and No. _____)**

Pursuant to an Agreement dated _____, referencing Development Case No. _____ between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT" and _____, hereinafter called "GRANTEE", which is hereby incorporated herein by this reference and hereinafter called "AGREEMENT", the undersigned declares as follows:

1. GRANTEE currently owns \$ _____ of _____ ADP Fee Credit, hereinafter called "CREDIT", originally earned on _____ as evidenced by the attached CREDIT STATEMENT.

2. GRANTEE hereby allocates \$ _____ of said CREDIT to satisfy drainage fee obligations for the development case or any phase thereof referenced in the AGREEMENT.

3. The allocation of CREDIT provided by this ADP Fee Credit Allocation 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.

//

GRANTEE:

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

By _____

By _____

Title _____

CHIEF OF PLANNING DIVISION

XII. APPENDIX "B"

**ADP Fee Credit Assignment Agreement [SAMPLE]
(Development Case Type and No. _____)**

Pursuant to an Agreement dated _____, between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT" and _____, hereinafter called "ASSIGNOR", 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. ASSIGNOR currently owns \$ _____ of _____ ADP Fee Credit, hereinafter called "CREDIT", originally earned on _____ as evidenced by the attached CREDIT STATEMENT.

2. ASSIGNOR hereby transfers, assigns, grants and conveys \$ _____ of said CREDIT and all of the rights, title, interest, benefits and privileges of said CREDIT to _____, hereinafter called "ASSIGNEE", to satisfy drainage fee obligations for Development Case Type and Number (i.e., Tract, Parcel Map, Plot Plan) _____ or any phase thereof.

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

4. The transfer or sale of CREDIT provided for under this ADP Fee Credit Assignment 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 ADP Fee Credit Assignment 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 CREDIT provided by this ADP Fee Credit Assignment 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.

//

ASSIGNOR:

ASSIGNEE:

By _____
Title _____

(NOTARY)

By _____
Title _____

(NOTARY)

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

By _____
CHIEF OF PLANNING DIVISION