



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**

Approved as to Legal Form

► SEE SIGNATURE PAGE  
Robert F. Messinger,  
Chief Assistant County Counsel

Date \_\_\_\_\_

Reviewed for Contract Compliance

► \_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

► *Brandon Ocasio*  
Brandon J. Ocasio, Real Property Manager  
Real Estate Services Department

Date 5/27/2021

## **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: \_\_\_\_\_]