

Ventana Specific Plan

DEVELOPMENT IMPACT FEE CREDIT AGREEMENT

between

THE CITY OF FONTANA
a California municipal corporation

and

HDO4, LLC
A New Mexico limited liability company

DEVELOPMENT IMPACT FEE CREDIT AGREEMENT

1. PARTIES AND DATE

This Development Impact Fee Credit Agreement (“Agreement”) is dated as of November __, 2024, for reference purposes only. This Agreement is between: (a) the City of Fontana, a California municipal corporation (“City”), and (b) HDO4, LLC, a New Mexico limited liability company (and its successors and assigns) (“Developer”). This Agreement will not become effective until the date (“Effective Date”) on which this Agreement has been approved and executed by the appropriate authorities of both the Developer and the City.

2. RECITALS

2.1 Developer (or its affiliate) owns certain real property (“Property”) located in the City of Fontana, San Bernardino County, State of California. The Property is depicted on the attached Exhibit “A”.

2.2 Developer has developed the Property, and in connection with that development, City required Developer to (a) pay City’s adopted master storm drain plan (“Master Storm Drain Plan”) impact fees (“Storm Drain Impact Fees”) in the sum of Two Hundred Eighty-Nine Thousand Forty-Two and 59/100 Dollars (\$289,042.59) (“Fair Share Obligation”), and (b) construct certain master planned storm drainage improvements (“Storm Drain Improvements”). A general description of the Storm Drain Improvements is attached as Exhibit “B.”

3. TERMS

3.1 Fee Credit. Developer’s cost to construct the Storm Drain Improvements was Five Million Four Hundred Sixty-Three Thousand One Hundred Fifty Dollars (\$5,463,150) (“Improvement Value”), thus exceeding the Fair Share Obligation by Five Million One Hundred Seventy-Four Thousand One Hundred Seven and 41/100 Dollars (\$5,174,107.41). To partially compensate Developer for the difference between the Improvement Value and the Fair Share Obligation, City has agreed to provide Developer with a storm drain development impact fee credit in the amount of Five Hundred Ninety-Nine Thousand Nine Hundred Dollars (\$599,900) (“Fee Credit”) that may be applied against future Storm Drain Fees imposed in connection with future development within the same Master Storm Drain Plan benefit area.

3.2 Improvement Agreement. Developer and City previously entered into an improvement agreement for the Property (“Improvement Agreement”), and Developer constructed the Storm Drain Improvements in accord with the Improvement Agreement. The rights and obligations of the parties with respect to the design, warranties, construction, and other physical attributes of the Storm Drain Improvements will be governed by the Improvement Agreement. Nothing in this Agreement modifies, extends, releases, or waives any term of condition or obligation arising under the Improvement Agreement.

3.3 Use of Fee Credit. The Fee Credit may be applied against future Storm Drain Development Impact fees payable in connection with future development within the same Master

Storm Drain Plan benefit area as the Property (“Eligible Development”) in such amounts, in such order, and at such times that Developer (or its assignee) elects in its (their) discretion. Developer may, in its discretion and without prior notice to the City, freely assign all or any portion of any unused amount of the Storm Drain Development Impact Fee Credit to related or unrelated entities. Assigned Fee Credits may be applied against Storm Drain Development Impact Fees payable in connection with an Eligible Development. If Developer elects to make an assignment, Developer will notify the City in writing (“Assignment Notice”) of the assignee’s name, together with the date and amount of the assigned Fee Credit. The City will not honor any claim for credit by any person or entity other than Developer unless the claim is accompanied by an Assignment Notice.

3.4 No Waiver of Claims to Additional Fee Credits or Reimbursement. Nothing herein is a waiver of any right or claim that Developer has currently or may have in the future for future credits or reimbursement for (a) the unreimbursed or uncredited difference between the Fair Share Obligation and the Improvement Value, or (b) the excess in value between the applicable fair share obligation and the value of other present or future public improvements constructed by Developer in connection with its other development projects in the City. Nothing herein is a commitment or representation by the City that Developer is entitled to future credits or reimbursement or that, even if Developer is so entitled, that the City will provide future credits or reimbursement in the full amount to which Developer may be entitled or in any amount at all.

3.5 Not a Statutory Development Agreement. This Agreement is not a statutory development agreement as described by Government Code section 65864, et seq. This Agreement confers no vested entitlements with respect to the development of the Property. This Agreement does not limit, in any way whatsoever, any authority the City may have to lawfully increase impact fees, change land use regulations, or otherwise lawfully exercise all powers available to the City pursuant to its police power, statutes, and judicial decision. Likewise, nothing in this Agreement shall limit, in any way, any right or remedy Developer may have to protest or challenge any impact fees or any other exercise of the City’s police powers. Except where subject to credit as provided in this Agreement, Developer shall pay all impact fees as they may be lawfully imposed by the City.

3.6 Cooperation. The parties agree to cooperate with each other in furthering the purposes of this Agreement. The parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement; provided, however, that the foregoing shall not require the City to take any legislative act or exercise its discretion in any particular manner.

3.7 Entire Agreement. This Agreement contains the final and complete agreement between the parties with respect to the matters herein discussed and supersedes all previous communications and agreements between them, either oral or written, to the extent such prior communications and agreements are inconsistent with this Agreement.

3.8 No Agency or Partnership. Each party acknowledges that it is not the agent, partner, co-venturer, or fiduciary of the other.

3.9 Attorneys’ Fees. In the event that any action or proceeding is commenced to regarding any term of this Agreement, the prevailing party in such action or proceeding, in addition

to all other relief to which it may be entitled, shall be entitled to recover from the other party the prevailing party's costs of suit and reasonable attorneys' fees. The prevailing party shall be as determined by the court in accordance with Code of Civil Procedure section 1032. The attorneys' costs and expert fees recoverable pursuant to this Section 3.9 include, without limitation, attorneys' costs and expert fees incurred on appeal and those incurred in enforcing any judgment rendered. Attorneys' costs and fees may be recovered as an element of costs in the underlying action or proceeding or in a separate recovery action.

3.10 Notices. All notices, demands or other communications (collectively, "Notices") required or allowed by this Agreement shall be in writing and shall be considered given: (a) when delivered in person to the recipient named below; or (b) three (3) business days after deposit in the United States mail, postage prepaid, addressed to the recipient named below. All Notices shall be addressed as follows:

If to the City: City Manager
 City of Fontana
 8353 Sierra Avenue
 Fontana, CA 92334-0518

With copies to: Best Best & Krieger LLP
 2855 E. Guasti Rd., Suite 400
 Ontario, CA 91767
 Attn: Ruben Duran

If to Developer: HDO4, LLC
 2151 E. Convention Center Way, Suite 222
 Ontario, CA 91764
 Attn: Richard Munkvold

With copies to: HDO4, LLC
 2151 E. Convention Center Way, Suite 114
 Ontario, CA 91764
 Attn: Steven B. Imhoof

Any party may, by notice given at any time, require subsequent Notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of Notice of change shall not be invalidated by the change.

3.11 Governing Law. Except where application of federal statutory or decisional law is required in connection with assertion of a federal constitutional right, this Agreement and its provisions shall in all respects be interpreted, construed, enforced, and governed by and under the procedural and substantive laws of the State of California, without regard to its conflict of laws principles.

3.12 Consent to Jurisdiction, Venue and Service. Any action or proceeding brought respecting this Agreement shall be instituted and maintained in the appropriate court in the County of San Bernardino, California. Developer hereby forgoes and waives any provision of State or

Federal law or judicial decision providing for a change of venue from such court on the grounds that the City is or may be a party to any such action or proceeding, including, without limitation, California Code of Civil Procedure section 394. Each party hereby irrevocably consents to the personal jurisdiction of the court. Service of process may be made in any manner provided by law.

3.13 Modification. This Agreement may be modified only by another written instrument duly authorized and executed by the parties. The foregoing notwithstanding, the City Manager is hereby authorized to make such minor amendments to this Agreement on behalf of the City as the City Manager may deem prudent and necessary in its administration, with the concurrence of the City Attorney.

3.14 Severability. The provisions of this Agreement are specifically made severable. If any clause, provision, rights and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy were not contained herein.

3.15 Rules of Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against, either the City or Developer. Section headings in this Agreement are for convenience only and are not to be considered as a part of this Agreement or in any way limiting or amplifying the provisions hereof. All provisions and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identification of the person or persons, firm or firms, corporation or corporations may require. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not directly in conflict with the express terms hereof to ascertain and give effect to the intent of the parties to this Agreement.

3.16 Execution/Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire agreement of the parties hereto.

3.17 Authorization. Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named parties.

[Signatures on next page]

SIGNATURES TO
DEVELOPMENT IMPACT FEE CREDIT AGREEMENT CONTINUED

CITY OF FONTANA,
a California municipal corporation

HDO4, LLC,
A New Mexico limited liability company

By: _____
Matthew Ballantyne
City Manager

By: _____
Richard Munkvold
Chief Financial Officer

Attest

By: _____
Germaine Key
City Clerk

Approved as to form:

By: _____
Best Best & Krieger LLP
City Attorney

By: _____
Phillip Burum, Deputy City Manager
Development Services Organization

By: _____
Gia Lam Kim
Public Works Director/City Engineer

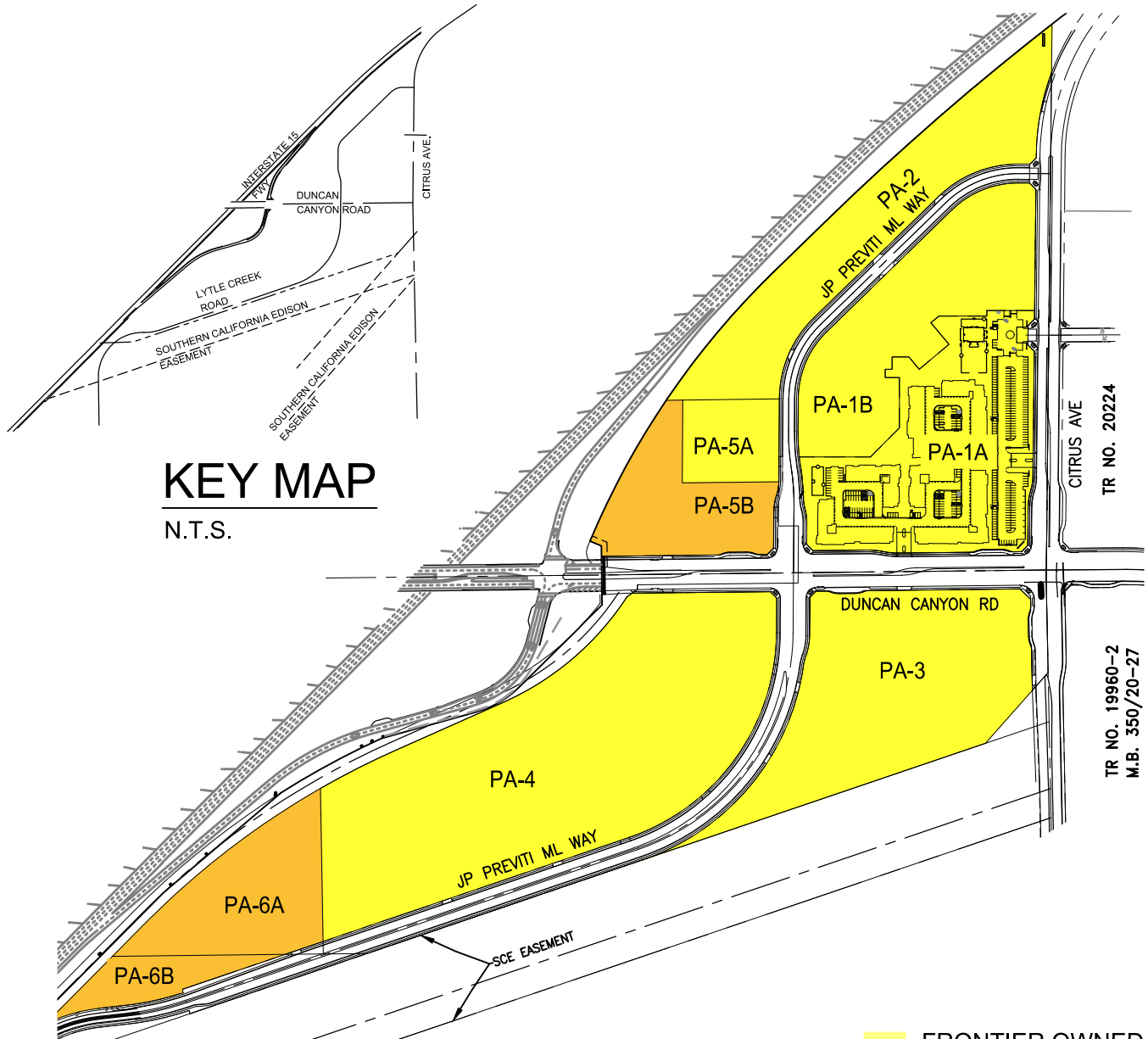
EXHIBIT "A"
TO
DEVELOPMENT IMPACT FEE CREDIT AGREEMENT

Depiction of Property

[Attached]

EXHIBIT "A"

EXHIBIT "A" CITY OF FONTANA VENTANA SPECIFIC PLAN



KEY MAP

N.T.S.

CITRUS AVE
TR NO. 20224

TR NO. 19960-2
M.B. 350/20-27

- FRONTIER OWNED
- NON-FRONTIER OWNED

Prepared By:

 2850 Inland Empire Blvd., Suite B
 Ontario, California 91764
 tel 909.581.0676 • fax 909.581.0696
 www.fuscoe.com

Prepared For:

 Your Hometown Builder



 NOT TO SCALE

EXHIBIT "B"
TO
DEVELOPMENT IMPACT FEE CREDIT AGREEMENT

Subject Improvements

[Attached]

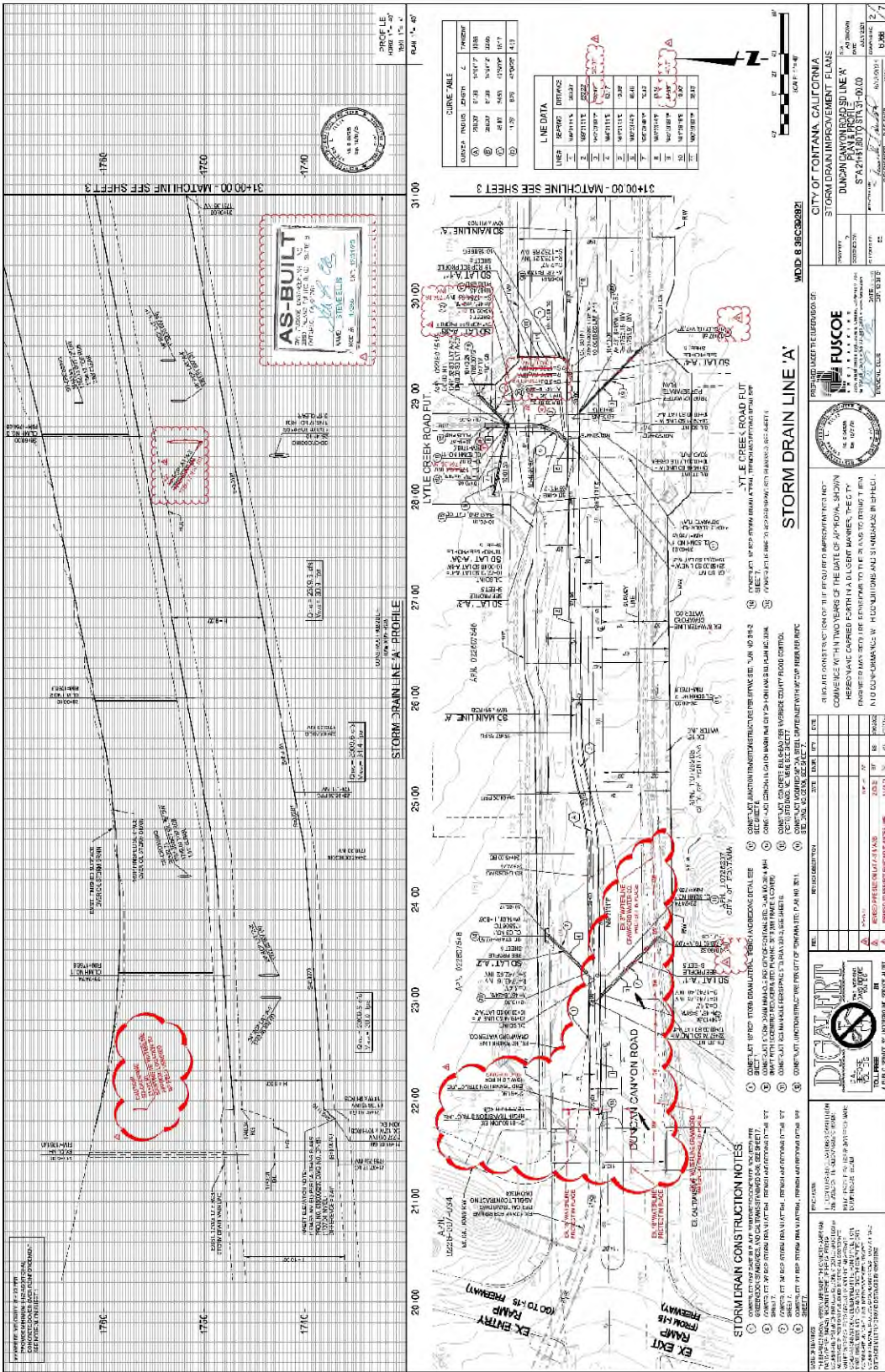
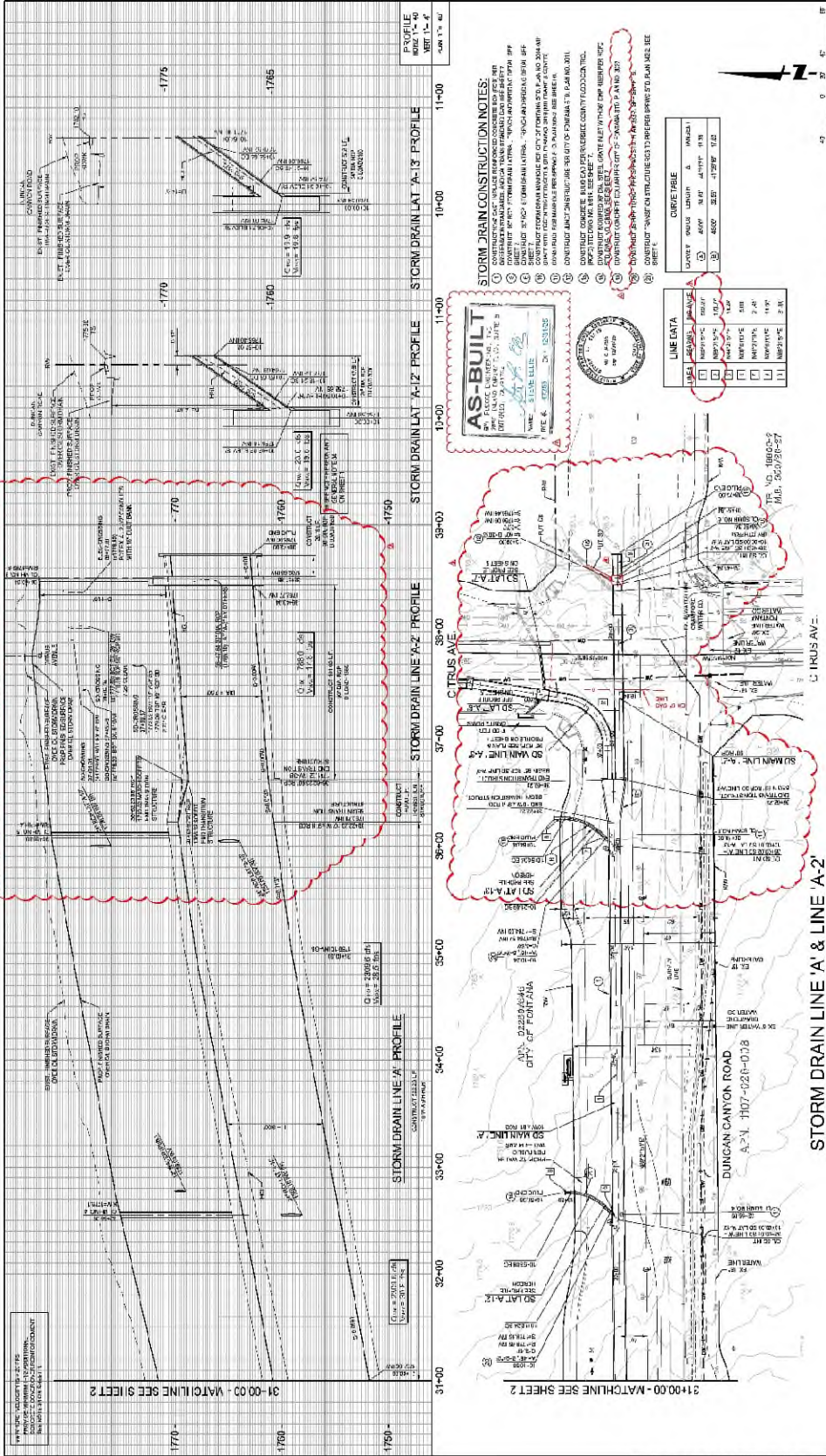


EXHIBIT "B" – PAGE 2



AS-BUILT
 BY: J. L. ...
 DATE: ...
 PROJECT: ...
 SHEET: ...

STORM DRAIN CONSTRUCTION NOTES:
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, LATEST EDITION.
 2. ALL MATERIALS SHALL BE OF THE BEST QUALITY AVAILABLE AND SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ENGINEER.
 3. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 4. ALL UTILITIES SHALL BE PROTECTED AND MARKED PRIOR TO CONSTRUCTION.
 5. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
 6. ALL NEIGHBORHOODS SHALL BE KEPT ADVISED OF CONSTRUCTION ACTIVITIES.
 7. ALL TRAFFIC CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
 8. ALL MATERIALS SHALL BE STORED PROPERLY TO PREVENT DAMAGE AND POLLUTION.
 9. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 10. ALL NEIGHBORHOODS SHALL BE KEPT ADVISED OF CONSTRUCTION ACTIVITIES.

LINE DATA	DEPTH	WIDTH
1	18"	36"
2	24"	48"
3	30"	60"
4	36"	72"
5	42"	84"
6	48"	96"
7	54"	108"
8	60"	120"
9	66"	132"
10	72"	144"
11	78"	156"
12	84"	168"
13	90"	180"

CONCRETE	DEPTH	WIDTH
1	18"	36"
2	24"	48"
3	30"	60"
4	36"	72"
5	42"	84"
6	48"	96"
7	54"	108"
8	60"	120"
9	66"	132"
10	72"	144"
11	78"	156"
12	84"	168"
13	90"	180"

STORM DRAIN LINE 'A' & LINE 'A-2'

DATE: 11/15/2011
 TIME: 10:00 AM
 PROJECT: STORM DRAIN IMPROVEMENT PLANS
 SHEET: 3 OF 3

PROPOSED LICENSE INFORMATION
 LICENSE NO. 10000
 EXPIRES: 12/31/2011

DESIGNER
 J. L. ...
 DATE: ...

APPROVED
 [Signature]
 DATE: ...

REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	11/15/2011
2	FOR CONSTRUCTION	11/15/2011

PROJECT INFORMATION
 CITY OF FONTANA, CALIFORNIA
 STORM DRAIN IMPROVEMENT PLANS
 DUNCAN CANYON ROAD LINE 'A' LINE
 1/2" LA 8 1/2" X 3 1/2" P 3/4" X 3/4" SCALE
 STA 31+00 TO STA 31+00

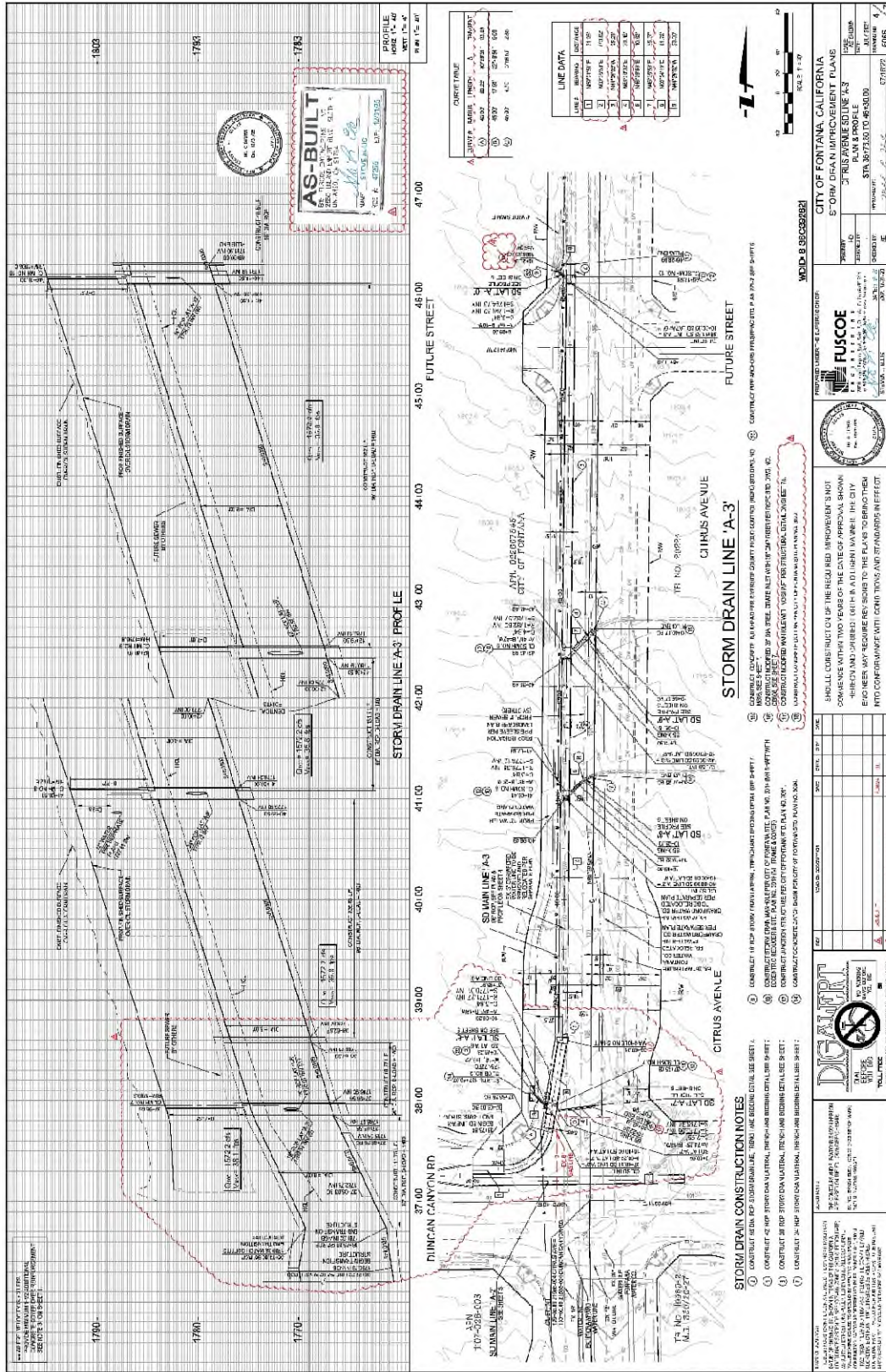


EXHIBIT "B" – PAGE 4

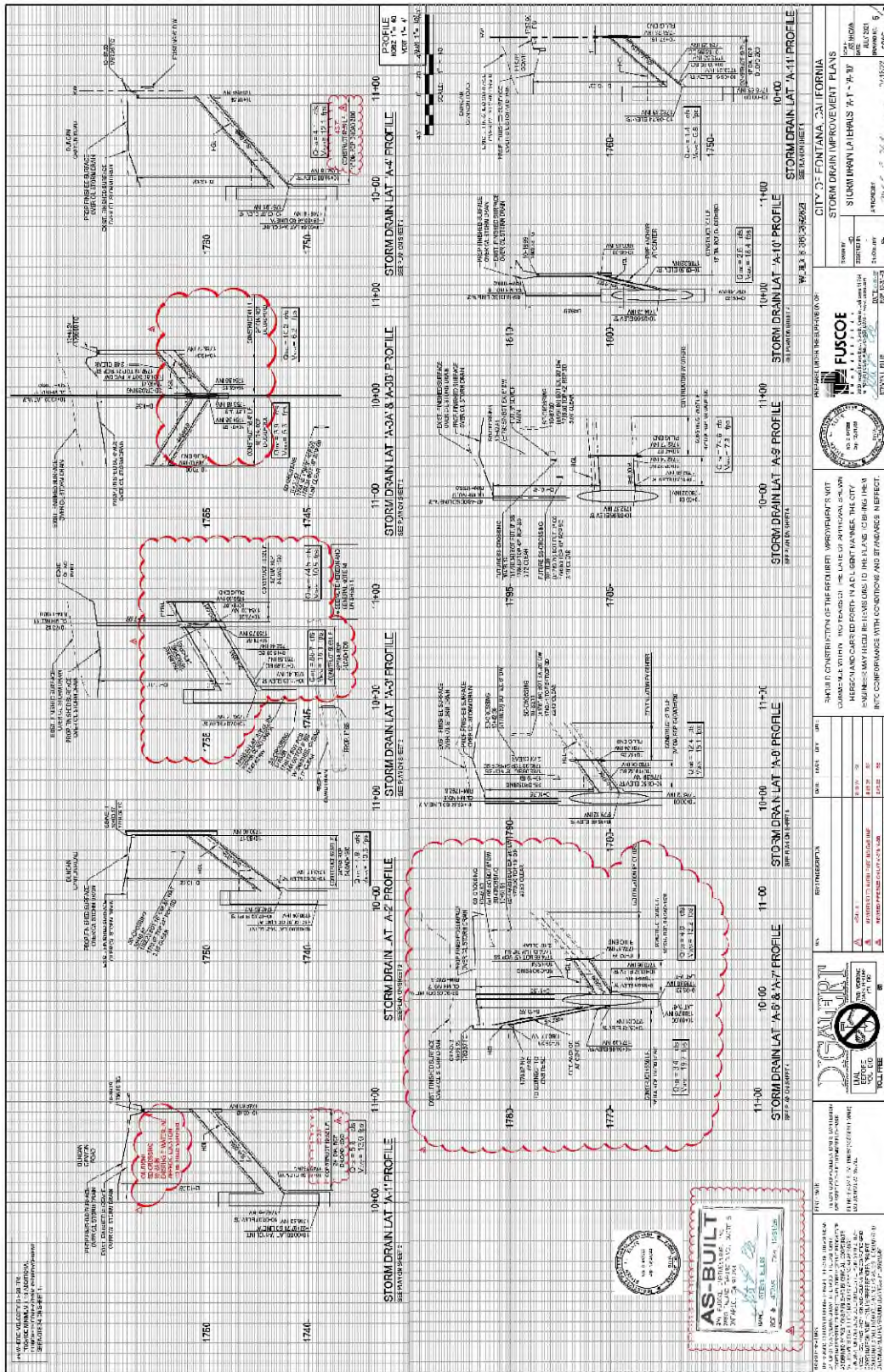


EXHIBIT "B" – PAGE 5

