

## **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

This PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is entered into as of \_\_\_\_\_ ("**Effective Date**") which is defined as the date the last of the parties executes this Agreement, between the **SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic ("DISTRICT")**, and **CITY OF RIALTO, a California municipal corporation ("CITY")**.

### **R E C I T A L S**

- A. DISTRICT is the owner of the fee simple interest in that certain real property containing approximately 24 acres, located at the southeast corner of the intersection of Ayala Drive and Renaissance Parkway in the City of Rialto, San Bernardino County, State of California (commonly known as APNs 0264-151-50 and 73), and more particularly described in the legal description attached hereto as Exhibit "A" ("**Fee Property**").
- B. CITY desires to purchase a certain portion of the Fee Property for economic development purposes.
- C. DISTRICT agrees to sell a certain portion of the **Fee Property** totaling approximately 4.40 acres ("**Surplus Property**"), as more particularly described in the respective legal description attached hereto as Exhibit "B".
- D. In exchange for the purchase of the **Surplus Property**, CITY has agreed to pay the purchase price of One Million Six Hundred Six One Thousand and 00/100 Dollars (\$1,661,000.00).

### **A G R E E M E N T**

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DISTRICT and CITY agree as follows:

#### **1. PURCHASE AND SALE OF THE SURPLUS PROPERTY.**

Subject to all of the terms, conditions, and provisions of this Agreement, and for the consideration herein set forth, DISTRICT agrees to sell to CITY, and CITY agrees to purchase from DISTRICT, the Surplus Property.

#### **PURCHASE PRICE.**

1.1 Amount of Purchase Price. The purchase price payable by CITY to DISTRICT for the Surplus Property is One Million Six Hundred Sixty-One Thousand Dollars (\$1,661,000.00) ("**Purchase Price**").

#### **1.2 Payment of Consideration**

The Purchase Price for the Surplus Property shall be paid as follows:

(a) Within ten (10) business days following the Effective Date of this Agreement, CITY shall deliver to [Golden State Escrow] at its office located at [1421-1 Cooley Drive, Colton, CA 92324], attention: [Kellie Linderman], Escrow Officer ("**Escrow Holder**") an executed copy of this Agreement.

(b) *Purchase Price.* On the date that is at least one (1) day prior to the scheduled Closing Date, or such other time as is reasonably required by Escrow Holder in order to close the Escrow on the scheduled Closing Date, CITY shall deposit the Purchase Price with Escrow Holder in the form of cash, or a confirmed wire transfer of funds, or a certified or bank cashier's check drawn on or issued by a financial institution with offices located within the State of California.

(c) *Independent Consideration.* Within ten (10) days of the Effective Date, CITY shall deliver to DISTRICT the sum of One Hundred and No/100 Dollars (\$100.00) (the "**Independent Consideration**"), as consideration for CITY's right to purchase the Surplus Property and to terminate this Agreement on or prior to the expiration of the Due Diligence Period and for DISTRICT's execution, delivery and performance of this Agreement. The Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement, is not applicable to the Purchase Price, is non-refundable and shall be retained by DISTRICT notwithstanding any other provision of this Agreement.

## 2. DUE DILIGENCE REVIEW.

2.1 Inspections. CITY and its agents, contractors, consultants, employees, representatives, engineers, and designees (collectively, "**CITY's Agents**") shall have reasonable access to the Surplus Property at all reasonable times during DISTRICT's normal business hours until the expiration of the Due Diligence Period (or earlier termination of this Agreement), for the purpose of conducting tests and inspections of the Surplus Property to investigate the condition and suitability of the Surplus Property for CITY's intended use, including surveys and architectural, engineering, geotechnical and environmental inspections and tests; provided, however, any intrusive or invasive investigations shall be subject to DISTRICT's prior written consent. The "**Due Diligence Period**" shall mean the sixty (60) day period following the Effective Date. All inspections shall be performed by CITY at CITY's sole cost and expense. As a condition to any such entry, inspection or testing, CITY shall comply, and cause CITY's Agents to comply, with the following: (a) coordinate its entries with DISTRICT so as not to disturb the operation of any business on the Surplus Property or the Fee Property, including notification to DISTRICT of the proposed date and purpose of the intended entry and submittal to DISTRICT of the names and/or affiliations of the persons that will be entering the Surplus Property; (b) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Surplus Property or the Fee Property; (c) comply with all applicable laws and governmental regulations; (d) keep the Surplus Property and the Fee Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed by or on behalf of CITY and CITY's Agents; (e) maintain or cause CITY Agents to maintain workers' compensation insurance on all persons entering the Surplus

Property in the amounts required by the State of California and commercial general liability insurance covering all operations performed by or on behalf of CITY providing coverage for bodily injury and property damage with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence and to include premises operations and mobile equipment, products and completed operations, broad form property damage (including completed operations), explosion, collapse, and underground hazards, personal injury, contractual liability, which policies shall name DISTRICT and the County of San Bernardino as an additional insureds and include a waiver by the insurer of any right to subrogation against DISTRICT, the County of San Bernardino, and its members, officers, employees, agents, and volunteers; (f) promptly repair any and all damage to the Surplus Property or the Fee Property, if any, caused by CITY or CITY's Agents and return the Surplus Property to its original condition following CITY's or CITY's Agents entry; and (g) provide to DISTRICT prior to initial entry a certificate of insurance or other evidence satisfactory to DISTRICT that CITY or CITY Agents have in force the insurances required by this Agreement and a provide a copy of such policies upon DISTRICT's request. Any insurance or self-insurance maintained by DISTRICT or the County of San Bernardino shall be in excess of insurances required by CITY or CITY Agents in this Agreement and shall not contribute with CITY or CITY Agents insurance policies. The insurance policies required by CITY or CITY Agents shall be kept and maintained in force during the Due Diligence Period and so long thereafter as necessary to cover any claims of damages suffered by persons or property resulting from any acts or omissions of CITY and CITY's Agents. CITY agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless DISTRICT, the County of San Bernardino, and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by DISTRICT on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. CITY's indemnification obligation applies to DISTRICT "active" as well as "passive" negligence but does not apply to DISTRICT "sole negligence" or "willful misconduct" within the meaning of Civic Code Section 2782. The foregoing indemnity shall survive the Close of Escrow or the termination of this Agreement. DISTRICT shall deliver to CITY copies of all plans, surveys, specifications, studies, reports, test results, and other documents pertaining to the physical, geological, or environmental condition of the Surplus Property that in the possession of DISTRICT ("Surplus Property Documents"). CITY acknowledges that DISTRICT has not made nor makes any warranty or representation regarding the truth, accuracy or completeness of the Surplus Property Documents or the source(s) thereof. DISTRICT has not undertaken any independent investigation as to the truth, accuracy or completeness of the Surplus Property Documents and any Surplus Property Documents it provides to CITY are provided solely as an accommodation to CITY and it is CITY's responsibility to verify the accuracy, completeness, and veracity of the Surplus Property Documents. DISTRICT expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Surplus Property Documents, or in any other written or oral communications transmitted or made available to CITY. CITY shall rely

solely upon its own investigation with respect to the Surplus Property, including, without limitation, the Surplus Property's physical, environmental and economic condition including the presence of Hazardous Materials, compliance or lack of compliance with any law, ordinance, order, permit or regulation or any other attribute or matter relating thereto.

2.2 Termination Right. If CITY is not satisfied with the Surplus Property for any reason, CITY may terminate this Agreement by giving written notice of termination to DISTRICT and Escrow Holder ("**Due Diligence Termination Notice**") on or before the expiration of the Due Diligence Period. In the event that CITY fails to deliver CITY's Due Diligence Termination Notice on or before the expiration of the Due Diligence Period, CITY shall have conclusively been deemed to have approved its due diligence investigation of the Surplus Property and waived its right to terminate this Agreement pursuant to this Section 2.2. If CITY timely elects to terminate this Agreement pursuant to this Section 2.2, the parties shall have no further obligations hereunder except for obligations that expressly survive the termination hereof.

2.3 Review of Title. No later than five (5) days following the Opening of Escrow, as defined in Section 3.1 below, DISTRICT shall provide to CITY a preliminary title report for the Surplus Property and the underlying title documents disclosed therein (collectively, the "**Preliminary Title Report**"), issued by a title company of CITY's choice ("**Title Company**"). CITY's title review period shall mean the period from the Opening of Escrow through the date that is twenty (20) days after the Opening of Escrow ("**CITY's Title Review Period**"). At any time during CITY's Title Review Period, CITY shall notify DISTRICT in writing ("**CITY's Title Notice**") of any objections CITY may have to title exceptions or other matters contained in the Preliminary Title Report or Survey ("**Title Objections**"). If CITY does not give such notice by the expiration of CITY's Title Review Period, such failure shall conclusively be deemed to be CITY's approval of those matters. If CITY does timely provide CITY's Title Notice with Title Objections, DISTRICT shall have five (5) business days after receipt thereof to notify CITY that DISTRICT (a) will endeavor to cause or (b) elects not to cause any or all of the Title Objections disclosed therein to be removed or insured over by the Title Company in a manner reasonably satisfactory to CITY. DISTRICT's failure to notify CITY within such five (5) business day period as to any Title Objections that DISTRICT is willing to endeavor to cure or cause to be insured over shall be deemed an election by DISTRICT not to pursue such endeavor to remove or have the Title Company insure over such Title Objections. If DISTRICT notifies or is deemed to have notified CITY that DISTRICT shall not endeavor to remove nor have the Title Company insure over any or all of the Title Objections, CITY shall have two (2) business days after the expiration of DISTRICT's five (5) business day period to respond to either (a) terminate this Agreement or (b) waive such Title Objections and proceed to Closing, without any reduction in the Purchase Price on account of such Title Objections. If CITY does not give notice within said period, CITY shall be deemed to have elected to waive the Title Objections pursuant this Section 2.3.

If CITY receives any supplement to the Preliminary Title Report disclosing any new materially adverse title matters not disclosed to CITY prior to the expiration of the CITY's Title

Review Period, the foregoing right of review and approval shall also apply to said new matter; provided, however, the period for CITY to deliver CITY's Title Notice with respect to such new title matter shall be the later of (i) expiration of the CITY's Title Review Period, or (ii) three (3) business days from receipt of the supplemental title report and the underlying document(s) referenced therein; provided, that CITY shall not have the right under this paragraph to make any objections with respect to any matter which would be disclosed by an accurate survey of the Surplus Property since CITY is to satisfy itself as to all matters which would be disclosed by an accurate survey prior to the expiration of the CITY's Title Review Period.

### 3. ESCROW.

3.1 Opening of Escrow; Closing Date. Closing of the sale of the Surplus Property shall take place through an escrow ("**Escrow**") to be established with the Escrow Holder referred to in Section 1.2(a). Escrow shall be deemed open upon delivery of a fully executed copy of this Agreement to Escrow Holder ("Opening of Escrow"). Upon receipt of a fully executed copy of this Agreement, Escrow Holder shall execute the Escrow Holder's acceptance attached hereto and notify DISTRICT and CITY of the escrow number it assigns to the Escrow. The Close of Escrow shall occur as soon as reasonably practicable following the expiration of the Due Diligence Period, but in no event later than the date that is thirty (30) days following the expiration of the Due Diligence Period ("**Closing Date**"). The terms "**Close of Escrow**" and/or the "**Closing**" shall mean the consummation of the transactions contemplated by this Agreement to occur through the Escrow including DISTRICT's conveyance of the Surplus Property to CITY.

3.2 Escrow Instructions. This Agreement, together with any standard instructions of Escrow Holder, shall constitute the joint escrow instructions of CITY and DISTRICT to Escrow Holder as well as an agreement between CITY and DISTRICT. In the event of any conflict between the provisions of this Agreement and Escrow Holder's standard instructions, this Agreement shall prevail.

3.3 Deliveries by DISTRICT. On or before 12:00 noon Pacific Time on the business day preceding the scheduled Closing Date, DISTRICT shall deliver to Escrow Holder: (i) the Grant Deed in the form attached hereto as Exhibit "C" ("**Grant Deed**"), executed and acknowledged by DISTRICT and an original of the Closing Statement described in Section 3.5, executed by DISTRICT, and (ii) all other documents reasonably required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement.

3.4 Deliveries by CITY. On or before 12:00 noon Pacific Time on the business day preceding the scheduled Closing Date, CITY shall deliver to Escrow Holder: (i) the Purchase Price, (ii) the escrow costs, (iii) an original of the Closing Statement described in Section 3.5, executed by CITY, and (iv) all other sums and documents reasonably required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement.

3.5 Closing Statement. No later than four (4) business days prior to the Closing Date, Escrow Holder shall prepare for approval by CITY and DISTRICT a closing statement (“**Closing Statement**”) on Escrow Holder’s standard form indicating, among other things, Escrow Holder’s estimate of all closing costs and prorations made pursuant to this Agreement.

3.6 Closing, Recording and Disbursements. On the Closing Date, and provided all of DISTRICT Conditions to Closing and CITY Conditions to Closing set forth in Sections 3.10.1 and 3.10.2 of this Agreement have been satisfied or waived in writing by the appropriate party, Escrow Holder shall take the following actions:

(a) *Recording.* Escrow Holder shall cause the Grant Deed to be recorded with the Recorder’s Office in San Bernardino County, California.

(b) *Delivery of Documents and Funds.* Escrow Holder shall deliver to CITY all of the items listed in Section 3.3 above which were delivered by DISTRICT to Escrow, except that Escrow Holder shall be instructed to record the original Grant Deed with the Recorder’s Office in San Bernardino County, California upon Close of Escrow. Escrow Holder shall deliver the Purchase Price to DISTRICT by wire transfer as provided in written instructions to be furnished to Escrow Holder by DISTRICT prior to the Close of Escrow, together with one duplicate original of all of the items listed in Section 3.4 above on the Close of Escrow and a conformed copy of the Grant Deed.

3.7 Payment of Costs. CITY shall pay for the premium for the standard coverage owner’s title policy Title Policy and any endorsements or extended coverage as referred to in Section 3.10.2(b). Any recording fees for the documents to be recorded under this Agreement and the escrow fee of Escrow Holder shall be paid by the CITY; provided, however, that if the Close of Escrow has not occurred by the Closing Date by reason of a default hereunder, the defaulting party shall bear all Escrow cancellation charges. All other costs and expenses of Escrow not specifically allocated in this Agreement shall be allocated between Buyer and Seller in accordance with customary practice in the county in which the Surplus Property is located. Seller and Buyer shall each be responsible for their respective attorneys’ fees and costs for this Agreement.

3.8 Information Report State/Federal Code Notifications. Escrow Holder shall file and DISTRICT and CITY agree to cooperate with Escrow Holder and with each other in completing any report (“**Information Report**”) and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. DISTRICT and CITY also agree that DISTRICT and CITY, their respective employees and attorneys, and

Escrow Holder and its employees may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither DISTRICT nor CITY shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

### 3.9 Conditions to Close of Escrow.

3.9.1 Conditions to DISTRICT's Obligations. In addition to any other condition set forth in this Agreement in favor of DISTRICT, DISTRICT shall have the right to condition its obligation to convey the Surplus Property to CITY and close the Escrow upon the satisfaction, or written waiver by DISTRICT, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the “**DISTRICT Conditions to Closing**”):

(a) *Delivery of Document and Funds.* CITY shall have timely executed and deposited into Escrow all escrow and closing documents required to be submitted by CITY in order to accomplish the close of Escrow for the Surplus Property. CITY shall have deposited with Escrow Holder the Purchase Price and the escrow and closing costs for which CITY is responsible to pay and all other sums required of CITY by this Agreement.

(b) *Representations and Warranties.* All representations and warranties made by CITY in this Agreement are true and correct in all material respects as of the Closing as though made at that time.

(c) *No Default.* CITY shall not be in material default of any of its obligations under this Agreement and no event shall have occurred that would constitute a default with the giving of notice or the passage of time.

3.9.2 Conditions to CITY's Obligations. In addition to any other condition set forth in this Agreement in favor of CITY, CITY shall have the right to condition its obligation to purchase the Surplus Property and close the Escrow upon the satisfaction, or written waiver by CITY, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the “**CITY Conditions to Closing**”):

(a) *Delivery of Documents.* DISTRICT shall have executed and deposited into Escrow the Grant Deed and any other escrow and closing documents required to be submitted by DISTRICT in order to accomplish the close of Escrow for the Surplus Property.

(b) *Title Policy.* The Title Company is unconditionally and irrevocably committed to issue to CITY at Closing a CLTA standard coverage owner's title policy, or, upon CITY's request, an ALTA extended coverage owner's policy of title insurance (provided CITY shall be responsible for any survey costs associated therewith and CITY must deliver an ALTA survey acceptable to the Title Company for

the issuance of such extended coverage at least ten (10) business days prior to the Closing Date and CITY shall be responsible for the additional cost of the extended coverage), insuring CITY's title to the Surplus Property in the amount of the Purchase Price, subject only to the following (collectively, the "**Approved Title Exceptions**"): (i) the standard exceptions and exclusions from coverage contained in such form of the policy; (ii) real estate taxes not yet due and payable; (iii) matters created by, through or under CITY; (iv) items disclosed by the Survey and Preliminary Title Report (including any supplements) and approved or deemed approved by CITY pursuant to the title review provisions in Section 2.4, or, if CITY fails to obtain the Survey, items which would be disclosed by an accurate, updated survey of the Surplus Property or a physical inspection of the Surplus Property; and (v) any Title Objections that neither DISTRICT nor the Title Company has agreed to remove from title or insure over ("**Title Policy**"). The issuance of an ALTA extended coverage policy shall not be a condition precedent to CITY's obligation to close the Escrow, and CITY shall not object to the Closing based upon an inability to obtain, or any delays in obtaining, such coverage. In addition, and without limiting the foregoing, the issuance of any particular title endorsements requested by CITY, at CITY's sole cost and expense, shall not be a condition precedent to CITY's obligation to close this Escrow and CITY acknowledges that CITY is solely responsible for ascertaining the availability of any such endorsements prior to the end of the Due Diligence Period. If endorsements are required to cure defects in title and DISTRICT has agreed to provide such endorsements as a means of curing such title defects, then DISTRICT shall pay for such endorsements.

(c) *Representations and Warranties.* All representations and warranties made by DISTRICT in this Agreement are true and correct in all material respects as of the Closing as though made at that time.

(d) *No Default.* DISTRICT shall not be in material default of any of its obligations under this Agreement (and shall not have received notice of a default hereunder which has not been cured).

3.9.3 Satisfaction of Conditions. Where satisfaction of any of the foregoing conditions requires action by CITY or DISTRICT, each party shall use its diligent efforts, in good faith, and at its own cost, to satisfy such condition.

3.9.4 Waiver. DISTRICT may at any time or times, at its election, waive any of DISTRICT Conditions to Closing set forth in Section 3.9.1 above to its obligations hereunder, but any such waiver shall be effective only if contained in writing and signed by DISTRICT and delivered to CITY. CITY may at any time or times, at its election, waive any of the CITY Conditions to Closing set forth in Section 3.9.2 above to its obligations hereunder, but any such waiver shall be effective only if contained in writing and signed by CITY and delivered to DISTRICT.

3.9.5 Termination. In the event each of DISTRICT Conditions to Closing set forth in Section 3.9.1 is not fulfilled on the Closing Date or such earlier time period as provided for herein or waived by DISTRICT pursuant to Section 3.9.4, and provided DISTRICT is not in

default of this Agreement, DISTRICT may at its option terminate this Agreement and the Escrow opened hereunder. In the event that each of the CITY Conditions to Closing set forth in Section 3.9.2 is not fulfilled on the Closing Date or such earlier time period as provided for herein or waived by CITY pursuant to Section 3.9.4, and provided CITY is not in default of this Agreement, CITY may at its option terminate this Agreement and the Escrow opened hereunder. No termination under this Agreement shall release either party then in default from liability for such default. In the event this Agreement is terminated, all documents and funds delivered by DISTRICT to CITY or Escrow Holder shall be returned immediately to DISTRICT and, in the event of a CITY default, all documents and funds delivered by CITY to DISTRICT or Escrow Holder shall be returned immediately to CITY.

#### 4. REPRESENTATIONS AND WARRANTIES.

4.1 DISTRICT's Representations and Warranties. DISTRICT hereby makes the following representations and warranties to CITY, each of which is material and relied upon by CITY in making its determination to enter into this Agreement:

(a) DISTRICT's execution, delivery and performance of its obligations under this Agreement does not constitute a default or a breach under any contract, agreement or order to which DISTRICT is a party or by which it is bound.

(b) To the best of DISTRICT's actual knowledge without any duty of investigation or inquiry, there are no pending, actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against the Surplus Property.

(c) DISTRICT has not received any notices and has no actual knowledge, without any duty if investigation or inquiry, of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting or relating to the Surplus Property.

4.2 CITY's Representations and Warranties. CITY hereby makes the following representations and warranties to DISTRICT, each of which is material and relied upon by DISTRICT in making its determination to enter into this Agreement:

(a) CITY has the full right, power and lawful authority to purchase and accept the Surplus Property and undertake all obligations as provided herein. The execution, performance and delivery of this Agreement by CITY have been fully authorized by all requisite actions on the part of CITY.

(b) CITY's execution, delivery and performance of its obligations under this Agreement does not constitute a default or a breach under any contract, agreement or order to which CITY is a party or by which it is bound.

(c) CITY is not the subject of a current or pending bankruptcy proceeding.

5. AS-IS SALE; RELEASE OF DISTRICT AS TO SURPLUS PROPERTY CONDITION.

CITY acknowledges that it will be given an adequate opportunity to review and inspect all aspects of the Surplus Property during the Due Diligence Period. DISTRICT makes no representation or warranty of any kind as to the physical or environmental condition of the Surplus Property or in connection with any matter, report or information relating to the condition of the Surplus Property, its value, fitness, use, zoning, entitlements, the existence of Hazardous Materials thereon, moratoriums, economic feasibility, developability or any other matter relating to CITY's proposed use or development of the Surplus Property. CITY shall, upon the Close of Escrow, be deemed to have disclaimed and waived any and all objections to the physical and environmental characteristics and conditions of the Surplus Property, including, without limitation, any Hazardous Materials located thereon and the condition of title thereto, whether or not such conditions would be disclosed by reasonable and diligent inspection. CITY acknowledges and agrees that the purchase of the Surplus Property will be on the basis of CITY's own investigation of the physical and environmental condition of the Surplus Property, including subsurface conditions, and CITY's investigation of the status of zoning, maps and all other matters relating to entitlements. The foregoing disclaimers and waivers include, without limitation, topography, climate, air, water rights, utilities, present and future zoning, governmental restrictions, entitlement rights and obligations, and governmental conditions or development, soil, subsoil, environmental contamination, the purpose to which the property is suited, drainage, access to public roads, proposed routes or roads or extensions thereof or the availability of governmental permits or approvals of any kind. CITY agrees that DISTRICT shall have no responsibility for any patent or latent defect or physical or environmental condition of the Surplus Property, whether or not known or discovered, and CITY accepts all such responsibility. The Surplus Property is being transferred and sold "AS-IS," "WHERE-IS," "WITH ALL FAULTS" without representation or warranty expressed or implied by DISTRICT, by operation of law, or otherwise except as otherwise expressly provided in this Agreement. DISTRICT expressly disclaims, which CITY hereby acknowledges and accepts, any implied warranty of condition, habitability, merchantability, or fitness for a particular purpose or use.

Except for claims for a breach of the representations and warranties of DISTRICT provided in this Agreement, CITY for itself and on behalf of each of its successors (collectively, the "Releasors") by this general release of known and unknown claims (this "Release") hereby irrevocably and unconditionally release and forever discharge DISTRICT and its officers, officials, employees, agents, and representatives (collectively, the "Releasees") or any of them, from and against any and all claims, damages, losses, costs, liabilities, fees or expenses, of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, which any of the Releasors now have, own, hold, or claim to have had, owned, or held, against any of the Releasees arising from, based upon or related to, whether directly or indirectly any facts, matters, circumstances, conditions or defects (whether patent or latent) of all or any kinds, related to, arising from, or based upon, whether directly or indirectly, the Surplus Property, including without limitation, the physical condition and quality of the Surplus Property or the presence of Hazardous Materials in, on, about or under the Surplus Property. CITY acknowledges that it is assuming the risk of such unknown and unanticipated claims and agrees that this release applies thereto, and expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”**

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

As used in this Agreement, the following terms shall have the meaning ascribed below:

“Environmental Law” shall mean all applicable past, present or future federal, state and local statutes, regulations, directives, ordinances, and rules, which pertain to environmental matters, contamination of any type whatsoever, or health and safety matters, as such have been amended, modified or supplemented from time to time (including any present and future amendments thereto and re-authorizations thereof), including, without limitation, those relating to: (a) the manufacture, processing, distribution, presence, release, generation, use, handling, assessment, investigation, study, monitoring, removal, remediation, cleanup, treatment, storage, transportation or disposal of Hazardous Materials; (b) air, soil, surface, subsurface, surface water and groundwater; (c) the operation and closure of underground storage tanks; (d) health and safety of employees and other persons; and (e) notification and record keeping requirements relating to the foregoing. Without limiting the above, Environmental Laws also include the following: (a) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended (“CERCLA”); (b) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), as amended (“RCRA”); (c) the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended; (d) the Clean Water Act (33 U.S.C. §§1251 et seq.), as amended; (e) the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended; (f) the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended; (g) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended; (h) the Federal Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), as amended; (i) the Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.); (j) the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as amended; and (k) any state, county, municipal or local statutes, laws or ordinances similar or analogous to (including counterparts of) any of the statutes listed above.

“Hazardous Material(s)” includes, without limitation, any hazardous or toxic material, substance, irritant, chemical, or waste, including without limitation (a) any material defined, classified, designated, listed or otherwise considered under any Environmental Law, including, without limitation, as defined in California Health & Safety Code Section 25260, as a “hazardous waste,” “hazardous substance,” “hazardous material,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “biohazardous waste,” “pollutant,” “toxic pollutant,” “contaminant,” “restricted hazardous waste,” “infectious waste,” “toxic substance,” or any other term or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment, (b) any material, substance or waste which is toxic, ignitable, corrosive, reactive, explosive, flammable, infectious, radioactive,

carcinogenic or mutagenic, and which is or becomes regulated by any local governmental authority, any agency of the State of California or any agency of the United States Government, (c) asbestos, and asbestos containing material, (d) oil, petroleum, petroleum based products and petroleum additives and derived substances, (e) urea formaldehyde foam insulation, (f) polychlorinated biphenyls (PCBs), (g) freon and other chlorofluorocarbons, (h) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources, (i) mold, fungi, viruses or bacterial matter, and (j) lead-based paint.

6. DEFAULTS.

6.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any default, to recover damages for any default (subject to the restriction on CITY's rights to recover monetary damages against DISTRICT set forth in the final clause of this sentence), or to obtain any other remedy consistent with the purpose of this Agreement; provided, however, that notwithstanding anything in the foregoing to the contrary, in no event shall CITY be entitled to obtain monetary damages of any kind from DISTRICT, including but not limited to for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California or in the United States District Court for the Central District of California.

6.2 Reserved.

6.3 Rights and Remedies are Cumulative. Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.4 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7. MISCELLANEOUS.

7.1 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be delivered by either (a) personal delivery, (b) reliable courier service that provides a receipt showing date and time of delivery, including federal express, or (c) registered or certified U.S. Mail, postage prepaid, return receipt requested. Notices shall be addressed to the respective parties as set forth below or to such other address and to

such other persons as the parties may hereafter designate by written notice to the other party hereto:

To DISTRICT: San Bernardino County Flood Control District  
825 E. 3<sup>rd</sup> Street  
San Bernardino, CA 92415-0835

With a copy to:  
County of San Bernardino  
Real Estate Services Department  
385 North Arrowhead Avenue, 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0180

To CITY: City of Rialto  
Development Services Department  
150 S. Palm Avenue  
Rialto, CA 92376

Each notice shall be deemed delivered on the date delivered if by personal delivery or by overnight courier service, or on the date of receipt as disclosed on the return receipt if by mail. By giving to the other parties written notice as provided above, the parties to this Agreement and their respective successors and assigns shall have the right from time to time, and at any time during the term of this Agreement, to change their respective addresses.

7.2 Relationship Between DISTRICT and CITY. It is hereby acknowledged that the relationship between DISTRICT and CITY is not that of a partnership or joint venture and that DISTRICT and CITY shall not be deemed or construed for any purpose to be the agent of the other.

7.3 Attorneys' Fees. 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 2.1 ("Due Diligence") and Section 7.10 ("Real Estate Brokerage Commission").

7.4 Successors and Assigns and Assignment. This Agreement shall bind and inure to the benefit of DISTRICT and CITY and their respective successors and permitted assigns.

7.5 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to

be charged. Any amendment or modification to this Agreement must be in writing and executed by DISTRICT and CITY.

7.6 Prohibited Persons and Transactions. CITY represents to DISTRICT that it is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Surplus Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

7.7 Computation of Time. In the event that the day on which a party is required to take any action under the terms of this Agreement is a holiday, Saturday or Sunday, such action shall be taken on the next succeeding business day. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code.

7.8 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California, without regard to conflict of interest principles.

7.9 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

7.10 Real Estate Brokerage Commission. Each party represents and warrants that neither party has retained any brokers or finders to represent its interests in connection with this transaction. Each party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages and expenses, including, without limitation, reasonable attorneys’ fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay any additional broker’s commission and/or finder’s fee.

7.11 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart.

7.12 Exhibits. Exhibits “A”, “B”, and “C” attached to this Agreement are incorporated herein by this reference and made a part hereof.

8. BOARD OF SUPERVISORS APPROVAL: This Agreement is subject to, and shall have no force or effect until and unless first approved by Board of Supervisors for DISTRICT.

[Signatures on next page]

IN WITNESS WHEREOF, DISTRICT and CITY have entered into this Agreement as of the date first set forth above.

**DISTRICT:**

**SAN BERNARDINO COUNTY FLOOD  
CONTROL DISTRICT, a body corporate  
and politic**

By: \_\_\_\_\_  
Robert A. Lovingood, Chairman  
Board of Supervisors

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

**CITY:**

**CITY OF RIALTO, a California  
municipal corporation**

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

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

SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS BEEN  
DELIVERED TO THE CHAIR OF  
THE BOARD  
LAURA H. WELCH,  
Clerk of the Board of Supervisors

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

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

**APPROVED AS TO LEGAL FORM:**

JEAN-RENE BASLE, County Counsel  
San Bernardino County, California

By: \_\_\_\_\_  
Agnes Cheng  
Deputy County Counsel

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

**ACCEPTANCE BY ESCROW HOLDER**

The undersigned hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

[ESCROW HOLDER]

\_\_\_\_\_, 2017

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

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

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

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF FEE PROPERTY**

## **EXHIBIT “B”**

### **LEGAL DESCRIPTION OF SURPLUS PROPERTY**

That certain portion of the Fee Property located in the City of Rialto, County of San Bernardino, State of California legally described as follows:

**EXHIBIT "C"**  
**GRANT DEED**

RECORDING REQUESTED BY:  
County of San Bernardino  
Real Estate Services Department  
385 N. Arrowhead Ave., 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0832

RECORDER: EXEMPT:  
This instrument is for the benefit of the  
of San Bernardino and is entitled to be  
recorded without fee (Govt. Code 6103)

|                                         |                   |             |
|-----------------------------------------|-------------------|-------------|
| Unincorporated<br>APN 0330-011-42 (ptn) | <b>GRANT DEED</b> | Dept. 12000 |
|-----------------------------------------|-------------------|-------------|

DOCUMENTARY TRANSFER TAX \$ 0.00  
☒ Computed on full value of property conveyed or  
☐ Computed on full value less lien and encumbrance  
remaining at the time of sale.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, a body corporate ad politic ("Grantor")  
for a valuable consideration receipt of which is hereby acknowledged, hereby GRANTS to the  
CITY OF RIALTO, a municipal corporation ("Grantee")  
the real property in the County of San Bernardino, California, described as follows;

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

SAN BERNARDINO COUNTY FLOOD  
CONTROL DISTRICT, a public entity

\_\_\_\_\_  
Robert A. Lovingood, Chairman  
Board of Supervisors

\_\_\_\_\_  
Date

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE

|                |                |              |
|----------------|----------------|--------------|
| Not Applicable |                |              |
| Name           | Street Address | City & State |

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me \_\_\_\_\_, Notary Public  
(insert name and title of the officer)

Personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

