



**Contract Number**

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**SAP Number**

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## 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>	Greg Bogh, Mayor
<b>Telephone Number</b>	909-797-2489
<b>Contract Term</b>	
<b>Original Contract Amount</b>	
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	
<b>Cost Center</b>	1930002526
<b>GRC/PROJ/JOB No.</b>	3800 3734
<b>Internal Order No.</b>	

**Briefly describe the general nature of the contract:** *Land Conveyance and Escrow Agreement, along with Grant Deed, will convey a 7.80-acre portion of District-owned property (portions of APN's 0303-151-23, 0303-151-36, and 0303-191-35) to the City of Yucaipa. Once completed, the City and District will be using the Property for temporary stockpile of material during the construction phase of the Wilson III Basin Improvement Project (Basin Project). Once the Basin Project is complete and if any part of the Property is no longer needed, the City will sell the Property for a purchase price of no less than \$1,371,304, which represents the property's fair market value. The proceeds from the sale of this property will be deposited into an escrow account to fund improvements associated with the Basin Project.*

**FOR COUNTY USE ONLY**

Approved as to Legal Form  <div style="border-top: 1px solid black; padding-top: 5px;">           SEE SIGNATURE PAGE            Robert F. Messinger,            Chief Assistant County Counsel         </div> <div style="border-top: 1px solid black; padding-top: 5px;">           Date _____         </div>	Reviewed for Contract Compliance  <div style="border-top: 1px solid black; padding-top: 5px;">           _____         </div> <div style="border-top: 1px solid black; padding-top: 5px;">           Date _____         </div>	Reviewed/Approved by Department  <div style="border-top: 1px solid black; padding-top: 5px;">           _____            Brandon J. Ocasio, Real Property Manager            Real Estate Services Department         </div> <div style="border-top: 1px solid black; padding-top: 5px;">           Date _____         </div>
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## **SECOND LAND CONVEYANCE AND ESCROW AGREEMENT**

This SECOND LAND CONVEYANCE AND ESCROW AGREEMENT (this "Agreement") is dated as of May\_\_\_\_, 2021 (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 ("CITY").

### **RECITALS**

A. The DISTRICT is the owner of real property identified as San Bernardino County Assessor's Parcel Numbers 0303-151-23, 0303-151-36 and 0303-191-04 ("Property") located in the City of Yucaipa.

B. The DISTRICT and the CITY entered into a legally enforceable Memorandum of Understanding (MOU) dated June 4, 2013 regarding the Wilson III Basin Project ("Basin and Appurtenant Channel Improvements") and the sale of certain real property owned by the District and located in the City of Yucaipa. On April 7, 2020, the DISTRICT and the CITY entered into a First Amendment to the MOU to more specifically identify the property that would be sold as surplus by the DISTRICT to the CITY. The First Amendment to the MOU identified that portions of the Property would be sold by the DISTRICT to the CITY as surplus land.

C. On October 1, 2020, the DISTRICT and the CITY opened an escrow (escrow account no. 6391812) to convey, from the DISTRICT to the CITY, an approximately 33.78 acre portion of APN 0303-181-19 and APN 0303-191-04, and an approximately 3 acre portion of APN 0303-191-01 pursuant to a Land Conveyance and Escrow Agreement ("First Land Conveyance"). In connection with that transaction, the parties entered into a Construction Escrow Account Agreement dated September 29, 2020, which is incorporated herein by this reference as if set forth in full, to open an Escrow Construction Management Account to allow for the deposit of any proceeds from the CITY's sale of the First Land Conveyance to third parties.

D. The parties desire for the DISTRICT to convey to the CITY, and the CITY to accept from the DISTRICT an approximately 7.8 acre portion of APNs 0303-151-23, 0303-151-36 and 0303-191-04 ("Subject Property") that is legally described and depicted in Exhibit "A".

E. Pursuant to Government Code section 54221(f)(1)(D), the "Subject Property" is "exempt surplus land" as it is being conveyed by the DISTRICT to the CITY for agency use. Specifically, the CITY will be using the Subject Property for temporary stockpile of material during the construction phase of the Wilson III Project, access to the downstream channel and well site, and utility corridor throughout the existing 2nd Street alignment. After the City no longer needs the Subject Property to facilitate the construction of the Wilson III Basin Project, the CITY may sell the Subject Property. The CITY has not executed a purchase and sale agreement or negotiated the sale of the Subject Property. Any CITY conveyance of the Subject Property to a third party shall comply with the Surplus Land Act.

F. The DISTRICT and the CITY agree that the fair market value of the Subject Property is One Million Three Hundred Seventy-One Thousand Three Hundred and Four Dollars (\$1,371,304) based on an approved appraisal. If the CITY sells the Subject Property after using it for an agency use, the entire proceeds of the sale shall be transferred into the Construction Escrow Account that was established for the First Land Conveyance for purposes of paying the costs of the Basin and Appurtenant Channel Improvements. The parties will be separately executing a First Amendment to Construction Escrow Account Agreement in the form attached

hereto as Exhibit "B" to allow for the deposit of the proceeds any sale of the Subject Property into the Escrow Construction Management Account that was previously established.

G. The parties desire that the proceeds of the sale in the escrow be available for withdrawal by the CITY solely for paying the costs of constructing the Basin and Appurtenant Channel Improvements which are described in the Construction Agreement attached as Exhibit "D" to the First Land Conveyance (which is incorporated herein by this reference) on the portion of the DISTRICT'S Property depicted on Exhibit "C" (the "Improvements Property").

H. The Basin and Appurtenant Channel Improvements will benefit both the DISTRICT and the CITY, and the parties therefore desire that the CITY complete the Basin and Appurtenant Channel Improvements as soon as reasonably possible. Access to the Improvements Property has been provided by the DISTRICT to the CITY pursuant to an encroachment permit that has been issued to the CITY. The encroachment permit allows CITY to begin constructing the Basin and Appurtenant Channel Improvements on the DISTRICT's Property and to utilize the Subject Property prior to the close of escrow.

I. The CITY agrees that it is acquiring the Subject Property in its AS-IS condition subject to CITY's rights to terminate this Agreement if the CITY disapproves any matter affecting title to the Subject Property or any physical condition of the Subject Property.

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

Section 1.      Recitals.

The recitals set forth above are true and correct and incorporated in this Agreement by this reference.

Section 2.      Conveyance and Acceptance of Subject Property.

Subject to all of the terms, conditions and provisions of this Agreement and for the consideration set forth below, the DISTRICT hereby agrees to convey and transfer the Subject Property to CITY and the CITY hereby agrees to accept and acquire the Subject Property from DISTRICT.

Section 3.      Escrow.

a. This transaction shall be completed through an escrow ("Escrow") established with First American Title Company ("Escrow Holder") located at 18500 Von Karman Avenue, Suite 600, Irvine, CA 92612. Within ten (10) business days after the Execution Date, the parties shall deliver a copy of this executed Agreement to Escrow Holder and request that Escrow Holder open the Escrow. This Agreement shall constitute instructions to the Escrow Holder, but each party shall execute such additional instructions consistent with this Agreement as may be reasonably required by Escrow Holder.

b. Should the CITY eventually sell the Subject Property, it shall sell it for not less than its fair market value as determined by an MAI-designated appraiser. The CITY hereby agrees to deposit all net proceeds from the re-sale of the Subject Property into the Escrow, and the CITY shall then be entitled to withdraw such proceeds from time to time upon written request to Escrow Holder (with a copy to the DISTRICT) to pay for costs of the Basin and Appurtenant Channel Improvements, consistent with the terms of the First Amendment to Construction Escrow

Account Agreement attached as Exhibit "B". All amounts remaining on deposit in the Escrow, if any, upon completion of the Basin and Appurtenant Channel Improvements, shall be withdrawn therefrom by CITY and be applied to any other regional flood control improvement project, including any environmental mitigation costs, within CITY's jurisdictional boundaries.

Section 4. [RESERVED]

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 five business days from the Date of Execution of this Agreement (the "Due Diligence Period"), the CITY shall have the right to inspect and approve or disapprove 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) at its cost and, during the Due Diligence Period, the CITY shall be permitted to make complete physical, environmental, legal and other inspections of the Subject Property and to make and remove copies of any and all records of the DISTRICT and files regarding the Subject Property. If the CITY, in its sole and absolute discretion, is satisfied with all of the inspections and investigations, the CITY shall give written notice of such satisfaction to DISTRICT prior to the end of the Due Diligence Period ("Notice of Due Diligence Approval") or terminate this Agreement by written notice to the DISTRICT. If the CITY does not provide a Notice of Due Diligence Approval, the CITY shall have conclusively been deemed to have disapproved its due diligence investigation of the Subject Property and this Agreement shall terminate.

(b) Subject to the DISTRICT's obligations under California law as a transferor of real property to disclose to the CITY all material facts relating to the Subject Property that are known to the DISTRICT and not known to the CITY, the CITY shall accept the delivery of possession of the Subject Property (including but not limited to subterranean structures and soil conditions), in "As Is," "Where is," and "Subject to all Faults" condition. The CITY hereby acknowledges that it has relied solely upon its investigation of the Subject Property and its review of such information and documentation as the CITY deems appropriate. The CITY is not relying on any statement or representation by the DISTRICT, any employee, official or consultant of the DISTRICT relating to the condition of the Subject Property. The DISTRICT makes no representations or warranties as to whether the Subject Property presently complies with environmental laws. To the extent that the DISTRICT has provided information relating to the condition of the Subject Property, the 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 the DISTRICT's obligations under California law as a transferor of real property to disclose to the CITY all material facts relating to the Subject Property that are known to the DISTRICT and not known to the CITY, the CITY, on behalf of itself, and its successors, shall, and by the execution of this Agreement, hereby does, forever release the 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 the DISTRICT's interest in and ownership thereof) and the environmental, seismic and structural condition of the Subject Property (herein, "Losses").

(d) The CITY 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. The CITY, 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.

CITY's Initials: \_\_\_\_\_

(e) This Agreement gives permission to the CITY and its agents and contractors to enter the Subject Property for the purpose of conducting the necessary due diligence.

Section 6. Conditions Precedent.

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

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

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

(3) The CITY's delivery of a signed First Amendment to Construction Escrow Account Agreement in the form attached hereto as Exhibit "B" into escrow.

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

(1) The CITY shall obtain title reports and copies of the title exception documents, which the CITY may accept or reject in part or in total. The CITY, at its sole discretion,

may terminate this Agreement at any time if any or all title exceptions are not acceptable to the CITY, and the DISTRICT is unwilling to waive the title exceptions; and

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

(3) The issuance by Escrow Holder in its capacity as a title company of an owner's title policy to the CITY in the amount of the fair market value for the Subject Property in a form and subject to exceptions that are acceptable to the CITY.

(4) The District's execution and delivery to escrow, for delivery to CITY at the Close of Escrow, of a counterpart of the First Amendment Construction Escrow Account Agreement on the form attached as Exhibit "B".

(5) The DISTRICT shall have formally determined and declared in writing that the Subject Property is surplus.

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

#### Section 7. Closing---Definition and 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 (with Certificate of Acceptance) from the DISTRICT to the CITY is recorded.

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

(c) Upon the Closing, Escrow Holder shall record the Deed with a Certificate of Acceptance, and deliver counterparts of the Construction Escrow Agreement executed by each party to the other party.

#### Section 8. Closing---Timing and Deliveries; Prorations.

(a) The Closing shall occur no later than three (3) business days after completion of the due diligence during the Due Diligence Period described in Section 5. All assessments, and property taxes (unless the 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 the CITY in writing as the date for the Closing (the "Closing Date"), the DISTRICT shall deliver to Escrow in recordable form the Grant Deed in the form attached hereto as Exhibit "D" (the "Deed") duly executed and acknowledged by the DISTRICT, which Deed shall convey all of its right, title and interest of the DISTRICT in the Subject Property to the CITY, and executed counterparts of the First Amendment Construction Escrow Account Agreement, and the CITY shall deliver to Escrow its Certificate of Acceptance, duly executed and acknowledged, and counterparts of the First Amendment Construction Escrow Account Agreement, duly executed by the CITY.

(c) On the day that is at least one (1) business day prior to the Closing Date, the CITY and the DISTRICT shall deliver to Escrow any funds necessary to pay their respective share of costs, as reflected in a preliminary closing statement prepared by Escrow Holder and approved by the DISTRICT and the CITY.

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) The CITY shall pay the premium for title insurance, cost of any Surveys and all requested CLTA or ALTA endorsements, the cost of recording the Deed(s) and any documentary or other transfer taxes payable on account of the conveyance of the Subject Property 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) The CITY shall pay all escrow charges and any and all other Closing Costs not described in clause (b) above;

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

Section 10. Covenants, Representations and Warranties.

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

(1) Power and Authority. The 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. The 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 the DISTRICT and enforceable in accordance with its respective terms.

(4) No Litigation. There is no pending or, to the best of the 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 the DISTRICT of its obligations hereunder

and thereunder shall to the best of the DISTRICT's knowledge result in a breach or constitute a default under any agreement, document, instrument or other obligation to which the DISTRICT is a party or by which the 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 the DISTRICT.

(6) Operation and Condition Pending Closing. Between the date of this Agreement and the Closing hereunder, the 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 the 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. The 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. The 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.

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

(1) Power and Authority. The CITY 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 the CITY hereby represent and warrant that such persons have the power, right and authority to bind the CITY.

(2) Requisite Action. The CITY 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 the CITY 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 the CITY of its obligations hereunder and thereunder shall to the best of the CITY's knowledge result in a breach or constitute a default under any agreement, document, instrument or other obligation to which the CITY is a party or by which the CITY 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 the CITY.



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. Notices.

All notices, approvals, consents or other documents required or permitted under this Agreement shall be in writing and delivered by first-class mail, overnight mail or by personal delivery addressed as follows:

City of Yucaipa  
34272 Yucaipa Blvd.  
Yucaipa, CA 92399-9950  
Attn: City Engineer

San Bernardino County Flood Control District  
825 3rd Street  
San Bernardino, CA 92415-0835  
Attn: Chief Flood Control Engineer

Notice shall be effective upon personal delivery, or three days after deposit in U.S. Mail, certified, with first class postage fully prepaid. Each party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.

Section 12. Default.

(a) If the DISTRICT fails to timely complete the purchase of the Subject Property due to the DISTRICT default, and not due to failure of a condition to closing in favor of the DISTRICT that has not been waived by the DISTRICT, then the CITY shall have the right to specific performance but not damages, and the CITY hereby expressly waives any and all rights to damages.

(b) If the CITY fails to timely complete the purchase of the Subject Property due to the CITY default, and not due to failure of a condition to closing in favor of the CITY that has not been waived by the CITY, then the DISTRICT may terminate this Agreement by written notice to the CITY, and upon such termination, the DISTRICT shall have no right to damages and hereby expressly waives any and all rights to damages.

Section 13. 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 14. 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 15. Indemnification.

The CITY agrees to indemnify, defend (with counsel reasonably approved by the DISTRICT) and hold the DISTRICT and its officers, employees, volunteers and agents harmless (Indemnitees) 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 CITY in the course of performing its inspection of the Subject Property or any work on the Subject Property. Nothing in this provision shall be construed to require the CITY to indemnify the indemnitee for the indemnitee's negligence or willful misconduct. The DISTRICT shall give the CITY written notice of the occurrence of a claim, litigation or other matters for which the DISTRICT seeks indemnity under this Section as promptly as practicable following the DISTRICT's knowledge of the occurrence of such matter and the DISTRICT shall reasonably cooperate with the CITY in the defense of any such claim or matter and shall not take any action that would adversely affect the CITY.

Section 16. Waiver.

No waiver of any default shall constitute a waiver of any other default of breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

Section 17. No Third Party Beneficiary Rights.

Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

Section 18. 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 15. Indemnification."

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

**San Bernardino County Flood Control District    City of Yucaipa**

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

Chair, Board of Supervisors

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

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

Greg Bogh, Mayor

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: \_\_\_\_\_

ATTEST:

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

Jennifer Crawford,  
Assistant City Manager/City Clerk  
City of Yucaipa

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

Approved as to Legal Form:

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

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

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

Approved as to Legal Form:

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

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

**EXHIBIT "A"**  
**Legal description and depiction of Subject Property**

(Attached.)

## EXHIBIT "A"

Portion of APN 303-151-36, 303-151-23 and 303-191-04

All that portion of Lots 6, 7 and 8 of Block H and that portion of Lot 1 of Block G of Yucaipa Water and Lumber Company Subdivision No. 1 as per Map recorded in Book 17 page 27 of Maps, also being a portion of that parcel granted to San Bernardino County Flood Control District in that document recorded on August 16, 1940 in Book 1431, Page 10, together with a portion of that parcel granted to San Bernardino County Flood Control District in that document recorded on September 18, 1972 on Book 8022, Page 51, records of San Bernardino County, State of California and more particularly described as follows:

BEGINNING at a point in the East line of said Lot 7, distance along said East line, N00°31'18"W 337.5 feet, from the centerline of the unnamed alley (15 feet wide) as shown on said Map, said Point of Beginning also being the same Point of Beginning in Grant Deed in favor of Marilyn Kay Martin recorded May 4, 2004 as Doc. # 2004-0310103 records of said County;

THENCE parallel with the South line of said Lots 6 and 7 and along the South line of said Martin Grant Deed S89°35'50"W a distance of 359.05 feet to the Southwest corner of said Martin Grant Deed;

THENCE N0°31'08"W along the West line of said Martin Grant Deed a distance of 323.12 feet to the centerline of that 40 foot wide street (now known as Eucalyptus Avenue) as shown on said Map;

THENCE along said centerline S89°33'58"W a distance of 264.45 feet to the Northeast corner of that property conveyed to Yucaipa Valley Water District recorded on August 9, 2002 as Document No. 2002-0419183;

THENCE along the Easterly line of said Yucaipa Valley Water District property S0°31'34"E a distance of 447.25 feet;

THENCE continuing along said Easterly line S38°25'07"W a distance of 41.51 feet;

THENCE continuing along said Easterly line S46°37'37"E a distance of 5.71 feet;

THENCE leaving said Easterly line S26°33'50"E a distance of 5.51 feet to the beginning of a non-tangent curve concave to the South having a radius of 70.00 feet, a radial bearing to said curve bears S26°33'50"E;

THENCE Easterly along the arc of said curve a distance of 58.45 feet through a central angle of 47°50'42";

THENCE S68°43'08"E a distance of 243.90 feet to the beginning of a tangent curve concave to the North having a radius of 160.00 feet;

THENCE Southeasterly along the arc of said curve a distance of 95.11 feet through a central angle of 34°03'26";

THENCE N77°13'25"E a distance of 125.13 feet to the beginning of a tangent curve concave to the Southeast having a radius of 1000.00 feet;

THENCE Northeasterly along the arc of said curve a distance of 214.74 feet through a central angle of 12°18'13";

THENCE N89°31'38"E a distance of 66.48 feet

THENCE N88°11'20"E a distance of 167.67 feet;

THENCE N88°14'07"E a distance of 33.66 feet;

THENCE N89°35'32"E a distance of 81.48 feet;

THENCE N38°28'26"E a distance of 102.31 feet;

THENCE N14°16'06"W a distance of 12.03 feet;

THENCE N18°24'10"W a distance of 10.00 feet to the beginning of a non-tangent curve concave to the Northeast having a radius of 55.00 feet a radial bearing to said curve bears N18°24'45"W;

THENCE Northwesterly along the arc of said curve a distance of 138.65 feet through a central angle of 144°26'01" to the beginning of a reverse curve having a radius of 55.00 feet, a radial bearing to said curve bears S53°58'42"E ;

THENCE Northerly along the arc of said curve a distance of 52.57 feet through a central angle of 54°46'05" to the beginning of a compound curve, concave to the Southwest and having a radius of 1107.00 feet, a radial bearing to said curve bears N71°15'13"E;

THENCE Northerly along the arc of said curve a distance of 93.41 feet through a central angle of 4°50'05" to the beginning of a reverse curve concave to the Northwest and having a radius of 1173.00 feet, a radial bearing to said curve bears N66°25'08"E;

THENCE Northerly along the arc of said curve a distance of 193.25 feet through a central angle of 9°26'22" to a point on the centerline of a 40 foot wide street (now known as Second Street) as shown on said Map, said point also being on the East line of that property described in said Martin Grant Deed;

THENCE along said centerline and the East line of said Martin Grant Deed S0°31'07"E a distance of 205.22 feet;

THENCE along the South line of said Martin Grant Deed S61°44'31"W a distance of 203.32 feet;

THENCE continuing along said South line S89°35'50"W a distance of 150.00 feet more or less to the Point of Beginning.

Said parcel contains 7.80 acres more or less.



TRACT NO. 15803

MB 283/30-36

EUCALYPTUS AVENUE

YUCAIPA WATER AND LUMBER COMPANY  
SUBDIVISION NO. 1  
MB 17127

BLOCK H

POB

APN 303-151-36

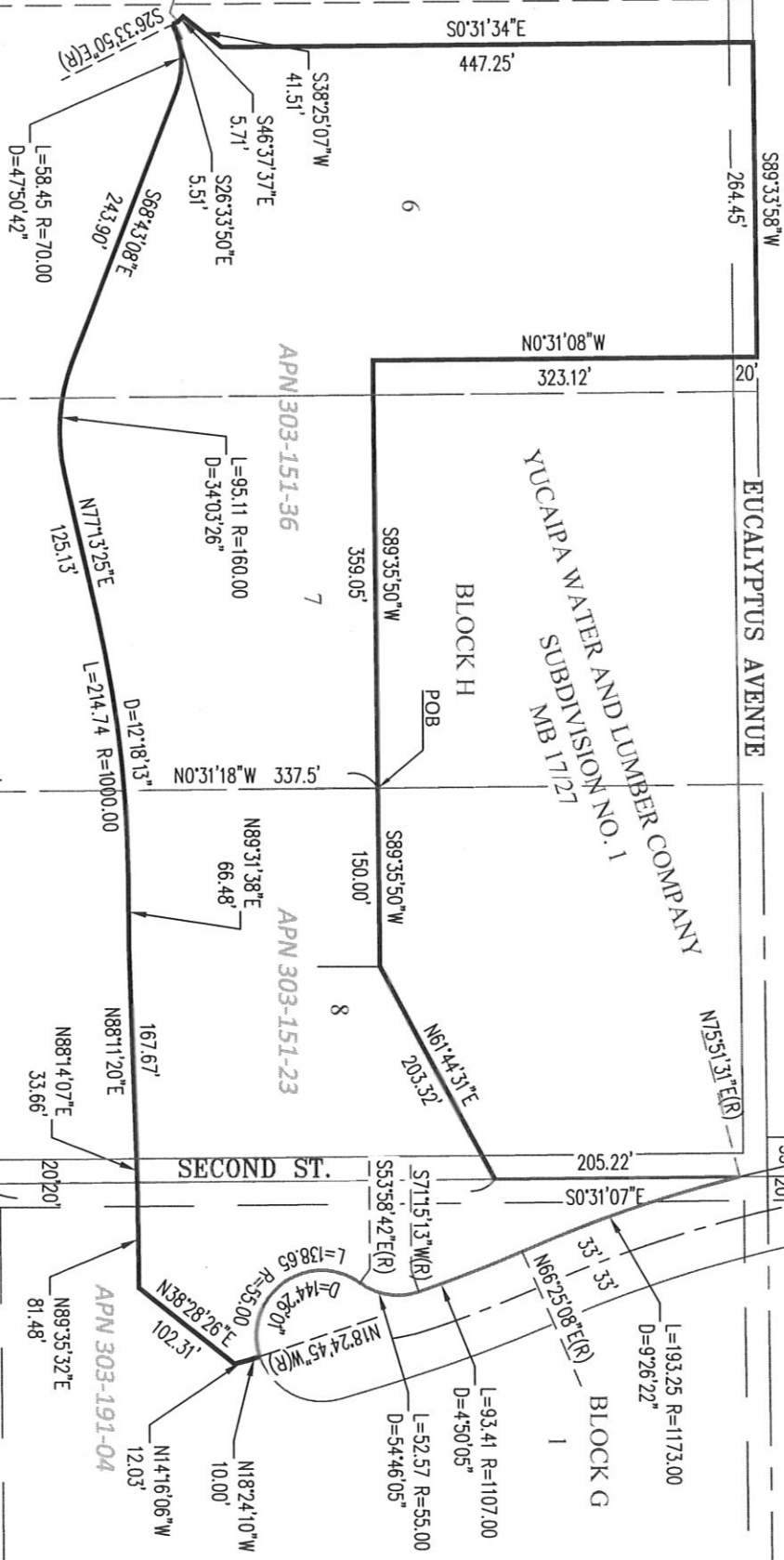
7

APN 303-151-23

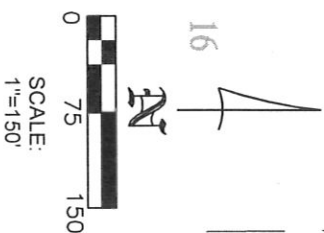
8

SECOND ST.

BLOCK G



NOTE: THIS PLAT IS SOLELY AN  
AID IN LOCATING THE PARCEL(S)  
DESCRIBED IN EXHIBIT "A". IT IS  
NOT A PART OF THE WRITTEN  
LEGAL DESCRIPTION.





**EXHIBIT "B"**  
**First Amendment to Construction Agreement**

(Attached.)



**Contract Number**

---

**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>	Greg Bogh, Mayor
<b>Telephone Number</b>	909-797-2489
<b>Contract Term</b>	
<b>Original Contract Amount</b>	
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	
<b>Cost Center</b>	1930002526
<b>GRC/PROJ/JOB No.</b>	3800 3734
<b>Internal Order No.</b>	

**Briefly describe the general nature of the contract:** *Construction Escrow Account Agreement for the Conveyance of a 7.80-acre portion of District-owned property (portions of APN's 0303-151-23, 0303-151-36, and 0303-191-35) to the City of Yucaipa. The amendment to the Construction Escrow Account Agreement allows for the deposit of proceeds if the City subsequently sells the Property. Such proceeds must be used to pay the costs of constructing the Wilson III Basin Improvement Project (Basin Project).*

**FOR COUNTY USE ONLY**

<p>Approved as to Legal Form</p> <p>► SEE SIGNATURE PAGE</p> <p>Robert F. Messinger, Chief Assistant County Counsel</p> <p>Date _____</p>	<p>Reviewed for Contract Compliance</p> <p>►</p> <p>Date _____</p>	<p>Reviewed/Approved by Department</p> <p>►</p> <p>Brandon J. Ocasio, Real Property Manager Real Estate Services Department</p> <p>Date _____</p>
---	--	---

## **FIRST AMENDMENT TO CONSTRUCTION ESCROW ACCOUNT AGREEMENT**

This First Amendment to the CONSTRUCTION ESCROW ACCOUNT AGREEMENT (this “**Agreement**”), is dated as of \_\_\_\_\_, 2021, and is entered into by and among the CITY OF YUCAIPA, a municipal corporation (the “**CITY**”), and the SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, a public entity (the “**DISTRICT**”). The CITY and the DISTRICT are sometimes referred to collectively as the “the **Parties**”.

### **RECITALS**

A. On September 29, 2020, the DISTRICT and the CITY entered into a Land Conveyance and Escrow Agreement (“**LCEA**”) for the DISTRICT to convey to the CITY an approximately 33.78 acre portion of APN 0303-181-19 and APN 0303-191-04, and an approximately 3 acre portion of APN 0303-191-01 (“**First Land Conveyance**”). On October 1, 2020, the DISTRICT and the CITY opened an escrow (escrow account no. 6391812) pertaining to the First Land Conveyance. In connection with that transaction, on September 29, 2020 the parties entered into a Construction Escrow Account Agreement to open an Escrow Construction Management Account to allow for the deposit of any proceeds from the CITY’s sale of the First Land Conveyance to third parties.

B. The CITY and the DISTRICT have entered into a Second Land Conveyance and Escrow Agreement dated March \_\_\_, 2021 (the “**Second LCEA**”) which provides for the conveyance of an approximately 7.8 acre portion of APNs 0303-151-23, 0303-151-36 and 0303-191-04 by DISTRICT to CITY in exchange for the CITY agreeing to construct the Wilson III Basin Project on property owned by the DISTRICT (the “**Improvements**”).

C. Pursuant to the Second LCEA, if the CITY resales any of the property acquired by the CITY under the Second LCEA, the CITY is to deposit all of the sales proceeds, when received by the CITY, into an escrow at First American Title Company, 18500 Von Karman Avenue, Suite 600, Irvine, California 92612 (“**Escrow Holder**”), and then use such funds (together with any interest/earnings thereon), the “**Funds**”) to construct the Improvements.

D. The CITY and the DISTRICT now desire to amend the Escrow Construction Management Account dated September 29, 2020 to (1) allow for the deposit of any proceeds from the sale of property described in the Second LCEA, into the same account that was established to accept the deposit of any proceeds from the sale of the property described in the LCEA, (2) confirm that the CITY can withdraw any excess proceeds after the Improvements are constructed and apply the excess proceeds to the construction of other flood control projects in the City.

NOW, THEREFORE, the parties hereby amend the Escrow Construction Management Account as follows:

1. Section 1, Establishment of Account, is hereby amended in its entirety to read as follows:

“The parties shall establish a joint account at Escrow Holder to receive the Funds, which shall constitute an escrow account for the benefit of both parties (the “**Account**”). The Account

shall also receive funds from the sale of proceeds from the property identified in the Second LCEA. Neither party may withdraw funds from the Account except as provided herein.”

2. Section 2, Escrow Account Deposits, is hereby amended in its entirety to read as follows:

“Upon CITY’s receipt of payments from the buyers of the land that CITY acquires from DISTRICT (which shall include principal and interest on any purchase money loan it makes to such buyers), CITY shall deposit all such funds into the Account. CITY is permitted to pay the escrow fees and charges for the sale of any land to third parties from the proceeds of the sale. All amounts remaining on deposit in the Escrow, if any, upon completion of the Basin and Appurtenant Channel Improvements, shall be withdrawn by CITY therefrom and applied to any other regional flood control improvement project within CITY’s jurisdictional boundaries. Upon completion of the Basin and Appurtenant Channel Improvements, CITY shall provide notice to Escrow Holder and DISTRICT. Within five business days, DISTRICT shall notify Escrow Holder that CITY may withdraw funds remaining on deposit, if any. CITY’s obligation to apply all amounts remaining upon completion of the Basin and Appurtenant Channel Improvements to any other regional flood control improvement project within CITY’s jurisdictional boundaries shall survive the termination of this Agreement.”

3. Section 3, Disbursement of Funds, is hereby amended in its entirety to read as follows:

“It is not a condition to disbursements under this Section that all sale proceeds from the sale of the property identified in the LCEA or the Second LCEA, plus any interest on purchase money loans shall have been deposited into the Account; the CITY may obtain disbursements of any and all funds in the Account pursuant to the other terms and conditions of this Section 3.

Escrow Holder shall disburse amounts on deposit in the Account solely in accordance with the directions of CITY and DISTRICT given by any person designated/authorized to act on behalf of the CITY and DISTRICT, respectively, as indicated on Exhibit “A” hereto, in accordance with a disbursement authorizations in the form attached hereto as Exhibit “B”, subject to the last paragraph of this Section 3. Upon the CITY’s and DISTRICT’s execution of this Agreement, CITY and DISTRICT shall promptly finalize and send the applicable certificate in the form attached as Exhibit “A” to the other party and to Escrow Holder, but either party may thereafter change its authorized signatory by another certificate sent to Escrow Holder and the other party.

If CITY desires DISTRICT to approve a disbursement, CITY shall so request in writing to DISTRICT (with a copy to Escrow Holder), which will include an explanation of the construction costs for which the request is being made, and evidence of such costs (“**Disbursement Request**”).

If DISTRICT disputes the request, DISTRICT shall inform CITY and Escrow Holder in writing of the nature of the dispute and the reason(s) for the dispute within seven (7) business days after the CITY’s Disbursement Request is delivered to DISTRICT. If DISTRICT does not timely do so, time being of the essence of this paragraph, then Escrow shall disburse the requested funds to CITY.”

3. Except as expressly set forth in this First Amendment, all other terms and conditions set forth in the Construction Escrow Account Agreement remain in effect. If any terms

4. Each individual executing this First Amendment on behalf of an entity hereby represents and warrants to the other party or parties to this Amendment that (i) such individual has been duly and validly authorized to execute and deliver this Amendment on behalf of such entity; and (ii) this First Amendment is and will be duly authorized, executed and delivered by such entity.

5. Except to the extent expressly modified by this First Amendment, the Construction Escrow Account Agreement remains in full force and effect. To the extent of any inconsistency between this First Amendment and the Construction Escrow Account Agreement, the terms and conditions of this First Amendment shall control. This First Amendment may be executed in multiple counterparts, all of which, taken together, shall constitute one document. This First Amendment shall be deemed effective against a party upon receipt by the other party (or its counsel) of a counterpart executed by facsimile or by e-mail (in PDF).

The CITY and the DISTRICT have caused this First Amendment to be signed, on the date first written above, by their respective officers duly authorized.

**DISTRICT:**

SAN BERNARDINO COUNTY FLOOD  
CONTROL DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_,  
Chair, Board of Supervisors

Date: \_\_\_\_\_, 2021

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

**CITY:**

CITY OF YUCAIPA

By: \_\_\_\_\_  
Greg Bogh, Mayor

Date: \_\_\_\_\_, 2021

**ATTEST:**

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

Approved as to Legal Form:

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

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

Approved as to Legal Form:

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

**ACKNOWLEDGED AND AGREED BY ESCROW HOLDER:**

\_\_\_\_\_

EXHIBIT “A”

FORMS OF CERTIFICATES AS TO AUTHORIZED SIGNATURES

(Attached.)

CERTIFICATE AS TO AUTHORIZED SIGNATURE  
(City of Yucaipa, for Account #\_\_\_\_\_)

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the **CITY OF YUCAIPA** who are authorized to initiate and approve transactions of all types on behalf of the City of Yucaipa for the account established under the Construction Escrow Account Agreement between the CITY OF YUCAIPA and the SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT.

**Name / Title**

**Specimen Signature**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature



CERTIFICATE AS TO AUTHORIZED SIGNATURE  
(San Bernardino County Flood Control District, for Account #\_\_\_\_\_)

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the **SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT** who are authorized to initiate and approve transactions of all types on behalf of the City of Yucaipa for the account established under the Construction Escrow Account Agreement between the CITY OF YUCAIPA and the SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT.

**Name / Title**

**Specimen Signature**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

EXHIBIT "B"

FORM OF DISBURSEMENT NOTICE

To: \_\_\_\_\_

Re: Construction Escrow Account Agreement dated as of \_\_\_\_\_, 2021 by and among the City of Yucaipa and the San Bernardino County Flood Control District

Pursuant to the provisions of Section \_\_\_\_ of the above-referenced Construction Escrow Account Agreement, the [City][San Bernardino County Flood Control District] confirms approval of the release of funds in the amount of \$\_\_\_\_\_ and hereby directs you to transfer and release such funds to the following account:

_____:	_____
ABA:	_____
Account #:	_____
Account Name:	_____
Reference:	_____
Contact:	_____

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Construction Escrow Account Agreement.

Dated: \_\_\_\_\_, 20\_\_

**[CITY OF YUCAIPA]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]

OR

**[SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT]**

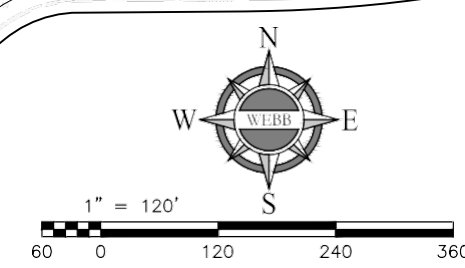
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]

**EXHIBIT "C"**

**Depiction of Improvements Property**

(Attached.)

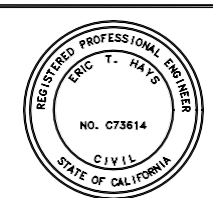
EXHIBIT C



SUBMITTED BY: \_\_\_\_\_  
CHIEF, F.C. OPS. DIVISION \_\_\_\_\_ DATE \_\_\_\_\_  
RECOMMENDED BY: \_\_\_\_\_  
ASSIST. FLOOD CONTROL ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_  
APPROVED BY: \_\_\_\_\_  
FLOOD CONTROL ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

**Underground Service Alert**  
Call: TOLL FREE 811  
WWW.call811.com  
TWO WORKING DAYS BEFORE YOU DIG

**ALBERT A. WEBB ASSOCIATES**  
ENGINEERING CONSULTANTS  
3788 McCRAV STREET  
RIVERSIDE, CA. 92506  
PH: (951) 686-1070  
FAX (951) 788-1256  
ENGINEER, RCE C73614 DATE: \_\_\_\_\_



NO.	DATE	DESCRIPTION	APP.	DATE
REVISIONS				

**CITY OF YUCAIPA**  
**WILSON III DETENTION BASIN AND 2ND STREET EXTENSION**  
**IMPROVEMENT PLANS**

**SHEET INDEX**

Submitted By: \_\_\_\_\_ Date: \_\_\_\_\_  
Recommended for Approval By: \_\_\_\_\_ Date: \_\_\_\_\_  
Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
Fermin G. Preciado, City Engineer

Job No. \_\_\_\_\_ Drawing No. 10879  
Sheet No. 2 of 45 sheets

City of Yucaipa  
Engineering Department

**EXHIBIT "D"**

**Form of Grant Deed**

(Attached.)

**Recording Requested By, and  
When Recorded Mail  
Document and Assessment  
Bills to:**

City of Yucaipa  
34272 Yucaipa Blvd.  
Yucaipa, CA 92399

Record without fee subject to  
Gov't Code 6103 and 27383

Project: Wilson Creek  
System No.: \_\_\_\_\_  
Parcel No.: \_\_\_\_\_  
Dept. Code: \_\_\_\_\_

**GRANT DEED**

D.P. No.: \_\_\_\_\_  
APNs: 0303-151-23, 0303-151-  
36, and 0303-191-04  
Date: \_\_\_\_\_, 2021

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: \_\_\_\_\_

**CERTIFICATE OF ACCEPTANCE**

(California Government Code § 27281)

(Portions of APNs 0303-151-23, 0303-151-36, and 0303-191-04)

This is to certify that an approximately 7.8 acre portion of San Bernardino County Assessor's Parcel Nos. 0303-151-23, 0303-151-36, and 0303-191-04 granted 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 under the authority of the City Council of the City of Yucaipa and the City of Yucaipa consents to the recordation thereof by its duly authorized officer.

**CITY OF YUCAIPA, a municipal  
corporation**

Dated: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Jennifer Crawford, Assistant City  
Manager/City Clerk

Approved as to form:

RICHARDS, WATSON & GERSHON

\_\_\_\_\_  
David M. Snow, City Attorney