

DATE SUBMITTED September 15, 2023
 SUBMITTED BY City Manager
 DATE ACTION REQUIRED September 20, 2023

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT:	DISCUSSION/ACTION: Consider adoption of Memorandum of Understanding between the Imperial Irrigation District, the City of Imperial and developer Imperial Hotel Acquisitions, LLC (“IHA”) to authorize transfer of the Dahlia 8 Drain to IHA. Further, authorize the City of Imperial to obtain a Security Agreement and provide assurance of backup services to the Dahlia 8 Drain once it is undergrounded.
BACKGROUND/SUMMARY: IHA is currently constructing a hotel, a healthcare facility, and a gas station/convenience store at 1500 N. Imperial Avenue, Imperial, CA 92251 (“NorthPointe”). As part of the improvements, IHA will underground the portion of the Dahlia 8 Drian set forth in the Memorandum of Understanding. This MOU requires IHA to underground the drain at IHA’s sole cost and expense. The MOU also requires IHA to pay, at its sole cost and expense, to maintain the drain. In the event that IHA fails to maintain the drain, the City of Imperial shall step in and perform such work. The City of Imperial will obtain adequate security to ensure that City of Imperial does not pay for the expenses.	
FISCAL IMPACT: \$0 of City of Imperial funds as private developer funds shall be used.	FINANCE INITIALS <div style="text-align: right;"><u>DP</u></div>
STAFF RECOMMENDATION: <u>approve</u>	DEPT. INITIALS <div style="text-align: right;"><u>STM</u></div>
MANAGER’S RECOMMENDATION: Approve Memorandum of Understanding and authorize City Manager to execute a Security	CITY MANAGER’S INITIALS <div style="text-align: right;">_____</div>

Agreement and documents.

MOTION:

SECONDED:

AYES:

NAYES:

ABSENT:

APPROVED ()

DISAPPROVED ()

REFERRED TO:

REJECTED ()

DEFERRED ()

Recording Requested By
Imperial Irrigation District

And When Recorded Mail To:

Imperial Irrigation District
Attn: Real Estate Section
P.O. Box 937
Imperial, CA 92251

Space Above This Line For Recorder's Use

APN: 063-010-023-000

Documentary Transfer Tax \$ R&T §11922, Gov Code §6103

____ Computed on Full Value of Property conveyed, or
____ Computed on Full Value less liens & encumbrances
remaining thereon at time of sale

Signature of Declarant or Agent Determining Tax – Firm Name

COVENANT AND AGREEMENT REGARDING MAINTENANCE OF DRAIN

This Covenant And Agreement Regarding Maintenance Of Drain (“**Agreement**”) is entered on the date set forth below by and between the City of Imperial, a municipal corporation of the State of California (“**City**”), Imperial Hotel Acquisitions LLC (“**IHA**”), and the Imperial Irrigation District, an irrigation district formed under the California Irrigation District Law (“**IID**”). City, IHA, and IID may be individually referred to as “**Party**” or collectively to as “**Parties**”.

RECITALS

- A. IHA is constructing a hotel, a healthcare facility, and a gas station/convenience store at 1500 N. Imperial Avenue, Imperial, CA 92251 (“**NorthPointe**”); and
- B. The NorthPointe property (the “**Property**”), described as set forth in **Exhibit “A”**; and
- C. An open drainage facility known as the Dahlia 8 Drain (“**Drain**”) is located along the eastern boundary of Property along State Route 86 (“**SR-86**”) and is depicted on **Exhibit “B”**. The portion of the Drain existing on the Property (“**NorthPointe Drain**”) is part of a larger drainage system, with IID continuing to own and operate those portions of the Drain not on the Property (“**IID Drains**”). The NorthPointe Drain will be connected to the IID Drains; and
- D. The Northpointe Drain is currently located within a Right of Way (the “**Right of Way**”) which is operated and maintained by the IID and is described on **Exhibit “C”**; and
- E. IHA wishes to underground that portion of the NorthPointe Drain located on the Property at its sole cost and expense; and

Commented [CL1]: Does Water Department has an official depiction of the Drain?

- F. IID has expressed a willingness to 1) abandon the NorthPointe Drain, 2) quitclaim the Right of Way to IHA, and 3) allow IHA to design, construct, operate and maintain an underground drain provided that a) all design and construction by IHA is conducted under the approval of IID and meets all IID design and facility standards; and b) the City commits to confirming, and, if necessary, performing, proper operation and maintenance of the underground NorthPointe Drain; and
- G. City is willing to accept the obligation regarding operation and maintenance as set forth herein provided IHA designs and constructs the underground NorthPointe Drain in accordance with plans approved by IID and City, pays all costs associated with design, construction, ongoing operation and maintenance and further provides ongoing security to City to perform operation and maintenance of the underground NorthPointe Drain.

NOW THEREFORE, in consideration of the mutual obligations set forth herein, the parties agree as follows:

1. IHA Responsibilities:

- a. IHA Covenants and agrees, as property owners to be responsible for the design, maintenance, repair, removal, and replacement of the NorthPointe Drain.
- b. IHA will pay all costs associated with the undergrounding of NorthPointe Drain, including but not limited to the design, construction, ongoing operation and maintenance of the undergrounded NorthPointe Drain in accordance with all applicable requirements including, but not limited to those of IID and City. Such costs include, but are not limited to, removal and replacement of any surface improvements damaged in the course of operation and maintenance performed by City, as well as any costs associated with IID's review of IHA's plans for the improvements, including staff time. Construction cannot begin until IID abandons and City accepts the obligations associated with the maintenance of the NorthPointe Drain.
- c. The underground NorthPointe Drain will be connected to the IID Drains. IHA shall submit an application for an encroachment permit to the IID Drains and will comply with all IID requirements regarding the permitting and construction of such connection.
- d. IHA understands and agrees that the IID Drains south of the Property will discharge into the NorthPointe Drain.
- e. All costs associated with the undergrounding of the NorthPointe Drain are separate from planning, design and construction costs for the relocation and encroachments of the Dahlia Lateral 8 along Neckel Road in Imperial, California. These costs are not included within this Agreement.
- f. IHA releases City and IID from any claims it might have arising from the undergrounding, operation and maintenance of the NorthPointe Drain and agrees to indemnify, defend and hold City and IID harmless from any claims arising from undergrounding, operation, and maintenance of the NorthPointe Drain.
- g. IHA shall execute such documents as may be deemed necessary by IID or City in order for its operation and maintenance obligation to constitute a covenant running with the land as to Property and shall further provide security in an amount and form acceptable to IID and City for the purpose of securing its operation and maintenance obligation.

2. City Responsibilities:

- a. Upon execution of this Agreement, City will cooperate with IID and IHA concerning the undergrounding, operation, and maintenance of the NorthPointe Drain. Such cooperation shall not include payment of costs associated with operation and maintenance of the NorthPointe Drain, but does include performance of operation and maintenance in the event IHA fails to do so. City agrees to accept operation and maintenance of the undergrounded NorthPointe Drain contingent upon performance of the terms and conditions of this Agreement being met by IHA.
- b. City releases IID from any claims it might have arising from the maintenance of the NorthPointe Drain and agrees to indemnify, defend and hold IID harmless from any claims arising from maintenance of the NorthPointe Drain.

3. IID Responsibilities:

- a. IID agrees that upon execution of this Agreement, it will execute such documents as may be necessary to abandon the NorthPointe Drain, and to quitclaim the Right of Way to IHA.
- b. IID agrees to allow IHA to design, construct, operate, and maintain an underground NorthPointe Drain provided that a) all design and construction of the Northpointe Drain by IHA is conducted under the approval of IID, b) all future design modification and construction of the NorthPointe Drain by IHA is conducted under the approval of IID, and c) the City commit to confirming, and, if necessary, performing, proper operation and maintenance of the NorthPointe Drain; and

4. Covenant Running With The Land:

This Covenant and Agreement shall run with all of the above described land; be binding upon IHA and future owners, encumbrances, successors, heirs or assignees; and, continue in perpetuity until released by the authority of the IID upon submittal of request, applicable fees, and evidence that this Covenant and Agreement is no longer required by law.

5. Notices:

Any written communications related to this MOU will be provided to the Parties at the following addresses:

City:
City of Imperial
Attn: City Manager
420 South Imperial Avenue
Imperial, California 92251

IHA:
Imperial Hotel Acquisitions LLC
c/o Gafcon, Inc.
Attn: Benso
10301 Meanley Drive, Suite 225
San Diego, California 92131

IID:

Imperial Irrigation District
Attn: Water Manager
333 East Barioni Blvd.
PO Box 937
Imperial, California 92251

Imperial Irrigation District
Attn: Real Estate Section
333 East Barioni Blvd.
PO Box 937
Imperial, California 92251

6. General Provisions:

- a. There is no agency relationship between the Parties. The employees of each Party shall continue to be entirely and exclusively under the direction, supervision, and control of the employing Party.
- b. Except as specifically set forth herein, any internal, in-house or administrative costs or expenses incurred by any Party related to that Party's obligations under this Agreement shall be the sole responsibility of the Party incurring said costs and expenses.
- c. This instrument and any attachments hereto constitute the entire agreement between the Parties concerning the subject matter hereof.

CITY OF IMPERIAL

By _____
Name _____
Title _____
Attest _____

IMPERIAL HOTEL ACQUISITIONS LLC

By _____
Name _____
Title _____
Attest _____

IMPERIAL IRRIGATION DISTRICT

By _____
Name _____
Title _____
Attest _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE REAL PROPERTY

The East Half of the Southeast Quarter of the East Half of Tract 135, Township 15 South, Range 13 and 14 East, S.B.M., situated in the City of Imperial, County of Imperial, State of California, according to the Official Plat thereof.

EXCEPT that portion conveyed to the State of California by Deed recorded March 8, 1945 in Book 637, Page 143 of Official Records.

EXHIBIT "B"
DEPICTION OF DRAIN



EXHIBIT "C"

DESCRIPTION OF RIGHT OF WAY

1. A right of way granted to IID in a Right of Way Deed dated March 30, 1939, and recorded April 19, 1939 in Book 518, Page 587 of Official Records on file in the Office of the Imperial County Recorder. Said right of way is more particularly described as follows:

A strip of land 66 feet in width lying west of, adjacent to, parallel with, and in addition to the existing right of way for U.S. Highway 99 as now constructed along the east line of the E. 1/2 of the S.E. 1/4 of the E. 1/2 of Tract 135. Said parcel of land situated in Twp. 15 South, Range 13/14 East, S.B.B.M., County of Imperial, State of California.

2. A right of way granted to IID in a Right of Way Deed dated May 8, 1941, and recorded February 19, 1942 in Book 583, Page 527 of Official Records on file in the Office of the Imperial County Recorder. Said right of way is more particularly described as follows:

A strip of land 66 feet in width, the west line of which is parallel with and 136 feet west of the center line of the existing State highway as now constructed along the east side of the E. 1/2 of the S.E. 1/4 of the E. 1/2 of Tract 135. Said parcel of land situated in Twp. 15 South, Range 13/14 East, S.B.B.M., County of Imperial, State of California.

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20 __, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature _____

(Seal)

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STATE OF CALIFORNIA

COUNTY OF _____

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WITNESS my hand and official seal.

Signature _____

(Seal)