

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR DISTRICT USE ONLY



ORIGINAL

Contract Number

21-324

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	Hesperia Venture I, LLC
Contractor Representative	John Ohanian
Telephone Number	
Contract Term	5/4/2021 – 5/6/2021
Original Contract Amount	\$0
Amendment Amount	
Total Contract Amount	\$0
Cost Center	
GRC/PROJ/JOB No.	
Internal Order No.	

Briefly describe the general nature of the contract:

This license agreement is entered into by and between the San Bernardino County Fire Protection District and Hesperia Venture I, LLC for the District's use of approximately 850 acres of unimproved land located south and east of Los Flores Road and the California Aqueduct in Hesperia CA, consisting of portions of APNs #039704128, #039704130, and #039704129, at no cost for a training event known as the 2021 Dozer Academy and Wildfire Training to be held from May 4 through May 6, 2021.

FOR DISTRICT USE ONLY

Approved as to Legal Form

► See signature page

Agnes Cheng, Deputy County Counsel

Date

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *Keith B. Miller*
Jim Miller, Real Property Manager, RESD

Date

4/30/21

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

LICENSE AGREEMENT

LICENSOR: Hesperia Venture I, LLC
John Ohanian
10410 Roberts Road
Calimesa, CA 92320

DISTRICT: SAN BERNARDINO COUNTY FIRE PROTECTION
DISTRICT
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

PREMISES: Approximately 850 acres of unimproved land, comprising
portions of APNs #039704128, #039704130, and #039704129,
located south and east of Los Flores Road and the California
Aqueduct in the City of Hesperia, County of San Bernardino, State
of California.

TERM OF LICENSE: Three (3) Days from May 4, 2021 to May 6, 2021

COMMENCEMENT DATE OF LICENSE: May 4, 2021

CONTRACT NO.

REV. 11/28/2102

TYPED:

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EXHIBIT "2" List of Former District or County Officials

LICENSE AGREEMENT

This license agreement ("License") is made and entered into by and between the San Bernardino County Fire Protection District, hereinafter designated as "DISTRICT," and Hesperia Venture I, LLC hereinafter called "LICENSOR".

WITNESSETH

WHEREAS, LICENSOR owns unimproved land located south and east of Los Flores Road and the California Aqueduct in Hesperia, CA, comprising APNs #039704128, #039704130, #039704129, #035717110, #035717123, and #035717116 ("Property"),

WHEREAS, DISTRICT desires to use a portion of the Property, comprising approximately 850 acres, consisting of portions of APNs #039704128, #039704130, and #039704129 ("Premises"), as shown in Exhibit "1" attached hereto and incorporated herein, to hold a training event known as the 2021 Dozer Academy and Wildfire Training ("Training Event") to be held from May 4 through May 6, 2021.

WHEREAS, the parties desire to enter into this License for the DISTRICT's use of the Premises on the terms and conditions set forth herein; and,

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree to the following:

COVENANTS AND AGREEMENTS:

1. **PREMISES:** The LICENSOR hereby permits DISTRICT and its employees and Training Event participants to use the Premises for the purpose of conducting the Training Event, which shall include, but is not limited to field exercises, heavy fire equipment exercises, and live fire training along with the use of all necessary vehicles, machinery, equipment and supplies thereon, including but not limited to fire engines and bulldozers. DISTRICT and Training Event participants shall have access to the Premises through the existing roads on the Property.
2. **TERM:** The term of the License shall be for three (3) days, commencing on May 4, 2021, and expiring on May 6, 2021.
3. **FEES:** No monetary fee(s) shall be payable by DISTRICT to the LICENSOR for the DISTRICT's use of the Premises for the Term. LICENSOR acknowledges and agrees that the consideration for this License is the reduction of hazardous fuels and fire protection of the Premises as a result of the Training Event, which will remove vegetation, eliminate dead or dying vegetation, and cut fire lines.
4. **ASSIGNMENT:** This License shall not be assigned without the express written approval of the LICENSOR.
5. **LICENSOR'S ACCESS TO PREMISES:** Upon providing not less than 24 hours prior written notice to the DISTRICT's Incident Commander then present at the Premises, LICENSOR reserves the right to enter upon the Premises for the purpose of inspecting the Premises for conformance to License, provided that such entry is at a date and time mutually agreed between LICENSOR and the DISTRICT's Incident Commander, LICENSOR is at all times escorted by DISTRICT for the duration of such entry, and LICENSOR executes DISTRICT's standard release form prior to such entry.

6. **DAMAGE PROVISION:**

A. LICENSOR acknowledges and agrees that the Training Event to be conducted on the Premises will result in disturbance of the ground and soils and the burning, damage, or destruction of the vegetation thereon, including, but not limited to ground coverings, grass and weeds, except as set forth in Paragraph 6B. Notwithstanding such disturbance, damage, or destruction, the LICENSOR further acknowledges and agrees that DISTRICT shall leave the Premises in its AS-IS condition at the end of the Term without any obligation whatsoever to repair or restore any such disturbance, damage, or destruction that occurs to the Premises or to clean-up any debris as a result of the Training Event.

B. DISTRICT agrees that it will not damage or destroy any existing Joshua Trees located on the Premises. To the extent that such damage or destruction occurs and is caused by DISTRICT, DISTRICT shall restore or replace the affected Joshua Tree at the Premises to the condition it substantially existed as of the commencement of this License. The parties shall coordinate to document the existing Joshua Trees on the Premises.

7. **LICENSES AND CERTIFICATIONS:** DISTRICT agrees that it will acquire and maintain those certifications, licenses, approvals and permits required by any Federal, State or local jurisdiction or authority for its use under this License.

8. **INDEMNIFICATION:**

A. Except to the extent caused by the negligence or intentional misconduct of LICENSOR, the DISTRICT agrees to indemnify and hold harmless the LICENSOR from any and all damages for injury to persons to the extent arising out of the sole negligence of the DISTRICT in connection with the Training Event. The foregoing indemnity shall survive the expiration or earlier termination of this License.

B. The LICENSOR agrees to indemnify, defend (with counsel reasonably approved by the DISTRICT) and hold harmless the DISTRICT and the County of San Bernardino ("COUNTY") and its respective authorized officers, employees, agents, and volunteers (the "Indemnitees") from any and all claims, actions, losses, damages, and/or liability, including but not limited to injury to persons or damage to property, arising out of the Training Event, this License, or condition of the Premises from any cause whatsoever, including the acts, errors or omissions of LICENSOR or any other person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The LICENSOR's indemnification obligation applies to Indemnitees' "active" as well as "passive" negligence but does not apply to Indemnitees' "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. The foregoing indemnity shall survive the expiration or earlier termination of this License.

9. **RELEASE OF LIABILITY:** Except to the extent provided in Paragraph 8.A, DISTRICT shall not liable for any claims, actions, losses, damages, liabilities, death, or injuries to the person or property of any person whomsoever at any time arising out of this License, the Training Event, or the condition of the Premises from any cause whatsoever or however arising, including (without limitation) any acts, errors, or omissions of LICENSOR or any other person or from equipment malfunction, fires, flooding, and other catastrophic consequences and LICENSOR hereby expressly releases DISTRICT and COUNTY and its respective authorized officers, employees, agents, Training Event participants, and volunteers from all claims, actions, losses, damages, liabilities, death, or injuries however arising that the LICENSOR and/or its assignees, heirs, distributees, guardians, and legal representatives have or may in the future have. This agreement shall act as a release of future claims that may arise from the above-mentioned claims, actions, losses, damages, liabilities, and injuries whether currently known, unknown, foreseen, or unforeseen. In approving this release, the LICENSOR agrees to and does hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

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

LICENSOR Initials 

The LICENSOR has carefully read this release and fully understands its contents. The LICENSOR is aware that this is a release of liability, understands and acknowledges the significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any claims, actions, losses, damages, liabilities, and injuries that it may hereafter incur, and approves it on the LICENSOR's own free will. The foregoing release shall survive the expiration or earlier termination of this agreement.

10. INSURANCE REQUIREMENTS AND SPECIFICATIONS:

A. The LICENSOR agrees to provide insurance set forth in accordance with the requirements herein. If the LICENSOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the LICENSOR agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the License hereunder.

Without in anyway affecting the indemnity herein provided and in addition thereto, the LICENSOR shall secure and maintain throughout the contract term the following types of insurance with limits as shown.

(1) Commercial/General Liability Insurance – The LICENSOR shall carry General Liability Insurance covering all operations performed by or on behalf of the LICENSOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Personal injury
- (e) Contractual liability.
- (f) \$2,000,000 general aggregate limit.

B. Additional Insured – All policies shall contain endorsements including the DISTRICT and the COUNTY and its respective officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this License hereunder. The additional insured endorsements shall not limit the scope of coverage for the DISTRICT or COUNTY to vicarious liability but shall allow coverage for the DISTRICT or COUNTY to the full extent provided by the policy.

C. Waiver of Subrogation Rights – The LICENSOR shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT and the COUNTY and its respective officers, employees, agents, volunteers, contractors and subcontractors. The LICENSEE hereby waives all rights of subrogation against the DISTRICT and the COUNTY.

11. TAXES, ASSESSMENTS AND LICENSES: LICENSOR understands Section 107 of the California Revenue and Taxation Code and is solely responsible for determining tax consequences, if any, of licensing to DISTRICT its use of the Premises. DISTRICT has no obligation to LICENSOR under this provision.

12. TERMINATION: DISTRICT may terminate this License at any time during the Term by giving the LICENSOR written notice of any termination pursuant to this paragraph at least 24 hours prior to the effective date of termination.

13. **WAIVERS:** No waiver by either party of any provisions of this License shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.
14. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
15. **CONSENT:** Whenever consent or approval of either party is required that party shall not unreasonably withhold such consent or approval.
16. **EXHIBITS:** All exhibits referred to are attached to this license and incorporated by reference.
17. **LAW:** This License shall be construed and interpreted in accordance with the laws of the State of California.
18. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this License shall have no effect on its interpretations.
19. **SEVERANCE:** If any provision of this License is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this License, and all such other provisions shall remain in full force and effect provided, however, that the purpose of the License is not frustrated. It is the intention of the parties hereto that if any provision of this License is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
20. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, or any other person shall be in writing and either served personally, delivered by reputable overnight courier, or sent by prepaid, first-class mail, certified or registered with return receipt requested. Any such notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed delivered upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested.
- DISTRICT's address: San Bernardino County Fire Protection District
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180
- LICENSOR's address: Hesperia Venture I, LLC
John Ohanian
10410 Roberts Road
Calimesa, Ca 92320
21. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this License, will survive the termination of this license.
22. **FORMER DISTRICT OR COUNTY OFFICIALS:** DISTRICT agrees to provide or has already provided information on former DISTRICT or COUNTY administrative officials (as defined below) who are employed by or represent LICENSOR. The information provided includes a list of former DISTRICT or COUNTY administrative officials who terminated DISTRICT or COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of LICENSOR. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of LICENSOR. For purposes of this provision, "DISTRICT administrative official" or

"COUNTY administrative official" is defined as a member of DISTRICT or COUNTY Board of Supervisors or such officer's staff, DISTRICT or COUNTY Administrative Officer or member of such officer's staff, DISTRICT or COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "2", List of Former DISTRICT or COUNTY Officials.)

23. **MATERIAL MISREPRESENTATION:** If during the course of the administration of this license, the LICENSOR determines that the DISTRICT has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the LICENSOR, this license may be immediately terminated. If this license is terminated according to this provision, the DISTRICT is entitled to pursue any available legal remedies.

24. **INTERPRETATIONS:** 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.

25. **AUTHORIZED SIGNATORS:** Both parties to this license represent that the signators executing this document are fully authorized to enter into this agreement.

26. **ATTORNEY'S FEES AND COST:** 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 paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the DISTRICT

27. **COUNTERPARTS:** This agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement. The parties shall be entitled to sign and transmit an electronic signature of this agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed agreement upon request.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

END OF CONTRACT.

DISTRICT: SAN BERNARDINO DISTRICT FIRE
PROTECTION DISTRICT

By: 
Curt Hagman, Chairman
Board of Directors

Date: MAY 04 2021

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

LYNNA MCNEELY, Secretary of the Board of
Directors

By: 
Deputy

Date: MAY 04 2021

Approved as to Legal Form:

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By: 
Agnes Cheng, Deputy County Counsel

Date: 4/30/2021
110568.13

LICENSOR: HESPERIA VENTURE I, LLC

By: 
John Ohanian

Title: Project Director of Development

Date: 4/30/2021

By: _____
(name)

Title: _____

Date: _____

EXHIBIT "2"

LIST OF FORMER DISTRICT OR COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former DISTRICT and COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY or DISTRICT, the date the Official terminated DISTRICT or COUNTY employment, the Official's current employment and/or representative capacity with the LICENSOR, the date the Official entered LICENSOR's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION