

RIGHT OF WAY CONTRACT

(Rev. 9/25)

PROJECT	WORK ORDER NO.	PROJECT PARCEL #	APN
Little 3 rd Street & Little Tippecanoe Road Imp	H15122	Fee-1	0279-122-24

This ACQUISITION AGREEMENT ("Agreement") is made by and between San Bernardino County Flood Control District, ("Grantor"), and San Bernardino County, a body corporate and politic of the State of California ("Grantee") each of them a "Party" and jointly the "Parties" as of the date the last of the parties executes this Agreement.

RECITALS

- A. Grantor is the fee owner of certain real property described as 4,125 square feet located at the northwest corner of Little Third Street and Little Tippecanoe Avenue, commonly identified as APN 0279-122-24 ("Grantor's Property").
- B. Grantee intends to complete a public project known as Little Third Street and Little Tippecanoe Avenue Road Improvement Project ("Project"), which generally consists of installing new asphalt concrete pavement, sidewalk, curb and gutter, storm drains, fencing, streetlights and constructing new curb ramps in accordance with current design standards and pursuant to the Americans with Disabilities Act (ADA) guidelines.
- C. To complete the Project, the Grantee seeks and Grantor is willing to grant and convey to the Grantee fee title to the entirety of the Grantor's Property ("Property"), as legally described and depicted in the plat[s] on Attachment "1".

AGREEMENT

1. In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:
 - (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the Grantee of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
 - (B) The Property is necessary for County purposes and public use for which Grantee has the authority to exercise the power of eminent domain.
 - (C) Grantee has not adopted a resolution of necessity nor taken any action to commence any eminent domain proceeding to acquire the Property related to the Project.
 - (D) Both Grantor and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is voluntary in compromise and settlement, in lieu of such litigation.
 - (E) The parties to this Agreement shall, pursuant Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-

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Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3.

Further, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this Agreement.

2. Payment and Just Compensation

(A) Grantee agrees to pay Grantor for said Property and rights thereto the total sum of \$39,200 (Thirty-Nine Thousand Two Hundred Dollars) ("Just Compensation"), plus Grantor's administrative fees, of currently estimated at approximately \$8,000, which is more specifically calculated as set forth below. The Just Compensation and Grantor's administrative fees shall be paid to Grantor ~~within sixty (60) days after at the Close of Escrow, which is defined as the date~~ the latest to occur of the following: (i) approval of the acquisition of the Property by the Grantee's Board of Supervisors ("Board") or the Board's Designee, (ii) mutual execution of this Agreement; (iii) the occurrence of the condition in Section 2(l), and (iiiiv) Grantor's execution of the Grant Deed.

(B) Amount Established as Just Compensation

Value of Property (Fee-1 ; 4,125 sq. ft.)	= \$39,200
Subtotal	= \$39,200

AMOUNT ESTABLISHED AS JUST COMPENSATION:	= \$39,200
<u>Administrative fees</u>	<u>= \$8,000*</u>

- Estimated at \$8,000 as of the date hereof; however, the actual cost to be paid by Grantee will be calculated by Grantor as of the date the Grant Deed is executed by Grantor.

(C) Grantor agrees to ~~use its best efforts to satisfy, of record, at or before conveying the Property and the rights therein, all cooperate with Grantee (without incurring any obligations or costs) to remove any~~ encumbrances and special assessments that are a lien against the Property, as Grantee may ~~require~~ reasonably request.

(D) Grantor agrees that Grantee may, notwithstanding the prior acceptance of this Agreement, acquire the Property by condemnation or other judicial proceedings, in which event Grantor agrees to cooperate with Grantee in the prosecution of such proceedings; Grantor agrees that the consideration hereinabove stated comprises the full amount of Just Compensation, inclusive of interest, for the acquisition of the Property; Grantor agrees that the Just Compensation set forth in this Agreement herein constitutes the full Just Compensation amount for the Property and the respective rights therein, which shall be prorated among all persons having an interest in the Property, as their respective interests may appear; and Grantor agrees that the Just Compensation shall be in full satisfaction of any and all claims of Grantor for payment for the Property. Grantee shall also pay Grantor's administration fees during any condemnation or judicial proceeding to acquire the Property.

(E) Grantee agrees to pay all escrow and recording fees, including any and all notary fees incurred in this transaction and, if title insurance is desired by the Grantee, the premium

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charged therefor. Said escrow and recording charges shall not, however, include documentary transfer tax.

(F) Grantor shall ~~satisfy, at or before the Close of Escrow, cooperate with Grantee (but without incurring any obligations or costs) to remove~~ any bond demands, delinquent taxes (together with penalties and interest thereon), and any delinquent or unpaid assessments that have become a lien as of the Close of Escrow, other than taxes for the year in which this escrow closes. The term "Close of Escrow" shall mean the consummation of the transaction contemplated by this Agreement to occur through the escrow including Grantor's conveyance of the Property to the Grantee.

(G) Grantee shall not be responsible for payment or cancellation of such obligations referenced in Section 2F prior to the Close of Escrow. The unpaid assessments remain the sole obligation of the Grantor, and, as between the assessing entity and Grantor prior to the Close of Escrow, no contractual obligation is created requiring Grantee to pay them unless Grantee acquires the Property on the Close of Escrow subject to any unpaid assessments. ~~Grantee shall also have the authority to deduct and pay from the amount shown in Paragraph 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, an/or delinquent and unpaid non-delinquent assessments which have become a lien at the Close of Escrow. The parties hereto agree that Grantee, in acquiring the Property subject to any unpaid assessments, is not assuming responsibility for payment or subsequent cancellation of such assessments. The assessments remain the obligation of the Grantor; and, as between State and Grantor, no contractual obligation has been made requiring their payment. If Grantor does not desire to satisfy or remove any unpaid assessments prior to the Close of Escrow, Grantee shall have the right to cancel the escrow and this transaction and pay all escrow cancellation costs.~~

(H) Grantee shall comply with any applicable state or federal laws, regulations, orders, including, but not limited to Revenue and Taxation Code Section 18662.

~~(H)~~(I) Grantor has received a written letter of concurrence from the California Department of Housing and Community Development (HCD) that the Property is Exempt Surplus Land under the Surplus Land Act and at least thirty (30) days have passed following the receipt of such concurrence letter.

3. This transaction will be handled through an internal escrow with San Bernardino County ("Escrow Holder").

4. Any or all moneys payable under this Agreement up to and including the total amount of unpaid principal and interest on note secured by mortgage or deed of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed or mortgage, shall, upon demand, be made payable to the mortgagee or beneficiary(ies) entitle thereunder, said mortgagee(s) or beneficiary(ies) to furnish Grantor with good and sufficient receipt showing said moneys credited against the indebtedness secured by said mortgage or deed of trust.

5. Grantor warrant(s) that there are no oral or written leases on all or any portion of the Property exceeding a period of one month, ~~and the Grantor further agrees to indemnify, defend (with~~

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~~counsel approved by Grantee), and hold the Grantee harmless and reimburse the Grantee for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month.~~

6. ~~Grantor shall indemnify, defend (with counsel reasonably approved by Grantee) and hold harmless Grantee and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including (without limitation): (1) the acts, errors or omissions of any person and for any costs or expenses (including attorneys' fees) incurred by Grantee on account of any claim except where such indemnification is prohibited by law; and/or (2) all responsibility, liability, judgements, penalties, consultants fees, attorneys' fees, any other cost and expenses, and claims for damages or injuries to persons, the environment, or property resulting from the existence or use of hazardous materials which are present on Grantor's Property as of the closing date. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. Grantor's indemnification obligation applies to Grantee's "active" as well as "passive" negligence but does not apply to Grantee's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. This Section shall survive the Close of Escrow or earlier termination of this Agreement.~~Indemnification.

A. Grantee agrees to indemnify, defend (with counsel reasonably approved by Grantor) and hold harmless the Grantor and its officers, employees, and agents from any and all claims, actions, losses, damages, and/or liability to the extent arising out of this Agreement and is caused by the negligence or intentional misconduct of Grantee. The Grantee's indemnification obligation shall survive the Close of Escrow and the execution of the Grant Deed or earlier termination of this Agreement.

B. Grantor agrees to indemnify, defend (with counsel reasonably approved by Grantee) and hold harmless the Grantee, its officers, employees, and agents from any and all claims, actions, losses, damages, and/or liability to the extent arising out of this Agreement and is caused by the negligence or intentional misconduct of Grantor. The Grantor's indemnification obligation shall survive the Close of Escrow and the execution of the Grant Deed or earlier termination of this Agreement.

C. In the event the Grantee and/or the Grantor is found to be comparatively at fault for any claim, action, loss, damage, and/or liability which results from their respective obligations under this Agreement, the Grantee and/or Grantor shall indemnify the other to the extent of its comparative fault.

7. The Grantor agrees that no improvements, other than those already on the property, shall be placed thereon; and the planting of any crops, trees, or shrubs, or alterations, repairs, or additions to existing improvements which may hereafter be placed thereon are at Grantor's risk and without expectation of payment if removed by Grantee.

8. Hazardous Substances or Hazardous Wastes Reserved

- ~~(A) Grantor hereby represents and warrants that during the period of Grantor's ownership of the Grantor's Property, there have been no disposals, releases or threatened releases of hazardous substances or hazardous wastes on, from, or under the Grantor's Property.~~

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~~Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous substances or hazardous wastes on, from, or under the Grantor's Property, which may have occurred prior to Grantor taking title to the Grantor's Property.~~

~~(B) The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the Grantee may elect to recover its cleanup costs from those who caused or contributed to the contamination. Grantor agrees to grant to Grantee, but only to the extent necessary (Grantor may reserve equal or greater rights), any rights to require/recover remediation, mitigation or cleanup costs it may have against any person or entity, including but not limited to Grantor, who may have caused or contributed to such contamination.~~

9. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement the right of possession and use of the Property by the Grantee or its agents, employees, contractors, consultants, and assigns, including the right to remove and dispose of existing improvements thereon, shall commence upon full execution of the Grant Deed at the Close of Escrow, provided that the amount of funds shown in Paragraphs 2(A) and 2(B) herein are paid to Grantor. The amount shown in Paragraphs 2(A) and 2(B) herein includes, but is not limited to, full payment for such possession and use for the respective interests in the Property and the Grantor's administration fees.
10. All notices or demands pursuant to this Agreement shall be given in writing by either party hereto to the other in person, by United States Mail (postage pre-paid), return receipt requested, or by reputable overnight courier service, and addressed to Grantee, as noted below, and to Grantor, whose address and email address shall be provided by Grantor in writing to Grantee prior to execution of this Agreement. Notice shall be deemed delivered on the date received or the date the recipient refuses to accept receipt. A courtesy copy of any notices or demands delivered in accordance with this paragraph shall be concurrently sent via e-mail to the e-mail address as agreed in this Paragraph, provided that such courtesy e-mail is not intended, nor shall it be deemed to substitute as the effective means of notice or alter the effective date of such notice. Either party may change its address for delivery of any notice or demand by giving written notice to each party. Also, Grantor shall notify the Grantee in writing within one (1) day of any property transfers.

To the Grantor at:

On file with Grantee.

To the Grantee at:

San Bernardino County
c/o Real Estate Services Department
Attention: Brandon Ocasio, Manager of Acquisitions
385 North Arrowhead Avenue, 3rd Floor San Bernardino, CA 92415-0180
Courtesy copy via email at: brandon.ocasio@res.sbcounty.gov

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11. Reserved

12. Reserved

13. ~~The Grantor agrees that no improvements, other than those already on the property, shall be placed thereon; and the planting of any crops, trees, or shrubs, or alterations, repairs, or additions to existing improvements which may hereafter be placed thereon are at Grantor's risk and without expectation of payment if removed by Grantee~~Reserved.

14. The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Grantor. Grantee must approve any assignment of this Agreement by Grantor. Governing law applicable to this Agreement is the State of California.

15. The Parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

16. Reserved

17. ~~Reserved. No Withholding as Foreign Grantor. Grantor represents and warrants to Grantee that Grantor is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code section 1445 and that it will deliver to Grantee on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.~~

18. Information Report. Escrow Holder shall file and Grantor and Grantee agree to cooperate with Escrow Holder and with each other in completing any report ("Information Report") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Grantor and Grantee also agree that Grantor and Grantee, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither Grantor nor Grantee shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information

19. The Recitals are incorporated into this Agreement by reference.

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20. All terms and conditions with respect to this Agreement are expressly contained herein and Grantor agrees that no representative or agent of Grantee, has made any representation or promise with respect to this Agreement not expressly contained herein.
21. In the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
22. Time is of the essence in performance of this Agreement and of each of its provisions.
23. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under the indemnification provisions in Paragraph ~~s 5 and~~ 6 of this Agreement.
24. The acquisition of the Property is subject to approval by the Grantee's Board of Supervisors, or the Board's authorized designee and the Grantor's governing body, which shall be required prior to the execution of this Agreement by the Grantee's and Grantor's respective authorized signatory below. Until such time that said approval is obtained ~~and Grantee has accepted said interests~~, this Agreement ~~and Grant Deed~~ shall be of no legal effect.

[Signatures on following page]

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In Witness Whereof, the parties have executed this Agreement the day and year first above written.

By _____

By _____

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

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ATTACHMENT 1

T1S, R4W, SEC 11 S.B.M.
E. Little 3rd Street
Right-of-Way Acquisition
H15122 – A-1
APN 0279-122-24

EXHIBIT "A" LEGAL DESCRIPTION

PARCEL "A"


THAT PORTION OF LOT 18 OF TRACT 2514, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36 PAGE 14 OF MAPS, RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 18; THENCE WESTERLY 165.00 FEET ALONG THE SOUTH LINE OF SAID LOT 18; THENCE LEAVING SAID SOUTHERLY LINE NORTHEASTERLY TO A POINT IN THE EAST LINE OF SAID LOT 18, SAID POINT BEING DISTANT 50.00 FEET NORTHERLY ALONG SAID EAST LINE FROM THE SOUTHEAST CORNER OF SAID LOT 18; THENCE SOUTHERLY ALONG SAID EAST LINE, 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 4124.97 SQ. FEET OR 0.095 ACRES, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

Prepared under my supervision:

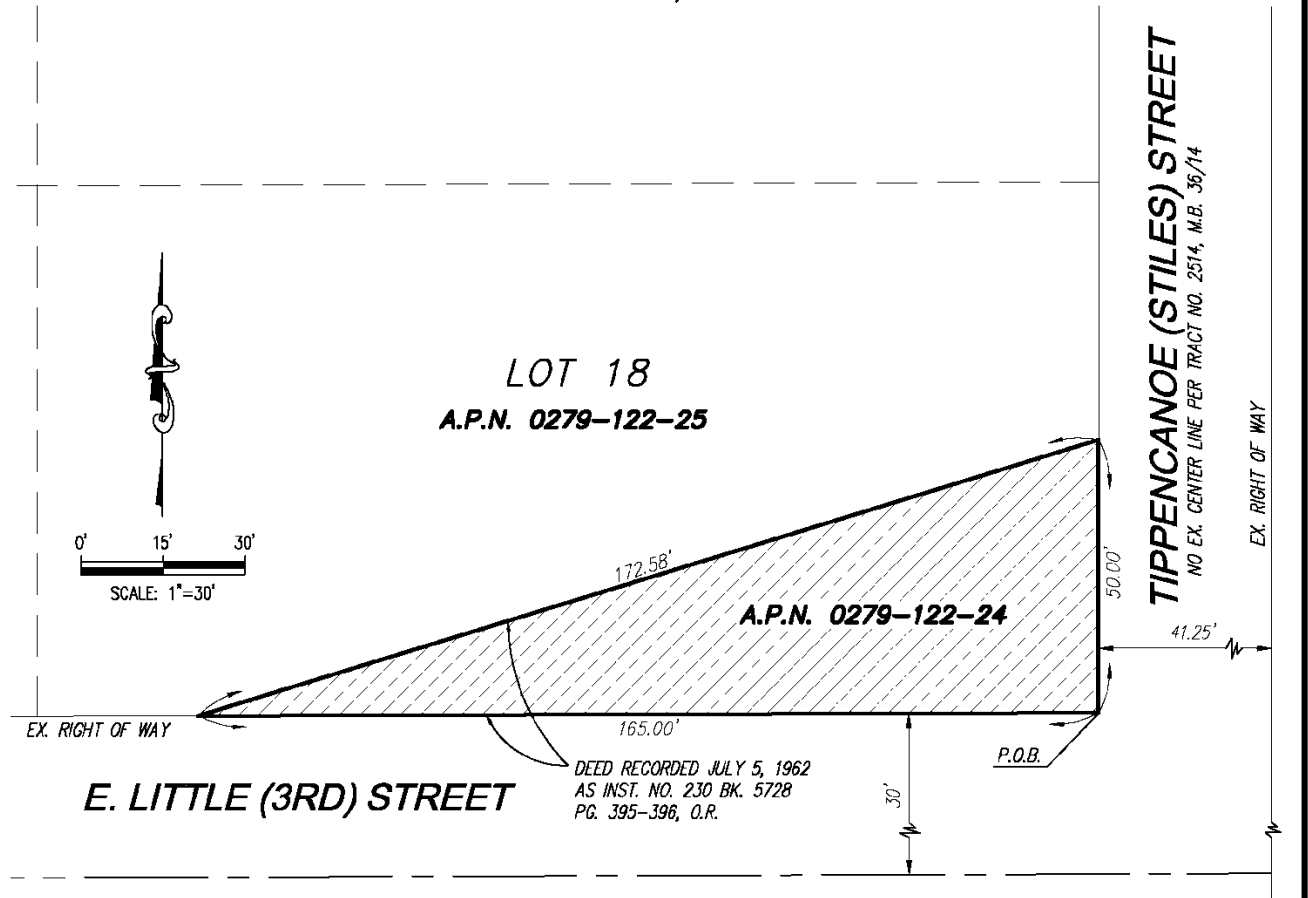

Armando D. DuPont, L.S. 7780
Reg. Exp. December 31, 2023

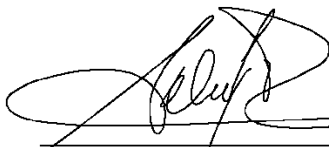


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EXHIBIT "B" PTN. LOT 18 OF TRACT 2514 MAP BOOK 36, PAGE 14




ARMANDO D. DUPONT,
P.L.S. 7780
REG. EXP. DECEMBER 31, 2023



————— = RIGHT OF WAY LINE
————— = LOT LINE
- - - - - = CENTER LINE

NOTES:
THIS MAP HAS BEEN COMPILED FROM RECORD DATA AND OTHER AVAILABLE
MATERIALS AND DOES NOT REPRESENT A FIELD SURVEY

 = AREA OF ACQUISITION (A-1): 4124.97 ± SQ. FT.

W.O. No.	Parcel No.	Owner
H15122	A-1	SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

CALVADA

SURVEYING, INC.
411 JENKS CIRCLE, SUITE 205, CORONA, CA. 92878
PHONE: 951-280-9860 FAX: 951-280-9746 www.calvada.com Job No. 23044

San Bernardino County
Department of Public Works - Transportation

Right - of - Way Plat
E. LITTLE 3RD STREET
AT
TIPPECANOE STREET
SAN BERNARDINO AREA