

Contract Number \_\_\_\_\_



ORIGINAL

SAP Number \_\_\_\_\_

## San Bernardino County Flood Control District

<b>Department Contract Representative</b>	Terry W. Thompson, Director, Real Estate Services Department
<b>Telephone Number</b>	(909) 387-5252
<b>Contractor</b>	City of Yucaipa
<b>Contractor Representative</b>	Mike Seal
<b>Telephone Number</b>	909-797-2489
<b>Contract Term</b>	N/A
<b>Original Contract Amount</b>	\$84,715
<b>Amendment Amount</b>	N/A
<b>Total Contract Amount</b>	\$84,715
<b>Cost Center</b>	1930002526
<b>GRC/PROJ/JOB No.</b>	
<b>Internal Order No.</b>	3800 3945

**Briefly describe the general nature of the contract:** Sale of approximately 3.23 acres of District-owned land (portion of APN 0303-181-19), which is near the District's Wilson III Basin Project, to the City of Yucaipa for a purchase price of \$84,715.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

► SEE SIGNATURE PAGE

Robert F. Messinger, Principal Assistant County Counsel

Date \_\_\_\_\_

Reviewed for Contract Compliance

►

Date \_\_\_\_\_

Reviewed/Approved by Department

►   
Jennifer Goodell, Real Property Manager, RESD

Date 6-12-20

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2020 (the "Execution Date"), and is entered into by and between San Bernardino County Flood Control District, a body corporate and politic ("DISTRICT") and the City of Yucaipa, a municipal corporation ("BUYER").

### RECITALS

- A. DISTRICT and BUYER entered into a Memorandum of Understanding (MOU) dated June 4, 2013 regarding the Wilson III Project ("Basin and Appurtenant Channel Improvements") and the sale of District Property located in the City of Yucaipa.
- B. DISTRICT is the owner of the fee simple interest in real property referenced as San Bernardino County Assessor's Parcel Number ("APN") 0303-181-19, consisting of approximately 42.93 acres ("DISTRICT's Property").
- C. In accordance with the MOU, the parties desire for the BUYER to purchase from DISTRICT, in fee simple, an approximately 3.24-acre portion of the DISTRICT's Property described on Exhibit "A" (the "Subject Property") as a site for the future development of the Yucaipa City Yard.
- D. DISTRICT and BUYER agree that the fair market value of the Subject Property is Eighty-Four Thousand Seven Hundred Fifteen Dollars (\$84,715.00) ("Fair Market Value"), based on an approved appraisal and market study, and BUYER agrees that the purchase of the Subject Property is AS-IS, except as specifically provided in this Agreement
- E. The Subject Property will be encumbered by a power of termination, as set forth in the Grant Deed, in favor of the District, limiting the use of the Subject Property to a municipal City yard and prohibiting the sale, lease, or other conveyance of the Subject Property to any person or entity.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions of this Agreement, DISTRICT and BUYER hereby agree as follows:

#### Section 1. Purchase and Sale of Subject Property.

Subject to all of the terms, conditions and provisions of this Agreement and for the consideration set forth below, DISTRICT hereby agrees to sell, convey and transfer to BUYER and BUYER hereby agrees to acquire all of the right, title and interest of DISTRICT in and to the Subject Property.

#### Section 2. Consideration.

BUYER shall pay to DISTRICT total consideration in the amount of Eighty-Four Thousand Seven Hundred Fifteen Dollars (\$84,715.00) ("Purchase Price") for the Subject Property.

#### Section 3. Escrow

This transaction shall be completed through an escrow established with First American Title Company ("Escrow Holder") located at 3400 Central Avenue, Suite 100, Riverside, California

92506. Escrow shall be deemed open upon Purchaser's delivery of a fully executed Agreement to the Escrow Holder, which shall occur within ten (10) business days after the Execution Date ("Opening Date").

Section 4. Encroachment Agreement. BUYER and DISTRICT acknowledge that they are parties to a separate Encroachment Permit/Agreement, which permits the Buyer to grade and place equipment on the Subject Property prior to the Closing Date as shown on Exhibit "C". It is a condition to the effectiveness of this Agreement that such Encroachment Permit/Agreement shall be approved, executed and delivered by both parties.

Section 5. Due Diligence Period.

(a) As used herein, the term "business days" means Monday through Friday, except for state and federal holidays. For a period of ten (10) business days commencing from the Date of Execution of this Agreement (the "Due Diligence Period"), BUYER shall have the right to inspect and approve all physical, environmental, legal and any other matters relating to the Subject Property (including zoning, land use and similar public agency or governmental conditions or approvals with respect to ownership, operation and use of the Subject Property) as BUYER may, in BUYER's judgment, elect to investigate at BUYER's cost; and, during the Due Diligence Period, BUYER shall be permitted to make complete physical, environmental, legal and other inspections of the Subject Property (at BUYER's sole cost) and to make and remove copies of any and all records of DISTRICT and files regarding the Subject Property; provided, however, neither BUYER nor any agent or consultant acting on behalf of BUYER shall conduct a Phase II environmental testing, boring, or other entry or disturbance of any sort on the Subject Property without prior notice to and written consent of DISTRICT. If BUYER, in BUYER's sole and absolute discretion, is satisfied with all of the inspections and investigations BUYER elects to undertake as described above, BUYER shall give written notice of such satisfaction to DISTRICT prior to the end of the Due Diligence Period ("Notice of Due Diligence Approval"). If BUYER does not provide a Notice of Due Diligence Approval, BUYER shall have conclusively been deemed to have approved its due diligence investigation of the Property.

(b) Subject to DISTRICT's obligations under California law as a seller of real property to disclose to BUYER all material facts relating to the Subject Property that are known to DISTRICT and not known to BUYER, BUYER shall accept the delivery of possession of the Subject Property (including but not limited to; subterranean structures and soil conditions), in the proposed condition, but otherwise "As Is," "Where is," and "Subject to all Faults" condition. BUYER hereby acknowledges that it has relied solely upon its own investigation of the Subject Property and its own review of such information and documentation as it deems appropriate. BUYER is not relying on any statement or representation by DISTRICT, any employee, official or consultant of DISTRICT relating to the condition of the Subject Property. DISTRICT makes no representations or warranties as to whether the Subject Property presently complies with environmental laws nor whether it shall comply after completion of the activities by BUYER. Furthermore, to the extent that DISTRICT has provided BUYER with information relating to the condition of the Subject Property, DISTRICT makes no representation or warranty with respect to the accuracy, completeness or methodology or content of such reports or information.

(c) Effective as of the Closing Date, subject to DISTRICT's obligations under California law as a seller of real property to disclose to BUYER all material facts relating to the Subject Property that are known to DISTRICT and not known to BUYER, BUYER, on behalf of itself, and its successors, shall, and by the execution of this Agreement, hereby does, forever release

DISTRICT, its officers, directors, agents and employees, and its and their respective successors, of and from any and all losses, liabilities, damages, claims, demands, causes of action, costs and expenses, whether known or unknown, arising out of or in any way connected with the Subject Property, including the condition of title to the Subject Property (and DISTRICT's interest in and ownership thereof) and the environmental, seismic and structural condition of the Subject Property (herein, "Losses").

(d) BUYER expressly waives any rights or benefits available to it with respect to the foregoing release under any provision of applicable law which generally provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. BUYER, by the execution of this Agreement, acknowledges that it fully understands the foregoing, and with this understanding, nonetheless elects to and does assume all risk for Losses known or unknown, described in this Section 5 and which are released pursuant to subsection (c) above. Without limiting the generality of the foregoing, THE UNDERSIGNED ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

THE UNDERSIGNED, BEING AWARE OF THIS CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

BUYER's Initials: 

(e) This Agreement gives permission to BUYER and its agents and contractors to enter the Subject Property for the purpose of conducting the necessary due diligence. The separate Encroachment Permit/agreement between BUYER and DISTRICT permits other activities of BUYER on the Subject Property prior to the close of escrow. Any other use of the Subject Property by BUYER, its agents and contractors is deemed unauthorized and may, in DISTRICT's sole discretion, be cause for termination of this Agreement if such use by BUYER is not discontinued within five business days after written notice from DISTRICT.

#### Section 6. Conditions Precedent.

(a) DISTRICT's Contingencies. DISTRICT's obligation to sell the Subject Property shall be subject to and contingent upon, DISTRICT's reasonable satisfaction or written waiver of the following:

(1) BUYER's performance of each and every covenant required to be performed by BUYER hereunder on or before the Closing; and

(2) The truth and accurateness of each of BUYER's covenants, representations and warranties, as set forth in Section 10(b) of this Agreement as of the Closing.

(b) BUYER's Contingencies. The Closing and BUYER's obligation to purchase the Subject Property shall be subject to and contingent upon the timely satisfaction or written waiver of the following:

(1) RESERVED; and

(2) BUYER shall obtain title reports and copies of the title exception documents, which BUYER may accept or reject in part or in total. BUYER, at its sole discretion, may terminate this Agreement at any time if any or all title exceptions are not acceptable to BUYER; and

(3) The truth and accurateness of each of DISTRICT's covenants, representations and warranties, as set forth in Section 10(a) of this Agreement as of the Closing; and

(4) DISTRICT shall have formally determined and declared in writing that the Subject Property is no longer necessary and surplus to DISTRICT's needs or is exempt from the Surplus Land Act.

In the event that any of the foregoing contingencies have not been either timely satisfied or expressly waived in writing by BUYER, then BUYER may terminate this Agreement by written notice to DISTRICT at any time prior to the Closing.

#### Section 7. Closing Conditions.

(a) As used herein, "Closing" means and refers to the date on which the conditions set forth in this Agreement for the transfer of the Subject Property have been satisfied, and the Deed is recorded.

(b) The Subject Property will be transferred to BUYER on the Closing Date (as defined below), provided that within the periods of time set forth in this Agreement: (i) neither DISTRICT nor BUYER have terminated this Agreement, (ii) BUYER has accepted the Deed, and (iii) all other conditions of the Closing set forth in this Agreement have been met and BUYER has paid, or caused to be paid all applicable costs relating to such closing.

#### Section 8. Closing

(a) The Closing shall occur no later than ten (10) business days after BUYER's completion of its due diligence during the Due Diligence Period described in Section 5. All assessments, and property taxes (unless DISTRICT is exempt), shall be prorated as of the Closing Date.

(b) On the day that is at least two business days prior to the day designated by BUYER in writing as the date for the Closing (the "Closing Date"), DISTRICT shall deliver to Escrow in recordable form the Grant Deed in the form attached hereto as Exhibit "B" (the "Deed") duly executed and acknowledged by DISTRICT, which Deed shall convey all of its right, title and interest of DISTRICT in the Subject Property to BUYER.

(c) Prior to the Closing Date, BUYER shall deliver to Escrow, all cash required by the terms of this Agreement to close, plus or minus closing adjustments and prorations, and a Certificate of Acceptance in the form attached to the form of Grant Deed in Exhibit "B", duly executed and acknowledged (for recordation with the Grant Deed).

(d) Escrow holder shall be instructed to record the Grant Deed in the Recorder's Office of the County of San Bernardino, California, if and when BUYER has obtained a commitment acceptable to BUYER for a CLTA (or if elected by BUYER, an ALTA) owner's policy of title insurance ("Title Policy") issued by First American Title Company (the "Title Company") acceptable to BUYER with liability in an amount equal to the Fair Market Value of the Subject Property together with such endorsements to the policy as may be reasonably requested by BUYER, insuring that fee title to the Subject Property is vested in BUYER, free and clear of options, rights of first refusal or other purchase rights, leases or other possessory interests, lis pendens and monetary liens and/or encumbrances and subject only to the title exceptions shown in that certain Preliminary Report dated February 14, 2020, issued by First American Title Company under Order Number NHSC-6167661.

#### Section 9. Closing Costs, Possession.

(a) As used herein, "Closing Costs" means and refers to title insurance premiums, required surveys and endorsements, filing fees, recordation fees, messenger costs and fees, and those other costs required to close the transaction contemplated herein.

(b) BUYER shall pay the premium for its title insurance, cost of the Survey and all requested CLTA or ALTA endorsements, the cost of recording the Deed and any documentary or other transfer taxes payable on account of the conveyance of the Subject Property to BUYER and any and all other costs associated with transfer of the Subject Property including but not limited to permits, surveys, construction costs, CEQA, EIR, environmental review, habitat issues.

(c) BUYER shall pay all Closing Costs.

(d) BUYER shall be entitled to exclusive possession of the Subject Property immediately upon the Closing.

#### Section 10. Covenants, Representations and Warranties.

(a) DISTRICT hereby makes the following covenants, representations and warranties and acknowledges that the execution of this Agreement by BUYER has been made in material reliance by BUYER on such covenants, representations and warranties.

(1) Power and Authority. DISTRICT has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

(2) Requisite Action. DISTRICT has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required.

(3) Enforceability of Agreement. The persons executing this Agreement and any instrument or document referenced herein have been duly authorized to do so and this Agreement and any such instrument or document is valid and legally binding on DISTRICT and enforceable in accordance with its respective terms.

(4) No Litigation. There is no pending or, to the best of DISTRICT's knowledge, threatened claims, action, allegations or lawsuit of any kind, whether for personal injury, property damage, property taxes, or otherwise, that could affect the marketable title and ownership to the Subject Property.

(5) No Violation. Neither the execution of this Agreement or the other instruments and documents referenced herein nor the performance by DISTRICT of its obligations hereunder and thereunder shall to the best of DISTRICT's knowledge result in a breach or constitute a default under any agreement, document, instrument or other obligation to which DISTRICT is a party or by which DISTRICT may be bound or under law, statute, ordinance, rule, governmental regulation, state constitution, or any writ, injunction, order or decree of any court or governmental body applicable to DISTRICT.

(6) Operation and Condition Pending Closing. Between the date of this Agreement and the Closing hereunder, DISTRICT shall continue to manage, operate and maintain the Subject Property in the same manner as existed prior to the execution of this Agreement.

(7) Contracts. There are no contracts or agreements to which DISTRICT is a party relating to the operation, maintenance, development, improvement, ownership or use of the Subject Property which shall survive the Closing.

(8) Encumbrances. DISTRICT covenants not to further encumber and not to place any further liens or encumbrances on the Subject Property, including, but not limited to, covenants, conditions, restrictions, easements, liens, options to purchase, rights of first offer options to lease, leases, tenancies, or other possessory interest. DISTRICT also covenants not to authorize any other person or entity to take any action that adversely affects the physical condition of the Subject Property or its soils to any material extent.

(9) All representations and warranties contained in this Section 10(a) are true and correct on the date hereof and on the Closing Date and shall survive the Closing.

(b) BUYER hereby makes the following covenants, representations and warranties and acknowledges that the execution of this Agreement by DISTRICT has been made in material reliance by DISTRICT on such covenants, representations and warranties.

(1) Power and Authority. BUYER has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and such other instruments as may be referenced herein on behalf of BUYER hereby represent and warrant that such persons have the power, right and authority to bind BUYER.

(2) Requisite Action. BUYER has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required.

(3) Enforceability of Agreement. The persons executing this Agreement and any instrument or document referenced herein have been duly authorized to do so and this Agreement and any such instrument or document is valid and legally binding on DISTRICT and enforceable in accordance with its respective terms.

(4) No Violation. Neither the execution of this Agreement or the other instruments and documents referenced herein nor the performance by BUYER of its obligations hereunder and thereunder shall to the best of BUYER's knowledge result in a breach or constitute a default under any agreement, document, instrument or other obligation to which BUYER is a party or by which BUYER may be bound or under law, statute, ordinance, rule, governmental regulation, state constitution, or any writ, injunction, order or decree of any court or governmental body applicable to BUYER.

(5) All representations and warranties contained in this Section 10(b) are true and correct on the date hereof and on the Closing Date and shall survive the Closing.

Section 11. Default.

(a) In the event BUYER fails to complete the purchase of the Subject Property for any reason, then BUYER shall have no right to seek specific performance or damages including, but not limited to incidental, consequential and punitive damages. If this transaction should fail to close as provided herein, this Agreement shall terminate upon written notice to BUYER, and upon such written notice of termination, all obligations of BUYER and DISTRICT shall terminate.

(b) In the event DISTRICT fails to complete the sale of the Subject Property for any reason, then BUYER shall have the right to seek specific performance, but shall have no right to seek damages including, but not limited to incidental, consequential and punitive damages.

Section 12. Conflict of Interest.

No member, official or employee of either party having any conflict of interest, direct or indirect, related to this Agreement and the use and development of the Subject Property shall participate in any decision relating to the Agreement. The parties represent and warrant that they do not have knowledge of any such conflict of interest.

Section 13. Nonliability of Officials and Employees.

No officer, official or employee of either party shall be personally liable to the other, or any successor in interest of such other party, in the event of any default or breach or for any amount which may become due hereunder, or on any obligations under the terms of this Agreement.

Section 14. Indemnification.

BUYER agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold DISTRICT and its officers, employees, volunteers and agents harmless from and against any and all claims, actions, losses, and/or liability and for any damages, judgments, costs, expenses, attorney's fees and/or liability arising from or related to any act or omission of BUYER in the course of performing its inspection of the Property and out of BUYER's construction of the City yard on the Subject Property prior to BUYER taking ownership of the Subject Property. BUYER's indemnification obligation applies regardless of the existence or degree of fault of the indemnitee. Nothing in this provision shall be construed to require BUYER



to indemnify the indemnitee for the indemnitee's active negligence or willful misconduct. DISTRICT shall give BUYER written notice of the occurrence of a claim, litigation or other matters for which DISTRICT seeks indemnity under this Section as promptly as practicable following DISTRICT's knowledge of the occurrence of such matter and DISTRICT shall reasonably cooperate with BUYER in the defense of any such claim or matter and shall not take any action that would adversely affect BUYER's defense of such

Section 15. Miscellaneous.

(a) The effective date of this Agreement shall be the date on which the last of the parties executes this Agreement.

(b) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same agreement, with one counterpart being delivered to each party hereto.

(c) All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(d) The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal.

(e) This Agreement and the exhibits attached hereto constitute the entire understanding and Agreement of the parties.

(f) The headings to the paragraphs of this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not in any way affect its interpretation. Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation."

(g) As this Agreement was jointly prepared by both parties, the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of law principles. The parties agree that any action brought by any party to this Agreement shall be in the San Bernardino County Superior Court. If any action is brought by a third party, the parties agree to use their best efforts to have such action heard in the San Bernardino County Superior Court.

(i) 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. This subsection shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under "Section 14. Indemnification."

(j) Each party shall execute and deliver such other reasonable documents requested by the other party to consummate the transactions described herein.

Section 16. Board of Supervisors' Approval.

This Agreement is subject to and shall have no force or effect until and unless first approved by the San Bernardino County Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

**San Bernardino County Flood Control District**

By: [Signature]  
Curt Hagman,  
Chairman, Board of Supervisors

Date: JUN 23 2020

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

LYNNA MONELL, Clerk of the Board of  
Supervisors

By: [Signature]  
Deputy

Date: JUN 23 2020



**City of Yucaipa**

By: [Signature]  
David Avilla, Mayor

Date: \_\_\_\_\_

ATTEST:  
By: [Signature]  
Jennifer Crawford,  
Assistant City Manager/City Clerk  
City of Yucaipa

Date: 6-8-20

By: [Signature]  
Fermin G. Preciado, City Engineer

Date: 6/8/20

Approved as to Legal Form:

Michelle D. Blakemore, County Counsel  
San Bernardino County, California

By: [Signature]  
Robert F. Messinger, Principal Assistant  
County Counsel

Date: 6/15/2020

Approved as to Legal Form:

By: \_\_\_\_\_  
David Snow, City Attorney  
City of Yucaipa

Date: \_\_\_\_\_

Approved as to Content:

Section 16. Board of Supervisors' Approval.

This Agreement is subject to and shall have no force or effect until and unless first approved by the San Bernardino County Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

**San Bernardino County Flood Control District**

By: \_\_\_\_\_  
Curt Hagman,  
Chairman, Board of Supervisors

Date: \_\_\_\_\_

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

LYNNA MONELL, Clerk of the Board of  
Supervisors

By: \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

Approved as to Legal Form:

Michelle D. Blakemore, County Counsel  
San Bernardino County, California

By: \_\_\_\_\_  
Robert F. Messinger, Principal Assistant  
County Counsel

Date: \_\_\_\_\_

**City of Yucaipa**

By: \_\_\_\_\_  
David Avilla, Mayor

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Jennifer Crawford,  
Assistant City Manager/City Clerk  
City of Yucaipa

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Fermin G. Preciado, City Engineer

Date: \_\_\_\_\_

Approved as to Legal Form:

By: \_\_\_\_\_  
David Snow, City Attorney  
City of Yucaipa

Date: 6/9/2020

Approved as to Content:

By: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT "A"**

### **Legal Description of Subject Property (Attached Legal and Plat)**

#### **EXHIBIT A**

All that portion of Lots 11 and 12, Block B of Yucaipa Water and Lumber Company Subdivision No. 1 in the County of San Bernardino, State of California, as per plat recorded in Book 17 of Maps, page 27 also being a portion of those parcels granted to San Bernardino County Flood Control District in the that document recorded on August 16, 1940 in Book 1431, Page 10, records of said County, more particularly described as follows:

Commencing at the Northwest corner of said Lot 12;

THENCE North  $89^{\circ} 32' 57''$  East along the North line of said Lot 12 a distance of 33.01 feet to the True Point of Beginning;

THENCE continuing along said North line and the North line of said Lot 11 North  $89^{\circ} 32' 57''$  East a distance of 575.65 feet to a point that lies 50.67 feet Westerly of the Northeast corner of said Lot 11;

THENCE South  $00^{\circ} 32' 41''$  East a distance of 47.94 feet;

THENCE South  $84^{\circ} 12' 33''$  East a distance of 50.98 feet to a point on the East line of said Lot 11, said point lies Southerly 53.49 feet from the Northeast corner of said Lot 11;

THENCE South  $00^{\circ} 32' 14''$  East along the East line of said Lot 11 a distance of 159.90 feet;

THENCE North  $81^{\circ} 07' 56''$  West a distance of 32.81 feet;

THENCE South  $83^{\circ} 19' 06''$  West a distance of 42.31 feet;

THENC South  $54^{\circ} 37' 03''$  West a distance of 38.53 feet;

THENCE South  $78^{\circ} 33' 09''$  West a distance of 61.92 feet;

THENCE South  $81^{\circ} 31' 28''$  West a distance of 78.78 feet to the beginning of a tangent curve, concave to the Southeast and having a radius of 75.00 feet;

THENCE Southwesterly along the arc of said curve a distance of 56.74 feet through a central angle of  $43^{\circ} 20' 38''$ ;

THENCE South  $38^{\circ} 10' 51''$  West a distance of 69.59 feet;

THENCE North  $33^{\circ} 41' 41''$  West a distance of 79.77 feet;

THENCE North 48° 35' 38" West a distance of 53.37 feet to the beginning of a tangent curve concave to the Southwest and having a radius of 150.00 feet;

THENCE Northwesterly along the arc of said curve a distance of 59.34 feet through a central angle of 22°40'00";

THENCE North 71° 15' 38" West a distance of 44.34 feet to the beginning of a tangent curve concave to the Northeast and having a radius of 170.00 feet;

THENCE Northwesterly along the arc of said curve a distance of 210.10 feet through a central angle of 70°48'35";

THENCE North 00° 27' 03" West a distance of 31.94 feet to the True Point of Beginning.

Said Parcel contains 3.23 acres more or less.



## 5



**EXHIBIT “B”**

**Form of Grant Deed**

(Attached)



**Recording Requested By:**

City of Yucaipa

**When Recorded Mail  
Document and Tax Document  
to:**City of Yucaipa  
34272 Yucaipa Blvd.  
Yucaipa, CA 92399Record without fee subject to  
Gov't Code 6103 and 27383Project: Wilson Creek  
System No.: 3.601  
Parcel No.: 150  
Dept. Code: 11600**GRANT DEED**D.P. No.: 3.601/137  
APN: Ptn of 0303-181-19  
Date: April 23, 2020

The undersigned grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX \$0.00 Conveyance to Government Entity. R&T  
11922

- ☐ computed on full value of property conveyed, or  
☐ computed on full value less liens and encumbrances remaining at the time of  
sale  
☐ Unincorporated Area      ☒ City of Yucaipa

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT**, a body corporate and politic, ("Grantor"), does hereby grant to the **CITY OF YUCAIPA**, a municipal corporation ("Grantee"), the following described real property in the City of Yucaipa, County of San Bernardino, State of California,

See, **Exhibit "A"**, legal description, **and** plat, attached hereto and made a part hereof.

**SAN BERNARDINO COUNTY  
FLOOD CONTROL DISTRICT**

By: \_\_\_\_\_

Name: Curt Hagman

Title: Chairman of the Board of Supervisors

Date: \_\_\_\_\_

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 San Bernardino )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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)

**CERTIFICATE OF ACCEPTANCE**  
(California Government Code § 27281)

This is to certify that the real property described in the attached Grant Deed by the San Bernardino County Flood Control District to the City of Yucaipa, is hereby accepted by the undersigned officer on behalf of the City of Yucaipa, acceptance of said real property being authorized by City Council action on \_\_\_\_\_, 202\_\_, and the City of Yucaipa consents to the recordation thereof by its duly authorized officer.

ATTEST:

\_\_\_\_\_  
Raymond A. Casey, City Manager

**[SIGNATURE MUST BE  
ACKNOWLEDGED]**

\_\_\_\_\_  
Jennifer Crawford, City Clerk

EXHIBIT "B"  
TERMS AND CONDITIONS

The San Bernardino County Flood Control District, a body politic and corporate of the State of California ("Grantor") conveys the fee interest in the Property herein described (Exhibit "A" Grant Deed) to City of Yucaipa, a municipal corporation ("Grantee"), and reserves therein a Power of Termination pursuant to California Civil Code § 885.010 et seq. under which, upon written notice to Grantee, the Property will revert automatically to Grantor without any further action required on the part of Grantor in the event one or several of the following occurs: 1) Grantee fails to develop the property for a City municipal yard for the benefit of the citizens of the City of Yucaipa in San Bernardino County; or 2) Grantee attempts to sell, lease or otherwise convey the Property. This Power of Termination shall expire on the date that is five years following the date on which this deed is recorded in the official records of the County of San Bernardino.

Grantee covenants that in the event that the Power of Termination described above is exercised by Grantor that Grantee will promptly execute and deliver to Grantor a quitclaim deed conveying to Grantor any interest of Grantee in the Property.

Agreed and accepted this 8th day of June 2020.

City of Yucaipa

By \_\_\_\_\_  
David Avilla, Mayor

Date \_\_\_\_\_

**Exhibit “C”**  
**Encroachment Permit**

## San Bernardino County Flood Control District

Inspection Phone:  
(909) 387-8009

Inspection office shall be notified two working days prior to commencing permitted use. FAILURE TO OBTAIN INSPECTION SHALL BE CAUSE FOR REVOCATION OF THIS PERMIT.

825 East Third Street, Room 108  
San Bernardino, CA 92415-0835  
(909) 387-7995 - FAX (909) 387-1858

# PERMIT



**Permit Issued:**

**Permit Expires:**

**File:** 3-601/2.04  
**Permit No:** P-32020025

**Permittee:** City of Yucaipa  
34272 Yucaipa Boulevard  
Yucaipa, CA 92399

**Contact/Phone:** Michael Seal 909-790-9203  
Special Projects

**Filing Fee:** NO FEE  
**Review Fee Deposit:** \$3,000.00  
**Inspection Fee Deposit:** \$1,250.00  
**TOTAL:** \*Actual Cost  
\*Review and Inspection fees will be "Actual Cost"

**Permit Activity:** Perform grading operations within a portion of District right-of-way that is currently being surplussed for a future City yard site being prepared in support of the Wilson Basin III Project being constructed under P-32016026

**Facility:** Wilson Creek

**Location:** South of Oak Glen Road and west of Bryant Street

**City/Community:** City of Yucaipa

1. This Permit is not valid without the accompanying Special, Standard, and General Provisions and any additional exhibits referenced by those provisions. Exercise of this Permit, the performance of any work contemplated hereunder, by Permittee or Permittee's authorized agent, shall indicate acceptance of and agreement to comply with all of the provisions of this Permit. Permittee shall make all contractors doing work on the Project familiar with all of the requirements of this Permit. Violation of any provision of this Permit shall be cause for immediate revocation of this Permit.
2. This Permit, or a certified copy thereof, shall be kept at the job site throughout the period of operations within District right-of-way and shall be shown to any District Representative or any law enforcement officer upon demand.
3. No revisions to the approved plans shall be made during construction without review, written approval and/or Permit amendment from the District.

### PERMITTEE'S ACCEPTANCE:

Signature by the Permittee, or Permittee's Authorized Agent, of this Permit shall indicate acceptance of all of the provisions of the Permit and shall represent that signee has full authority to act on behalf of and legally bind Permittee to all terms herein.

### DISTRICT APPROVAL:

\_\_\_\_\_  
Permittee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
BRENDON BIGGS, M.S., P.E.  
Interim Flood Control Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
PRINT

\_\_\_\_\_  
TITLE

cc: CA Dept. of Fish and Wildlife  
FC Operations Supt  
Inspector

## **STANDARD PROVISIONS**

1. This Permit shall become effective upon the "Permit Issued" date shown on Page 1 of this Permit. All Permit provisions and all applicable fees (i.e. review fees, inspection fees, monthly land use fees, etc.) for the Permit shall commence or become enforceable upon the Permit Issued date, regardless of the Permittee's actual commencement of activity within District right-of-way. Signature by the Permittee or Permittee's Authorized Agent on Page 1 of this Permit shall indicate the Permittee's agreement to assume all responsibility and to adhere to the Permit terms and fees from the date of Permit issuance.
2. This permit is issued for the sole purpose of rough grading activities only, as depicted on the attached plan "**Exhibit A**" and corresponding SWPPP.

## **GENERAL PROVISIONS**

1. It shall be the responsibility of the Permittee to adhere to all applicable Federal, State and local laws and regulatory requirements. The Permittee shall comply with the District's Stormwater Ordinance 3588 and all applicable National Pollutant Discharge Elimination System (NPDES) requirements to reduce or eliminate pollution of stormwater discharges into waters of the United States. In this regard, the Permittee shall utilize Best Management Practices (BMPs) in the construction and subsequent operation of the permitted activity to prevent any pollutants (including sediment) from being discharged into any storm drain and/or channel systems.

The following items must also be adhered to:

- Appropriate BMPs should be utilized during all phases of work.
  - All pollutant impacts from spills, drips, overspray, and/or other accidental releases to soil shall be mitigated in a timely manner. Mitigation typically includes disposal of impacted soils through appropriate hazardous waste procedures.
  - Upon the completion of the project or portion of the project covered under this Flood Control Permit, all trash and/or debris shall be removed. No waste shall be disposed of in any District facility.
  - Permittee shall, at all times, exercise proper dust control and dust abatement.
2. The use of any District-owned property, easement areas, or areas covered under any agreement involving the District for conservation or mitigation purposes by any entity other than the District is expressly prohibited under this Permit, unless such conservation or mitigation has been specifically listed as an authorized Permit activity on Page 1 of this Permit. This prohibition shall remain in perpetuity regardless of approvals that the Permittee or Permittee's authorized agent may obtain within environmental permits or documents from any and all environmental regulatory agencies prior to issuance of the District's Permit.
  3. The review and inspection fees for this Permit shall be based on the District's Schedule of Fees Ordinance in effect at the time of District review and/or inspection. Upon completion of the permitted activity, the District will compile all District costs as outlined on the appropriate Schedule of Fees. In the event costs exceed the deposit amount, the Permittee will be billed for the overage and hereby agrees to pay such amount to the District. In the event costs are less than deposit amount, the excess will be refunded to the Permittee.

4. The District's Schedule of Fees Ordinance is subject to change by the District Board of Supervisors. The Board typically considers changes in the Schedule of Fees Ordinance to take effect at the beginning of each fiscal year (July 1). Should the borrow fee rate be adjusted at any time during the life of this Permit in accordance with changes to the Schedule of Fees Ordinance, the Permittee shall have the right to continue soil removal based on the new rate or request cancellation of its Permit prior to the effective date of the new rate. Upon cancellation, the Permittee shall be responsible for restoring the work area to the satisfaction of the District prior to vacating District right-of-way. The District shall not be responsible for any impact to contractual obligations the Permittee may have as a result of revisions to the District's Schedule of Fees Ordinance.
5. The term of construction activities shall be completed prior to the Permit expiration date. The District will coordinate an extension(s) to the Permit term upon receipt of a completed Flood Control Permit Amendment Application at least thirty days prior to the expiration date.
6. This Permit is valid only to the extent of the District's jurisdiction. Permits or other approvals required by other agencies or underlying fee owners of District easement lands shall be the responsibility of the Permittee. Nothing contained in this Permit shall be construed as a relinquishment of any rights now held by the District.
7. Should any survey monumentation be located during the course of construction and it is further determined that such monumentation will be disturbed or destroyed during construction, then a Licensed Land Surveyor or Registered Civil Engineer authorized to practice land surveying shall submit a corner record showing pre-construction ties prior to disturbing the monument with the County Surveyor prior to the start of construction. The monuments shall be reset in a surface of the new construction, with a suitable monument box placed thereon, or set with permanent witness monuments. A corner record shall be filed with the County Surveyor for reset of monuments and evidence submitted prior to finalizing the Permit. All work shall be performed under the direction of a licensed land surveyor or registered civil engineer at the expense of the Permittee.
8. Permittee shall make all contractors doing work on this Project familiar with all of the requirements of this Permit.
9. The Permittee shall be responsible to provide inspection and/or video inspection and all associated reports, etc. for the life of the structures allowed under this Permit within 90-days after written notification by the District. All reports and documentation shall be to standards acceptable to the agencies requesting the inspection (e.g. State or Federal agencies).
10. No floatable materials or stockpiling shall be maintained in District right-of-way, and equipment shall be kept out of District right-of-way except when in use during work hours.
11. The existing access gates shall be locked after hours and on weekends by interlocking Permittee's lock with the District's lock to allow District access. The Permittee shall ensure that the gate remains locked at all times except when authorized access is required.
12. The proposed activity within District right-of-way shall be in compliance with all applicable City/County ordinances for noise and operating hours.
13. The Permittee shall not have exclusive use of the Permit Area. The District may allow other Permittees access to the area to engage in permitted activities.



14. All existing asphalt or concrete surfacing removed within District right-of-way shall be sawcut at the removal limits. Any settlement in the future shall be maintained by the Permittee.
15. All loads and vehicles accessing the Permit site shall comply with applicable State Motor Vehicle requirements.
16. Backfill in all areas having flood control facilities shall be similar to the existing material and shall not contain organic material, broken concrete or pavement, or other material unsuitable for compaction. Backfill two feet deep under concreted rock slope protection and/or two feet behind concrete structures shall be compacted to at least 95% of maximum dry density as determined by ASTM Test Method D-1557. All other backfill shall be compacted to at least 90% relative density as determined by ASTM Test Method D-1557, Method C and certified evidence thereof submitted. Compaction tests shall be performed at locations specified and to the satisfaction of the District.
17. All construction and material testing for facilities constructed within District right-of-way will be performed by the Permittee and/or Permittee's authorized agent and certified evidence thereof shall be furnished to the District at the Permittee's expense.
18. If required by the District's Inspector, the Permittee will submit "Record Drawings", stamped and signed by a Registered Engineer in the State of California, at the time of the final inspection. In addition, an electronic "PDF" format copy will be required.
19. No more than one-third (1/3) of any flood control facility may be obstructed during the period October 15 to April 15, nor more than two-thirds (2/3) of any facility may be obstructed during the remaining period. The term "obstruction" shall include all temporary or permanent structures, falsework, excavated material, and equipment connected with the construction. For the purpose of computing the area of an obstruction, dimensions shall be taken normal to the channel flow of the actual physical outline of the obstruction.
20. The Permit can be immediately revoked at any time upon written notification from the District. Violation of any provisions of this Permit shall be cause for immediate revocation of this Permit. Upon revocation, the Permittee shall cease all activities and restore District right-of-way to the satisfaction of the District.
21. At any time during the life of this Permit, the District may revise, modify, or add provisions to this Permit as may be required to meet the flood control, water conservation, and safety responsibilities of the District.
22. Should maintenance of the permitted activities be required at any time, the Permittee shall coordinate such maintenance activity with the District's Flood Control Operation's Support Division.
23. INSURANCE - This Permit shall not become valid until the Certificate of Insurance has been completed by your contractor's insurance company and approved by the Flood Control District. If the Permit activity is to be completed by Permittee's forces, the Certificate of Insurance shall be completed by Permittee's insurance company and approved by the Flood Control District.

24. The Permittee shall indemnify and hold the District, its Board of Supervisors, and all of its officers, employees and agents free and harmless from any and every claim, demand or action for damages, or injury to any person or persons or property of any kind whatsoever, and any cost or expense in connection therewith, and agrees to defend the Flood Control District, the County of San Bernardino, and all officers, employees and agents of said public body against any claims or demands which may arise out of or result from Permittee's construction, operation, use or activities on District right-of-way. If the Permittee fails to comply with any obligation contained herein, Permittee shall be liable to the District for any administrative expenses and attorney's fees incurred in obtaining compliance with this Permit and any such expenses and fees incurred in processing any action for damages or for any other remedies permitted by law.
25. A copy of this Permit will be sent to the State Department of Fish and Wildlife, who may require a permit for this type of activity. It is the responsibility of the Permittee to obtain any required permits and approvals prior to starting any activity authorized in the Permit.

A completely executed copy of the State Department of Fish and Wildlife permit shall be kept at the Permit site at all times while work is being performed. Permittee shall make all contractors doing work on this project familiar with all of the requirements of the State Department of Fish and Wildlife permit.
26. Prior to beginning any activity authorized in this Permit, the Permittee and/or Permittee's authorized agent, shall notify Underground Service Alert (USA) at 1-800-422-4133 at least 48 hours in advance to coordinate the Permit activity on District right-of-way.
27. In accepting this Permit, the Permittee agrees to replace any existing improvements which may include but not be limited to access road pavement, irrigation pipelines, chain link fencing and landscaping with acceptable products, installed to size, line and grade as the existing products removed and as approved by the District.
28. Work done in the absence of prescribed inspection may be required to be removed and replaced under the proper inspection, the entire cost of removal and replacement, including the cost of all materials used in the work thus removed, shall be borne by the Permittee, regardless of whether the work removed is found to be defective or not. Work covered up without the authority of the District, shall upon order of the District, be uncovered to the extent required, and the Permittee shall bear the entire cost of performing all the work and furnishing all the equipment and materials necessary for the removal and subsequent replacement of the covering, as directed by the District.
29. Should installation or maintenance activities be required during the period October 15 to April 15, work shall be undertaken within a 5-day clear weather forecast. Permittee shall maintain and provide for a flood watch when storm conditions threaten, and have personnel and equipment available on a 24-hour schedule and provide the District with the names and after-hours phone numbers of responsible supervisory personnel.
30. Access to the District's levees, channels and patrol roads shall remain open and free to vehicular traffic at all times. Alternate access to the facilities shall be provided when existing access is severed or impaired. Permittee must prevent the public or unauthorized persons from entering the construction area or the District's right-of-way.
31. The Permittee shall perform, at Permittee's own expense, all construction surveying and engineering necessary to control construction to limits defined in the plans and exhibits. The construction surveying and engineering will be performed to the District's satisfaction.

32. The location of any temporary construction roadways or ramps which the Permittee may wish to build within District right-of-way shall be subject to the approval of the District. Roads shall be constructed so as to wash out during any appreciable flows.
33. If the Permittee should refuse or neglect to comply with the provisions of the Permit, or the orders of the District, the District may have such provisions or orders carried out by others at the expense of the Permittee.
34. No part of the activities authorized under this Permit shall be accepted in phases. All work within District right-of-way must be completed prior to District acceptance of improvements within District right-of-way.
35. At the completion of the construction activities, the area shall be cleaned, graded and dressed to the satisfaction of the District. A joint inspection (Permittee/District) shall be made to determine if the work has been completed in accordance with Permit requirements.
36. Activities under this Permit are subject to any instructions of the Chief Flood Control Engineer or his /her representative. ALL INSTRUCTIONS MUST BE STRICTLY OBSERVED.
37. District activities shall take precedence at all times and, when any work or activity must be performed to carry out the functions and purposes of the District, Permittee must allow same to be done without interference.
38. Any damage caused to District facilities or structures by reason of the exercise of the Permit shall be repaired at the cost of the Permittee to the satisfaction of the District. Permittee will be billed for the actual cost to the District should Permittee neglect to make such repairs promptly.
39. Any District right-of-way monuments that are removed, disturbed, or destroyed as a result of activity under Permit will be replaced by the District. Permittee will be billed and agrees to immediately pay all costs of such replacement.
40. Unless otherwise specified herein, this Permit is subject to all prior permits, agreements, easements, privileges or other rights, whether recorded or unrecorded, in the area specified in this Permit. Permittee shall make his own arrangements with holders of such prior rights.
41. The permitted activities shall be in accordance with:
  - The San Bernardino County Department of Public Works, Transportation and Flood Control Standard Specifications, available at the Department of Public Works, 825 E. Third Street, San Bernardino, California; and
  - All applicable provisions of the "Construction and Safety Orders" issued by the State Division of Industrial Safety and "Manual of Accident Prevention in Construction" issued by the Associated General Contractors, Inc.
42. All work associated with the activities authorized under this Permit shall conform with all Cal-OSHA requirements. Prior to any shoring activity, the Permittee or Permittee's authorized agent shall submit shoring plans, signed and approved by a registered engineer, and copies of required permits.
43. It shall be the responsibility of the Permittee and/or the Permittee's authorized agent to insure that all personnel performing work authorized under this Permit are adequately trained and have appropriate safety gear and equipment before entering any confined space.

44. The area disturbed by permitted activities shall be kept to minimum and shall be limited to that area actually being worked.
45. No nuisance shall be allowed on any of the premises and the Permittee shall exercise diligence in precluding any dumping operations in the area by patrolling or installing barriers to deter unauthorized access when the premises are not supervised.
46. Any unauthorized structure or portions thereof placed on District right-of-way or which affect District structures, must be removed by Permittee without cost to the District.
47. It is expressly understood that the area involved under this Permit is subject to inundation from storm, flood, and/or conservation flows at any time, and that the District shall not, in any way, be obligated to afford protection against said flows, or to assume any cost for damages. The District reserves the right to divert any storm or flood flows upon any land under this Permit at any time and without notice, and no diversion of such shall be made by the Permittee without the consent of the District.
48. All concrete shall conform to Section 201-1 of the Standard Specification for Public Works Construction, latest edition, unless otherwise specified in this Permit. Curing compound shall conform to the provisions of Section 201-4.1 of the Standard Specifications for Public Works Construction, latest edition.
49. The Permit activities allowed under this Permit may require the Permittee to use a pre-emergent within District right-of-way in order to control the growth of weeds. The necessity to use pre-emergent shall be at the discretion of the District's inspector, and the type and method of use of the pre-emergent shall be submitted by the Permittee for review and approval by the District's inspector prior to use. Please contact the Supervising Agricultural Standards Officer for the San Bernardino County Agriculture Department at (909) 387-2131 with any questions or concerns regarding the proper application of the required pre-emergent.
50. The Permittee is hereby advised that the District's inspector shall make routine, periodic visits to the construction site commencing upon the date of Permit issuance. Such site inspections shall be performed to ensure that Permit activities have not been initiated without proper notification to the District. As such, the District shall have its inspector charge the appropriate time for such site visits, whether work is being performed or not, and inspection fees for the Permit may be assessed accordingly based on the time necessary to conduct the necessary site visits.
51. The exact location of any above ground structure(s) shall be field coordinated with the District's inspector prior to installation.