

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

21.610

SAP Number

San Bernardino County Flood Control District

Department Contract Representative
Telephone Number

David L. Drake, P.E., Chief
(909) 387-7963

Contractor

EPC Holding 823, LLC, EPC
Holding 944, LLC, Roseville
Investments, LLC, American
Superior Land, LLC, and RMD
Inland Investors, LLC.

Contractor Representative
Telephone Number

John Troutman, Vice President
(949) 383-4131

Contract Term

Original Contract Amount

Amendment Amount

Total Contract Amount

Cost Center

Briefly describe the general nature of the contract:

Memorandum of Understanding with EPC Holdings 823 LLC, EPC Holdings 944 LLC, Roseville Investments, LLC, American Superior Land, LLC, and RMC Inland Investors, LLC, for the Realignment and Improvement of Hawker Crawford Channel in the City of Fontana

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE ATTACHED

Sophie A. Akins, Deputy County Counsel

Date

Reviewed for Contract Compliance

David Doublet, Assistant Director

Date

Reviewed/Approved by Department

Brendon Biggs, Chief Flood Control Engineer

Date

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FOR COUNTY USE ONLY

Approved as to Legal Form

Sophie Akins

Sophie A. Akins, Deputy County Counsel

Date July 26, 2021

Reviewed for Contract Compliance

David Doublet
David Doublet, Assistant Director

Date

Reviewed/Approved by Department

Brendon Biggs
Brendon Biggs, Chief Flood Control Engineer

Date

**MEMORANDUM OF UNDERSTANDING
FOR RELOCATION OF HAWKER CRAWFORD CHANNEL IMPROVEMENTS**

This Memorandum of Understanding (“Agreement”) is entered into as of _____ 2021 (“Effective Date”), by and between the San Bernardino County Flood Control District (“District”), on the one hand, and EPC HOLDINGS 823 LLC, a Washington limited liability company, EPC HOLDINGS 944 LLC, a Washington limited liability company, ROSEVILLE INVESTMENTS, LLC, a Florida limited liability company, AMERICAN SUPERIOR LAND, LLC, a Delaware limited liability company, and RMD INLAND INVESTORS, LLC, a Delaware limited liability company (collectively “Land Owner”), on the other hand. District and Land Owner are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

A. District is the owner of certain real property that makes up Hawker Crawford Channel starting from Duncan Canyon Road and running through certain real property known as Monarch Hills and more particularly shown on Exhibit “A” (“Existing Hawker Crawford Channel”).

B. Land Owner is the owner/developer of various parcels of land located within the City of Fontana (“City”) that make up the project commonly known as Monarch Hills (the “Project”) for which Land Owner processed various entitlements through the City under Master Case Number 16-012, including General Plan Amendment No 16-001, Zone Change No. 16-001, Conditional Use Permit No. 18-011 for a Planned Unit Development, Tentative Tract Map (“TTM”) No. 16-003 (TM 20010), Design Review (DR) No.16-007 for site and architectural review of 233 proposed lots in both Residential Planned Community (R-PC) and proposed Medium Density (R-2) zones, TTM No. 16-025 (TM 20069) and DRP No. 16-025 for 129 detached condos, TTM No. 16-026 (TM 20070) and DRP No. 16-026 for 127 attached condos, and Development Agreement No. 16-001, which were approved by the City Council on February 16, 2019.

C. District and Land Owner intend that portions of Hawker Crawford Channel be relocated from their current location to the location shown on Exhibit “B” (“Proposed Hawker Crawford Channel”) and as submitted for review to the District under File 1-806/2.04 and Permit No. P-12019118.

D. Upon acceptance by the District of certain improvements to the realigned Hawker Crawford Channel flood control facilities, to be constructed by Land Owner, within the alignment shown on Exhibit “B”, District and Land Owner intend to exchange fee ownership to those parcels provided for herein to conform to the new Proposed Hawker Crawford Channel alignment.

E. The Parties acknowledge that their current respective unimproved properties set forth on Exhibits "A" and "C" are of equal value per square foot but that there will be a shortfall in total appraised value of the land transferred from Land Owner to District caused by the fact that the Existing Hawker Crawford Channel is larger in area than the Proposed Hawker Crawford Channel, and that said shortfall will be compensated for by the flood control improvements that Land Owner will make to the Proposed Hawker Crawford Channel (the "Hawker Crawford Channel Improvements").

F. The Hawker Crawford Channel Improvements will be funded through Community Facilities District ("CFD") formed by the City pursuant to a Joint Community Facilities Agreement ("JCFA") entered into by the City, the District, and Land Owner as set forth in Section 5 herein.

G. The Parties also acknowledge that the value of the Hawker Crawford Channel Improvements that Land Owner will construct greatly exceeds the shortfall in the appraised value of the property discussed in Recital E, above.

H. The purpose of this Agreement is to memorialize the transfer of land between the Parties and Land Owner's construction of the Hawker Crawford Channel Improvements, in consideration thereof.

AGREEMENT

NOW, THEREFORE, based on the forgoing Recitals, which are incorporated by reference as if full set forth herein, the Parties hereto agree as follows:

1. Existing District Property Interests. District is the owner of the real property interests in Existing Hawker Crawford Channel as shown in Exhibit "A" ("District Property").

2. Existing Land Owner Interests. Land Owner is the owner of certain real property located in the City commonly known as Monarch Hills, with tax assessor's parcel numbers 226-075-10,13,15,16,17,18, 226-075-36,40,41, and 226-075- 26,27,28,29,39, including the land where Lytle Creek Road will be relocated as shown on Exhibit "B".

3. Existing Hawker Crawford Channel Conveyance.

- a. District will convey to Land Owner the District Property identified in Section 1, above, upon execution of this Agreement. Following said conveyance, Land Owner will grant an irrevocable license, to District, of the right of continuous, unimpeded ingress and egress, over and across the Project for the purpose of accessing District's Existing Hawker Crawford Channel facilities adjacent to or in the vicinity of, the District Property, as depicted on Exhibit "D" (the "License"). The License shall be automatically revoked upon the delivery by Land Owner to District and acceptance by the District of the deed for the Hawker Crawford Channel Improvements property as contemplated in Section 4 below, and the recording thereof in the official records of the County of San Bernardino.

4. Hawker Crawford Channel Improvements Property Conveyance.
 - a. Upon completion and acceptance of the Hawker Crawford Channel Improvements, Land Owner will provide to District the deed for the real property upon which the Hawker Crawford Channel Improvements are located. The exact dimensions of the property involved will be determined during the final design of the Hawker Crawford Channel Improvements.
 - b. The Parties agree that the permitting and construction of the Hawker Crawford Channel Improvements discussed herein can proceed prior to the completion of the land conveyance contemplated in Section 4(a).

5. Joint Community Facilities Agreement.
 - a. The District and Land Owner shall enter into a JCFA with the City for the formation of a CFD to fund the Hawker Crawford Channel Improvements that is consistent with the terms and conditions in this Section 5.
 - b. The City shall be solely responsible for the formation of the CFD, the levy and collection of special taxes, the issuance of bonds, and the provision of disclosure pertaining to the special taxes. The District shall not be responsible for the formation of the CFD, the levy and collection of special taxes, the issuance of bonds, and the provision of disclosure pertaining to the special taxes.
 - c. The City shall indemnify the District for any and all claims arising from or related to the formation of the CFD, the levy of special taxes, the administration of the CFD and bonds, the levy of special taxes, and the issuance and administration of the bonds, and initial and continuing disclosure obligations related to such bonds.
 - d. Land Owner shall be responsible for ensuring that the Hawker Crawford Channel Improvements conform with the requirements of the CFD and JCFA, including but not limited to, public bidding and prevailing wages.
 - e. The goals and policies regarding the use of the CFD shall be consistent with the District's goals and policies.
 - f. The District shall be provided a draft of the JCFA to review for compliance with the requirements set forth in Subsections (b) through (e), above. If the JCFA does not satisfy the above requirements, the District Chief Flood Control Engineer shall notify the City and Land Owner in writing within 45 days of the deficiencies. If the City does not revise the JCFA to cure the deficiencies, the District Chief Flood Control Engineer may terminate this Agreement. If the District fails to notify the City and Land Owner in writing within 45 days, the District waives the right to terminate the Agreement pursuant to this Subsection (f).

6. Design and Permitting of Hawker Crawford Channel Improvements.

- a. Land Owner shall be solely responsible for the design, engineering, permitting and construction of the Hawker Crawford Channel Improvements in accordance with any and all applicable laws, including but not limited to, the Civil Code, the Labor Code and the Public Contract Code, until final completion and written acceptance of the Hawker Crawford Channel Improvements by the District pursuant to Section 6(c).
- b. Land Owner will construct the Hawker Crawford Channel Improvements along the Land Owner's Project frontage and connect to existing inlet structure north of Duncan Canyon Road in accordance with flood control improvement plans as approved by the District that have been submitted for review under File 1- 806/2.04 and Permit No. P-12019118 ("Plans").
- c. Land Owner shall be responsible for all operation and maintenance of the Hawker Crawford Channel Improvements until (1) the operation and maintenance "Resource Agency Permits" (collectively, the California Department of Fish and Wildlife Streambed Alteration Agreement (1602 Agreement), Army Corps of Engineers Individual Permit (404 Permit), and the Regional Water Quality Control Board (401 Certification) Permit) are obtained and transferred to the District, if applicable, (2) the Hawker Crawford Channel Improvements have been constructed by Land Owner and accepted by the District, and (3) Land Owner has implemented all applicable mitigation measures related to the construction Hawker Crawford Channel Improvements. Notwithstanding the foregoing, if Land Owner has not been able to obtain the Resource Agency Permits for operation and maintenance of the Hawker Crawford Channel Improvements by the time the Hawker Crawford Channel Improvements have been constructed, Land Owner shall take commercially reasonable best efforts to obtain the Resource Agency Permits for one (1) year, at which time the District shall be responsible for all operation and maintenance of the Hawker Crawford Channel Improvements and obtaining the Resource Agency Permits. Additionally, the District shall take commercially reasonable best efforts to include the Hawker Crawford Channel Improvements in the District-wide Resource Agency Permits that the District is currently trying to obtain. Following the transfer of the Resource Agency Permits from Land Owner to the District, Land Owner shall remain responsible for any mitigation obligations required for the construction the Hawker Crawford Channel Improvements that have not yet been satisfied in accordance with the District's determination. However, Land Owner shall not be responsible for any obligations whatsoever related to the operation and maintenance of the Hawker Crawford Channel Improvements including but not limited to on-going mitigation and environmental compliance obligations arising after the transfer and acceptance of the Hawker Crawford Channel Improvements.

7. Construction of Hawker Crawford Channel Improvements.

- a. Contract Documents. The JCFA shall provide that the construction documents for the Hawker Crawford Channel Improvements (1) name the District as an express third party beneficiary in all of the construction contracts relating to the Hawker Crawford Channel Improvements, (2) require the contractor(s) to provide Performance and Payment Bonds for the Hawker Crawford Channel Improvements in an amount no less than 100% of the amount of the Hawker Crawford Channel Improvements, which bonds shall name the District as an obligee, and (3) include the District and San Bernardino County as an additional insured on all insurance provided by the contractor(s) for the Hawker Crawford Channel Improvements, as set forth in Section 7(b)(ii) below. The Performance Bond obtained for the Hawker Crawford Channel Improvements shall be in a form approved by the District, if the Land Owner does not utilize the District's standard Performance Bond form.
- b. Indemnification and Insurance. The JCFA shall require all contractors and vendors working on the Hawker Crawford Channel Improvements to have appropriate and adequate insurance coverage for the mutual protection and benefit of the Parties. The JCFA shall require that the following be included in all Hawker Crawford Channel Improvements contracts:
 - i. Contractor Indemnification. The Contractor agrees to indemnify, defend (with counsel reasonably approved by San Bernardino County Flood Control District (District) and hold harmless the District, San Bernardino County and their authorized officers, employees, agents and volunteers (the "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor's indemnification obligation applies to the Indemnitee's "active" as well as "passive" negligence but does not apply to the Indemnitee's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
 - ii. Additional Insured — All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the San Bernardino County Flood Control District and County of San Bernardino and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured

endorsements shall not limit the scope of coverage for the District and County of San Bernardino to vicarious liability but shall allow coverage for the District to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

- c. Inspection. Land Owner shall provide inspection of all items of work performed under the construction contract(s) with the Land Owner's contractors or subcontractors for the Hawker Crawford Channel Improvements and shall maintain adequate records of inspection and materials testing at the Hawker Crawford Channel Improvements site for review by the District. Land Owner shall provide copies of all records of inspection and materials testing to the District within ten (10) calendar days of the Land Owner's receipt.
- d. Utilities. Land Owner shall arrange for relocation of any utilities that interfere with construction of the Hawker Crawford Channel Improvements within the Hawker Crawford Channel Improvements site.
- e. Hawker Crawford Channel Improvements Completion. Following inspection, upon the District's inspection and written acceptance of the completed Hawker Crawford Channel Improvements by District, the District shall assume title to the Hawker Crawford Channel Improvements and shall be responsible for the maintenance of the completed Hawker Crawford Channel Improvements. Upon such transfer of title, Land Owner shall provide to the District any and all warranty documentation and one set of Mylar record drawings. Within six (6) months of the written acceptance of the completed Hawker Crawford Channel Improvements by District, Land Owner shall monument all final District-owned right of way by setting all corners thereof with pipes or other physical monuments in accordance with the executed land conveyance agreement documentation, and file a Record of Survey regarding such monumentation with the County Surveyor's Office, or reflect such right of way monuments on a Tract Map – whichever documentation can be accomplished first.
- f. Record Retention. Land Owner shall retain or cause to be retained for audit by the District or other government auditors for a period of ten (10) years from the date of final payment, all records and accounts relating to the construction of the Hawker Crawford Channel Improvements.
- g. The District will grant, under separate agreements, easements, and/or access agreements for construction, access, maintenance, and use of necessary utilities within Hawker Crawford Channel related to the Project for the following: (1) to the City for sewer; (2) to the City for trail use of a maintenance road; and, (3) to the West Valley Water District for water mainline crossing.

8. Value of Hawker Crawford Channel Improvements. The initial estimated value of the Hawker Crawford Channel Improvements is Ten Million Fifty-Eight Thousand Two Hundred Twenty-One Dollars (\$10,058,221.00). It is understood the value of improvements may change based on final plans and specifications. Should the estimated values change, either upward or downward, from those bonded for under provisions of Section 7(a), above, new bonds shall be provided corresponding to the new values. The District shall not be responsible to pay any costs to the Land Owner or otherwise make any in-kind contributions to the Land Owner to construct the Hawker Crawford Channel Improvements in accordance with the District-approved Plans.

9. Timeliness. Parties agree to work together in a timely manner to complete all respective Project related matters.

10. Notices.

If to Land Owner:

c/o EPC Holdings 823, LLC
3161 Michelson Drive, Suite 425
Irvine, CA 92612
Attn: Craig Cristina
Telephone: (949) 383-4124
ccristina@richlandcommunities.com

With Copy and Email To:

John A. Ramirez, Esq.
Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
(714) 662-4610
jramirez@rutan.com

If to District:

San Bernardino County Flood Control District
825 East Third Street, Room 122
San Bernardino, CA 92415-0835
Attn: Chief Flood Control Engineer

With Copy and Email To:

Sophie A. Akins, Esq.
Deputy County Counsel
385 N. Arrowhead Ave., 4th Floor
San Bernardino, CA 92415
sophie.akers@cc.sbcounty.gov

11. Indemnification. Land Owner agrees to indemnify, defend (with counsel reasonably approved by District) and hold harmless the District, San Bernardino County, and their authorized officers, employees, agents and volunteers (“Indemnitees”) from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the Indemnitees. Land Owner’s indemnification obligation applies to the Indemnitees’ “active” as well as “passive” negligence but does not apply to the Indemnitees’ “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

12. Insurance. Land Owner agrees to comply with the following insurance requirements:

- a. Additional Insured. All policies, except for the Workers’ Compensation policy, shall contain endorsements naming the District, San Bernardino County and their officers, employees, agents and volunteers (District and the San Bernardino County are collectively referred to as “District” for the purpose of this Section 11) as additional insureds with respect to liabilities arising out of this agreement. The additional insured endorsements shall not limit the scope of coverage for the District to vicarious liability but shall allow coverage for the District to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- b. Waiver of Subrogation Rights. Land Owner shall require the carriers of required coverages to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Land Owner and Land Owner’s employees or agents from waiving the right of subrogation prior to a loss or claim. Land Owner hereby waives all rights of subrogation against the District.
- c. Policies Primary and Non-Contributory. All policies required herein are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the District.
- d. Severability of Interests. Land Owner agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between Land Owner and the District or between the District and any other insured or additional insured under the policy.
- e. Proof of Coverage. Land Owner shall furnish Certificates of Insurance to District evidencing the insurance coverage, including endorsements, as required, prior to Land Owner’s execution of this Agreement document, which certificates shall provide that such insurance shall not be terminated

or expire without thirty (30) days written notice to District, and Land Owner shall maintain such insurance throughout the term of the Agreement. Within fifteen (15) days of the Land Owner's acceptance of this Agreement, Land Owner shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

- f. Acceptability of Insurance Carrier. Unless otherwise approved by the San Bernardino County Department of Risk Management (hereinafter "Risk Management"), insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".
- g. Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- h. Failure to Procure Coverage. In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the District has the right but not the obligation or duty to obtain insurance if it deems necessary and any premiums paid by the District will be promptly reimbursed by Land Owner.
- i. Insurance Review. Insurance requirements are subject to periodic review by the District. County's Director of Risk Management or designee is authorized, but not required, to increase, reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or needed, or not needed, to protect the interests of the District. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the District, inflation, or any other item reasonably related to the District's risk.
- j. Any failure, actual or alleged, on the part of the District to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the District.
- k. Land Owner agrees to provide insurance set forth in accordance with the requirements herein. If Land Owner uses existing coverage to comply with these requirements and that coverage does not meet the specified

requirements, Land Owner agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of this Agreement.

- l. Without in any way affecting the indemnity herein provided and in addition thereto, Land Owner shall secure and maintain throughout the duration of the Agreement the following types of insurance with limits as shown:
 - i. Workers' Compensation/Employers Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Land Owner and all risks to such persons under this Agreement. If Land Owner has no employees, it may certify or warrant to the District that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the District's Director of Risk Management. With respect to Parties that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - ii. Commercial/General Liability Insurance - Land Owner shall carry General Liability Insurance covering all operations performed by or on behalf of Land Owner providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - Premises operations and mobile equipment.
 - Products and completed operations.
 - Broad form property damage (including completed operations).
 - Explosion, collapse and underground hazards.
 - Personal injury.
 - Contractual liability.
 - \$2,000,000 general aggregate limit.
 - iii. Automobile Liability Insurance - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Land Owner is transporting one or more non-employee passengers in Land Owner's work on this

project, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Land Owner owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- iv. Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- v. Environmental Liability Insurance with a combined single limit of not less than one million (\$1,000,000) per claim or occurrence. The required additional insured endorsement shall protect District without any restrictions.
- m. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date the agreement was signed by District. The claims made insurance shall be maintained or “tail” coverage provided throughout the duration of the Agreement and for a minimum of five (5) years after termination of the Agreement.
- n. Subcontractor Insurance Requirements. Land Owner agrees to require all parties, including (but not limited to) subcontractors, architects, or others it hires or contracts with related to the excavation, construction, installation, replacement, maintenance and repair, removal, use, or any other work performed by or on behalf of Land Owner for the Hawker Crawford Channel Improvements to provide insurance covering the contracted operation with the same policies and provisions required of Land Owner in this Agreement and with builder’s risk property insurance, providing all risk, including theft coverage for all property and materials to be used for or related to the work and said insurance policies shall not have any coinsurance penalty. All policies required under this provision shall include waiver of subrogation rights against District and shall name District as an additional insured. Land Owner agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required herein.

13. Attorney(s) Fees. In the event of litigation arising from this Agreement, each Party shall bear its own costs, including attorney(s) fees. This Section shall not apply to the costs or attorney(s) fees relative to the indemnification obligations set forth in Section 11.

14. Governing Law and Venue. This Agreement shall be deemed executed and delivered within the State of California. The rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of San Bernardino.

15. Severability. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect, unless imposing the any remaining terms of the Agreement would deprive a Party of a material benefit or consideration under this Agreement.

16. District Clause. All of the District's revenues as defined below, have been pledged to secure the payment of the principal and interest on certain bonds and refunding bonds ("Bonds") issued by the District in May 2007. The pledge constitutes a first lien on the revenues for the payment of the Bonds. Any payments under this Agreement are subject to the prior pledge of revenues described above. District payments pursuant to this Agreement will be made to the extent there are sufficient funds available after payment of the Bonds. For purposes of this paragraph, "revenues" shall mean all income and revenue received by the District from the operation or ownership of the flood and storm water control and conservation facilities ("Flood Control System") of the District (including but not limited to, all real and personal property, or any interest therein, and all additions, improvements, betterments and extensions thereto), determined in accordance with Generally Accepted Accounting Principles, including all ad valorem property taxes received by the District pursuant to Article XIII A of the Constitution of the State of California and Section 95 et seq. of the California Revenue and Taxation Code, all rents, royalties and license and permit fees and charges received by the District, investment income and all other money howsoever derived by the District from the operation or ownership of the Flood Control System or arising from the Flood Control System, but excluding (a) ad valorem property taxes levied to pay any voter approved general obligation indebtedness of the District, (b) assessments levied pursuant to Section 43-7 or Section 43-26.9 of the San Bernardino County Flood Control Act (Cal. Water Code App. Sect. 43-1 et seq.), and (c) grants, advances or contributions in aid of construction, except to the extent such grants are unrestricted and available for any expenditure of the District.

17. No Presumption Against Drafting Party. This Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that this Agreement documents a negotiated agreement and it shall not be construed or interpreted in favor of any Party due to the fact that one of the Party's attorneys drafted this Agreement.

18. Further Assurances. From and after the Effective Date, the Parties shall cooperate in good faith with the each other in taking such actions and executing such instruments as may be reasonably necessary to effectuate the purposes of entering into this Agreement and to perfect the rights granted hereunder.

19. Counterparts. The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an

original. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

20. Dispute Resolution. In the event that a dispute arises between the Parties, the Parties shall first attempt to resolve the dispute through meetings with appropriate staff members. In the event that the dispute cannot be resolved at the staff level, the Chief Flood Control Engineer and Land Owner authorized representative shall meet and informally confer to attempt to resolve the matter prior to either Party pursuing any legal remedies or filing a claim.

21. Assignment. Land Owner shall obtain District's written consent to the proposed assignment of this Agreement, which the District shall not unreasonably withhold. Any proposed assignment of this Agreement shall ensure that the assignee is bound to the same terms and conditions as Land Owner.

22. Representation on Authority of Parties/Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

23. Integration. This Agreement represents and contains the entire agreement and understanding among the Parties hereto with respect to the subject matter of this Agreement, as of the Effective Date, and supersedes any and all prior written and oral agreements and understandings. This Agreement may be amended or modified only through a writing executed by all the Parties.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

Curt Hagman

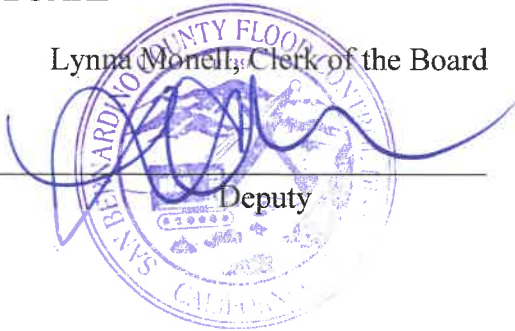
Curt Hagman, Board Chairman

Dated: AUG 10 2021

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell, Clerk of the Board

By



Deputy

**EPC HOLDINGS 823 LLC
a Washington limited liability company**

By: *John Troutman*
(Authorized signature – sign in blue ink)

Name: John Troutman
(Print or type name of person signing contract)

Title: Vice President
(Print or Type)

Dated: 7/20/2021

Address 3161 Michelson, Ste. 425
Irvine, CA 92612

**EPC HOLDINGS 944 LLC
a Washington limited liability company**

By: *John Troutman*
(Authorized signature – sign in blue ink)

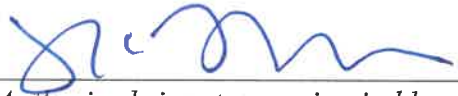
Name: John Troutman
(Print or type name of person signing contract)

Title: Vice President
(Print or Type)

Dated: 7/20/2021

Address 3161 Michelson, Ste. 425
Irvine, CA 92612

ROSEVILLE INVESTMENTS, LLC
a Florida limited liability company

By 
(Authorized signature – sign in blue ink)

Name: John Troutman
(Print or type name of person signing contract)


Title: Vice President
(Print or Type)

Dated: 7/20/2021

Address 3161 Michelson, Ste. 425

Irvine, CA 92612

AMERICAN SUPERIOR LAND, LLC
a Delaware limited liability company

By 
(Authorized signature – sign in blue ink)

Name: John Troutman
(Print or type name of person signing contract)

Title: Vice President
(Print or Type)

Dated: 7/20/2021

Address 3161 Michelson, Ste. 425
Irvine, CA 92612

RMD INLAND INVESTORS, LLC
a Delaware limited liability company

By 
(Authorized signature – sign in blue ink)

Name: John Troutman
(Print or type name of person signing contract)

Title: Vice President
(Print or Type)

Dated: 7/20/2021

Address 3161 Michelson, Ste. 425
Irvine, CA 92612

FOR COUNTY USE ONLY

Approved as to Legal Form SEE ATTACHED	Reviewed for Contract Compliance <i>David R. Daulton</i>	Reviewed/Approved by District <i>[Signature]</i>
Sophie A. Akins, Deputy County Counsel	<i>for</i> Andy Silao, P.E., Chief – Contracts	Brendon Biggs, Chief Flood Control Engineer
Date _____	Date <u>7/21/21</u>	Date <u>7/21/21</u>

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ *Sophie Akins*
Sophie Akins, Deputy County Counsel

Date July 26, 2021

Reviewed for Contract Compliance

▶ _____
Andy Silao, P.E., Chief – Contracts

Date _____

Reviewed/Approved by District

▶ _____
Brendon Biggs, Chief Flood Control Engineer

Date _____

EXHIBIT A

**MONARCH HILLS
EXISTING HAWKER CRAWFORD CHANNEL LOCATION MAP**

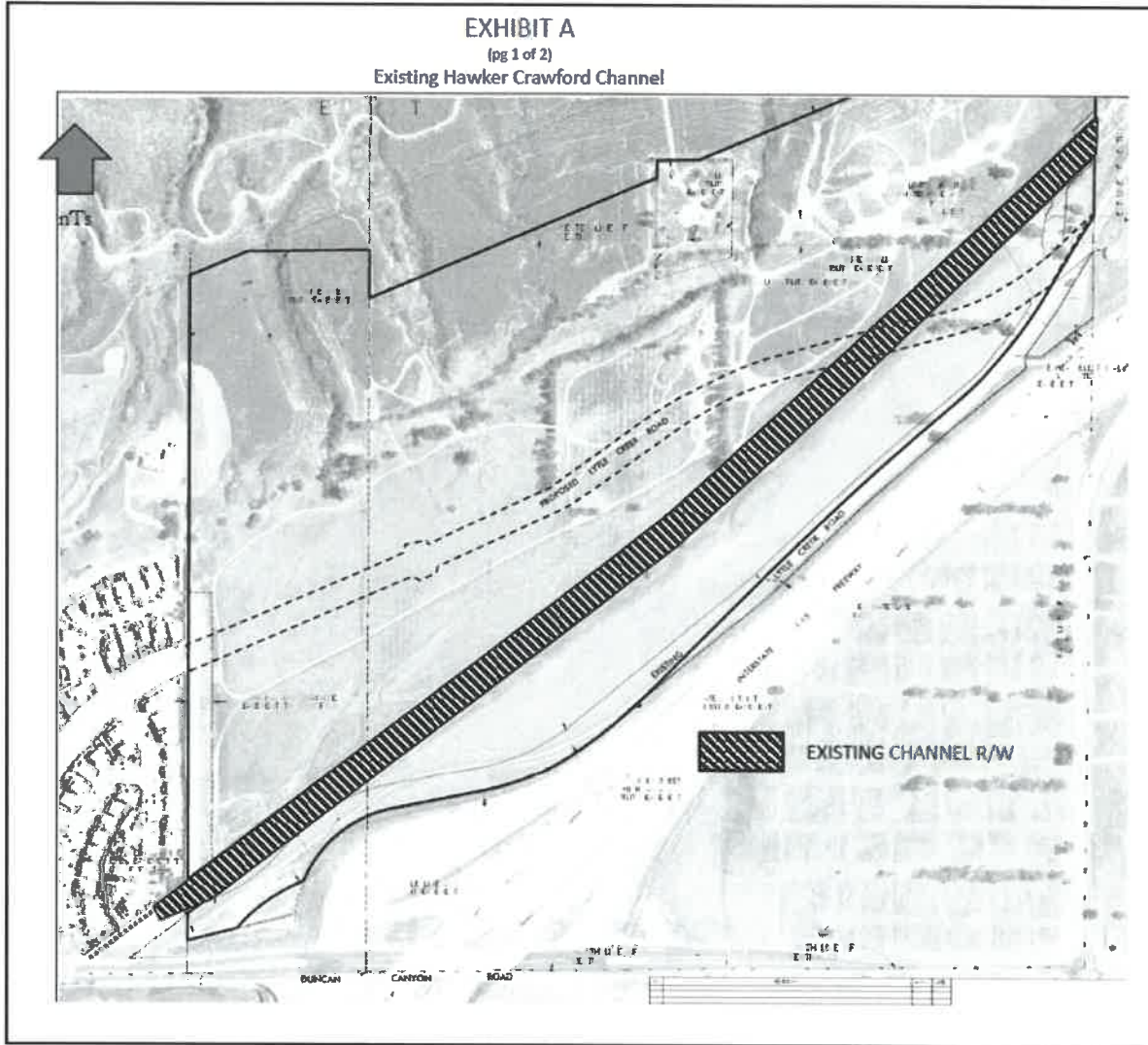


EXHIBIT A

Pg 2 of 2

Legal Description of District Property

Those parcels of land lying within Section 13, Township 1 North, Range 6 West, San Bernardino Meridian, the City of Fontana, County of San Bernardino, State of California described as follows:

Hawker Crawford Channel Parcel 54- That parcel of land described in that Final Order of Condemnation recorded June 20, 1972 in Book 7959, page 98 of Official Records of said County.
Containing 2.703 acres more or less.

Hawker Crawford Channel Parcel 55- That parcel of land described in that Final Order of Condemnation recorded February 7, 1972 in Book 7853, page 478 of Official Records of said County.
Containing 1.01 acres more or less.

Hawker Crawford Channel Parcel 56- That parcel of land described in that Final Order of Condemnation recorded May 21, 1973 in Book 8187, page 903 of Official Records of said County.
Containing 1.86 acres more or less.

Hawker Crawford Channel Parcel 57- That parcel of land described in that document, recorded September 17, 1973 in Book 8628, page 1304 and page 1306 of Official Records of said County.
Containing 0.063 acres more or less.

Hawker Crawford Channel Parcel 58- That parcel of land described in that Final Order of Condemnation recorded July 10, 1972 in Book 7973, page 496 of Official Records of said County.
Containing 5.386 acres more or less.

EXHIBIT B

**MONARCH HILLS
RELOCATED HAWKER CRAWFORD CHANNEL**

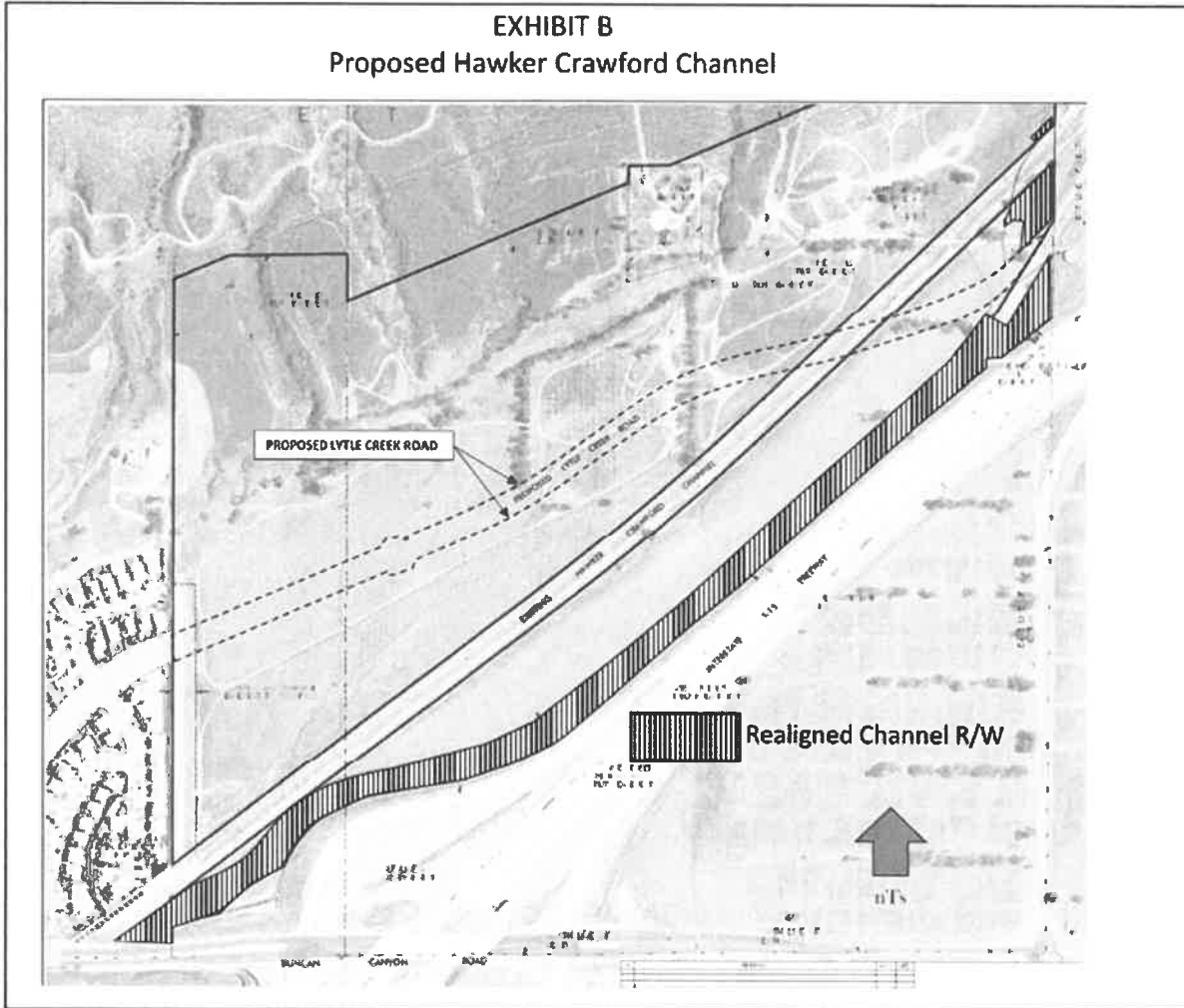


EXHIBIT C

MONARCH HILLS EXISTING LAND OWNER INTERESTS

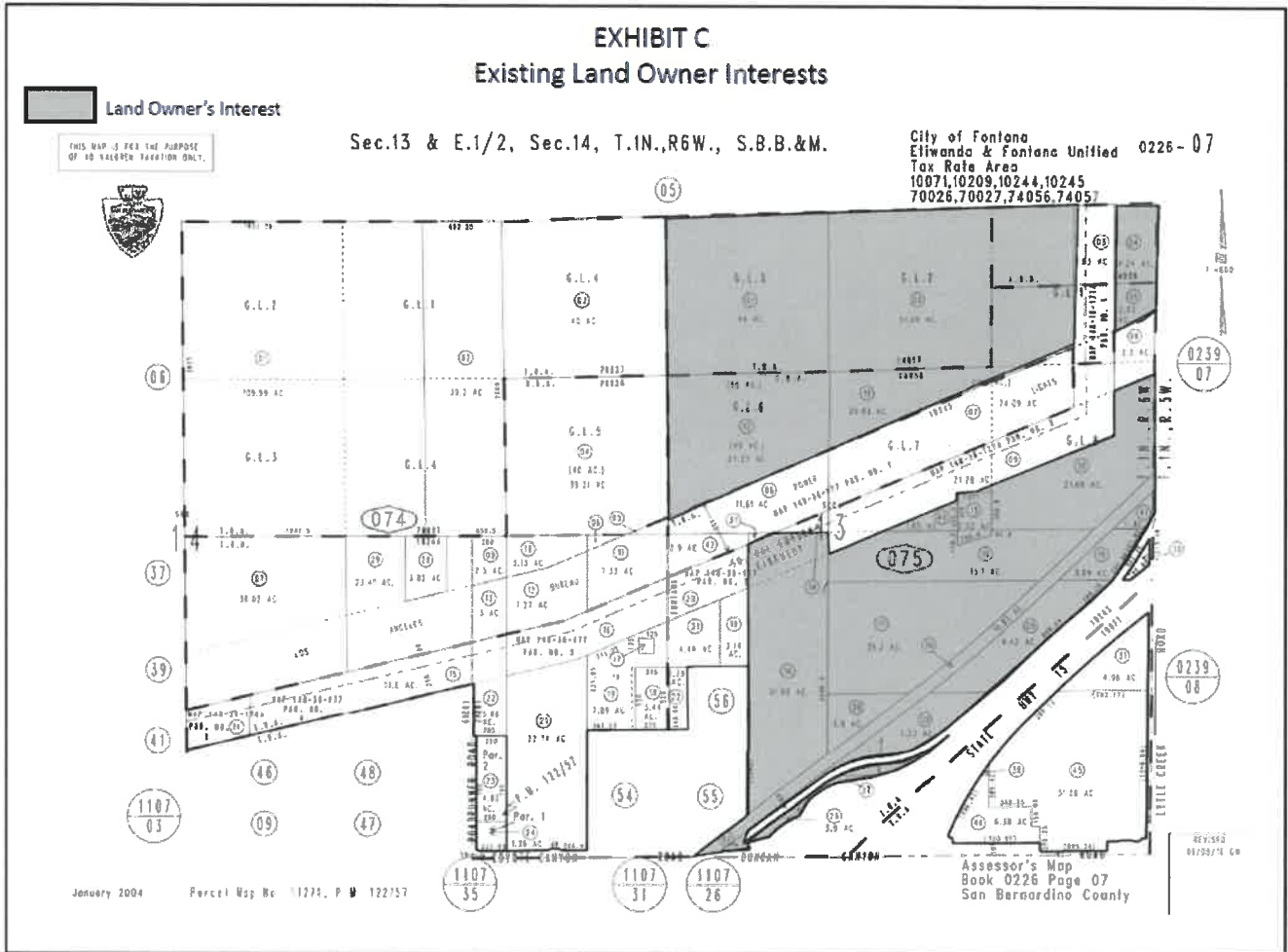


EXHIBIT D
MONARCH HILLS
LICENSE AREA TO DISTRICT

