

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.28
(ID # 14802)

MEETING DATE:
Tuesday, April 20, 2021

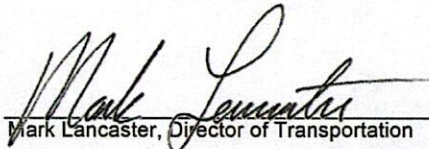
FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION
DEPARTMENT: Approval of Assignment and Assumption of Cooperative Agreement Between the County of Riverside, the Riverside County Flood Control and Water Conservation District, ERP Holding Co., Inc. and KB Home Coastal, Inc. for the Spring Street Channel, Stage 5 (Tract Map Nos. 30908 and 30909), Project No. 1-0-00080. District 2. [\$0] (Companion Item to MT Item No. 14801)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Assignment and Assumption Cooperative Agreement (Agreement) between the County of Riverside (County), the Riverside County Flood Control and Water Conservation District (District), ERP Holding Co., Inc. (Assignor) and KB Home Coastal, Inc. (Assignee) and authorize the Chair of the Board to execute the same.

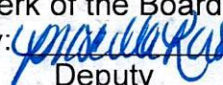
ACTION:


Mark Lancaster, Director of Transportation 4/2/2021

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Hewitt and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez, and Hewitt
Nays: None
Absent: None
Date: April 20, 2021
xc: Transp.

Kecia R. Harper
Clerk of the Board
By: 
Deputy

(companion item 11.1)

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: The Assignee is funding all construction and construction inspection costs (100%). No General Funds will be used on this project.			Budget Adjustment: No	
			For Fiscal Year: NA	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Assignment and Assumption Agreement (Agreement) transfers the rights and responsibilities from Assignor as established by the original Cooperative Agreement executed on June 23, 2020 (Board Agenda Item No. 3.37). Once executed, the Assignee will assume responsibility for the construction of the flood control facilities required as a condition of approval for Tract Map Nos. 30908 and 30909. The Agreement is necessary to provide for County and District inspection and subsequent operation and maintenance of the referenced storm drain facilities.

The County will assume ownership and responsibility for the operation and maintenance of the project's associated catch basins, curbs and gutters, concrete collar, connector pipes, inlets and laterals that are 36 inches or less in diameter located within County rights of way. Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the Spring Street Channel, Stage 5 storm drain systems that are greater than 36 inches in diameter, concrete pads, slope protection barriers, signage and fencing. The Assignee will retain ownership of an 18-inch reinforced concrete pipe, an 8'W x 2'H reinforced concrete box and a water quality basin located within private-held rights of way.

County Counsel has approved the Agreement as to legal form, and the Assignor and Assignee have executed the Agreement. A companion item appears on the Riverside County Flood Control and Water Conservation District agenda this same date.

Impact on Residents and Businesses

Assignee's planned development will benefit from the storm drain facilities that are to be constructed by the Assignee. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

Additional Fiscal Information

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

The Assignee is funding all construction and construction inspection costs. Future operations and maintenance costs associated with said County storm drain facility will accrue to the Transportation Department.

ATTACHMENTS:

Vicinity Map

Assignment and Assumption of Cooperative Agreement



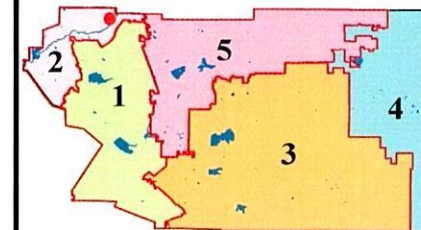
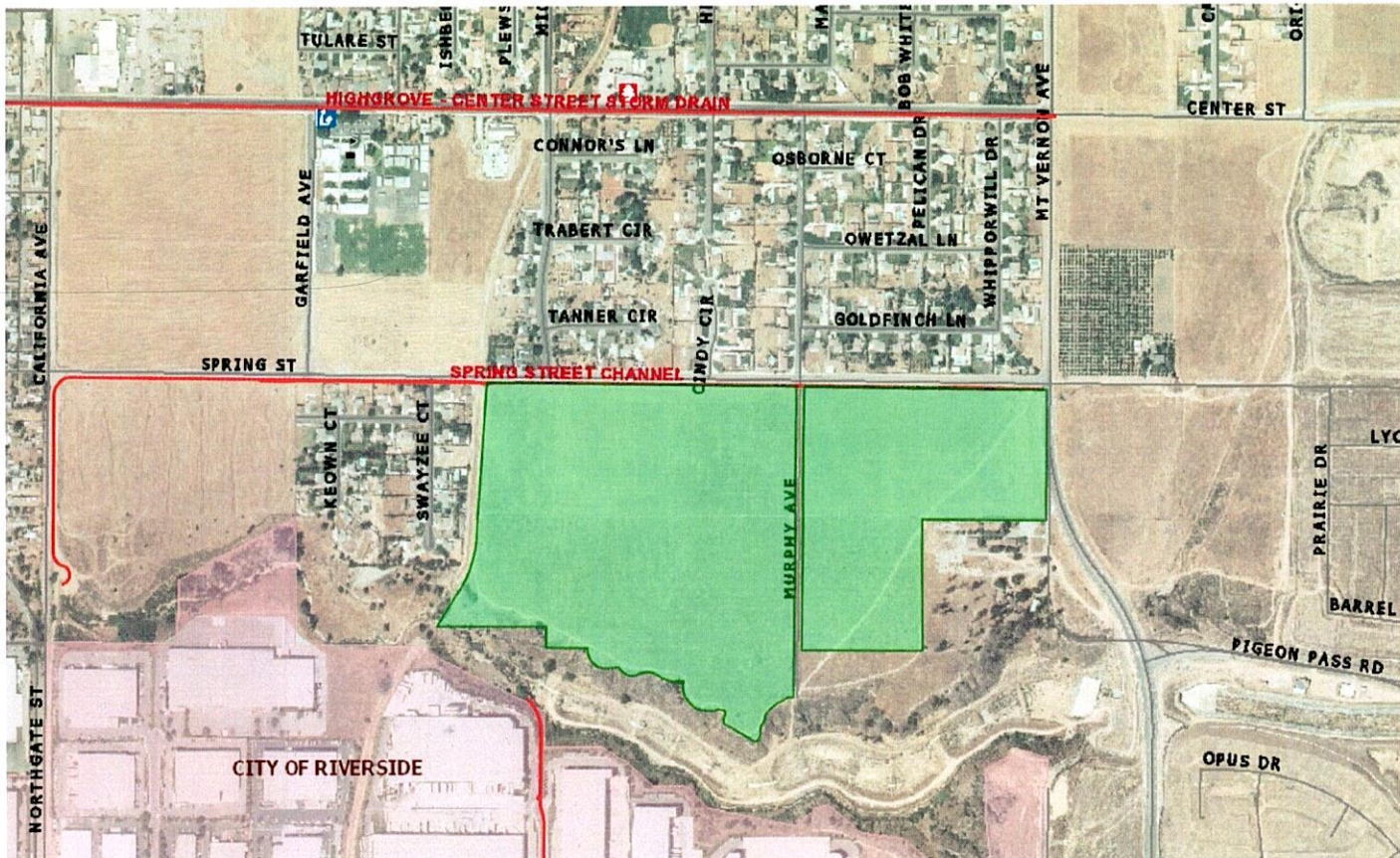
Jason Farin, Principal Management Analyst

4/13/2021



Gregory L. Priamos, Director County Counsel

4/8/2021



Supervisor Districts

LEGEND:

- Existing Facilities
- Project Vicinity
- Supervisorial District

DESCRIPTION:

Spring Street Channel, Stage 5
Project No. 1-0-00080
Tract Map Nos. 30908 and 30909



VICINITY MAP



Attachment 1

ASSIGNMENT AND ASSUMPTION OF COOPERATIVE AGREEMENT

Spring Street Channel, Stage 5
Project No. 1-0-00080
Tract Map Nos. 30908 and 30909

This Assignment and Assumption Agreement ("ASSIGNMENT") is made by and between (i) the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"); (ii) the County of Riverside, a political subdivision of the State of California ("COUNTY"); (iii) ERP Holding Co., Inc., a Delaware corporation ("ASSIGNOR"); and (iv) KB Home Coastal Inc., a California corporation ("ASSIGNEE"), (together, the "Parties"). The Parties hereto agree as follows:

RECITALS

A. DISTRICT, COUNTY and ASSIGNOR have previously entered into that certain Agreement which was executed on June 23, 2020, (District Board Agenda Item No. 11.3), and recorded as Document No. 2020-0519258 in the Official Records of the County of Riverside ("AGREEMENT"), setting forth the Parties' respective rights and obligations concerning ASSIGNOR's proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract Map Nos. 30908 and 30909 located in an unincorporated area of western Riverside County in the State of California, are hereinafter called "PROPERTY"; and

B. Subsequent to the execution of said AGREEMENT, ASSIGNEE has acquired fee title to PROPERTY pursuant to a certain Grant Deed dated October 30, 2020, and plans to proceed in accordance with AGREEMENT; and

C. A true copy of AGREEMENT, has been provided to ASSIGNEE and said AGREEMENT describes the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract Map Nos.

30908 and 30909 are to be designed and constructed by ASSIGNOR, and inspected and accepted for operation and maintenance by DISTRICT and COUNTY; and

D. AGREEMENT stipulates that ASSIGNOR may assign its rights and responsibilities as set forth therein subject to the written consent of the parties thereto; and

E. The totality of ASSIGNOR'S rights, title, interests, benefits and privileges pursuant to AGREEMENT, are hereinafter collectively called "ASSIGNOR RIGHTS", and the totality of ASSIGNOR'S obligations pursuant to AGREEMENT, are hereinafter collectively called "ASSIGNOR OBLIGATIONS"; and

F. ASSIGNOR RIGHTS and ASSIGNOR OBLIGATIONS are hereinafter altogether called "RIGHTS AND OBLIGATIONS"; and

G. ASSIGNOR, ASSIGNEE, COUNTY, and DISTRICT intend that, by execution of this ASSIGNMENT, ASSIGNEE shall assume and agrees to perform all of ASSIGNOR's rights and obligations as stated in AGREEMENT; and

NOW, THEREFORE, in consideration of the preceding Recitals and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

1. The above Recitals are true and correct.
2. By execution of this ASSIGNMENT, ASSIGNOR hereby assigns all of its RIGHTS AND OBLIGATIONS to ASSIGNEE.
3. For the benefit of DISTRICT and COUNTY, ASSIGNEE hereby agrees to be fully bound by the terms of AGREEMENT that are stated and imposed on ASSIGNOR in AGREEMENT.
4. In regard to the assignment of RIGHTS AND OBLIGATIONS set forth herein, DISTRICT hereby consents to and hereby agrees to be bound by (i) the assignment of RIGHTS AND OBLIGATIONS in favor of ASSIGNEE, and (ii) the assumption by ASSIGNEE of said RIGHTS AND OBLIGATIONS. In further clarification of the intent of the parties, ASSIGNEE

and ASSIGNOR specifically agree with DISTRICT that access and/or grant of real property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be satisfied by ASSIGNEE, and in regard to all financial obligations, DISTRICT shall invoice ASSIGNEE for all charges incurred pursuant to AGREEMENT.

5. The assignment and assumption of RIGHTS AND OBLIGATIONS pursuant to this ASSIGNMENT shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties hereto.

6. In the event that any action or suit by the party hereto is brought against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this ASSIGNMENT, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

7. This ASSIGNMENT is to be construed in accordance with the laws of the State of California.

8. This ASSIGNMENT may be changed or modified only upon the written consent of the Parties hereto.

9. Any and all notices sent or required to be sent to ASSIGNEE arising from either this ASSIGNMENT, or the obligations contained in AGREEMENT will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contract Services Section

ERP HOLDING CO., INC.
Two N. Riverside Plaza, Suite 400
Chicago, IL 60606
Attn: Cydney White

COUNTY OF RIVERSIDE
4080 Lemon Street, 8th Floor
Riverside, CA 92502-1090
Attn: Transportation Department
Plan Check Section

KB HOME COASTAL INC.
36310 Inland Valley Drive
Wildomar, CA 92595
Attn: Christopher Earl

10. The individuals executing this ASSIGNMENT on behalf of ASSIGNEE hereby certify that they have the authority within their respective companies to enter into and execute this ASSIGNMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this ASSIGNMENT.

11. This ASSIGNMENT may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this ASSIGNMENT on

April 20, 2021

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By J. Uhley
JASON E. UHLEY
General Manager-Chief Engineer

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

By Karen S. Spiegel
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

ATTEST:

KECIA HARPER
Clerk of the Board

By Leila Moshref-Danesh
LEILA MOSHREF-DANESH
Deputy County Counsel

By UPD
Deputy

(SEAL)

Assignment and Assumption of Cooperative Agreement:
Spring Street Channel, Stage 5
Project No. 1-0-00080
Tract Map Nos. 30908 and 30909
AMR:blm
01/27/21

RECOMMENDED FOR APPROVAL:

By


MARK LANCASTER
Director of Transportation

COUNTY OF RIVERSIDE


By


KAREN SPIEGEL, Chair
Board of Supervisors

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By


KRISTINE BELL-VALDEZ
Deputy County Counsel

ATTEST:

KECIA HARPER
Clerk of the Board

By


Deputy

(SEAL)

Assignment and Assumption of Cooperative Agreement:
Spring Street Channel, Stage 5
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ASSIGNOR

ERP HOLDING CO., INC.,
a Delaware corporation

By: 

CYDNEY WHITE
Vice President

(ATTACH NOTARY WITH CAPACITY STATEMENT)

Assignment and Assumption of Cooperative Agreement:
Spring Street Channel, Stage 5
Project No. 1-0-00080
Tract Map Nos. 30908 and 30909
AMR:blm
01/27/21

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Cydney White, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she, as Vice President of ERP Holding Co., Inc., a Delaware corporation, for and on behalf thereof signed and delivered said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of March, 2021.


Naomi Regino
Notary Public

My Commission Expires: July 16, 2023



ASSIGNEE

KB HOME COASTAL INC.,
a California corporation

By 

JOHN P. FENN
President, Inland Empire Division

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Assignment and Assumption of Cooperative Agreement:
Spring Street Channel, Stage 5
Project No. 1-0-00080
Tract Map Nos. 30908 and 30909
AMR:blm
01/27/21

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.

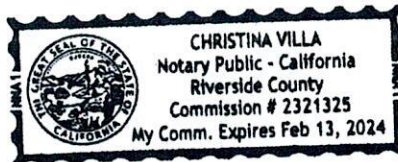
STATE OF California)SS
COUNTY OF Riverside)

On February 19, 2021, before me, Christina Villa, Notary Public, personally appeared John P. Fenn, 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



My Commission Expires: February 13, 2024

This area for official notarial seal

Notary Name: Christina Villa Notary Phone: (951) 691-5300
Notary Registration Number: 2321325 County of Principal Place of Business: Riverside