

T1S, R3W, SEC 2 S.B.M.
7937 Ypsilantha Street, Highland, CA 92346
Elder Creek Relocation Rent Study
RESO Project No. 3800 3906
F01911
APN 1210-201-27

San Bernardino County Flood Control District
825 East Third Street
San Bernardino, CA 92415

PROJECT: Elder Creek Project
PROJECT NO. F01911

MITIGATION RELEASE AND COMPENSATION AGREEMENT

In consideration of the mutual covenants and agreements herein set forth, Ariel Alonso Tello and Felipa De Jesus Tello, ("Property Owner(s)") and the San Bernardino County Flood Control District ("District") hereby agree to enter into this Mitigation Release and Compensation Agreement ("Agreement") on the following terms and conditions:

1. In consideration of the waiver in Section 2 and release in Section 3, within sixty (60) calendar days of the date of the District's execution of this Agreement, District shall make payment in the amount of \$45,000 to Property Owner(s), in the form of a check made payable to: Ariel Alonso Tello and Felipa De Jesus Tello.
2. Property Owner(s) acknowledges that District is undertaking the Project, as further described in Section 4, for purposes of reducing the risk of potential flooding in the area adjacent to the Property. Property Owner(s) understands that the District offers no guarantees or warranties as to the success or outcome of the Project in reducing flooding risk in the event of heavy rain or storm events. The execution of this Agreement does not obligate District to perform any activities on the Property or otherwise mitigate noise and vibration impacts to the Property generated by the Project, including relocating Property Owner(s) during the time period set forth in Section 4. Property Owner(s) hereby waives the right to request that the District undertake measures to mitigate the Project noise and vibration, including but not limited to, relocating Property Owner(s) for the duration of the noise and vibration impact, undertaking measures to safeguard personal property on the Property, including but not limited to, wall art, picture frames, furniture, etc. Property Owner(s) understands and agrees that the upon receipt of payment herein, it shall be solely responsible for safeguarding personal property on the Property against the impacts of the Project on the Property.
3. In consideration of the payment of the amount set forth in Section 1 and in acknowledgement of the facts set forth in Section 4, Property Owner(s), as owner of certain real property commonly identified as APN: 1210-201-27, and as more specifically described in Exhibit "A" attached hereto ("Property"), on behalf of itself and its heirs, executors, administrators, predecessors, successors, and assigns does hereby fully release, acquit, and forever discharge District, San Bernardino County, and their authorized officers, employees, agents and volunteers predecessors, successors and assigns, both past and present, of and from any and all claims, causes of action, costs, expenses, damages, liabilities, or demands of whatever nature, character, or description, whether known or unknown, suspected or unsuspected, fixed or contingent, asserted or unasserted, which Property Owner(s) may have had, may now have, or may have in the future against District and San Bernardino County, in any way arising out of, relating to, or connected to this Agreement and/or the noise and vibration generated by the Project, as more fully described in Section 4. In executing this Agreement, Property Owner(s) agrees and does hereby irrevocably, knowingly, and voluntarily waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his favor or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

The Parties knowingly and voluntarily waive the provisions of Section 1542, and acknowledge and agree that this waiver is an essential and material term of this Agreement and the settlement that led to it, and without such waiver the settlement would not have been entered into. The Parties hereby represent that they understand and acknowledge the significance and consequence of this specific waiver of Section 1542.

4. The Project involves the construction and maintenance of approximately 2,100 linear feet of improvements to Elder Creek Channel between Old Greenspot Road to approximately 700 feet downstream of Abbey Way in the City of Highland. The Project improvements include widening and deepening the existing concrete channel, constructing a new 26 foot wide to 10 feet deep concrete channel, 10 foot wide by 14 foot height reinforced concrete box, road culvert upgrades, placement of rock at specific locations, grading, and enhancing and setting aside the existing earthen channel downstream of Abbey Way for wetland-riparian wildlife purposes. Routine maintenance will include activities such as vegetation management, sediment removal, and maintenance of access roads and appurtenant structures. Project construction is estimated to commence in [Spring 2025]. The District anticipates that construction of the Elder Creek Project adjacent to the Property will generate noise and vibration in excess of the County of San Bernardino 0.2 in/sec PPV annoyance threshold (vibration) for approximately 120 working days of the Project duration commencing on the issuance of a "Notice to Proceed – Channel Construction" from the Resident Engineer to the Contractor. The Property Owner(s) will be given a copy of the "Notice to Proceed – Channel Construction" document as well as a "Weekly Statement of Working Days" Document to update the progress of the agreement during construction from the Contracts Division/Resident Engineer.]. Project construction work shall occur from 7:00AM to 4:30PM on weekdays. During this time, it is recommended that residents remain indoors with windows closed when construction activity is occurring outside of their homes to avoid elevated exterior noise and vibration levels. No Project construction work will occur on weekends or holidays, during adverse weather-related conditions, earthquakes, fire, flood, and unforeseen site conditions that could halt construction activities. No construction work will occur from November 22, 2024, to January 6, 2025. Project completion is estimated to occur on [Fall 2025].
5. Property Owner(s) hereby warrants that it is the fee owner of the Property and that it has the right to enter into this Agreement and the settlement and waivers contained herein.
6. Property Owner(s) 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 the noise and vibration generated from the Project construction activities from tenants of the Property, Property invitees, Property licensors, and/or purchasers of the Property, including the acts, errors or omissions of any such 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 Property Owner(s) indemnification obligation applies to the Indemnitees' "active" as well as "passive" negligence but does not apply to the Indemnitees' "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.
7. This Agreement is the result of negotiations between the parties hereto. This Agreement is intended by the parties as a final expression of their understanding with respect to the matters herein and is a complete and exclusive statement of the terms and conditions thereof and supersedes all other prior agreement or understanding pertaining to the matters covered in this Agreement. This Agreement shall not be changed, modified, or amended except as agreed in a written amendment to this Agreement executed by the parties. The District, Property Owner(s), their assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of their respective entity and that such execution will bind that entity to the terms of this Agreement. The Parties participated equally in negotiating and drafting this Agreement and nothing in it shall be construed against any particular Party on the basis that this Agreement was drafted by that Party. If any term, condition or application of this Agreement is held to be invalid, such invalidity shall not affect the other terms, conditions or applications of this Agreement that can be given effect without the invalid term, condition, or application. To that end, the Agreement is declared to be severable.

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8. The District shall notify Property Owner(s) in writing no less than three (3) weeks prior to the commencement of the construction work of the Project adjacent to the Property as stated on the "Notice to Proceed – Channel Construction" Document.

[Signatures on next page]

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**SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT**

By: _____

Name: Luther D. Snook

Title: Chief Executive Officer

Dated: _____

By: _____

Name and Title:

Dated: _____

APPROVED AS TO LEGAL FORM:

TOM BUNTON, County Counsel

By: _____

Name: Sophie A. Curtis

Title: Deputy County Counsel

Dated: _____

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY OWNER(S) PROPERTY

RESTATEMENT AS RECORDED IN PARCEL MAP 19559, BOOK 243, PAGE 18, TO Ariel Alonso Tello and Felipa De Jesus Tello, RECORDED April 10, 2019 AS INSTRUMENT NO. 2019-0112061, OFFICIAL RECORDS.

APN: 1210-201-27-0000