

FIRST AMENDMENT TO PURCHASE, SALE AND DEVELOPMENT AGREEMENT

RIVERSIDE TRANSIT AGENCY

(APN 215-341-009)

This FIRST AMENDMENT TO PURCHASE, SALE AND DEVELOPMENT AGREEMENT ("First Amendment") is entered into effective June _____, 2022 ("Effective Date") by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation ("Seller") and RIVERSIDE TRANSIT AGENCY, a joint powers agency of the State of California ("Buyer").

In consideration of the mutual covenants and agreements, Buyer and Seller (collectively and individually, the "Parties") agree to the following terms and conditions:

RECITALS

WHEREAS, Seller and Buyer entered into that certain PURCHASE, SALE AND DEVELOPMENT AGREEMENT ("Agreement") dated May 6, 2021, pertaining to Assessor's Parcel Number 215-341-009 ("Property"), generally known by the address of 4125 Vine Street in Riverside, California and more particularly described in Exhibit "A" Legal Description and depicted in Exhibit "B" Plat Map attached to the Agreement; and

WHEREAS, a water-well exists on the Property as shown on Exhibit B to the Agreement known as the City of Riverside's Eleventh Street Well, which is owned and operated by Seller, through its Department of Public Utilities ("RPU"); and

WHEREAS, the Eleventh Street Well includes improvements consisting of a 20" diameter red iron #80 pipe casing, completed to a depth of 358', perforated with Mills Knife, 5/8" x 3.5", constructed in 1926; and

WHEREAS, pursuant to the Agreement, the Property will be developed as part of the Mobility Hub/Project requiring Seller to abandon the Eleventh Street Well as presently situated and thereby cause Seller to implement a realignment of the well (the "Well Relocation"); and

WHEREAS, pursuant to the Agreement, Buyer is obligated to reimburse Seller for mutually agreed upon costs incurred by Seller not to exceed \$30,000 for the Well Relocation due to the extra pipeline needed for such realignment and the sum of \$30,000 ("Relocation Deposit") was deposited by Buyer into escrow with Escrow Holder as part of the transactions contemplated under the Agreement; and

WHEREAS, to allow for the Well Relocation and future maintenance of the relocated Eleventh Street Well, pursuant to the Agreement, Buyer granted Seller two permanent easements for ingress and egress to the Site located at 4175 Vine Street, Riverside California bearing Assessor's Parcel Number 215-341-011 ("Easement Property") substantially in the form as set forth in Exhibit "C" ("Access Easement") and Exhibit "D" ("Well Easement") attached to the Agreement (collectively, the "Easements"); and

WHEREAS, to eliminate the possibility of damaging any improvements made by Buyer on the Easement Property made part of the Mobility Hub/Project, pursuant to the Agreement, Seller was required to use its best efforts to complete the drilling needed for the Well Relocation on or before June 30, 2022, and coordinate ongoing activities to finalize the Well Relocation with Buyer so as not

to unreasonably delay construction of or impair the improvements made part of the Mobility Hub/Project; and

WHEREAS, Seller has abandoned the Eleventh Street Well as presently situated as obligated under the Agreement, but Seller has advised Buyer that it cannot complete the drilling needed for the Well Relocation on or before the June 30, 2022, deadline and commencement of work for the Well Relocation will likely not occur for several years and possibly for another ten (10) years; and

WHEREAS, based upon the new time estimate of Seller for implementing the Well Relocation, the Easement Property shall have been fully developed as part of the Mobility Hub/Project and thereby, will have improvements thereon at the time Seller undertakes the Well Relocation; and

WHEREAS, due to the delay in the Well Relocation by Seller, the parties now wish to ensure that notwithstanding any wording and terms set forth in the Easements, inclusive of the Access Easement and Well Easement, Seller shall not unreasonably interfere with operations of the Mobility Hub/Project due to the Well Relocation and shall reimburse and indemnify Buyer for any liability or damage caused to the Mobility Hub/Project by the Well Relocation; and

NOW, THEREFORE, the Parties hereby agree the foregoing Recitals are true and correct, and in consideration of the promises and mutual covenants herein set forth and for other good and valuable consideration, agree to the following terms, conditions, and amendments to the Agreement:

1. Escrow Cancellation Instructions. Due the delay in the Well Relocation by Seller, the Parties wish to cancel escrow established under this Agreement and have the Relocation Deposit of \$30,000 returned to Buyer. Therefore, the Parties agree and hereby instruct Escrow and/or Escrow Holder to close and cancel Escrow established under this Agreement disburse the Relocation Deposit to Buyer less Buyer's portion of any escrow cancellation fees as provided for in the Agreement.

2. Indemnity for Easement Property Use.

Notwithstanding anything to the contrary in the Easements, Seller agrees to indemnify, defend and hold Buyer and its respective officers, directors, shareholders, partners, members, managers, affiliates, employees, representatives, agents, invitees, mortgagees, successors and assigns harmless from and against any and all claims, actions, causes of action, demands, damages, costs, liabilities, losses, judgments, expenses or costs of any kind or nature whatsoever (including, without limitation, attorney's fees) by reason of property damage, death or injury to persons arising from or relating to Seller's drilling, laying down of pipe, locating, constructing, inspecting, repairing, or maintaining the Relocation Well and/or use of the Easements and/or Easement Property.

3. Damage to Easements and/or Easement Property

Notwithstanding anything to the contrary in the Easements, the Easements shall be exercised so as not to unreasonably endanger or interfere with the Mobility Hub/Project. If Seller damages or destroys any portion of the Easement Property, the Seller shall either (a) upon mutual consent of both parties repair, reconstruct or replace such damaged or destroyed portion of the Easement Property at Seller's sole cost and expense, or (b) reimburse Buyer upon demand for all reasonable costs and expenses actually incurred by

Buyer in repairing, reconstructing or replacing such damaged portion of the Easement Property, as applicable.

4. **Termination of Easements.** If Seller fails to commence the Well Relocation by June 30, 2032, the Parties hereby agree that the Easements shall automatically terminate without further notice or action by the Parties and Buyer may record a notice of termination of such Easements. Upon request of Buyer, Seller shall take all necessary steps to clear the Easements from title on the Easement Property, including executing and recording any instruments to effectuate the same (i.e., recordation of a quitclaim deed).
5. **Specific Amendments to Agreement.** For clarification and interpretation of the Agreement in consideration of this First Amendment and to carry out and further express the Parties intent, the following amendments shall be made to the Agreement:

(1) DELETE last sentence of Article 2.1 starting from "Seller shall coordinate ..."

(2) DELETE Article 6.3 in its entirety and REPLACE with the following:

The Relocation Deposit amount of \$30,000 will be held by Buyer in a capital account until completion of the Well Relocation. Upon completion of the Well Relocation, Seller will provide Buyer an invoice that describes in reasonable detail the work performed and the total costs of the Well Relocation and Buyer will reimburse Seller an amount not to exceed \$30,000.00 of eligible costs within thirty (30) days of the receipt of invoice.

6. **Buyer's Change of Contact Information.** Pursuant to Article 8.6, Notices, Buyer's contact information is amended as follows:

Riverside Transit Agency
1825 Third Street
P.O. Box 59968
Riverside, CA 92517-1968
Attn: Kristin Warsinski, Chief Executive Officer
Phone: (951) 565- 5136

7. **No Other Amendments.** Except as specifically set forth in this First Amendment, all provisions of the Agreement are unmodified and remain in full force and effect, and the Parties hereby ratify and confirm each and every provision thereof.
8. **Entire Agreement.** This First Amendment contains the entire agreement between the Parties with respect to the subject matter contained herein and all preliminary negotiations with respect to the subject matter are merged into and incorporated in this First Amendment.
9. **Conflicts in Terms.** In the event of any conflict between the terms and conditions set forth in this First Amendment and other provisions of the Agreement or Easements, the terms and conditions of this First Amendment shall control.
10. **Definitions.** Unless specifically modified herein, all of the definitions and terms contained in the Agreement shall have the same meaning and application in this First Amendment and if any conflict in definitions may arise this First Amendment shall control.

11. Execution in Counterparts. The Parties agree that this First Amendment may be executed in counterparts, subject to exchange of signature pages, each of which shall be deemed an original and together shall constitute one and the same instrument. Facsimile signatures or signatures sent electronically in portable document format ("PDF"), or the like, shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their duly authorized representatives as set forth below and notwithstanding the date of signatures, this First Amendment shall be considered made and entered into as of the Effective Date written above:

Seller:

THE CITY OF RIVERSIDE

By: _____

Interim City Manager

ATTESTED TO:

By: _____

City Clerk

APPROVED AS TO FORM:

By: *Susan Wilson*

Assistant City Attorney

Buyer:

RIVERSIDE TRANSIT AGENCY

By: *Kristin Warsinski*

Kristin Warsinski
Chief Executive Officer

APPROVED AS TO FORM:

By: *Barbara Raileanu*

Barbara Raileanu
General Counsel