



Contract Number

72-4460

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	Noel Castillo, P.E. – Assistant Director, Public Works
Telephone Number	(909) 387-7916
Contractor	Arroyo Capital II-6, LLC and LS-Fontana LLC
Contractor Representative	Jeffrey B. Brouelette – Executive Vice President Shannon Whittaker – Assistant Vice President
Telephone Number	(949) 272-1172 (949) 345 - 8097
Contract Term	
Original Contract Amount	
Amendment Amount	N/A
Total Contract Amount	
Cost Center	1910002518-F02757, Zone 1

Briefly describe the general nature of the contract:

Acquisition and Funding Agreement – Hawker Crawford Channel Improvements

LS-FONTANA LLC (the "Developer") is developing the property within the boundaries of the Community Facilities District; The development of such property will require the acquisition, construction and installation of certain Flood Control District Facilities;

In order to provide for the acquisition, construction and installation of such Flood Control District Facilities, the Flood Control District and the Developer are entering into an Acquisition and Funding Agreement (the "Acquisition Agreement"), pursuant to which the Developer will acquire, construct and install, or cause to be acquired, constructed and installed, certain of the Flood Control District Facilities and, upon satisfaction of the conditions specified therein, the Flood Control District will acquire and take title to such Flood Control District Facilities and that the Developer will be paid the purchase price thereof from proceeds of Special Taxes or Bonds (collectively, "District Proceeds") made available for such purpose by the Community Facilities District.

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE ATTACHED

Sophie A. Akins, County Counsel

Date _____

Reviewed for Contract Compliance

Andy Silao
Andy Silao, P.E.

Date 6/2/2022

Reviewed/Approved by District

Brendon Biggs
Brendon Biggs, Chief Flood Control Engineer

Date 6/3/22



Contract Number _____

SAP Number _____

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FOR COUNTY USE ONLY

Approved as to Legal Form

Sophie A. Akins, County Counsel

Date May 25, 2022

Reviewed for Contract Compliance

Andy Silao, P.E.

Date _____

Reviewed/Approved by District

Brendon Biggs, Chief Flood Control Engineer

Date _____

ACQUISITION AND FUNDING AGREEMENT

by and among

**SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT,**

LS-FONTANA LLC

and

ARROYO CAPITAL II-6, LLC

Dated as of June 14, 2022

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ACQUISITION AND FUNDING AGREEMENT

THIS ACQUISITION AND FUNDING AGREEMENT (this “Acquisition Agreement”), dated as of June 14, 2022, is by and among the SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT (the “District”), LS-FONTANA LLC (the “Developer”) and ARROYO CAPITAL II-6, LLC (“Arroyo”).

WITNESSETH:

WHEREAS, the District, on one hand, and EPC Holdings 823 LLC, EPC Holdings 944 LLC, Roseville Investments, LLC, American Superior Land, LLC and RMD Land Investors, LLC, on the other hand (collectively, the “Original Landowner”), entered into a Memorandum of Understanding for Relocation of Hawker Crawford Channel Improvements as of August 10, 2021 (the “Channel MOU”);

WHEREAS, on December 7, 2021, the District Board of Supervisors approved the assignment of the Channel MOU from the Original Landowner to Arroyo;

WHEREAS, Arroyo is a land bank entity that currently owns all of the land in the proposed CFD and the land to be transferred to the District upon the completion of the Hawker Crawford Channel Improvements pursuant to the Channel MOU;

WHEREAS, the Developer has entered into an agreement with Arroyo pursuant to which, among other things, the Developer will acquire all of the developable land within the proposed CFD and has assumed all responsibilities for the development of such land and the construction of the Hawker Crawford Channel Improvements pursuant to the Channel MOU;

WHEREAS, the District intends pursuant to this Acquisition Agreement to approve an assignment of all rights, duties and obligations of the Original Landowner pursuant to the Channel MOU from Arroyo to the Developer, other than the obligation to convey the property underlying the Hawker Crawford Channel Improvements to the District, and references in the Channel MOU to the “Landowner” shall mean the Developer except with respect to such conveyance;

WHEREAS, the Channel MOU contemplated that a community facilities district (the “CFD”) would be established by the City of Fontana (the “City”), which would be authorized to finance the costs incurred by the Developer relating to the Hawker Crawford Channel Improvements (as defined in the Channel MOU) in accordance with a joint community facilities agreement (“JCFA”) by and among the City, District, and Developer;

WHEREAS, Section 5 of the Channel MOU specified various provisions that were to be included in the JCFA applicable to the City and Developer but because the City will only enter into the JCFA with the District, it is necessary for the District and Developer to enter into this Agreement concurrent with the execution of the JCFA between the City and District in order to effectuate the intent of Section 5 of the Channel MOU;

WHEREAS, the City Council of the City (the “City Council”) has, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the “Act”), commenced proceedings to establish the CFD;

WHEREAS, pursuant to the Act, the proceedings of the City Council and an election held within the CFD, the CFD will be authorized to issue special tax bonds (the “Bonds”) secured by special taxes (the “Special Taxes”) levied within the CFD to finance certain public facilities, including the Hawker Crawford Channel Improvements;

WHEREAS, the CFD will, upon satisfaction of the conditions and in accordance with the terms set forth in this Acquisition Agreement and the JCFA, purchase the Hawker Crawford Channel Improvements, the District will take title thereto and the Developer will be paid from the proceeds of the Bonds for the costs of the Hawker Crawford Channel Improvements determined as set forth herein;

NOW, THEREFORE, for and in consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Article I shall have the meanings herein specified:

“Acquisition Agreement” means this Acquisition and Funding Agreement, dated as of June 14, 2022, by and between the District and the Developer, as originally executed or as the same may be amended from time to time in accordance with its terms.

“Act” means the Mello-Roos Community Facilities Act of 1982, constituting Sections 53311 *et seq.* of the California Government Code.

“Actual Cost” means an amount equal to the sum of (a) the actual, reasonable cost of constructing the Hawker Crawford Channel Improvements, including labor, material and equipment costs, (b) the actual, reasonable cost of designing and preparing the Plans for the Hawker Crawford Channel Improvements, including engineering services provided in connection with designing and preparing such Plans, (c) the actual, reasonable cost of environmental evaluations required in the District’s reasonable determination specifically for the Hawker Crawford Channel Improvements, (d) the amount of any fees actually paid to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for the Hawker Crawford Channel Improvements as well as the cost of implementing mitigation required by such approvals, such as the purchase of mitigation credits, (e) the actual, reasonable cost for construction management services for the Hawker Crawford Channel Improvements, which cost shall not exceed 5% of the cost of constructing the Hawker Crawford Channel Improvements, as determined pursuant to clause (a) of this definition, (f) the actual, reasonable cost for professional services directly related to the construction of the Hawker Crawford Channel Improvements, including engineering, inspection, construction staking, materials testing and similar professional services, (g) the actual, reasonable cost of any performance and maintenance bonds and insurance, including title insurance, required hereby for the Hawker Crawford Channel Improvements, and (h) the actual, reasonable cost of any real property or interest therein acquired from a party other than the Developer or an Affiliate thereof (including amounts advanced by the Developer to the District for such purpose), which real property or interest therein is either necessary for the construction of the Hawker Crawford Channel Improvements (*e.g.*, temporary construction easements, haul roads, etc.) or is required to be conveyed with the Hawker Crawford Channel Improvements pursuant to the Channel MOU, all as specified in a Payment Request that has been reviewed and approved by the District Engineer; provided, however, that (x) no item of cost relating to the Hawker Crawford Channel Improvements shall be included in more than one category of cost specified in clauses (a) through (h) of this definition, and (y) each item of cost shall include only amounts actually paid by the Developer to third parties, other than Affiliates of the Developer, and shall not include overhead or other internal expenses of the Developer.

“Affiliate” of another Person means (a) each Person that, directly or indirectly, owns or controls, whether beneficially or as trustee, guardian, or other fiduciary, 50% or more of any class of equity securities of such other Person, and (b) each Person that controls, is controlled by

or is under common control with or by such Person or any Affiliate of such Person. For the purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Arroyo” means Arroyo Capital II-6, LLC, a Delaware limited liability company.

“Bonds” means bonds issued by the City of Fontana Community Facilities District No. 109 (Narra Hills).

“Channel MOU” means the Memorandum of Understanding for Relocation of Hawker Crawford Channel Improvements dated as of August 10, 2021, as it may be amended from time to time.

“City” means the City of Fontana, a general law city organized and existing under the laws of the State, and its successors.

“Community Facilities District” means the City of Fontana Community Facilities District No. 109 (Narra Hills), a community facilities district organized and existing under the laws of the State, and its successors.

“Complete” means that the construction of the Hawker Crawford Channel Improvements (including all ancillary, non-essential items included in the Hawker Crawford Channel Improvements) by the Developer is, in the reasonable judgment of the District Engineer, in all respects complete.

“Developer” means LS-Fontana LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns.

“District” means the San Bernardino County Flood Control District formed and operating pursuant to the California Water Code Appendix 43-1 *et seq.* and shall be deemed to include San Bernardino County for the purposes of any indemnity and insurance provisions set forth in this Acquisition Agreement.

“District Engineer” means the Chief Flood Control Engineer of the District, or his or her designee.

“Flood District Facilities Account” means the account by that name established under the Indenture, the amounts in which are to be applied to the payment of the Purchase Price of the Hawker Crawford Channel Improvements.

“General Prevailing Wage Rates” means those rates as determined by the Director of the Department of Industrial Relations of the State of California.

“Hawker Crawford Channel Improvements” means those improvements specified in the Plans.

“Hazardous Material” means any hazardous or toxic substance, material or waste which is regulated by any local governmental authority, the State or the United States Government, including, without limitation, any material or substance which is (a) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (33 U.S.C. § 1321), (b) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903), (c) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, (d) petroleum, or (e) asbestos.

“JCFA” means a joint community facilities agreement relating to the Community Facilities District by and between the City and District.

“Payment Request” means the document and associated information to be provided by the Developer to substantiate the Purchase Price of the Hawker Crawford Channel Improvements, which shall be substantially in the form of Exhibit A attached hereto.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

“Plans” means the plans and specifications prepared at the direction of the Developer and approved by the District under the District’s File 1-806/2.04 and Permit No. P-12019118.

“Purchase Price” means the Actual Cost of the Hawker Crawford Channel Improvements, as determined pursuant to Section 2.02 hereof.

“Related Property” means the property on, in or over which the Hawker Crawford Channel Improvements are located, which property is dedicated or otherwise conveyed to the District as provided in Section 3.04 hereof.

“Special Taxes” means special taxes levied by the Community Facilities District.

“State” means the State of California.

“Substantially Complete” means that the construction of the Hawker Crawford Channel Improvements by the Developer has, in the reasonable judgment of the District Engineer, reached a stage of completion sufficient to allow it to be utilized for the purpose for which it is intended and that only the construction of ancillary, non-essential items remains incomplete; provided, however, that the Hawker Crawford Channel Improvements shall not be deemed to be Substantially Complete if, in the reasonable judgment of the District Engineer, the cost to complete the construction of such ancillary, non-essential items would exceed 10% of the Purchase Price. “Substantially Complete” shall include completion of, and compliance with, the terms and conditions of Section 6(c) of the Channel MOU.

ARTICLE II

ACQUISITION OF THE HAWKER CRAWFORD CHANNEL IMPROVEMENTS

Section 2.01. Acquisition of the Hawker Crawford Channel Improvements. The Developer hereby agrees to sell to the District, and the District hereby agrees to purchase from the Developer, the Hawker Crawford Channel Improvements for the Purchase Price thereof, subject to the terms and conditions hereof. Title to the Hawker Crawford Channel Improvements and Related Property shall be transferred by the Developer and Arroyo to the District by appropriate instrument in accordance with the Channel MOU.

The parties hereto expect that, at some date after the execution hereof, the Community Facilities District will issue the Bonds. The Purchase Price of the Hawker Crawford Channel Improvements is to be paid solely from proceeds of the Special Taxes available for such purpose, if any, and from proceeds of the Bonds deposited in the Acquisition Account. The District shall not be obligated to pay the Purchase Price except from such proceeds of the Special Taxes and the Bonds. The District does not make any warranty, either express or implied, that such proceeds of the Special Taxes and the Bonds available for the payment of the Purchase Price will be sufficient for such purpose. The District shall not be obligated to the Developer for any amounts expended by Developer to construct the Hawker Crawford Channel Improvements in the event that the Purchase Price exceeds the proceeds of the Special Taxes and the Bonds.

Section 2.02. Payment of Purchase Price.

(a) In order to receive all or any portion of the Purchase Price, the Developer shall deliver to the District and the District Engineer (i) a Payment Request, together with all attachments and exhibits to be included therewith, (ii) transfers of the Resource Agency Permits, as defined in the Channel MOU, to the District as applicable, (iii) pursuant to Section 7(a) of the Channel MOU, copies of the Payment and Performance Bonds, each in an amount no less than 100% of the Hawker Crawford Channel Improvements, which bonds shall name (or shall be amended to name) the District as a obligee, (iv) a copy of the documents conveying, or which previously conveyed the Hawker Crawford Channel Improvements and Related Property, to the District in accordance with the Channel MOU, (v) the Payment Request by Developer's authorized representative certifying that all obligations under the Channel MOU have been met, including those Channel MOU Section 6(c) mitigation measures related to the construction of the Hawker Crawford Channel Improvements, as applicable, (vi) all documents, including warranty documentation, as required by Section 7(e) of the Channel MOU, (vii) copies of all Unconditional Waiver and Release Forms obtained from the contractor and subcontractors in substantially the same form as set forth in California Civil Code sections 8134 and 8138, and (viii) a copy of the Notice of Completion of the Hawker Crawford Channel Improvements filed in accordance with Section 8182 of the California Civil Code, if applicable.

(b) Upon receipt of a completed Payment Request (and accompanying documentation), the District Engineer shall conduct a review in order to confirm that the Hawker Crawford Channel Improvements are Complete and were constructed in accordance with the Plans therefor and to verify and approve the Actual Cost specified in such Payment Request. The Developer agrees to cooperate with the District Engineer in conducting each such review and to

provide the District Engineer with such additional information and documentation as is reasonably necessary for the District Engineer to conclude each such review. The District agrees to cause the District Engineer to conduct such review without unreasonable delay. If the District Engineer determines that the Actual Cost specified in such Payment Request as initially submitted exceeds the Developer's actual, reasonable cost of constructing the Hawker Crawford Channel Improvements, the Developer shall resubmit such Payment Request, with the Actual Cost specified therein modified so as to take into account such determination by the District Engineer. Upon receipt of all documentation required in subsection (a) above and the Channel MOU, and upon confirmation that the Hawker Crawford Channel Improvements are Complete and have been constructed in accordance with the Plans therefor, and verification and approval of the Actual Cost of the Hawker Crawford Channel Improvements, the District Engineer shall sign the Payment Request, indicating thereon that the full amount of the Purchase Price of the Hawker Crawford Channel Improvements is to be paid, and forward the same to the Community Facilities District for payment to the Developer in accordance with the JCFA.

(c) If, as a result of the review described in subsection (b), above, the District Engineer (i) determines that the Hawker Crawford Channel Improvements, while not Complete, are Substantially Complete, (ii) confirms that it has been constructed in accordance with the Plans therefor, and (iii) verifies and approves the Actual Cost of the Hawker Crawford Channel Improvements, the District Engineer shall sign the Payment Request, indicating thereon that an amount equal to 90% of the Actual Cost, is to be paid, and forward the same to the Community Facilities District for payment to the Developer in accordance with the JCFA.

(d) When the Developer completes or causes to be completed all work with respect to the Hawker Crawford Channel Improvements and concludes that it is Complete, the Developer shall deliver to the District Engineer (i) as-built drawings or similar plans and specifications for the Hawker Crawford Channel Improvements if not previously submitted to the District Engineer, together with a certification of the Developer that such drawings or plans and specifications are true, correct and complete, and (ii) such information and documentation as is reasonably required by the District Engineer in order for the District Engineer to determine whether the Hawker Crawford Channel Improvements are Complete. Upon receipt of such information and documentation, the District Engineer shall conduct a review in order to confirm that the Hawker Crawford Channel Improvements are Complete. If, as a result of such review, the District Engineer determines that the Hawker Crawford Channel Improvements are Complete, the District Engineer shall sign a copy of the original Payment Request therefor, indicating thereon that an amount equal to the remainder of the (x) the Purchase Price, less (y) the amount paid pursuant to the preceding paragraph is to be paid, and forward the same to the Community Facilities District for payment to the Developer in accordance with the JCFA.

ARTICLE III

CONSTRUCTION OF THE HAWKER CRAWFORD CHANNEL IMPROVEMENTS

Section 3.01. Preparation and Approval of Plans and Specifications. The Developer has caused Plans to be prepared for the Acquisition Facilities in accordance with the Channel MOU.

Section 3.02. Duty of Developer to Construct. The Developer shall construct or cause to be constructed the Hawker Crawford Channel Improvements in accordance with the Channel MOU, this Acquisition Agreement, and the approved Plans. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Hawker Crawford Channel Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall not be relieved of its obligation to construct the Hawker Crawford Channel Improvements and convey them to the District in accordance with the terms hereof, even if the available proceeds of Special Taxes and Bonds are less than the Actual Cost.

Section 3.03. Public Works Requirements. (a) In order to insure that the Hawker Crawford Channel Improvements are constructed as if they had been constructed under the direction and supervision, or under the authority of, the District, so that it may be acquired pursuant to California Government Code Section 53313.5, the Developer shall comply with all of the requirements of this Section.

(b) Bids for the construction of the Hawker Crawford Channel Improvements shall be obtained from at least three (3) bidders, or as otherwise approved by the District Engineer in writing.

(c) The contract(s) for the construction of the Hawker Crawford Channel Improvements shall be awarded to the responsible bidder submitting the lowest responsive bid.

(d) The Developer shall require, and the specifications and bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such Persons are engaged to perform work on the Hawker Crawford Channel Improvements, to pay at least General Prevailing Wage Rates to all workers employed in the execution of the contract, to post a copy of the General Prevailing Wage Rates at the job-site in a conspicuous place available to all employees and applicants for employment, and to otherwise comply with applicable provisions of the California Labor Code, the California Government Code and the California Public Contract Code relating to public works projects of flood control districts. The District has provided the Developer with copies of tables setting forth the General Prevailing Wage Rates, and the Developer hereby acknowledges receipt thereof.

(e) In performing its obligations under this Acquisition Agreement, the Developer shall comply with the applicable nondiscrimination and affirmative action provisions of the laws

of the United States of America, the State and the District. In performing its obligations under this Acquisition Agreement, the Developer shall not discriminate in its employment practices against any employee, or applicant for employment, because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition. The Developer shall require, in any contract it enters into for the construction of the Hawker Crawford Channel Improvements, that the contractor be subject to the provisions of this paragraph.

(f) The Developer shall require each contractor and vendor engaged to perform work on the Hawker Crawford Channel Improvements, to provide proof of insurance coverage satisfying the requirements of the Channel MOU throughout the term of the construction of the Hawker Crawford Channel Improvements.

(g) The contracts with each contractor and vendor for the Hawker Crawford Channel Improvements shall require that all insurance policies obtained by the contractor or vendor in accordance with the Channel MOU, except those for Worker's Compensation, Errors and Omissions and Professional Liability, contain additional endorsements naming the District and the County of San Bernardino, and their officers, employees, agents and volunteers, as additional insureds with respect to liabilities arising out of the contractor's or vendor's performance of services pursuant to such contracts. Such additional insurance coverage shall be at least as broad as Additional Insured (Form B) Endorsement Form ISO, CG 2010.1185. The contracts with each contractor or vendor for the Hawker Crawford Channel Improvements shall also require the contractor or vendor to indemnify, defend (with counsel reasonably approved by the District) and hold harmless the District, County of San Bernardino 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 and vendor'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. Each contract for the construction of the Hawker Crawford Channel Improvements shall also name the District as an express third-party beneficiary of the contract.

(h) The Developer shall comply, and shall cause each contractor and vendor engaged to perform work on the Hawker Crawford Channel Improvements, to comply, with such other requirements relating to the construction of the Hawker Crawford Channel Improvements as the District may impose by written notification delivered to the Developer, to the extent legally required as a result of changes in applicable federal or State laws.

(i) The Developer shall require, and the specifications and bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such Persons are engaged to perform work on the Hawker Crawford Channel Improvements, to submit certified weekly payroll records to the Developer for inspection by the District, and to furnish certified payroll records to the District promptly upon request.

The Developer shall provide proof to the District, at such intervals and in such form as the District may reasonably require, that the foregoing requirements have been satisfied.

Section 3.04. Inspection; Completion of Construction. The District shall inspect the work of construction on the Hawker Crawford Channel Improvements to insure that the work of construction is accomplished in accordance with the Plans, however, such inspection shall not be deemed to relieve the Developer from constructing the Hawker Crawford Channel Improvements in accordance with the Plans. The District's personnel shall have access to the site of the work of construction at all reasonable times for the purpose of accomplishing such inspection. Upon the completion of the construction of Hawker Crawford Channel Improvements to the satisfaction of the District's inspectors, the Developer shall notify the District in writing that the construction has been completed in accordance with the Plans. No later than ten days after receiving such notification that the Hawker Crawford Channel Improvements were constructed in accordance with the Plans therefor, the Developer shall forthwith file with the San Bernardino County Recorder a Notice of Completion, in form acceptable to the District Engineer, pursuant to the provisions of Section 8182 of the California Civil Code, if applicable. The Developer shall furnish to the District a copy of such Notice of Completion showing thereon the date of filing with said County Recorder.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

Section 4.01. Representations and Warranties of the Developer. The Developer makes the following representations and warranties for the benefit of the District:

(a) *Organization.* The Developer represents and warrants that the Developer is duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to conduct business and is in good standing under the laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) *Authority.* The Developer represents and warrants that the Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered on behalf of the Developer.

(c) *Binding Obligation.* The Developer represents and warrants that this Acquisition Agreement is a valid and binding obligation of the Developer and is enforceable against the Developer in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) *Environmental Matters Relating to the Related Property.* The Developer represents and warrants that neither the Developer, nor any subcontractor, agent or employee of either thereof, has used, generated, manufactured, procured, stored, released, discharged or disposed of (whether accidentally or intentionally) any Hazardous Material on, under or in the Related Property, or transported (whether accidentally or intentionally) any Hazardous Material to or from such Related Property, in violation of any federal, state or local law, ordinance, regulation, rule or decision regulating Hazardous Material.

The Developer represents and warrants that, as of the Acceptance Date, there will not be present on, under or in the Related Property, or any portion thereof, any Hazardous Materials, except for (i) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (ii) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, or (iii) those with respect to which ongoing remediation or mitigation is being performed in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions.

(e) *Environmental Matters Relating to the Related Property.* The Developer represents and warrants that neither the Developer, nor any subcontractor, agent or employee of either thereof, has used, generated, manufactured, procured, stored, released, discharged or disposed of (whether accidentally or intentionally) at any time on or prior

to the date hereof any Hazardous Material on, under or in the Related Property, or any structure, fixtures, equipment, or other objects thereon, or transported (whether accidentally or intentionally) any Hazardous Material to or from the Related Property, or any structure, fixtures, equipment, or other objects thereon, in violation of any federal, state or local law, ordinance, regulation, rule or decision regulating Hazardous Material.

The Developer represents and warrants that there is not present on, under or in the Related Property or any structure, fixtures, equipment, or other objects thereon, or any portion thereof, any Hazardous Materials, except for (i) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (ii) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, and (iii) those with respect to which ongoing remediation or mitigation is being performed in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions.

The Developer represents and warrants that the Developer has not received notice of, and, to the best of the Developer's knowledge, there is not, any proceeding or formal inquiry by any governmental authority, body or agency with respect to the presence of Hazardous Materials on, under or in the Related Property, or any structure, fixtures, equipment, or other objects thereon, or the migration thereof from or to other property.

Section 4.02. Covenants of the Developer. The Developer makes the following covenants for the benefit of the District:

(a) *Completion of the Hawker Crawford Channel Improvements.* The Developer covenants that it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause the Hawker Crawford Channel Improvements to be completed in accordance with this Acquisition Agreement and the Channel MOU.

(b) *Compliance with Laws.* The Developer covenants that, while the Hawker Crawford Channel Improvements are owned by the Developer or required pursuant to Channel MOU to be maintained by the Developer, it will not commit, suffer or permit any of its agents, employees or contractors to commit any act to be done in, upon or to the Hawker Crawford Channel Improvements in violation in any material respect of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Hawker Crawford Channel Improvements.

(c) *Payment Requests.* The Developer covenants that (i) it will not request payment from the District under this Acquisition Agreement for the acquisition of any improvements that are not part of the Hawker Crawford Channel Improvements, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to Payment Requests.

(d) *Environmental Matters Relating to the Related Property.* The Developer covenants that neither the Developer, nor any subcontractor, agent or employee thereof, will use, generate, manufacture, procure, store, release, discharge or dispose of (whether accidentally or intentionally) at any time on or prior to the Acceptance Date on, under or in Related Property, or transport (whether accidentally or intentionally) any Hazardous Material to or from the Related Property, in violation of any federal, state or local law, ordinance, regulation, rule or decision regulating Hazardous Material in effect at the time of such use, generation, manufacturing, procurement, storage, release, discharge, disposal or transportation.

Section 4.03. Representations and Warranties of the District. The District makes the following representations and warranties for the benefit of the Developer:

(a) *Authority.* The District represents and warrants that the District has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered on behalf of the District.

(b) *Binding Obligation.* The District represents and warrants that this Acquisition Agreement is a valid and binding obligation of the District and is enforceable against the District in accordance with its terms.

Section 4.04. Covenants of the District. The District makes the following covenants for the benefit of the Developer:

(a) *Completion of the Hawker Crawford Channel Improvements.* The District covenants that it will use its reasonable and diligent efforts to take all actions which may be lawfully required of it in issuing permits, processing and approving Plans, and inspecting and accepting the Hawker Crawford Channel Improvements in accordance with this Acquisition Agreement and the Channel MOU.

(b) *Payment Requests.* The District covenants that it will diligently follow all procedures set forth in this Acquisition Agreement with respect to each Payment Request.

Section 4.05. Indemnification. The Developer 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, the JCFA or the issuance of the Bonds 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. The Developer’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.

ARTICLE V

TERMINATION; DAMAGES

Section 5.01. Termination by Agreement. This Acquisition Agreement may be terminated by written agreement of the District, the Developer and Arroyo only in conjunction with the termination of the Channel MOU. Section 4.05 shall survive the termination of this Acquisition Agreement.

Section 5.02. Termination by District. (a) The following events shall constitute grounds for the District, at its option, to terminate this Acquisition Agreement, without the consent of the Developer or Arroyo:

(i) the Developer or Arroyo shall voluntarily file for reorganization or other relief under any Federal or state bankruptcy or insolvency law;

(ii) the Developer or Arroyo shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer or Arroyo, or shall suffer an attachment or levy of execution to be made against the Related Property unless such action, possession, attachment or levy shall have been terminated or released within 60 days after the commencement thereof;

(iii) except to the extent that the Developer's obligation to construct the Hawker Crawford Channel Improvements is excused pursuant to Section 5.03 hereof, the Developer shall abandon construction of the Hawker Crawford Channel Improvements (failure for a period of three consecutive months or failure for two periods of two consecutive months to undertake substantial work related to the construction of the Hawker Crawford Channel Improvements shall constitute a non-exclusive example of such abandonment);

(iv) the Developer or Arroyo shall breach any material covenant or default in the performance of any material obligation under this Acquisition Agreement or the Channel MOU, or any representation or warranty of the Developer set forth herein or in any certifications delivered by the Developer hereunder shall prove to have been false or misleading in any material respect when made or deemed made;

(v) the Developer or Arroyo shall transfer any of their rights or obligations under this Acquisition Agreement, without the prior written consent of the District; or

(vi) the Developer shall materially fail to complete the Hawker Crawford Channel Improvements as contemplated by this Acquisition Agreement and the Channel MOU.

(b) If any event listed in paragraph (i) or (ii) of subsection (a) of this Section occurs, this Acquisition Agreement shall automatically terminate.

(c) If any event listed in paragraph (iii), (iv), (v) or (vi) of subsection (a) of this Section occurs, the District may elect to terminate this Acquisition Agreement. If the District intends to terminate this Acquisition Agreement, the District shall first notify the Developer and Arroyo in writing of such intention and of the grounds for such termination and allow the Developer and Arroyo 60 days to eliminate or mitigate to the reasonable satisfaction of the District the grounds for such termination. If, in the reasonable opinion of the District, such grounds for termination can be eliminated or mitigated, but not within such 60 day period, such period shall be extended in order to provide a reasonably sufficient amount of time to accomplish such elimination or mitigation, but only if the Developer or Arroyo, as applicable, has instituted corrective action within such 60 day period and the Developer or Arroyo, as applicable, is thereafter proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), the Developer or Arroyo, as applicable, has not eliminated or completely mitigated such grounds for termination to the reasonable satisfaction of the District, the District may then terminate this Acquisition Agreement by delivering a written notice of such termination to the Developer and Arroyo. If any of the grounds listed in said paragraphs (iii), (iv), (v) or (vi) for termination of this Acquisition Agreement by the District (A) has occurred, and (B) has not been eliminated or mitigated to the reasonable satisfaction of the District or waived by the District, the District, from and after the occurrence thereof, shall have no obligation to acquire the Hawker Crawford Channel Improvements pursuant hereto.

Section 5.03. Termination by Developer. (a) The following events shall constitute grounds for the Developer, at its option, to terminate this Acquisition Agreement, without the consent of the District:

(i) the District shall voluntarily file for reorganization or other relief under any Federal or state bankruptcy or insolvency law;

(ii) the District shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the District, as applicable, or shall suffer an attachment or levy of execution to be made against the property it owns unless, in any of such cases, such action, possession, attachment or levy shall have been terminated or released within 60 days after the commencement thereof;

(iii) the District shall breach any material covenant or default in the performance of any material obligation under this Acquisition Agreement, or any representation or warranty of the District set forth herein shall prove to have been false or misleading in any material respect when made; and

(iv) the District shall transfer any of its respective rights or obligations under this Acquisition Agreement, without the prior written consent of the Developer;

(b) If any event listed in subsection (a) of this Section occurs, the Developer may elect to terminate this Acquisition Agreement. If the Developer intends to terminate this Acquisition Agreement, the Developer shall first notify the District in writing of such intention and of the grounds for such termination and allow the District 60 days to eliminate or mitigate to

the reasonable satisfaction of the Developer the grounds for such termination. If, in the reasonable opinion of the Developer, such grounds for termination can be eliminated or mitigated, but not within such 60 day period, such period shall be extended in order to provide a reasonably sufficient amount of time to accomplish such elimination or mitigation, but only if the District have instituted corrective action within such 60 day period and the District is thereafter proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), the District has not eliminated or completely mitigated such grounds for termination to the reasonable satisfaction of the Developer, the Developer may then terminate this Acquisition Agreement by delivering a written notice of such termination to the District.

Section 5.04. Force Majeure. Except as may be specifically provided in this Acquisition Agreement, the performance by the District or the Developer of its respective obligations hereunder shall be excused during, and the period of time for performance of its respective obligations hereunder shall be extended for a period of time equal to, any period of delay caused by reason of (a) acts of God or civil commotion, (b) riots, strikes, picketing or other labor disputes, (c) shortages of materials or supplies, (d) damage to work in progress by reason of fire, floods, earthquakes or other casualty, (e) enactment of laws which prevent or preclude compliance by the District or the Developer with a material provision of this Acquisition Agreement, (f) administrative proceedings challenging the District, this Acquisition Agreement or a Payment Request brought by Persons other than the District or the Developer, or any Affiliate thereof, (g) litigation (including the pendency thereof), brought by Persons other than the District or the Developer, or any Affiliate thereof, including, without limitation, litigation challenging the District, the development of the Property, the Bonds, this Acquisition Agreement, a Payment Request, (h) pendency of initiatives or referenda affecting the District, the development of the Property, the Bonds, this Acquisition Agreement or a Payment Request, or (i) any other cause beyond the reasonable control of the District or the Developer, respectively; provided, however that, as to any party (x) the financial inability of such party itself to perform under this Acquisition Agreement, and (y) the negligence or willful misconduct of such party shall not constitute a permitted delay for purposes of this Section and, provided, further, that any action, omission, or failure to approve a Payment Request or other approval, or the imposition of additional requirements or restrictions in connection therewith by the District, caused by the Developer's actual failure to comply with applicable laws or regulations or the provisions of this Acquisition Agreement (other than an actual failure to comply that results from the enactment of laws which prevent or preclude compliance by a party with a material provision of this Acquisition Agreement, administrative proceedings challenging the District, the Bonds, this Acquisition Agreement or a Payment Request or other approval, litigation brought by persons other than a party, or an Affiliate of a party, including without limitation, litigation challenging the District, the development of the Property, the Bonds, this Acquisition Agreement or a Payment Request or other approval, initiative or referenda affecting the District, the development of the Property, the Bonds, this Acquisition Agreement or a Payment Request or other approval), shall not constitute a permitted delay for the Developer for purposes of this Section.

If the District or the Developer shall claim that performance of its respective obligations hereunder is excused by a permitted delay pursuant to this Section, such party shall give the other parties hereto written notice of the commencement of such permitted delay within 30 days after first gaining knowledge of such permitted delay.

If the District or the Developer shall claim that performance of its respective obligations hereunder is excused by a permitted delay pursuant to this Section, such party's performance shall only be excused during, and the period of time for performance of its obligations hereunder shall only be extended for a period of time equal to, the period of time for which the cause of such permitted delay is in effect and is actually causing a delay in performance by such party of its obligations hereunder.

The District and the Developer shall act diligently and in good faith to avoid foreseeable delays in performance and to remove the cause of any permitted delay under this Section or develop a reasonable alternative means of performance of its respective obligations hereunder.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Developer as Independent Contractor. In performing under this Acquisition Agreement, it is mutually understood that the Developer is acting as an independent contractor, and not an agent of the District. The District shall have no responsibility for payment to any contractor, subcontractor or supplier of the Developer.

Section 6.02. Other Agreements. Nothing contained herein shall be construed as affecting the District's, the Developer's or Arroyo's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of the Developer's rights and obligations, and the District's rights and obligations, under this Acquisition Agreement; provided, however, that the Developer shall use its reasonable and diligent efforts to perform each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the acquisition, construction and installation of the Hawker Crawford Channel Improvements.

Section 6.03. Binding on Successors and Assigns. Neither this Acquisition Agreement nor the duties and obligations of the Developer hereunder may be assigned to any Person without the written consent of the District, which consent shall not be unreasonably withheld or delayed. Neither this Acquisition Agreement nor the duties and obligations of the District hereunder may be assigned to any Person, without the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the parties hereto.

Section 6.04. Amendments. This Acquisition Agreement may only be amended by an instrument in writing executed and delivered by both the District and the Developer.

Section 6.05. Waivers. No waiver of, or consent with respect to, any provision of this Acquisition Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 6.06. No Third-Party Beneficiaries. No person or entity shall be deemed to be a third-party beneficiary hereof, and nothing in this Acquisition Agreement (either express or implied) is intended to confer upon any person or entity, other than the District and the Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Acquisition Agreement.

Section 6.07. Notices. Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be

given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

District: San Bernardino County Flood Control District
825 East Third Street, Room 122
San Bernardino, CA 92415-0875
Attention: Chief Flood Control Engineer

Developer: LS-Fontana LLC
7525 Irvine Center Drive, Suite 200
Irvine, CA 92618
Attention: Shannon Whittaker

Arroyo: Arroyo Capital II-6, LLC
18575 Jamboree Road, Suite 5-50
Irvine, CA 92612
Attention: Jeffrey B. Brouelette

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, or (d) if given by any other means, upon delivery at the address specified in this Section.

Section 6.08. Attorneys' Fees. In the event of litigation arising from this Acquisition 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 4.05.

Section 6.09. Jurisdiction and Venue. Each of the District and the Developer (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Acquisition Agreement shall be brought in a state or local court in the County of San Bernardino or in the Courts of the United States of America in the district in which said county is located, (b) consents to the jurisdiction of each such court in any such suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue of any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the District and the Developer agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 6.10. Governing Law. This Acquisition Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State.

Section 6.11. Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 6.12. Counterparts. The parties agree that this Acquisition 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 Acquisition Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Acquisition 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 Acquisition Agreement upon request.

Section 6.13. Approval of Partial Assignment of Channel MOU. The District hereby approves Arroyo's assignment of all rights, duties and obligations of Arroyo under the Channel MOU to the Developer other than the obligation of Arroyo to convey the property underlying the Hawker Crawford Channel Improvements to the District in accordance with, and subject to the terms of the Channel MOU. The Developer hereby accepts such assignment and agrees to assume all such assigned rights, duties and obligations.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Acquisition Agreement as of the day and year first hereinabove written.

**SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT**

By: 
Curt Hagman, Board Chairman

Dated: JUN 14 2022

Signed and Certified that a Copy of this
Document has been Delivered to the Chairman
of the Board

By: 

Lynna Monell, Clerk of the Board

LS-FONTANA LLC, a Delaware limited liability company

By: Shannon Whittaker
Name: Shannon Whittaker
Its: AVP

ARROYO CAPITAL II-6, LLC, a Delaware limited liability company

By: Arroyo Capital II, LLC, a Delaware limited liability company,
Its sole member

By: Jeffrey B. Brouelette
Jeffrey B. Brouelette,
Executive Vice President

EXHIBIT A

**PAYMENT REQUEST
FOR SUBSTANTIALLY COMPLETE HAWKER CRAWFORD CHANNEL
IMPROVEMENTS**

_____ (the “Developer”), hereby requests payment of 90% a portion of the Purchase Price of the Hawker Crawford Channel Improvements as described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Acquisition and Funding Agreement, dated as of June 14, 2022 (the “Acquisition Agreement”), by and between San Bernardino County Flood Control District (the “District”) and the Developer. In connection with this Payment Request, the undersigned hereby represents and warrants to the District as follows:

1. The undersigned is a Developer Representative, qualified to execute this request for payment on behalf of the Developer and knowledgeable as to the matters set forth herein.
2. The Developer will submit to the District Engineer as-built drawings or similar plans and specifications for the Hawker Crawford Channel Improvements and such drawings or plans and specifications, as applicable when the Hawker Crawford Channel Improvements are Complete.
3. The only work remaining to Complete the Hawker Crawford Channel Improvements does not exceed 10% of the Purchase Price and such remaining work constitutes ancillary, non-essential items.
4. The Hawker Crawford Channel Improvements for which payment is sought have been constructed in accordance with the Plans therefor, and in accordance with all applicable District standards and the requirements of the Acquisition Agreement, and the as-built drawings or similar Plans and specifications referenced in paragraph 2 above.
5. The true and correct Actual Cost of Hawker Crawford Channel Improvements for which payment is sought is set forth in Attachment A.
6. The Developer has submitted or submits herewith to the District Engineer invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the District Engineer to verify the Actual Cost.
7. There has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen’s or mechanics’ liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.
8. No event listed in subsection (a) of Section 5.02 of the Acquisition Agreement has occurred and is continuing or will occur upon the making of any payment requested hereunder.

9. The representations and warranties of the Developer set forth in Section 4.01 of the Acquisition Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.
10. The Developer represents and warrants that, as of the date hereof, there is not present on, under or in the Related Property, or any portion thereof, any Hazardous Materials, except for (i) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (ii) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, (iii) those with respect to which ongoing remediation or mitigation is being performed in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions or (iv) any types or amounts that do not present a human health risk or hazard to the public.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

Date:

DEVELOPER

By: _____
Name: _____
Title: _____

**PAYMENT REQUEST
FOR COMPLETE HAWKER CRAWFORD CHANNEL IMPROVEMENTS**

_____ (the "Developer"), hereby requests payment of all (or the remainder, if prior payment was made) the Purchase Price of the Hawker Crawford Channel Improvements as described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Acquisition and Funding Agreement, dated as of June 14, 2022 (the "Acquisition Agreement"), by and between San Bernardino County Flood Control District (the "District") and the Developer. In connection with this Payment Request, the undersigned hereby represents and warrants to the District as follows:

1. The undersigned is a Developer Representative, qualified to execute this request for payment on behalf of the Developer and knowledgeable as to the matters set forth herein.
2. Developer has satisfied all requirements of the Acquisition Agreement, including but not limited to, Section 2.02(a) of the Acquisition Agreement.
3. Developer has fulfilled all obligations under the Channel MOU, including those Channel MOU Section 6(c) mitigation measures related to the construction of the Hawker Crawford Channel Improvements, as applicable.
4. The Developer has submitted or submits herewith to the District Engineer as-built drawings or similar plans and specifications for the Hawker Crawford Channel Improvements and such drawings or plans and specifications, as applicable, are true, correct and complete.
5. The Developer has arranged for the transfers of the Resource Agency Permits, as defined in the Channel MOU, to the District, as applicable.
6. The Hawker Crawford Channel Improvements have been constructed in accordance with the Plans therefor, and in accordance with all applicable District standards and the requirements of the Acquisition Agreement, and the as-built drawings or similar Plans and specifications referenced in paragraph 2 above.
7. The true and correct Actual Cost of Hawker Crawford Channel Improvements is set forth in Attachment A.
8. The Developer has submitted or submits herewith to the District Engineer invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the District Engineer to verify the Actual Cost.
9. There has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.

10. No event listed in subsection (a) of Section 5.02 of the Acquisition Agreement has occurred and is continuing or will occur upon the making of any payment requested hereunder.
11. The representations and warranties of the Developer set forth in Section 4.01 of the Acquisition Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.
12. The Developer represents and warrants that, as of the date hereof, there is not present on, under or in the Related Property, or any portion thereof, any Hazardous Materials, except for (i) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (ii) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, (iii) those with respect to which ongoing remediation or mitigation is being performed in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions or (iv) any types or amounts that do not present a human health risk or hazard to the public.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

Date:

DEVELOPER

By: _____
Name: _____
Title: _____

ATTACHMENT A

Actual Cost

Purchase Price

Total Purchase Price to be Paid: