



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

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

## Department of Public Works

<b>Department Contract Representative</b>	Terry W. Thompson, Director Real Estate Services Department
<b>Telephone Number</b>	(909) 387-5252
<b>Contractor</b>	Flood Control District
<b>Contractor Representative</b>	David Drake
<b>Telephone Number</b>	387-7962
<b>Contract Term</b>	N/A
<b>Original Contract Amount</b>	\$6,000
<b>Amendment Amount</b>	N/A
<b>Total Contract Amount</b>	\$6,000
<b>Cost Center</b>	
<b>GRC/PROJ/JOB No.</b>	6700 3846
<b>Internal Order No.</b>	

**Briefly describe the general nature of the contract:** *Adopt Resolution declaring that the conveyance of a drainage easement over a portion of a Flood Control District (District) parcel, consisting of approximately 16,320 square feet of land, is in the public interest and will not substantially conflict with the District's operations; and authorizing the conveyance of said easement interest to the County of San Bernardino for the construction of drainage improvements associated with the Ranchero Road Corridor Widening Project.*

### 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 \_\_\_\_\_

## **AGREEMENT AND ESCROW INSTRUCTIONS**

**In consideration of the mutual covenants and agreements herein set forth,** San Bernardino County Flood Control District, a body corporate and politic (hereinafter referred to as SELLER), agree(s) to sell and convey to the County of San Bernardino, a body corporate and politic of the State of California (hereinafter referred to as BUYER) interests in that real property (hereinafter referred to as PROPERTY) as described in the attached deed(s) and exhibit(s) and which is (are) attached hereto and made a part hereof. Conveyance of said PROPERTY is by permanent easement as set forth below and the PROPERTY valuation is summarized as follows:

Value of Grant of Easement for Drainage and Flowage Purposes acquired (16,320 sq. ft.):      \$ 6,006.00

AMOUNT ESTABLISHED AS JUST COMPENSATION (Rounded):      **\$ 6,000.00**

**The terms and conditions of the contract are SUBJECT TO BOARD APPROVAL and are as follows:**

1. The parties have herein set forth the whole of their agreement (this "Agreement and Escrow Instructions"). The performance of this Agreement and Escrow Instructions constitutes the entire consideration for said PROPERTY and shall relieve the BUYER, and its agent(s) of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvements.
2. BUYER agrees to pay SELLER for said PROPERTY and rights thereto the sum of **\$6,000.00** (SIX THOUSAND DOLLARS), which sums shall be paid to SELLER at close of escrow.
3. BUYER and SELLER have agreed that included in the amount payable in paragraph 2, above, the SELLER is compensated in full for the actual possession of the PROPERTY.
4. SELLER warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the SELLER agrees to hold BUYER, and assigns, harmless and reimburse the BUYER for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of SELLER for a period exceeding one month.
5. SELLER agrees to use its best efforts to satisfy of record at or before conveying said PROPERTY and rights, all encumbrances and special assessments which are a lien against the land, as BUYER may require. PROPERTY will be free and clear of all encumbrances except:
  - a. Covenants, conditions, restrictions and reservations of record.
  - b. Easements or rights-of-way over said land for public or quasi-public utility or public street purposes, if any.
6. RESERVED.
7. SELLER agrees that BUYER may, notwithstanding the prior acceptance of this Agreement and Escrow Instructions, acquire title to said PROPERTY and rights by condemnation or other judicial proceedings, in which event SELLER agrees to cooperate with BUYER in the prosecution of such proceedings; agrees that the consideration hereinabove stated shall be the full amount of just compensation, inclusive of interest, for the acquisition of said PROPERTY and rights; agrees that the consideration recited in paragraph 2 hereof constitutes the full amount of the purchase price for the PROPERTY and rights and shall be prorated among all persons having an interest in this property as their respective interests may appear; and agrees that the said consideration shall be

in full satisfaction of any and all claims of SELLER for payment for the right of occupancy and use hereinafter provided for in paragraph (8).

8. As additional consideration for the payment of the purchase price hereinabove set forth, SELLER hereby grants to BUYER, and assigns, the right of immediate occupancy and use of said PROPERTY and which is being granted for the purpose of exercising any of the rights being conveyed hereby in said PROPERTY from and after execution of this contract until such time as said PROPERTY is conveyed and accepted by BUYER.

9. BUYER agrees to pay any escrow and recording fees incurred in this transaction; and if title insurance is desired by the BUYER, to pay the premium charged therefor.

10. The closing of this transaction is contingent upon BUYER's written approval, or waiver, prior to close of escrow, of a Hazardous Substance Conditions Report ("Report") showing there are no Hazardous Substance Conditions affecting the Property. Such Report will be obtained at BUYER's direction and expense. A "Hazardous Substance" for purposes of this Agreement and Escrow Instructions is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, State or Local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement and Escrow Instructions is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that could require remediation and/or removal under applicable Federal, State or local law.

SELLER hereby represents and warrants that during the period of SELLER's ownership of the property, there have been no disposals, releases or threatened releases of hazardous substances or hazardous wastes on, from, or under the property. SELLER further represents and warrants that SELLER has no knowledge of any disposal, release, or threatened release of hazardous substances or hazardous wastes on, from, or under the property which may have occurred prior to SELLER taking title to the property.

The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of a Hazardous Substance Condition. If the property being acquired is found to be contaminated by the presence of a Hazardous Substance Condition which requires remediation, mitigation or cleanup under Federal or State law, BUYER may elect to recover its remediation, mitigation and cleanup costs from those who caused or contributed to the contamination. SELLER agrees to grant to BUYER, but only to the extent necessary (SELLER 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 SELLER, who may have caused or contributed to such contamination.

11. Any holders of a beneficiary interest in the subject area secured by a trust deed and promissory note will be asked to provide a full reconveyance relinquishing their interest in the property being acquired. SELLER agrees to cooperate with BUYER, and/or escrow holder, in obtaining said conveyance.

12. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the County or its agent, including the right to remove and dispose of improvements, shall commence upon full execution of this agreement, and that the amount shown in paragraph 2 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

13. The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Seller.

14. All terms and conditions with respect to this Agreement and Escrow Instructions are expressly contained herein and SELLER agrees that no representative or agent of BUYER, has made any representation or promise with respect to this Agreement and Escrow Instructions not expressly contained herein.

15. BUYER shall provide SELLER Relocation Assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended) and Title 49 code of Federal Regulations (CFR) Part 24, and these regulations shall be the basis for the BUYER's policies and procedures in implementing relocation assistance. This section is not applicable to this acquisition of property.

TO: Any Reliable Escrow Company
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BUYER agrees to purchase the PROPERTY referenced above and upon the terms and conditions described in the AGREEMENT AND ESCROW INSTRUCTIONS for a total consideration of **\$6,000.00** (SIX THOUSAND DOLLARS) and will deposit with escrow company said consideration for delivery to SELLER at close of escrow, together with any additional funds and/or instruments necessary to comply with the terms hereof, all of which you may use when BUYER's title company can issue a standard coverage form policy of title insurance with liability not less than the amount stated as total consideration, showing title vested in the BUYER, or assigns, free of all encumbrances, excepting those encumbrances, approved in writing by BUYER, and such other encumbrances as are approved in writing by BUYER, which approvals shall not be unreasonably withheld. If said title insurer is not in a position to issue a standard coverage form policy of title insurance as required hereby within 90 days from that date hereof, the AGREEMENT AND ESCROW INSTRUCTIONS and this escrow shall terminate unless extended by mutual agreement between BUYER and SELLER.

All disbursements shall be made by your check. All funds received in this escrow shall be deposited in one or more of your general escrow accounts with any bank doing business in the State of California and may be transferred to any other general escrow account(s). The expression "close of escrow" means the date on which the deeds conveying the PROPERTY to BUYER are recorded. Close of escrow shall be on or before 90 days from the date of BUYER signature hereof. All adjustments are to be made on the basis of a thirty-day month. Recordation of any instruments delivered through this escrow, if necessary or proper in the issuance of a policy of title insurance called for, is hereby authorized. You are to furnish a copy of these instructions, amendments thereto, closing statements and/or documents deposited in this escrow to the lenders, real estate broker(s) and/or the attorney(s) involved in this transaction upon request of such lenders, brokers, or attorneys. Should you before or after close of escrow receive or become aware of any conflicting demands or claims with respect to this escrow or the rights of the parties hereto, or any money or property deposited herein or affected hereby, you shall have the right to discontinue any and all further acts on your part until each conflict is resolved to your satisfaction, and you shall have the further right to commence or defend any action or proceedings for the determination of such conflict. The parties hereto jointly and severally agree to pay all costs, damages, judgments and expenses, including reasonable attorney's fees, suffered or incurred by you in connection with, or arising out of this escrow, including but without limiting the generality of the foregoing, a suit in interpleader brought by you. In the event you file a suit in interpleader, you shall ipso facto be fully released and discharged from all obligations imposed on you in this escrow.

Time is declared to be the essence of these instructions. If you are unable to comply with the time specified herein and such additional time is required to make examination of the official records, you will return all documents, money, or property to the party entitled thereto upon satisfactory written demand and authorization. Any amendment of and/or supplement to any instructions must be in writing. These escrow instructions and amendments hereto may be executed in one or more counterparts, each of which independently shall have the same effect as if it were the original, and all of which taken together shall constitute one and the same instruction.

In the event BUYER, SELLER, and/or assigns, utilize "Facsimile" transmitted instructions or electronic copies of instructions (scanned images, etc.), Escrow Holder is instructed to rely and act upon such instruction in the same manner as if original signed instructions were in the possession of Escrow Holder and BUYER and/or SELLER herein agree to forward signed hard copies of instructions within 48 hours of transmission. Escrow Holder shall have no liability to any party for relying upon facsimile or electronic instructions which were erroneously transmitted to Escrow Holder. BUYER and SELLER agree that when necessary to permit compliance with closing instruction, Escrow Holder may rely on facsimile- or electronically-transmitted demands. BUYER and SELLER further acknowledge and agree that documents necessary for recording with non-original (facsimile or electronic) print and/or signatures will not be accepted for recording by the County Recorder, thus delaying the close of escrow.

Parties to this transaction are aware and understand that as a result of the passage of the Tax Reform Act of 1986 which added Section 6045(e) to the Internal Revenue Code, the SELLER in this transaction is to deposit, prior to close of escrow, certain information including all sellers' names and tax identification numbers, and that the closing of this transaction will be delayed in the event escrow has not received same from SELLER prior to close of escrow. Escrow holder will forward information as required by above Internal Revenue Code Section on forms as prescribed therein.

In order to comply with Section 1445 of the Internal Revenue Code; and Sections 18805 and 26131 of the California Revenue and Taxation Code, SELLER will complete and deposit into escrow the documents provided by the escrow holder required by the above referenced code sections.

ANY RELIABLE ESCROW COMPANY serves only as an escrow holder in connection with these instructions and cannot give legal advice to any party hereto. Escrow holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by escrow holder, and for the disposition of same in accordance with the written instructions accepted by escrow holder. The agency and duties of escrow holder commence only upon receipt of copies of this instruction executed by all parties.

At the close of escrow you are to deliver all documents, including a Conformed Copy of the recorded deed of conveyance, to the County of San Bernardino Real Estate Services.

The foregoing AGREEMENT and ESCROW INSTRUCTIONS are hereby approved by SELLER and BUYER and SELLER and BUYER hereby agree to sell and to buy said PROPERTY and will deliver to you the papers, instruments and/or funds required within the time limit specified herein; and you are authorized to deliver said funds and documents to the appropriate parties at such time that you can issue your policy of title insurance as set forth above. SELLER further agrees to pay any personal property taxes properly chargeable to SELLER. You are also instructed to pay from the amount shown as the total consideration above any other charges to which the parties have agreed.

**SELLER(s): San Bernardino County Flood Control District**

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

**BUYER: County of San Bernardino**

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

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIR 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  
Robert Messinger, Principal Assistant County Counsel  
Date 09/02/2020