

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (the "Agreement") is dated as of _____, 2014 (the "Execution Date") and is entered into by and between the San Bernardino County Flood Control District, a body corporate and politic ("FCD") and the City of Highland, a municipal corporation of the State of California ("CITY").

RECITALS

- A. FCD is the owner of the fee simple interest in that certain FCD Parcel 336a consisting of 1,814 square feet (a portion of APN 1192-561-03), located in the City of Highland, County of San Bernardino, California, and more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein ("Parcel A") and FCD Parcel 336b consisting of 4,544 square feet (a portion of APN's 1192-541-01 and 1192-541-02), located in the City of Highland, County of San Bernardino, California, and more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein ("Parcel B") and FCD Parcel 336c consisting of 5,209 square feet (a portion of APN's 1192-541-01 and 1192-541-02), located in the City of Highland, County of San Bernardino, California, and more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein ("Parcel C") and FCD Parcel 336d consisting of 191 square feet (a portion of APN 1192-541-02, located in the City of Highland, County of San Bernardino, California, and more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein ("Parcel D"). Parcel A, Parcel B, Parcel C and Parcel D are referred to herein, collectively, as the "Easement Parcels".
- B. CITY desires to acquire an easement for the 5th Street storm drain and road widening purposes in perpetuity over Parcel A, Parcel B, Parcel C and Parcel D and more particularly described in the Grant of Easement attached hereto as Exhibit "B", and by this reference incorporated herein (the "Grant of Easement").
- C. FCD finds that the conveyance of the easements over Parcel A, Parcel B, Parcel C and Parcel D (collectively, the "Easements") is in the public interest, will not substantially conflict or interfere with the use of the property owned by the FCD, the Easements will not impair or diminish existing or probable future requirements for flood prevention and water conservation and the conveyance of the Easements is authorized by the California Water Code, Uncodified Acts, Act 1060, §§ 2 and 6 and California Government Code §25526.6.
- D. CITY is the owner of the fee simple interest in that certain City Parcel 98 consisting of 26,783 square feet (a portion of APN 1192-231-23), located in the City of Highland, County of San Bernardino, California, and more particularly described in Exhibit "C", attached hereto and by this reference incorporated herein ("Parcel 98") is referred to herein, as (the "Exchange Parcel").
- E. FCD requires fee title in and to the Exchange Parcel for the operation and maintenance of flood control facilities lying within Sand Creek - Warm Creek systems and CITY finds that the conveyance of fee title in and to the Exchange Parcel, as more particularly described in the Grant Deed attached hereto as Exhibit "D", and by this reference incorporated herein (the "Grant Deed"), to FCD for said purposes is in the public interest and will not substantially conflict or interfere with the CITY storm drain facilities within

that same flood control system and the conveyance of the fee interest is authorized by California Government Code §25526.6.

- F. CITY has reserved an easement right in the Grant Deed to access, operate and maintain the existing storm drain facilities in over and across the fee title land. If the storm drain facilities are abandoned in the future by the City or its successors or assigns, the easement reservation will automatically terminate.
- G. FCD has agreed to convey the Easement Parcels, and CITY has agreed to accept the Easement Parcels upon the City's payment to FCD of a Purchase Price in the amount of Twenty-Seven Thousand One Hundred Eleven and 00/100 Dollars (\$27,111.00) (the "Purchase Price")
- H. CITY has agreed to convey the Exchange Parcel, and FCD has agreed to accept the Exchange Parcel upon the FCD's payment to CITY of an Exchange Price in the amount of Nine Thousand Four Hundred Thirty-nine and 00/100 Dollars (\$9,439.00) (the "Exchange Price").
- I. CITY has agreed to pay, and FCD has agreed to accept, the Net Exchange Value for the fee simple interest and easements in the amount of Seventeen Thousand Six Hundred Seventy-two and 00/100 Dollars (\$17,672.00) (Net Exchange Value").

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the FCD and CITY hereto agree as follows:

Section 1. Recitals. The recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Purchase and Sale Agreement.

(a) Subject to all of the terms, conditions and provisions of this Agreement, and for consideration equal to the Purchase Price, CITY hereby agrees to convey and transfer all of its right, title and interest in and to the property (the "Exchange Parcel") to FCD, and FCD hereby agrees to acquire all of the right, title and interest of CITY in and to the property, excepting therefrom the reservation for an easement being retained by the CITY.

(b) Subject to all of the terms, conditions and provisions of this Agreement, and for consideration equal to the Exchange Price, FCD hereby agrees to Grant the Easement to CITY, and CITY hereby agrees to accept the Grant of Easement from FCD.

(c) The Exchange Parcel shall be conveyed to CITY by FCD and the Grant of Easement shall be granted by FCD to CITY concurrently on the Closing Date subject to the terms, conditions and provisions of this Agreement.

(d) The difference between the CITY's Purchase Price and FCD's Exchange Price is Seventeen Thousand Six Hundred Seventy-two and 00/100 Dollars (\$17,672.00) (the "Net Exchange Value"). The parties hereto agree that in lieu of the CITY tendering the full Purchase Price to FCD, and FCD tendering the full Exchange Price to the CITY, the CITY shall pay only the Net Exchange Value to the FCD in consideration for the fee simple and easement real property interests being conveyed pursuant to this Agreement

(e) In addition, the CITY shall pay to FCD the total cost for all Administrative Fees, including Real Estate Services hourly rates, and Board Mandated Fees, which shall be paid through the Close of Escrow.

Section 3. Escrow.

(a) The Grant of Easement and sale of the Exchange Parcel shall take place through an escrow ("Escrow") administered by Golden State Escrow, Inc. (the "Escrow Holder"). Escrow shall commence upon the receipt by the Escrow Holder of a copy of this Agreement executed by CITY and FCD. On or before the Closing Date, CITY shall deposit with the Escrow Holder an amount equal to the sum of the Net Exchange Value, which amount shall be paid to FCD at Close of Escrow. In the event CITY fails to deposit an amount equal to the Net Exchange Value In strict accordance with the foregoing, time being of the essence, this Agreement shall terminate and any and all funds deposited in Escrow by CITY to complete CITY's obligations under this Agreement shall be refunded to CITY less any Escrow fees (to the extent that CITY failed to timely deposit the required monies with Escrow Holder due to no fault of FCD), and except as otherwise provided in this Agreement to the contrary, the parties shall have no further obligation or liabilities to the other.

(b) If this Agreement is terminated by FCD or FCD fails to consummate this transaction in accordance with this Agreement (through no fault of CITY), FCD shall be solely responsible to Escrow Holder for all customary and reasonable escrow charges payable to Escrow Holder without further or separate instruction to Escrow Holder, and the parties shall each be relieved and discharged from all further responsibility or liability under this Agreement.

(c) If this Agreement is terminated by CITY or CITY fails to consummate this transaction in accordance with this Agreement (through no fault of FCD), CITY shall be solely responsible to Escrow Holder for all customary and reasonable escrow charges payable to Escrow Holder without further or separate instruction to Escrow Holder, and the parties shall each be relieved and discharged from all further responsibility or liability under this Agreement

Section 4. Close of Escrow.

As used herein, "Close of Escrow" means and refers to the date on which the conditions set forth in this Agreement for the transfer of the property and the Grant of Easement and the Grant Deed are each delivered to and recorded by Escrow Holder. CITY shall be solely responsible to Escrow Holder for all customary and reasonable escrow charges payable to Escrow Holder. The Exchange Parcel shall be transferred to FCD and Easement shall be transferred to CITY, respectively, at the Close of Escrow, provided that within the periods of time set forth in this Agreement: (i) neither party has terminated this Agreement, (ii) CITY has accepted the Grant of Easement, (iii) FCD has accepted the Grant Deed, (iv) all other conditions set forth in this Agreement have been met and (v) CITY has paid, or caused to be paid, to the Escrow Holder all applicable costs. The Close of Escrow shall occur on a date designated by the parties, provided that such date shall be no later than 90 days after the Execution Date, unless this Agreement has been earlier terminated pursuant to the terms hereof.

Section 5. Escrow Instructions.

FCD and CITY each agree to execute and deliver to the Escrow Holder the customary supplemental written escrow instructions (consistent with the terms of this Agreement) of the Escrow Holder. In the event of a conflict between the additional terms of such customary supplemental escrow instructions of the Escrow Holder and the provisions of this Agreement, this Agreement shall supersede and be controlling. Upon any termination of this Agreement or

cancellation of the Escrow, except as results from the default of FCD, CITY shall be solely responsible for the payment of the escrow cancellation costs of the Escrow Holder.

Section 6. Conveyance of Title.

(a) On or before the Close of Escrow, FCD shall deliver to the Escrow Holder the Grant of Easement, in substantially the forms attached hereto as Exhibit "C" duly executed and acknowledged by FCD. On or before the Close of Escrow CITY shall deliver to Escrow Holder a Grant of Easement acceptance executed by an authorized officer of CITY and shall deliver same to Escrow Holder on or before the Close of Escrow. The Escrow Holder shall be instructed to record the Grant of Easement in the Official Records of the County of San Bernardino, California, if and when the Escrow Holder holds the funds for the FCD as set forth herein. CITY shall deliver to the Escrow Holder the Grant Deed in the form attached hereto as Exhibit "D" duly executed and acknowledged by CITY. On or before the Close of Escrow FCD shall deliver to Escrow Holder a Grant Deed acceptance executed by an authorized officer of FCD and shall deliver same to Escrow Holder on or before the Close of Escrow. The Escrow Holder shall be instructed to record the Grant of Easement and Grant Deed, respectively, in the Official Records of the County of San Bernardino, California.

(b) As a condition precedent to CITY's obligation to proceed with the Close of Escrow and the transaction contemplated hereunder, all requirements for the issuance by a title company of CITY's choosing (the "CITY Title Company") of an CLTA owner's policy of title insurance (the "CITY Title Policy") with liability in an amount of the Purchase Price, as may be requested by CITY, insuring that easement rights to the Easement Parcels are vested in the CITY, free and clear of options, rights of first refusal or other purchase rights, leases or other possessory interests (except those leases or other possessory interests existing prior to the Closing Date), lis pendens and monetary liens and/or encumbrances and subject only to the following matters:

- (1) a lien for real property taxes, bond, or assessments not then delinquent;
- (2) matters of the Easements' title not disapproved by CITY in writing;
- (3) all matters that affect title to the Easement Parcels that would be revealed by an accurate and complete survey of the Easement Parcels as of the end of the Inspection Period;
- (4) dedication of all streets abutting the Easement Parcels;
- (5) customary utility rights-of-way and easements that do not materially interfere with the existing use of the Easement Parcels;
- (6) zoning and other governmental restrictions;
- (7) matters common to any general area or subdivision in which the Easement Parcels is located;
- (8) matters affecting the condition of the Easement Parcels' title created by or with the consent of the CITY or CITY's officers, employees or agents.

(9) such other title exceptions, if any, resulting from documents being recorded or delivered through Escrow

(c) As a condition precedent to FCD's obligation to proceed with the Close of Escrow and the transaction contemplated hereunder, all requirements for the issuance by a title company of FCD's choosing (the "FCD Title Company") of an CLTA owner's policy of title insurance (the "FCD Title Policy") with liability in an amount of the Exchange Price as may be requested by FCD, insuring that fee simple interest in and to the property is vested in the FCD, free and clear of options, rights of first refusal or other purchase rights, leases or other possessory interests (except those leases or other possessory interests existing prior to the Closing Date), lis pendens and monetary liens and/or encumbrances and subject only to the following matters:

(1) a lien for real property taxes, bond, or assessments not then delinquent;

(2) matters of the Easements' title not disapproved by FCD in writing;

(3) all matters that affect title to the Exchange Parcel that would be revealed by an accurate and complete survey of the Exchange Parcel as of the end of the Inspection Period;

(4) dedication of all streets abutting the Exchange Parcel;

(5) customary utility rights-of-way and easements that do not materially interfere with the existing use of the Exchange Parcel;

(6) zoning and other governmental restrictions;

(7) matters common to any general area or subdivision in which the Easement Parcels are located;

(8) matters affecting the condition of the Exchange Parcels' title created by or with the consent of the FCD or FCD's officers, employees or agents.

(9) such other title exceptions, if any, resulting from documents being recorded or delivered through Escrow.

Section 8. Inspections and Review.

(a) During the period commencing on the date of full execution by both parties of this Agreement and terminating on the date occurring sixty (60) days thereafter ("Feasibility Period"), CITY shall undertake at CITY's expense an inspection of the Easement Parcels; a review of the physical condition of the Easement Parcels, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Easement Parcels; and a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Easement Parcels. CITY's inspection of the Easement Parcels shall be conducted during normal business hours upon forty-eight (48) hours' prior notice to FCD. Within ten (10) business days following the full execution of this Agreement by both parties, FCD shall deliver to CITY copies of all plans, surveys, specifications, and other documents

pertaining to the physical, geological, or environmental condition of the Easement Parcels that are owned by or in the possession of FCD.

(b) If CITY disapproves of the results of the inspection and review, CITY may elect to terminate this Agreement by giving FCD written notification prior to the last day of the Feasibility Period. If CITY fails to properly notify FCD of the intent to terminate this Agreement due to CITY's disapproval of the results of the inspection and review, CITY shall be deemed to be satisfied with the results of the inspection.

(c) CITY shall accept the delivery of possession of the Easement Parcels (including but not limited to, subterranean structures and soil conditions), in an "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition. CITY hereby acknowledges that it has relied solely upon its own investigation of the Easement Parcels and its own review of such information and documentation as it deems appropriate. CITY is not relying on any statement or representation by FCD, any employee, official or consultant of FCD relating to the condition of the Easement Parcels. FCD makes no representations or warranties as to whether the Easement Parcels presently complies with environmental laws or whether the Easement Parcels contains any hazardous substance. Furthermore, to the extent that FCD has provided CITY with information relating to the condition of the Easement Parcels, FCD makes no representation or warranty with respect to the accuracy, completeness or methodology or content of such reports or information.

(d) As of the Close of Escrow, CITY, on behalf of itself and its successors, waives and releases FCD and its successors and assigns from any and all costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising from or relating to any of the following matters and conditions relating to the Easement Parcels which exist as of the date of the applicable Close of Escrow: the physical condition of the Easement Parcels or any above ground or underground improvements thereon, the condition of the soils, the suitability of the soils for the improvement of any proposed project, or any law or regulation applicable thereto. Notwithstanding the preceding, the foregoing released claims shall specifically exclude any claims or other matters based upon (i) breach of any of FCD's representations and warranties set forth in this Agreement or based upon FCD's intentional fraudulent acts or omissions; (ii) breach of any of FCD's obligations specifically provided in this Agreement to be performed after the Close of Escrow; and (iii) any Hazardous Materials deposited or placed in, at or under the Easement Parcels by FCD in violation of applicable environmental laws.

(e) 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 or her favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. By execution of this Agreement, CITY acknowledges that it fully understands the foregoing, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown, described in this Section 8 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 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."

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.

Initials of CITY: _____

(f) The provisions of this Section 8 shall survive the Close of Escrow, and shall be binding upon CITY.

(g) FCD shall assist and cooperate with CITY in endeavoring to remove title exceptions unacceptable to CITY, but FCD shall have no obligation to cause such objections to be removed or to expend any sums in such endeavor, except that FCD shall remove all monetary liens and encumbrances created by or as a result of FCD's activities.

(h) FCD covenants not to further encumber and not to place any further liens or encumbrances on the Easement Parcels, 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 interests.

(i) FCD also covenants not to authorize others to take any action that adversely affects the physical condition of the Easement Parcels or its soils to any material extent.

(j) During the period commencing on the date of full execution by both parties of this Agreement and terminating on the date occurring sixty (60) days thereafter ("Feasibility Period"), FCD shall undertake at FCD's expense an inspection of the Exchange Parcel; a review of the physical condition of the Exchange Parcel, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Exchange Parcel; and a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Exchange Parcel. FCD's inspection of the Exchange Parcel shall be conducted during normal business hours upon forty-eight (48) hours' prior notice to CITY. Within ten (10) business days following the full execution of this Agreement by both parties, CITY shall deliver to FCD copies of all plans, surveys, specifications, and other documents pertaining to the physical, geological, or environmental condition of the Exchange Parcel that are owned by or in the possession of CITY.

(k) If FCD disapproves of the results of the inspection and review, FCD may elect to terminate this Agreement by giving CITY written notification prior to the last day of the Feasibility Period. If FCD fails to properly notify CITY of the intent to terminate this Agreement due to FCD's disapproval of the results of the inspection and review, FCD shall be deemed to be satisfied with the results of the inspection.

(l) FCD shall accept the delivery of possession of the Exchange Parcel (including but not limited to, subterranean structures and soil conditions), in an "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition. FCD hereby acknowledges that it has relied solely upon its own investigation of the Exchange Parcel and its own review of such information and documentation as it deems appropriate. FCD is not relying on any statement or representation by CITY, any employee, official or consultant of CITY relating to the condition of the Exchange Parcel. CITY makes no representations or warranties as to whether the Exchange Parcel presently complies with environmental laws or whether the Exchange Parcel contains any hazardous substance. Furthermore, to the extent that CITY has provided FCD with information relating to the condition of the Exchange Parcel, CITY makes no representation

or warranty with respect to the accuracy, completeness or methodology or content of such reports or information.

(m) As of the Close of Escrow, FCD, on behalf of itself and its successors, waives and releases CITY and its successors and assigns from any and all costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising from or relating to any of the following matters and conditions relating to the Exchange Parcel which exist as of the date of the applicable Close of Escrow: the physical condition of the Exchange Parcel or any above ground or underground improvements thereon, the condition of the soils, the suitability of the soils for the improvement of any proposed project, or any law or regulation applicable thereto. Notwithstanding the preceding, the foregoing released claims shall specifically exclude any claims or other matters based upon (i) breach of any of CITY's representations and warranties set forth in this Agreement or based upon CITY's intentional fraudulent acts or omissions; (ii) breach of any of CITY's obligations specifically provided in this Agreement to be performed after the Close of Escrow; and (iii) any Hazardous Materials deposited or placed in, at or under the Exchange Parcel by CITY in violation of applicable environmental laws.

(n) FCD 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 or her favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. By execution of this Agreement, FCD acknowledges that it fully understands the foregoing, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown, described in this Section 8 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 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."

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.

Initials of FCD: _____

(o) The provisions of this Section 8 shall survive the Close of Escrow, and shall be binding upon FCD.

(p) CITY shall assist and cooperate with FCD in endeavoring to remove title exceptions unacceptable to FCD, but CITY shall have no obligation to cause such objections to be removed or to expend any sums in such endeavor, except that CITY shall remove all monetary liens and encumbrances created by or as a result of CITY's activities.

(q) CITY covenants not to further encumber and not to place any further liens or encumbrances on the Exchange Parcel, 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 interests.

(r) CITY also covenants not to authorize others to take any action that adversely affects the physical condition of the Exchange Parcel or its soils to any material extent.

Section 9. Closing Costs, Possession.

(a) FCD and CITY shall each pay its own cost for its respective title policy.

(b) CITY shall pay 100% of the Escrow Holder's charges and fees which may be charged by the Escrow Holder in connection with the Close of Escrow.

(c) CITY shall be entitled to possession of the Easement Parcels and FCD shall be entitled to possession of the Exchange Parcel immediately upon the Close of Escrow.

Section 10. Representations and Warranties.

(a) FCD hereby makes the following representations, covenants and warranties:

(1) Power and Authority. FCD 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. FCD 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 for or on behalf of FCD have been duly authorized to so act on behalf of FCD and this Agreement and any such instrument or document is valid and legally binding on FCD and enforceable against FCD in accordance with their respective terms.

(4) No Litigation. There is no pending or, to the best of FCD'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 Easement Parcels or the Easements.

(5) No Violation. Neither the execution of this Agreement or the other instruments and documents referenced herein nor the performance by FCD of its obligations hereunder and thereunder shall result in a breach or constitute a default under any agreement, document, instrument or other obligation to which FCD is a party or by which FCD 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 FCD.

(6) Operation and Condition Pending Closing. Between the date of this Agreement and the Close of Escrow hereunder, FCD will continue to manage, operate and maintain the Easement Parcels in the same manner as existed prior to the execution of this Agreement.

All representations and warranties contained in this Section 10(a) are true and correct on the date hereof and on the date of the Close of Escrow and shall survive the Close of Escrow.

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

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

(2) 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) This Agreement is, and all instruments and documents to be executed by CITY pursuant to this Agreement shall be, duly executed by and are or shall be valid and legally binding upon CITY and enforceable against CITY in accordance with their respective terms.

(4) Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which CITY is a party or by which CITY may be bound, or under law, statute, ordinance, rule governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to CITY.

All representations and warranties contained in this Section 10(b) are true and correct on the date hereof and on the date of the Close of Escrow and shall survive the Close of Escrow.

Section 11. 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 Easement Parcels 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 12. Attorneys' Fees. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees.

Section 13. Venue. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in, and that all real properties which are the subject of this Agreement are situated with San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Agreement, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

Section 14. Nonliability of Officials and Employees.

No officer, official or employee of either party shall be personally liable to the other party, 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.

(a) CITY agrees to indemnify and hold FCD and its officers, employees and agents harmless from and against all damages, judgments, costs, expenses and attorney's fees arising from or related to any act or omission of CITY in performing its investigations of the Easement Parcels. FCD shall give CITY written notice of the occurrence of a claim, litigation or other matters for which FCD seeks indemnity under this Section as promptly as practicable following FCD's knowledge of the occurrence of such matter and FCD shall reasonably cooperate with CITY in the defense of any such claim or matter and shall not take any action that would adversely affect CITY's defense of such matter.

(b) FCD agrees to indemnify and hold CITY and its officers, employees and agents harmless from and against all damages, judgments, costs, expenses and attorney's fees arising from or related to any act or omission of FCD in performing its investigations of the Exchange Parcel. CITY shall give FCD written notice of the occurrence of a claim, litigation or other matters for which CITY seeks indemnity under this Section as promptly as practicable following CITY's knowledge of the occurrence of such matter and CITY shall reasonably cooperate with FCD in the defense of any such claim or matter and shall not take any action that would adversely affect FCD's defense of such matter.

Section 16. Miscellaneous.

(a) 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.

(b) 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 Friday, 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 Friday, Saturday, Sunday or state or national holiday.

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

Section 17. Entire Agreement.

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

(b) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto with respect to the Easement Parcels.

(c) 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.

Section 18. Legislative Body Approval.

This agreement is subject to, and will have no force or effect until and unless first approved by the San Bernardino County Flood Control District Board of Supervisors.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the dates set forth below.

FCD:

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

By: _____
Janice Rutherford, Chair, Board of Supervisors

Date: _____

Laura H. Welch,
Clerk of the Board of Supervisors

Approved as to Legal Form:
Jean-Rene Basle, County Counsel
County of San Bernardino, California

By: _____
Deputy

By: _____
Alan L. Green, Deputy

Date: _____

Date: _____

CITY:

CITY OF HIGHLAND, a municipal corporation

By: _____

Date: _____

Approved as to Legal Form:

By: _____

Date: _____

EXHIBIT "A"

Easement Parcels

EXHIBIT "A"

Those portion of Lots 26 and 27 of the Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as per plat recorded, in Book 2 of Maps, page 22, records of said County, described as follows:

PARCEL A

That portion of that part of said Lot 27 described in a document to the San Bernardino County Flood Control District recorded June 1, 1963 in Book 5926, page 948, Official Records of said County, said portion being all of said part lying northerly of a line that is parallel with and 93.25 feet southerly of the north line of said Lot 27.

EXCEPTING THEREFROM any portion lying within the land described in a deed to the County of San Bernardino for right of way and public highway purposes recorded August 1, 1947 in Book 2073, page 217, Official Records of said County.

Containing 0.04 acres (1,814 square feet), more or less.

Affects: APN 1192-561-03

PARCEL B

Those portions of those parts of said Lot 26 of the Cunningham Subdivision, described in a Tax Deed to the San Bernardino County Flood Control District recorded February 27, 1978 in Book 9377, page 1122 and in a document to the San Bernardino County Flood Control District recorded April 24, 1963 in Book 5895, page 598, both of Official Records of said County, said portions being all of said parts lying southerly of a line that is parallel with and 10.75 feet northerly of the south line of said Lot 26.

EXCEPTING THEREFROM any portion lying within Fifth Street, 82.5 feet wide.

Containing 0.10 acres (4,544 square feet) more or less.

Affects: APN 1192-541-01 & 02

PARCEL C

Those portion of those parts of said Lot 26, of the Cunningham Subdivision, described in a Tax Deed to the San Bernardino County Flood Control District recorded February 27, 1978 in Book 9377, page 1122, and in a document to the San Bernardino County Flood Control District recorded April 24, 1963 in Book 5895, page 598, both of Official Records of said County, said portions being all of the parts lying easterly of a line that is parallel with and 33.00 feet westerly of the southerly extension of the centerline of Central Avenue as said center line is shown on Tract map No. 8270 recorded in Book 110 of Maps, pages 6 through 8, inclusive, records of said County.

EXCEPTING THEREFROM any portion thereof lying within hereinabove described Parcel B.

Containing 0.12 acres (5,209 square feet) more or less.

Affects: APN 1192-541-01 & 02

PARCEL D

That portion of said Lot 26 of the Cunningham Subdivision, as described in a Tax Deed to the San Bernardino County Flood Control District recorded February 27, 1978 in Book 9377, page 1122, Official Records of said County, bounded as follows:

On the east by the westerly line of the hereinabove described Parcel C; on the south by the northerly line of the hereinabove described Parcel B; and on the northwest by the following described line:

Commencing at the intersection of the southerly prolongation of the westerly line of Central Avenue as said westerly line is shown on Tract Map No. 8270 recorded in Book 110 of Maps, pages 6 through 8, inclusive, records of said County and the northerly line of the hereinabove described Parcel B; thence North 89°47'30" West 19.43 feet to the **Point of Beginning**; thence North 44°52'11" East 27.68 feet to an intersection with the southerly prolongation of the westerly line of Central Avenue as said westerly line is shown on said Tract Map No. 8270 and being the **Point of Termination**.

Containing 0.004 acres (191 square feet) more or less.

Affects: APN 1192-541-02

Prepared under the supervision of:


David B. Ragland, L.S. 5173
License Expires June 30, 2013

EXHIBIT "B"

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

CITY CLERK
CITY OF HIGHLAND
27215 BASELINE
HIGHLAND, CA 92346

ATTEN: BETTY HUGHES

Record without fee subject to Gov't Code 6103
Recordation required to complete chain of title.

Portion of APN # 1192-561-03
1192-541-01
1192-541-02

Space above this line for Recorder's use

GRANT OF EASEMENT
(PUBLIC ROAD and ACCESS)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **San Bernardino County Flood Control District**, a body corporate and politic,

Does hereby grant to the **City of Highland**, a Municipal Corporation, an **EASEMENT** for public roads, drainage and utility purposes upon, under, over, and across the real property in City of Highland, County of San Bernardino, State of California, described as follows:

**SEE EXHIBIT "A", LEGAL DESCRIPTION, AND EXHIBIT "B",
PLAT, ATTACHED HERETO AND MADE A PART HEREOF**

Together with the easement herein granted the City of Highland shall have the right to enter upon and to pass and repass over and along the District's access roads on land within and adjoining the herein described easement area whenever necessary to maintain the improvements constructed in conjunction with the 5th Street and Del Rosa Drive Street Improvement Project.

IT IS UNDERSTOOD that the City of Highland ("CITY") will perform all necessary maintenance associated with the entire box culvert and appurtenant structures including but not limited to wingwalls, curb and gutter and appurtenances thereto constructed within the San Bernardino County Flood Control District's ("DISTRICT") Right of Way in conjunction with the 5th Street and Del Rosa Drive Street Improvement Project.

By acceptance hereof, CITY agrees to indemnify DISTRICT, its officers, agents and or employees from any and all liability, loss or damage associated with the rights granted herein.

**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

Dated: _____

By: _____

**Janice Rutherford
Chair of the Board of Supervisors**

2.603 City Creek Channel
Parcel 336
D.P. 2.600/ 19a

EXHIBIT "A"

Those portion of Lots 26 and 27 of the Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as per plat recorded, in Book 2 of Maps, page 22, records of said County, described as follows:

PARCEL A

That portion of that part of said Lot 27 described in a document to the San Bernardino County Flood Control District recorded June 1, 1963 in Book 5926, page 948, Official Records of said County, said portion being all of said part lying northerly of a line that is parallel with and 93.25 feet southerly of the north line of said Lot 27.

EXCEPTING THEREFROM any portion lying within the land described in a deed to the County of San Bernardino for right of way and public highway purposes recorded August 1, 1947 in Book 2073, page 217, Official Records of said County.

Containing 0.04 acres (1,814 square feet), more or less.

Affects: APN 1192-561-03

PARCEL B

Those portions of those parts of said Lot 26 of the Cunningham Subdivision, described in a Tax Deed to the San Bernardino County Flood Control District recorded February 27, 1978 in Book 9377, page 1122 and in a document to the San Bernardino County Flood Control District recorded April 24, 1963 in Book 5895, page 598, both of Official Records of said County, said portions being all of said parts lying southerly of a line that is parallel with and 10.75 feet northerly of the south line of said Lot 26.

EXCEPTING THEREFROM any portion lying within Fifth Street, 82.5 feet wide.

Containing 0.10 acres (4,544 square feet) more or less.

Affects: APN 1192-541-01 & 02

PARCEL C

Those portion of those parts of said Lot 26, of the Cunningham Subdivision, described in a Tax Deed to the San Bernardino County Flood Control District recorded February 27, 1978 in Book 9377, page 1122, and in a document to the San Bernardino County Flood Control District recorded April 24, 1963 in Book 5895, page 598, both of Official Records of said County, said portions being all of the parts lying easterly of a line that is parallel with and 33.00 feet westerly of the southerly extension of the centerline of Central Avenue as said center line is shown on Tract map No. 8270 recorded in Book 110 of Maps, pages 6 through 8, inclusive, records of said County.

EXCEPTING THEREFROM any portion thereof lying within hereinabove described Parcel B.

Containing 0.12 acres (5,209 square feet) more or less.

Affects: APN 1192-541-01 & 02

PARCEL D

That portion of said Lot 26 of the Cunningham Subdivision, as described in a Tax Deed to the San Bernardino County Flood Control District recorded February 27, 1978 in Book 9377, page 1122, Official Records of said County, bounded as follows:

On the east by the westerly line of the hereinabove described Parcel C; on the south by the northerly line of the hereinabove described Parcel B; and on the northwest by the following described line:

Commencing at the intersection of the southerly prolongation of the westerly line of Central Avenue as said westerly line is shown on Tract Map No. 8270 recorded in Book 110 of Maps, pages 6 through 8, inclusive, records of said County and the northerly line of the hereinabove described Parcel B; thence North 89°47'30" West 19.43 feet to the **Point of Beginning**; thence North 44°52'11" East 27.68 feet to an intersection with the southerly prolongation of the westerly line of Central Avenue as said westerly line is shown on said Tract Map No. 8270 and being the **Point of Termination**.

Containing 0.004 acres (191 square feet) more or less.

Affects: APN 1192-541-02

Prepared under the supervision of:


David B. Ragland, L.S. 5173
License Expires June 30, 2013

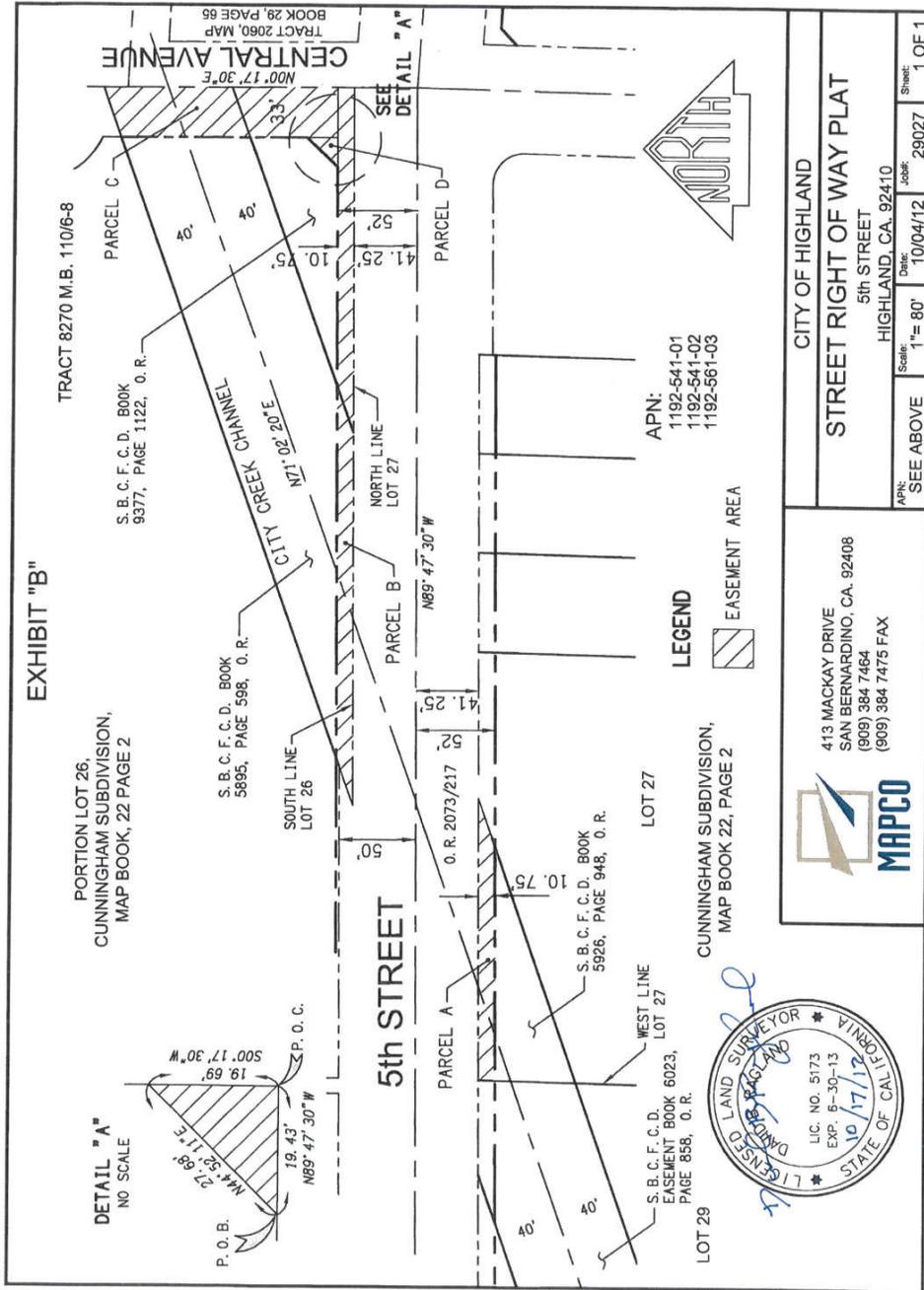


EXHIBIT "C"

Exchange Parcel

EXHIBIT "A" LEGAL DESCRIPTION

All of that parcel of land described in deed recorded January 17, 2002, as Instrument Number 2002-0027065, said parcel described in said deed as follows:

A portion of the east $\frac{1}{2}$ of the east $\frac{1}{2}$ of Lot 1, Block 60, in Rancho San Bernardino and described as follows:

BEGINNING at a point in the centerline of Victoria Avenue, said Victoria Avenue being 82.50 foot street, said point being 1,878 feet southerly from the centerline of Pacific Street; thence south $42^{\circ}33'47''$ west 39.77 feet; thence along a 312.28 foot radius curve to the right a distance of 168.41 feet; thence south $73^{\circ}27'47''$ west 60 feet; thence along a 1,000 foot radius curve to the right, a distance of 106.72 feet, more or less, to a point in the west line of the east $\frac{1}{2}$ of the east $\frac{1}{2}$ of said Lot 1, said point being 2,036 feet southerly from centerline of Pacific Street; thence south 16 feet; thence south $86^{\circ}20'54''$ east a distance of 330.67 feet more or less, to a point in the centerline of Victoria Avenue; thence north along the centerline of Victoria Avenue a distance of 196.5 feet, more or less, to the point of beginning.

SAVING AND EXCEPTING THEREFROM an undivided $\frac{3}{4}$ interest in the west 3 feet of the above described parcel of land.

ALSO SAVING AND EXCEPTING THEREFROM an undivided $\frac{3}{4}$ interest in and to a strip of land 3 feet in width lying west of and adjoining the west line of Victoria Avenue.

RESERVING UNTO THE GRANTOR an easement to access, operate and maintain existing storm drain facilities in over and across the hereinabove described parcel of land. It is understood that the easement rights reserved to the Grantor, their successors and assigns will automatically terminate in the event the storm drain facilities are abandoned.

Sand Warm Confluence
2.501 Par 98

EXHIBIT "D"

Recording Requested By:

San Bernardino County
 Flood Control District
 825 E. Third Street, Room 140
 San Bernardino, CA 92415-0835

Mail To:

SAME AS ABOVE

Conveyance to Government Entity.
 R&T 11922
 Transfer Tax: \$0.00

Record without fee subject to
 Gov't Code 6103

Project: Sand-Warm Confluence
 System No.: 2.501
 Parcel No.: 98
 Dept. Code: 11600

GRANT DEED

D.P. No.: 2.500
 APN: 1191-231-23
 Date: May 8, 2014

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

City of Highland, a Municipal Corporation,

(do)es hereby **grant** to the **SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT**, a body corporate and politic, the following described **real property** in the County of San Bernardino, State of California:

**See Exhibit "A", Legal Description
 attached hereto and made a part hereof**

Date: _____

By: _____

print name: _____

print title: _____

Date: _____

By: _____

print name: _____

print title: _____

San Bernardino County Flood Control District Acceptance Certificate

This is to certify that the interest in real property conveyed by the within instrument to the San Bernardino County Flood Control District, a body corporate of the State of California, is hereby accepted by the undersigned officer/agent on behalf of the Board of Supervisors pursuant to authority conferred by Resolution # 2012-45, March 27, 2012, by its Board of Supervisors and the grantee consents to recordation thereof by its duly authorized officer/agent.

DATED: _____ BY: _____

Print Name: _____ Title: _____

EXHIBIT "A" LEGAL DESCRIPTION

All of that parcel of land described in deed recorded January 17, 2002, as Instrument Number 2002-0027065, said parcel described in said deed as follows:

A portion of the east ½ of the east ½ of Lot 1, Block 60, in Rancho San Bernardino and described as follows:

BEGINNING at a point in the centerline of Victoria Avenue, said Victoria Avenue being 82.50 foot street, said point being 1,878 feet southerly from the centerline of Pacific Street; thence south 42°33'47" west 39.77 feet; thence along a 312.28 foot radius curve to the right a distance of 168.41 feet; thence south 73°27'47" west 60 feet; thence along a 1,000 foot radius curve to the right, a distance of 106.72 feet, more or less, to a point in the west line of the east ½ of the east ½ of said Lot 1, said point being 2,036 feet southerly from centerline of Pacific Street; thence south 16 feet; thence south 86°20'54" east a distance of 330.67 feet more or less, to a point in the centerline of Victoria Avenue; thence north along the centerline of Victoria Avenue a distance of 196.5 feet, more or less, to the point of beginning.

SAVING AND EXCEPTING THEREFROM an undivided ¾ interest in the west 3 feet of the above described parcel of land.

ALSO SAVING AND EXCEPTING THEREFROM an undivided ¾ interest in and to a strip of land 3 feet in width lying west of and adjoining the west line of Victoria Avenue.

RESERVING UNTO THE GRANTOR an easement to access, operate and maintain existing storm drain facilities in over and across the hereinabove described parcel of land. It is understood that the easement rights reserved to the Grantor, their successors and assigns will automatically terminate in the event the storm drain facilities are abandoned.

Sand Warm Confluence
2.501 Par 98