

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

This AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made and entered into by and between **San Bernardino County Transportation Authority (SBCTA)** ("**Buyer**"), and **City of Riverside, a municipal corporation** ("**Seller**"), with reference and respect to the "**Recitals**" set forth in paragraphs A, B and C below. Buyer and Seller are sometimes individually referred to herein as "**Party**" and collectively as "**Parties**." The Parties hereto have executed this Agreement on the dates set forth below next to their respective signatures. However, this Agreement shall be effective as of the date the notice to precede was issued, provided that the Agreement has been approved by Buyer's governing body or its delegated representative and signed as well as delivered by all Parties ("**Effective Date**"). Buyer may, but need not, confirm the Effective Date to Seller as the later of the date indicated on the signature page below that (i) this Agreement has been approved as to form, executed and dated by Buyer and (ii) Seller has executed and dated this Agreement, Seller hereby agreeing that if Seller has not dated this Agreement at the time Seller delivers the same to Buyer or Escrow Agent, then Buyer or Escrow Agent may date the same as of the date of delivery and/or receipt.

RECITALS

A. Buyer understands that Seller is the owner in fee simple of certain real property located at **North and South Sides of Hardt Street, 720 Feet East of Gifford Avenue within the City of San Bernardino**, San Bernardino County, California, designated as Assessor Parcel Number(s) **0281-301-18 & 19** and more particularly described in EXHIBIT 1 attached hereto and incorporated herein by this reference ("**Property**").

B. Buyer desires to acquire a portion or portions of the Property in connection with the Redlands Passenger Rail Project ("**Project**"). The Project involves the extension of passenger rail service along an approximately nine-mile corridor extending east from the San Bernardino Transit Center in the City of San Bernardino to the University of Redlands in the City of Redlands, in the County of San Bernardino, State of California. The portion(s) of and/or interest(s) in the Property to be acquired are as follows: A temporary construction easement and right of way (hereinafter referred to as the "**Temporary Construction Easement**") pursuant to a Grant of Temporary Construction Easement in the form of EXHIBIT 2 attached hereto and incorporated herein by this reference (hereinafter referred to as the "**TCE Grant**"), over, above, on, under, in, across, along and through that certain portion of the Property consisting of approximately 15,499 square feet, more fully described and depicted in EXHIBIT A and EXHIBIT B to the TCE Grant (hereinafter referred to as the "**Temporary Construction Easement Area**"), including, without limitation, the landscaping and/or improvements thereon, if any.

C. Seller is willing to grant the Temporary Construction Easement on and subject to the terms set forth in this Agreement, Seller and Buyer hereby acknowledging and agreeing that the Temporary Construction Easement is being acquired (i) for public use and is necessary for the construction, operation and/or maintenance of the Project and (ii) pursuant to this Agreement in

lieu of a condemnation action or proceeding and/or an action or proceeding in the nature of eminent domain.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the covenants, agreements, representations and/or warranties contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties hereto do hereby agree as follows:

TERMS/AGREEMENT

1. PURCHASE AND SALE.

1.1 Temporary Construction Easement. Seller agrees to sell the Temporary Construction Easement upon and subject to the terms and conditions set forth herein, including, without limitation, the additional terms and conditions related to the Temporary Construction Easement set forth in Section 1.4 below.

1.2 Purchase Price. The total purchase price for the Temporary Construction Easement is **THIRTY THOUSAND SEVEN HUNDRED DOLLARS AND NO CENTS (\$30,700.00)** ("**Purchase Price**"). It is understood and agreed between the Parties that payment of the Purchase Price includes, without limitation, payment for the following improvements, if any, as well as any improvements demolished as expressly permitted by this Agreement and/or the TCE Grant, which are considered to be part of the realty and are being acquired by SBCTA in this transaction and, therefore, may be removed and disposed of, without the obligation to replace or pay consideration in addition to that set forth in this Section 1.2: none.

1.3 Payment of Purchase Price. At the Closing (defined below), Buyer shall pay to Seller through Escrow (also defined below) the Purchase Price, payable in cash, by cashier's or certified check or by wire transfer.

1.4 Temporary Construction Easement. The following additional terms and conditions apply with respect to the Temporary Construction Easement:

1.4.1 Seller shall and does hereby grant the Temporary Construction Easement pursuant to the TCE Grant for access to the Temporary Construction Easement Area and for the purpose of all necessary and convenient activities associated with the construction and operation of the Project. Seller grants to Buyer the Temporary Construction Easement over, across and upon the Temporary Construction Easement Area for construction activities, including, but not limited to, all purposes connected with the laying down, use and storage of tools, machinery, materials, and equipment for the construction of the Project, together with the right of ingress to and egress from the Temporary Construction Easement Area and the right at any and all times to enter and use the Temporary Construction Easement Area and each and every part thereof for purposes connected with the construction of the Project, including without limitation vehicular and pedestrian ingress and egress purposes.

1.4.2 The term of the Temporary Construction Easement shall be the period beginning on the commencement date described below in this Subsection 1.4.2 and continuing thereafter for a period of Twenty-four (24) months, as the same may be extended

pursuant to Subsection 1.4.4 and/or Subsection 1.4.5 below. As part of the Temporary Construction Easement, Seller shall permit and allow Buyer and its agents, representatives, employees and contractors (collectively, “**Representatives**”) to enter upon the Temporary Construction Easement Area over, on and through the Property during the term. The term of the Temporary Construction Easement shall commence on the anticipated date of first entry on the Temporary Construction Easement Area by Buyer or its Representatives under or pursuant to the Temporary Construction Easement as described in the notice to be given as set forth below in this Subsection 1.4.2. But, notwithstanding the foregoing, the Temporary Construction Easement becomes valid, binding and enforceable upon Buyer’s recordation of the TCE Grant and payment of the consideration set forth in Section 1.2 above; provided, however, that this shall not limit Buyer’s rights and remedies under or pursuant to Section 8.3 below. Actual use of the Temporary Construction Easement Area under and/or pursuant to the Temporary Construction Easement and the TCE Grant will not commence until Buyer or any one or more of its Representatives, such as the construction contractor for the Project, provides written notice to Seller of the actual anticipated date of entry onto the Temporary Construction Easement Area for the purposes of commencement of construction or other Project-related activities. Buyer or any one or more of its Representatives will send or otherwise provide to Seller such written notice at least seven (7) days prior to entering the Temporary Construction Easement Area.

1.4.3 A temporary construction barrier may be installed at or near the perimeter of the Temporary Construction Easement Area once the construction is started and the Temporary Construction Easement Area is disturbed by demolition and/or construction. At the expiration of the Temporary Construction Easement, Buyer shall, subject to reasonable wear and tear, restore the Temporary Construction Easement Area to a condition as near as practicable to the condition that existed immediately prior to Buyer’s operations. Buyer shall not, however, be required to restore (i) landscaping or improvements, for which the Seller has been paid under or pursuant to Section 1.2 of this Agreement, or (ii) any other changed condition or circumstance not resulting from Buyer’s operations, negligence or greater fault, to the pre-existing condition.

1.4.4 Seller agrees that, at or prior to the expiration of the Temporary Construction Easement, Buyer has the option to extend the term of such easement, as to the Temporary Construction Easement Area or any portion thereof, on a month-to-month (or longer) basis, for up to an additional Twelve (12) months. The rate for the extended use of the Temporary Construction Easement shall be \$1,279.17 per month. It is further agreed and understood that Buyer shall provide Seller with the written notice of its intent to extend the term of the Temporary Construction Easement at least seven (7) days prior to the expiration of the Temporary Construction Easement.

1.4.5 Additionally, in the event of unpredictable or unavoidable delays in construction, including, without limitation, those resulting from force majeure or other causes not within the reasonable control of Buyer, the term of the Temporary Construction Easement, including any extension period under or pursuant to Subsection 1.4.4 above, may be extended upon written notice from Buyer to Seller at the rate of \$42.64 per day; said amount will be paid to Seller in a lump sum upon completion of construction of the Project.

1.4.6 While on the Temporary Construction Easement Area, Buyer will comply with all applicable laws, rules and regulations. Buyer will be responsible and liable for any damage to the Property to the extent the same is both (i) proximately caused by the negligent

acts or greater fault of Buyer in connection with its use or occupancy of the Property for the purposes specified herein and (ii) not (a) remedied in accordance with or otherwise resolved or covered as a result of the terms of this Agreement, including, without limitation, the payment(s) to be made hereunder and/or pursuant hereto or (b) permitted, contemplated, waived or released by the terms of this Agreement or the TCE Grant.

2. ESCROW.

2.1 Opening of Escrow. Within ten (10) business days following the Effective Date, Seller and Buyer shall open an escrow ("**Escrow**") for the conveyance of the Temporary Construction Easement with Commonwealth Land Title Company, 4100 Newport Place Drive, Suite 120, Newport Beach, CA 92660 ("**Escrow Holder**"). For purposes of this Agreement, the Escrow shall be deemed open on the first date after the Effective Date that Escrow Holder shall have received a fully executed copy of this Agreement from Seller and Buyer ("**Opening of Escrow**"). Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened ("**Opening Date**").

2.2 Escrow Instructions. This Agreement constitutes the joint basic escrow instructions of Buyer and Seller for conveyance of the Temporary Construction Easement. Either an original or a copy of this Agreement, fully executed by the Parties, shall be delivered to Escrow Holder upon the Opening of Escrow. Buyer and Seller shall execute, deliver and be bound by any reasonable and customary supplemental or additional escrow instructions ("**Additional Instructions**") of Escrow Holder or other instruments as may be reasonably required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. However, any such Additional Instructions shall not conflict with, amend or supersede any portions of this Agreement unless expressly consented or agreed to in writing by both Seller and Buyer. In the event of any conflict or any inconsistency between this Agreement and such Additional Instructions, this Agreement shall govern unless otherwise specifically agreed to in writing by the Parties.

2.3 Close of Escrow. For purposes of this Agreement, "**Closing**" means the closing or close of Escrow by the recordation in the Official Records of San Bernardino County, California, of the TCE Grant, as well as the disbursement of funds and distribution of any other documents by Escrow Holder, all as described in this Agreement. Subject to the satisfaction of the conditions precedent below, Closing is to occur sixty (60) days following the Opening Date ("**Closing Date**"); provided, however, that Closing and, therefore, the Closing Date shall be extended as provided in Section 8.6 below; and provided, further, that Closing may occur upon such earlier or later date as the Seller and Buyer mutually agree to in writing or as otherwise provided in this Agreement. Buyer and Seller may mutually agree to change the Closing Date by joint written notice to Escrow Holder. The Closing shall be conditioned upon satisfaction, or written waiver by the Party for whose benefit the condition exists, of all conditions precedent thereto. In the event the Escrow is not in a condition for the Closing to occur by the Closing Date for any reason other than the uncured breach of either Buyer or Seller, then any Party who is not then in default of the terms of this Agreement may terminate this Agreement as provided in Article 6. If no (and until a) notice of termination as provided in Article 6 is received by Escrow Holder, Escrow Holder is instructed to proceed with Closing as soon as possible.

2.4 Costs of Escrow. Because of Buyer's status as a public entity, pursuant to California Revenue and Taxation Code Section 11922, no documentary transfer tax will be payable with respect to the conveyance(s) contemplated by this Agreement. Similarly, pursuant to California Government Code Section 27383, no recording fees will be payable with respect to the recording of the TCE Grant. Buyer shall pay the reasonable and customary costs of any Title Policy (defined below). Buyer shall pay the Escrow fees and any notary fees attributable to the conveyance of the Temporary Construction Easement. Buyer shall also pay the additional costs, if applicable, associated with any title endorsements requested by Buyer. Escrow Holder shall endeavor to provide an estimated Closing costs statement to Buyer and Seller at least three (3) days prior to the Closing Date.

2.5 Buyer's Conditions Precedent to Close of Escrow. The Closing and Buyer's obligation to acquire the Temporary Construction Easement and pay the Purchase Price is subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions; provided, however, that the occurrence of the Closing shall not waive or release any breach of or failure to perform under this Agreement by Seller not actually known to Buyer on or prior to the Closing Date):

2.5.1 Seller shall have tendered into Escrow all payments, if any, and documents required of Seller pursuant to this Agreement.

2.5.2 Seller shall have completed in a timely fashion all of Seller's obligations which are to be completed prior to the Closing as provided in this Agreement.

2.5.3 Escrow Holder shall have received an irrevocable commitment from the Title Company to issue any Title Policy required pursuant to this Agreement, subject only to the Permitted Exceptions, as set forth in more detail in Article 3 below.

2.5.4 All representations and warranties of Seller hereunder shall be true and correct as of the Effective Date and as of the Closing.

2.5.5 All property taxes and assessments attributable to the Property to the date of Closing shall have been paid by Seller before delinquency and shall be current as of the Closing; provided, however, that, to the extent the same are available, the Purchase Price proceeds may be used to make such payments.

2.5.6 Buyer shall have approved Escrow Holder's estimated Closing costs statement; such approval shall not be unreasonably withheld, conditioned or delayed.

2.5.7 Buyer shall have determined that the Temporary Construction Easement Area are suitable for Buyer's intended use and development, as set forth in more detail in Article 4 below.

2.6 Seller's Conditions Precedent to Close of Escrow. The Closing and Seller's obligation to convey the Temporary Construction Easement are subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions) on or prior to the Closing Date:

2.6.1 Buyer shall have tendered into Escrow all payments and documents required of it pursuant to this Agreement.

2.6.2 Buyer shall have completed in a timely fashion all of its obligations which are to be completed prior to the Closing as provided in this Agreement.

2.6.3 Seller shall have approved Escrow Holder's estimated Closing costs statement.

2.7 Buyer's Payments and Documents. Not less than one (1) day prior to Closing, Buyer shall pay or tender (as applicable) to Escrow Holder the following-described funds and documents (in recordable form, as necessary or appropriate):

2.7.1 The Purchase Price.

2.7.2 Funds required to pay the Escrow fees, recording fees and notary fees attributable to the conveyance of the Property as well as the costs of any Title Policy, and the additional costs, if applicable, associated with any title endorsements requested by Buyer payable by Buyer pursuant to Section 2.4 of this Agreement.

2.7.3 Funds required to pay any additional reasonable charges customarily charged to buyers in accordance with common escrow practices in San Bernardino County.

2.7.4 Certificate accepting the TCE Grant and consenting to recording of same.

2.7.5 Such other documents and funds required of Buyer under this Agreement and, to the extent reasonable, customary or usual, by Escrow Holder in the performance of its contractual or statutory obligations.

2.8 Seller's Payments and Documents. No less than one (1) day prior to Closing, Seller shall pay or tender (as applicable) to Escrow Holder the following-described funds and documents (in recordable form, as necessary or appropriate):

2.8.1 The fully-executed and acknowledged TCE Grant.

2.8.2 A FIRPTA (Foreign Investment in Real Property Tax Act) Certificate/Non-Foreign Status Affidavit complying with Federal laws, rules and requirements and an appropriate California Form 593 (for example, Form 593-C); Buyer's failure to provide either instrument shall result in tax withholding, payment and the like in accordance with applicable laws, rules and regulations.

2.8.3 Such other documents and funds required of Seller under this Agreement and, to the extent reasonable, customary or usual, by Escrow Holder in the performance of its contractual or statutory obligations, including, without limitation, such instruments as are required in connection with the issuance of any Title Policy, such as a seller's statement, owner's affidavit, gap indemnity and the like.

2.9 Escrow Holder Responsibilities. Upon the Closing, Escrow Holder is authorized and instructed to:

2.9.1 Obtain consents and subordination agreements from the holders of any liens or encumbrances, sufficient to assure that the Temporary Construction Easement is both permitted and not junior or subordinate to any lien or encumbrance which, through foreclosure, could cause a loss of the easement rights represented by the TCE Grant. If Seller elects to satisfy and remove any such exceptions from funds otherwise payable to Seller through Escrow, before such payments or charges are made, Escrow Holder shall notify Seller of the terms necessary to satisfy and remove such monetary liens or encumbrances, and Seller shall approve the disbursement of necessary funds.

2.9.2 Pay, and charge Buyer and/or Seller, as appropriate, for any fees, charges and costs payable under this Agreement, including, but not limited to, Sections 2.7 and 2.8 above. Before such payments or charges are made, Escrow Holder shall notify Buyer and Seller of the fees, charges and costs necessary to clear title and proceed with Closing.

2.9.3 Record the TCE Grant, as well as any other instruments, as appropriate, delivered through Escrow.

2.9.4 Subject to Subsection 2.8.4 above, withhold from funds otherwise payable to Seller at Closing such amount as Buyer is required to withhold therefrom pursuant to the following: (i) California Revenue and Taxation Code Section 18662 (i.e., 3 1/3% of the total sales price) and timely submit such sums to the California Franchise Tax Board, unless Buyer is relieved of such withholding requirements under the provisions of said Section 18662; and (ii) Federal laws, rules and/or regulations, including, without limitation, those identified in Subsection 2.8.2 and timely pay over such funds to the appropriate Federal agency or authority, unless Buyer is relieved of such withholding requirements under the provisions of such laws, rules and regulations by Seller's provision of (and Seller actually provides) an appropriate affidavit(s) and/or statement(s). Further, deliver to each Party copies of all such withholding forms, affidavits and/or certificates.

2.9.5 Disburse such other funds and deliver such other documents to the Party or Parties entitled thereto.

2.9.6 Cause any Title Policy to be issued.

2.10 Notices. All communications from Escrow Holder to either Buyer or Seller shall be directed to the addresses and in the manner established in Section 8.1 below for notices, demands and communications between Buyer and Seller.

3. TITLE.

3.1 Condition of Title; Title Policy. It is a condition to the Closing for Buyer's benefit that the Temporary Construction Easement Area be subject only to the Permitted Exceptions and that the TCE Grant be superior to any lien or encumbrance which, through foreclosure or other enforcement, could cause the Temporary Construction Easement to be wiped out as a junior encumbrance. At, and as a condition of, Closing for Buyer's benefit,

Commonwealth Land Title Company, 4100 Newport Place Drive, Suite 120, Newport Beach, CA 92660 ("**Title Company**") shall be prepared to issue to Buyer, upon Closing, a policy of title insurance (whether a CLTA, ALTA or ALTA extended coverage policy, as determined by Buyer, the "**Title Policy**") in an amount equal to the Purchase Price, showing the Temporary Construction Easement Area subject only to the Permitted Exceptions and the TCE Grant, including the easement granted thereunder, as senior to any monetary lien or encumbrance which, through foreclosure or other enforcement, could cause the TCE Grant, including the easement granted thereunder, to be wiped out. Escrow Holder shall cause Title Company to issue the Title Policy to Buyer upon the occurrence of the Closing.

3.2 Permitted Exceptions. The term "**Permitted Exceptions**" as used herein shall mean the following conditions and exceptions to title or possession:

3.2.1 A lien to secure payment of general and special real property taxes and assessments, not delinquent.

3.2.2 A lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code accruing on or after the Closing; provided, however, that, notwithstanding anything contained in this Agreement to the contrary, Seller shall be responsible and liable for all taxes that relate to any period prior to the Closing, including, without limitation, supplemental taxes which are not assessed or charged and/or which do not become due or owing until after the Closing.

3.2.3 Matters affecting the condition of title created by or with the consent of Buyer.

3.2.4 Other exceptions to title disclosed by the Title Report (as defined in Section 3.3 below) which have been approved in writing by Buyer prior to the Closing.

3.2.5 Any other exceptions to title which are or will become subordinate to the TCE Grant as reflected in the Title Policy pursuant to subordination agreements acceptable to Buyer and the Title Company.

3.3 Title Report. Buyer shall endeavor to obtain and provide to Seller, within fifteen (15) calendar days following the Opening of Escrow or as soon as reasonably possible thereafter, a standard preliminary report from the Title Company, together with copies of the underlying documents relating to the Schedule B exceptions set forth in such report (collectively, the "**Title Report**").

4. SUITABILITY AND CONDITION OF PROPERTY.

4.1 Determination of Suitability and Approval of Environmental and Other Conditions. It is a condition precedent to the Closing for Buyer's benefit that Buyer has determined that the Temporary Construction Easement Area are suitable for Buyer's intended use, as determined by Buyer in its sole discretion. Prior to the Closing Date, Buyer shall determine whether the Temporary Construction Easement Area are suitable and shall provide to Seller and Escrow Holder its written notice of such determination; provided, however, that any failure of Buyer to provide notice shall be deemed approval; and, in connection with any

disapproval, Buyer may, but need not, include its election to extend the Closing Date as provided in Section 8.6 below. In the event Buyer determines that the Temporary Construction Easement Area are suitable, such determination by Buyer shall not alter or diminish Seller's covenants, agreements, representations and/or warranties made herein or under law, unless a representation or warranty is expressly and specifically waived in writing in whole or in part by Buyer. In the event Buyer determines that the Temporary Construction Easement Area is not suitable, then Buyer may terminate this Agreement as provided in Section 6.1 below.

4.2 Inspections, Testing and Right of Entry. Prior to Closing, Buyer may conduct, at Buyer's sole expense, such inspections and testing of the Temporary Construction Easement Area, including, without limitation, any improvements thereon, as Buyer may desire or deem appropriate, in Buyer's sole discretion, to determine the suitability of the Temporary Construction Easement Area for Buyer's intended use. Buyer will enter the Temporary Construction Easement Area pursuant to a Temporary Right of Entry Agreement in the form of EXHIBIT 3 upon the request of Buyer, and Seller's approval and execution of said agreement shall not be unreasonably withheld, conditioned, or delayed. In conducting such inspections and testing, Buyer shall endeavor to minimize damage to the Temporary Construction Easement Area, as well as any improvements thereon, and shall, in the event the Closing fails to occur as the result of a condition outside of Buyer's control, return the Temporary Construction Easement Area, including the improvements thereon, to their condition prior to the inspections and testing, except that Buyer shall have no responsibility or liability for returning the Temporary Construction Easement Area to their prior condition to the extent that any change or modification resulted from (i) reasonable wear and tear, (ii) force majeure or (iii) any other cause not within the reasonable control of Buyer, including, without limitation, the acts or omissions of any person or entity other than Buyer and/or its Representatives. Seller hereby grants to Buyer and its Representatives permission and a license to enter upon the Temporary Construction Easement Area at all reasonable times prior to the Closing Date for the purpose of conducting such inspections and testing. In the event the Temporary Construction Easement Area is occupied by any person(s) other than Seller, Seller shall make arrangements with such person(s) to ensure access by Buyer, including, without limitation, Buyer's Representatives, in order to conduct the inspections and testing pursuant to this Section 4.2.

5. SELLER'S ACKNOWLEDGMENT AND GENERAL RELEASE.

5.1 Full Satisfaction. Seller acknowledges that, in accordance with applicable provisions of California law, Seller may be entitled to the payment of relocation expenses, payments for loss of goodwill, inverse condemnation, unlawful pre-condemnation conduct, and other benefits and reimbursements other than and/or in addition to those expressly provided for in this Agreement (collectively, "**Benefits**") in connection with Buyer's acquisition of the Temporary Construction Easement Area as well as the other matters covered herein. Seller acknowledges and agrees that payment and receipt of the Purchase Price includes, without limitation, full payment of, for and with respect to the Benefits, including, without limitation, just compensation, lease bonus value, business goodwill, furniture, fixtures and equipment, precondemnation damages, claims of inverse condemnation, attorneys' fees, costs, interest, and any and all other damages in complete settlement of all claims (known and unknown), causes of action and demands of Seller against Buyer because of Buyer's purchase of the Temporary Construction Easement and for any and all claims (known and unknown) arising from or relating to the purchase and sale which is the subject of this Agreement. Consistent with the foregoing as

well as Section 9.2 below, Seller, on behalf of itself and its heirs, executors, administrators, successors and assigns, acknowledges that Buyer's performance under this Agreement constitutes full and complete satisfaction of Buyer's obligations to provide the Benefits to Seller and to compensate Seller not only for the purchase of the Temporary Construction Easement Area, but also for construction and/or operation of the Project.

5.2 Waivers and Releases. Seller hereby waives, to the maximum legal extent, any and all claims, demands, remedies and causes of action for damages, liabilities, losses, injuries, costs and/or expenses, including attorneys' fees, arising out of, resulting from or related to Buyer's acquisition of the Temporary Construction Easement Area, whether known or unknown, foreseeable or unforeseeable, including, without limitation, construction and/or operation of the Project. The Parties hereto agree that this Agreement is a settlement of claims in order to avoid litigation and shall not, in any manner, be construed as an admission of the fair market value of the Temporary Construction Easement Area, or of any liability by any Party. Seller on behalf of Seller as well as Seller's heirs, executors, administrators, successors and assigns, hereby fully releases Buyer, its successors, assigns and Representatives, and all other persons and entities, known and unknown, from any and all claims and causes of action by reason of any damage which has been sustained, or may be sustained, as a result of (i) Buyer's purchase of the Temporary Construction Easement (including, without limitation, any and all rights thereunder as well as in and to the Temporary Construction Easement Area) or any preliminary steps thereto or (ii) the construction and/or operation of the Project, including, without limitation, its construction, reconstruction, development, redevelopment, operation, maintenance, repair, existence and use.

5.3 California Civil Code Section 1542. Seller hereby acknowledges that it has consulted or had an opportunity to consult with legal counsel regarding, and represents and warrants that it is familiar with, 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."

Seller acknowledges that, with respect to the sale of the Temporary Construction Easement Area under or pursuant to the TCE Grant to Buyer or the construction and/or operation of the Project, Seller may have sustained damages, losses, costs and/or expenses which are presently unknown and unsuspected, and such damages, losses, costs and/or expenses which may have been sustained may give rise to additional damages, losses, costs and/or expenses in the future. Nevertheless, Seller hereby represents, warrants, acknowledges and agrees that this Agreement has been negotiated and agreed upon in light of that situation, and hereby waives, to the maximum legal extent, any rights accruing to it under said Section 1542 or any other statute or judicial decision of similar effect.

_____/_____
Seller's Initials

The foregoing acknowledgment and release shall survive the Closing as well as the recording of the TCE Grant.

5.4 Notice to Others. If Seller sells, transfers, assigns or otherwise conveys the Property or any interest in the Property, Seller shall notify the purchaser, successor, assignee or other transferee of the existence and terms of this Agreement, including, without limitation, the TCE Grant and the obligations, liabilities and duties as well as the rights and remedies of the Parties. Neither Buyer nor any other person or entity shall have any obligation, liability or duty to compensate any purchaser, successor, assignee or other transferee for the interests, rights and remedies granted to or obtained by Buyer under or pursuant to this Agreement or justifying the Temporary Construction Easement.

6. TERMINATION, DEFAULTS AND REMEDIES.

6.1 Exercise of Rights to Terminate. In the event Buyer elects to exercise its right to terminate this Agreement and the Escrow as provided in Section 2.3, 6.3 or 8.5, then Buyer may so terminate by giving notice, in writing, of such termination to Seller and Escrow Holder. In the event Seller elects to exercise its rights to terminate this Agreement and the Escrow as provided in Section 2.3 or 6.2, then Seller may so terminate by giving notice, in writing, of such termination to Buyer and Escrow Holder. In either such event, the Party so terminating shall, except as otherwise expressly provided in Section 6.2 or 6.3 below, pay all Escrow Holder and Title Company termination fees and charges (collectively, "**Termination Costs**"). Upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting the obligation of the Party so terminating or breaching, as appropriate, to pay Termination Costs as provided herein and any other obligations which expressly survive termination, shall cease and terminate.

6.2 Buyer's Breach. In the event Buyer breaches any obligation under this Agreement which Buyer is to perform prior to the Closing, and fails to cure such breach within five (5) business days of receipt of written notice of such breach from Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement and the Escrow by giving notice, in writing, of such termination to Buyer and Escrow Holder. In such event, Buyer shall pay all Termination Costs. Upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for Buyer's obligation to pay Termination Costs as provided in this Agreement and any other obligations which expressly survive termination, shall cease and terminate.

6.3 Seller's Breach. In the event Seller breaches any obligation under this Agreement which Seller is to perform prior to the Closing, and fails to cure such breach within five (5) business days of receipt of written notice of such breach from Buyer, then, (a) in addition to pursuing any other rights or remedies which Buyer may have at law or in equity, including, without limitation, any and all damages resulting from such breach, (b) Buyer may, at Buyer's option, (i) terminate this Agreement and the Escrow by giving notice, in writing, of such termination to Seller and Escrow Holder, or (ii) initiate and prosecute an action for specific performance of this Agreement. Should Buyer elect to terminate this Agreement and the Escrow as provided herein, then Seller shall pay all Termination Costs and, upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting (1) Seller's obligations and liabilities resulting or accruing as a result of or pursuant clause (a) above in this Section 6.3,

(2) Seller's obligation to pay Termination Costs as provided in this Agreement and (3) any other obligations that expressly survive termination, shall cease and terminate.

6.4 Return of Funds and Documents; Release of Liability as to Escrow Holder. In the event Escrow Holder terminates this Escrow as a result of having received notice, in writing, from Buyer or Seller of its election to terminate the Escrow as provided herein, then Escrow Holder shall terminate the Escrow and return all funds, less Termination Costs, as appropriate, and documents to the Party depositing the same. Further, the Parties hereby release Escrow Holder, and shall hold Escrow Holder free and harmless, from all liabilities associated with such termination excepting for Escrow Holder's obligations to return funds and documents as provided herein.

7. "AS-IS" PURCHASE

7.1 **As-Is Information.** Buyer acknowledges, agrees, represents, and warrants that, except as otherwise expressly provided by Seller in this Agreement: (a) any information supplied or made available by Seller, whether written or oral, or in the form of maps, surveys, plats, soils reports, engineering studies, environmental studies, inspection reports, plans, specifications, or any other information whatsoever, without exception, pertaining to the Property, any and all records and other documents pertaining to the use of the Property, income thereof, the cost and expenses of maintenance thereof, and any and all other matters concerning the condition, suitability, integrity, marketability, compliance with law, or other attributes or aspects of the Property, or a part thereof, if furnished to Buyer, is furnished solely as a courtesy; (b) THE INFORMATION IS PROVIDED ON AN "AS-IS, WHERE-IS" BASIS AND SELLER MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE INFORMATION; and (c) no representations have been made by Seller, or its agents or employees, in order to induce Buyer to enter into this Agreement. Without limiting the generality of the foregoing, Buyer acknowledges, agrees, warrants and represents to Seller that neither the Seller nor its agents or employees have made any representations or statements to Buyer concerning the Property's investment potential or resale at any future date, at a profit or otherwise, nor has Seller or its agents or employees rendered any advice or expressed any opinion to Buyer regarding any tax consequences of ownership of the Property.

7.2 **As-Is Property.** On the Close of Escrow, Buyer will be familiar with the Property and will have made such independent investigations as Buyer deems necessary or appropriate concerning the Property. Seller makes no representations or warranties and specifically disclaims any representation, warranty or guaranty (except as otherwise expressly provided in this Agreement), oral or written, past, present or future with respect to the use, physical condition or any other aspect of the Property, the conformity of the Property to past, current or future applicable zoning or building code requirements or the compliance with any other laws, rules, ordinances, or regulations of any government or other body, the financial earning capacity or expenses history of the operation of the Property, the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, susceptibility to landslides, sufficiency of undershoring, sufficiency of drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area,

the existence or nonexistence of hazardous waste or other toxic materials of any kind, whether known or unknown and whether or not regulated or governed by applicable laws (including, without limitation, hydrocarbons or asbestos), or any other matter affecting the condition, stability, suitability or integrity of the Property or portion thereof.

7.3 **Negligence or Failure to Investigate.** Seller shall not be responsible for any negligent misrepresentation or failure to investigate the Property on the part of Seller, any real estate broker or agent, or any other agent, contractor or employee of Seller or any third party.

7.4 **As-Is.** BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING SOLD AND ACCEPTED ON AN "AS-IS, WHERE-IS" BASIS, AND IS BEING ACCEPTED WITHOUT ANY REPRESENTATION OR WARRANTY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY SELLER IN THIS AGREEMENT. IF BUYER ELECTS TO PROCEED WITH THE PURCHASE OF THE PROPERTY, ANY OBJECTIONS WHICH BUYER MAY HAVE WITH RESPECT TO THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL MATTERS, HAZARDOUS SUBSTANCES, WASTES OR TOXIC MATERIALS THAT MAY BE LOCATED ON, UNDER OR ABOUT THE PROPERTY, WHETHER KNOWN OR UNKNOWN) SHALL BE WAIVED BY BUYER.

7.5 **Waivers.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY SELLER IN THIS AGREEMENT, AS PART OF BUYER'S AGREEMENT TO PURCHASE AND ACCEPT THE PROPERTY "AS-IS, WHERE-IS," AND NOT AS A LIMITATION ON SUCH AGREEMENT, BUYER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS BUYER MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE PROPERTY AND IT IMPROVEMENTS. SUCH WAIVER IS ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY SELLER IN THIS AGREEMENT, SUCH WAIVER INCLUDES, BUT IS NOT LIMITED TO, A WAIVER OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS AND CLAIMS OF EVERY KIND AND TYPE, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS WHICH WERE NOT OR ARE NOT DISCOVERABLE, ANY RIGHTS AND CLAIMS RELATING OR ATTRIBUTABLE TO ENVIRONMENTAL CONDITIONS, ALL OTHER ACTUAL OR LATER CREATED OR CONCEIVED OR STRICT LIABILITY OR STRICT LIABILITY TYPE CLAIMS AND RIGHTS.

BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH IS SET FORTH BELOW:

"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."

has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer. The material truth and accuracy of the foregoing representations and warranties shall be a condition of Seller's obligations hereunder. Prior to the Close of Escrow, Buyer shall notify Seller of any facts or circumstances which are contrary to the foregoing representations and warranties.

8.3 **No Warranties.** Except for those representations and warranties expressly set forth in this Agreement, the parties understand and acknowledge that no person acting on behalf of Seller is authorized to make, and by execution hereof Buyer acknowledges that no person has made any representations, agreement, statement, warranty, guaranty or promise regarding the Property or the transaction contemplated herein, or regarding the zoning, construction, development, physical condition or other status of the Property. Without limiting the generality of the foregoing, Seller makes no representation or warranties with respect to the amount or types of fees required to obtain building permits or otherwise to rezone and develop the Property.

9. OTHER.

9.1 Notices and Demands. All notices or other communications required or permitted between the Parties hereunder shall be in writing, and shall be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by facsimile transmission with confirmation of receipt, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service), addressed to the Party to whom the notice is given at the address(es) provided below, subject to the right of any Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the third business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by personal delivery, facsimile transmission or courier service, shall be deemed given upon receipt, rejection or refusal of the same by the Party to whom the notice is given. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice or other communication sent.

To Buyer: San Bernardino County Transportation Authority
Attn: Victor Lopez, PE
Project Office
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
Telephone: (909) 884-8276
Facsimile: (909) 885-4407

To Seller: City of Riverside
c/o Colleen Nicol
City Clerk
3900 Main Street, 7th Floor
Riverside, CA 92522
Telephone: _____
Facsimile: _____

9.2 Entry, Possession, Use, Construction and Operation.

9.2.1 Upon execution of this Agreement by Buyer and Seller, and deposit of funds in the amount of the Purchase Price into Escrow, Buyer shall have the right of possession and use of the Easement Area and Temporary Construction Easement Area, including, without limitation, the right to remove and dispose of improvements thereon, thereat and/or thereto and construct the Project. The foregoing agreement of Seller shall survive the Closing, including, without limitation, the recording of the Easement Deed and TCE Grant, or, at Buyer's election, the termination of this Agreement by either Party (whether Seller or Buyer) for any reason, including, without limitation, a breach by the other Party and/or the return of the Purchase Price deposit by Escrow Holder to Buyer on termination of this Agreement; and, if Buyer elects that the same shall survive, Buyer's rights shall be as set forth in the right of entry, possession and use provisions attached hereto as EXHIBIT 4.

9.2.2 Buyer makes no representation, warranty, covenant or agreement that the Project shall be constructed or operated; and Seller acknowledges and agrees that no obligation, liability or duty whatsoever shall exist or be incurred by Buyer or any other person or entity to Seller or any other person or entity as a result of any failure to construct or operate the Project for any reason. The foregoing agreement of Seller shall survive the Closing, including, without limitation, the recording of the Easement Deed and TCE Grant, or the termination of this Agreement by either party (whether Seller or Buyer) for any reason, including a breach by the other party.

9.3 Brokers and Sales Commissions. Buyer and Seller represent and warrant to each other that no person or entity may claim or is entitled to a real estate commission, finder's fees or any similar payments with respect to the transaction which is the subject of this Agreement. Buyer and Seller shall each protect, defend, indemnify and hold the other harmless from and against all such claims for real estate commissions, finder's fees or any similar payments with respect to the sale of the Property in accordance with this Agreement.

9.4 Damage or Destruction. Should the Property be materially damaged or destroyed by fire, earthquake or other event without the fault of either Party, this Agreement may be rescinded and terminated by Buyer; and, in such event, Buyer may reappraise the Property or any part of it Buyer desires to acquire and make an offer thereon.

9.5 Extension of Closing and Closing Date. Buyer may, upon written notice to Seller, extend the Closing Date and, therefore, the Closing for a reasonable period of time, not to exceed six months beyond the Closing Date, in order to satisfy or to provide time for others to satisfy the conditions to Closing in favor of Buyer set forth in this Agreement, including, without limitation, the following: (i) that, in accordance with Subsection 2.5.3 and Article 3 above, the Easement Area and Temporary Construction Easement Area are subject only to the Permitted Exceptions and that title to the same are otherwise acceptable to Buyer; (ii) that, in accordance with Subsection 2.5.7 and Article 4 above, Buyer has determined that the Easement Area and Temporary Construction Easement Area are suitable for Buyer's intended use; and (iii) that, in accordance with Subsection 2.5.4 and Article 7 above, Seller's representations and warranties are true and accurate and Buyer has received any consent(s), release(s) and/or subordination(s) required or contemplated by Subsections 7.1.4 and 7.1.5 above. Notwithstanding anything contrary to the foregoing, the Closing Date and, therefore the Closing, may be further extended

upon the mutual consent of the Parties, which consent from Seller shall not be unreasonably withheld, conditioned, or delayed.

10. INCORPORATION OF RECITALS; WHOLE AGREEMENT.

10.1 Recitals. The preamble at the beginning of this Agreement as well as the Recitals set forth in paragraphs A, B and C immediately after the preamble are hereby incorporated into this Agreement as if set forth in full in this Section 10.1.

10.2 Whole Agreement. Consistent with Section 10.17 below, the Parties hereto acknowledge and agree that they have set forth the whole of their agreement in this instrument. Consistent with Sections 5.1, 5.2 and 5.3 above, the performance of this Agreement by SBCTA constitutes the entire consideration for the Permanent Easement and Temporary Construction Easement, including, without limitation, the Easement Deed and TCE Grant, and shall release and relieve Buyer of and from any and all other and further claims, demands, obligations, liabilities and duties on this account or on account of the location, grade, construction, and operation of the Project.

11. MISCELLANEOUS.

11.1 Survival of Covenants. The covenants, representations and warranties of both Buyer and Seller set forth in this Agreement shall survive the Closing as well as the recordation of the Easement Deed and TCE Grant.

11.2 Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use commercially reasonable efforts to accomplish the Closing in accordance with the provisions of this Agreement.

11.3 Time of Essence. Time is of the essence of each and every term, condition, obligation and provision of this Agreement.

11.4 Counterparts; Copies. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Except as required for recordation, the parties as well as Escrow Holder and Title Company shall accept copies of signatures, including, without limitation, electronically transmitted (for example, by e-mail, facsimile, PDF or otherwise) signatures.

11.5 Captions. Any captions to, or headings of, the articles, sections, subsections, paragraphs, or subparagraphs or other provisions of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision of this Agreement.

11.6 No Obligations to Third Parties. Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to, any person or entity other than the Parties.

11.7 Exhibits. The Exhibits attached to this Agreement are hereby incorporated into this Agreement by this reference.

11.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision of this Agreement.

11.9 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California. Any and all legal actions brought to enforce or interpret the terms and provisions of this Agreement shall be commenced exclusively in a court of competent jurisdiction in the County of San Bernardino.

11.10 Buyer's Assignment. Buyer shall have the right, in its sole discretion, to assign this Agreement as well as its rights and remedies in, to and under the Permanent Easement/Easement Deed and the Temporary Construction Easement/TCE Grant, and any right or obligation herein and therein, to any party of its choice without the prior consent or approval of Seller.

11.11 Successors and Assigns. This Agreement as well as the Easement Deed and the TCE Grant shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

11.12 Ratification. This Agreement is subject to the approval and ratification by the Buyer's governing body or its delegated representative.

11.13 Severability. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

11.14 Construction. This Agreement will be liberally construed to effectuate the intention of the Parties with respect to the transaction(s) described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either Party (including the Party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting thereof.

11.15 Legal Fees. Each Party shall be responsible for payment of its own attorneys' fees with respect to negotiation and preparation of this Agreement and processing of the Escrow, any action or proceeding to enforce, interpret or construe any of the provisions of this Agreement, including, without limitation, seeking damages as a result of breach of this Agreement.

11.16 Entire Agreement; Amendment. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and (together with the Easement Deed and TCE Grant) contains the entire agreement between Buyer and Seller as to the subject matter hereof. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date(s) set forth below next to their respective signatures.

[Signatures on the following pages]

SIGNATURE PAGE TO
AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS

Date: _____

BUYER:

San Bernardino County Transportation
Authority

By: _____

Raymond W. Wolfe, Ph.D.
Executive Director

APPROVED AS TO FORM:

Bernadette M. Duran-Brown
SBCTA Legal Counsel

Date: _____

SELLER:

**City of Riverside, a municipal
corporation**

By: _____

Name: _____

Title: _____

Approved as to Form:

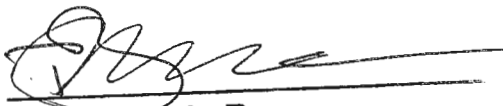
By: 
**Anthony L. Beaumon
Deputy City Attorney**

EXHIBIT LIST

- Exhibit 1 - Legal Description of Property [APN(s): 0281-301-18 & 19]
- Exhibit 2 - Grant of Temporary Construction Easement
- Exhibit 3 - Temporary Right of Entry Agreement
- Exhibit 4 - Entry, Possession and Use Provisions
- Exhibit 5 - Special Provisions

**EXHIBIT 1 TO
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

Legal Description of Property
[APN(s): 0281-301-18 & 19]

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

Portions of Lots 11 and 12, Block 72, Rancho San Bernardino, in the City of San Bernardino, County of San Bernardino, State of California, as per Map Book 7, Page 2, San Bernardino County Records, described as follows:

Beginning at a point in the South line of said Lot 11, North 89°43' West, 73.32 feet from the Southeast corner of said Lot 11;
Thence North 89°43' West, 150.55 feet;
Thence North 00°06'30" West, 680.57 feet;
Thence South 89°50' East, 223.87 feet to the West line of Lot 12;
Thence North 00°06'30" West, 166.69 feet to the North line of the Atchison, Topeka and Santa Fe Railroad right of way;
Thence South 89°50' East, 262.40 feet;
Thence South 21°08'50" West 53.55 feet;
Thence South 21°69' West, 237.15 feet;
Thence South 21°35'30" West, 483.96 feet;
Thence South 19°00'30" West, 185.25 feet;
Thence South 16°37'30" West, 82.45 feet to the point of beginning.

Except therefrom that portion of said land conveyed to the Southern California Railway Company, a California Corporation, as set forth and described in that certain document recorded October 18, 1898 in Book 258, Page 226 of Deeds.

**EXHIBIT 2 TO
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

Grant of Temporary Construction Easement
[APN(s): 0281-301-18 & 19]

[attached behind this page]

RECORDING REQUESTED BY:

Commonwealth Land Title Company
4100 Newport Place, Suite 120
Newport Beach, CA 92660
Escrow and Order No. _____

WHEN RECORDED MAIL TO:

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715

Portions of APN(s): 0281-301-19

EXEMPT FROM RECORDING FEES PER GOVT. CODE §27383
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. & TAX CODE §11922

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

This Grant of Temporary Construction Easement (hereinafter referred to as this **"Instrument"**) is made and entered into by the undersigned **City of Riverside, a municipal corporation** (hereinafter referred to as **"Grantor"**), with reference and respect to that certain Agreement of Purchase and Sale and Joint Escrow Instructions as further described and referenced in the second to last paragraph of this Instrument (hereinafter referred to as the **"Agreement"**). Grantor represents and warrants that it is the owner in fee simple of certain real property located in the City of San Bernardino, County of San Bernardino, State of California, more fully described in ATTACHMENT "1" attached hereto and incorporated herein by this reference (hereinafter referred to as the **"Property"**).

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor does hereby GRANT and CONVEY to **San Bernardino County Transportation Authority ("Grantee")**, and its successors and assigns, a temporary construction easement and right of way (**"Temporary Construction Easement"**), over, on, under, in, across, along, and through that certain portion of the Property more fully described and depicted in Exhibits **"A"** and **"B"** attached hereto and incorporated herein by reference (**"Temporary Construction Easement Area"**), for the purpose of all necessary and convenient activities associated with the Redlands Passenger Rail Project (hereinafter referred to as the **"Project"**) as further described in the Agreement, including, without limitation, construction and/or operation of the Project.

The Temporary Construction Easement shall, unless extended, expire on the date (**"Expiration Date"**) that is not more than Twenty-four (24) months from the commencement of construction within the Temporary Construction Easement Area, as established in a notice given to Grantor by or on behalf of Grantee pursuant to the Agreement. The Grantee shall have an option to extend the Temporary Construction Easement on a month-to-month basis (and/or as otherwise provided in the Agreement) until construction on the Project is completed. Upon occurrence of the completion of the Project, the then-owners of record of the Property shall have the right to request and, thereafter, receive from Grantee a duly executed and acknowledged instrument in writing whereby Grantee quitclaims or otherwise releases its interest in the Temporary Construction Easement, but not the other terms and provisions of this Instrument, to the said then-owner of record of the Property, and may cause same to be recorded in Official Records of San Bernardino County, California.

Grantor covenants, by and for itself, its heirs, successors and assigns, including, without limitation, any voluntary and involuntary successor(s)-in-interest to the Property or any part thereof, that Grantor shall not, without the express prior written consent of Grantee, erect, place, or maintain any improvement, or undertake any other activity, which may interfere with the use of the Temporary Construction Easement Area; and Grantor shall not permit the erection, placement, or maintenance of any improvement, or undertaking of any other activity, which may interfere with the use of the Temporary Construction Easement Area, including, without limitation, the erection of any building, wall, fence, structure or other improvement within the Temporary Construction Easement Area.

The Temporary Construction Easement shall include, without limitation, the right and privilege of Grantee and its employees, agents, representatives, contractors, subcontractors, and workmen to: (i) perform all activities as may be necessary to facilitate the purposes of the Temporary Construction Easement; (ii) use, control, and occupy the Temporary Construction Easement Area; (iii) have access to, ingress to, and egress from the Temporary Construction Easement Area; (iv) use and temporarily place and operate tools, equipment, machinery, and materials on the Temporary Construction Easement Area; and (v) trim, cut, or clear away any trees, brush, or other vegetation or flora, including, without limitation, the roots thereof, located within the Temporary Construction Easement Area.

This Instrument, including, without limitation, the grant and other terms and provisions set forth or incorporated by reference herein shall inure to the benefit of, and be binding upon, Grantor and Grantee and their respective heirs, successors and assigns, including, without limitation, any involuntary successor(s)-in-interest. Grantee may assign its rights and remedies in, to and under this Instrument and may do so without obtaining the consent of or providing notice to Grantee.

At the expiration of the Temporary Construction Easement, Grantee shall restore the Temporary Construction Easement Area to a condition as near as practicable to the condition that existed immediately prior to Grantee's operations; provided, however, that Grantee's restoration obligations shall not apply with respect to reasonable wear and tear or any changed condition or circumstance not resulting from Grantee's operations, including, without limitation, Grantee's negligence or greater fault. Additionally, Grantee shall not be required to restore any vegetation, landscaping or improvements for which the Grantor has been paid, to the pre-existing condition. Further, it is understood that, upon said expiration or termination of the Temporary Construction Easement, Grantee shall have no other or further obligation, liability or duty in connection with the Property.

The covenants contained in this Instrument shall run with the land.

This Instrument arises from the Agreement as entered into by Grantor and Grantee on or about _____, 201_. The terms and provisions of the Agreement are incorporated into this Instrument by this reference as if set forth in this Instrument in full. Interested parties may inspect a copy of the Agreement at the offices of Grantee.

This Instrument together with the Agreement contains the entire agreement of the parties relating to the subject matter hereof, including, without limitation, the rights herein granted and the obligations herein assumed. Any oral representations concerning or modifications of this Instrument or the Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by each of the parties.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below.

Dated: _____

GRANTOR:

**City of Riverside, a municipal
corporation**

By: _____

Its: _____

Name: _____

ACKNOWLEDGMENT

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, 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)

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Grant of Temporary Construction Easement to the undersigned San Bernardino County Transportation Authority ("SBCTA"), the provisions of which instrument are incorporated by this reference as though fully set forth in this certificate, is hereby accepted by the undersigned officer on behalf of SBCTA pursuant to authority conferred by the San Bernardino County Transportation Authority's Board of Directors, Agenda Item 12, adopted on June 5, 2013, and the Grantee consents to recordation thereof by its duly authorized officer.

Description/ identification of real property: **North and South Sides of Hardt Street, 720 Feet East of Gifford Avenue, San Bernardino, CA 92408**
APN: 0281-301-19

Dated: _____

By: _____

Carrie Schindler, PE
Director of Transit and Rail Programs

ACKNOWLEDGEMENT

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, 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)

EXHIBIT "A"
LEGAL DESCRIPTION
APN 0281-301-19

TEMPORARY CONSTRUCTION EASEMENT - RPRP 253R-126.8-TCE

Those portions of Lots 11 and 12, Block 72 of Rancho San Bernardino, in the City of San Bernardino, County of San Bernardino, State of California, as per Map Book 7, Page 2, records of said County, being more particularly described as follows:

Beginning at the intersection of the Southerly right-of-way line of the SBCTA (formerly SANBAG) Railway as shown on Record of Survey Map 148/73-92 Recorded March 7, 2012 with the Easterly boundary of that land described as Parcel 16 in Final Order of Condemnation recorded April 12, 1966, in Book 6606, Page 521 of official records; thence along said Southerly right-of-way line, South 89°47'24" West, 208.68 feet to an intersection with the Westerly boundary of that land described as Parcel 16 in said Final Order of Condemnation recorded April 12, 1966, in Book 6606, Page 521 of official records; thence along said Westerly boundary, South 00°28'58" East, 69.99 feet; thence leaving said Westerly boundary, North 89°46'42" East, 100.92 feet; thence South 00°00'00" West, 25.01 feet; thence North 90°00'00" East, 69.82 feet to a point on the Easterly boundary of that land described as Parcel 16 in said Final Order of Condemnation; thence along said Easterly boundary, North 21°12'12" East, 19.07 feet; thence North 21°25'42" East 83.36 feet to the **Point of Beginning**.

Said parcel contains 15,499 square feet more or less.

Distances shown hereon are grid distances in U.S. Survey feet. To obtain ground level distances, multiply distance by 1/0.99993920. All bearings shown hereon are grid based upon the California Coordinate System, Zone 5, CCS83, (Epoch NSRS-2007). Bearings from reference deeds/maps may or may not be in terms of said system.


DAVID W. AMBLER
L.S. 7322



**EXHIBIT "B" TO
GRANT OF TEMPORARY CONSTRUCTION EASEMENT**

MAP OF TEMPORARY
CONSTRUCTION EASEMENT AREA
[APN(s): 0281-301-19]

[attached behind this page]

LEGEND

P.O.B. INDICATES POINT OF BEGINNING

 INDICATES TEMPORARY CONSTRUCTION EASEMENT

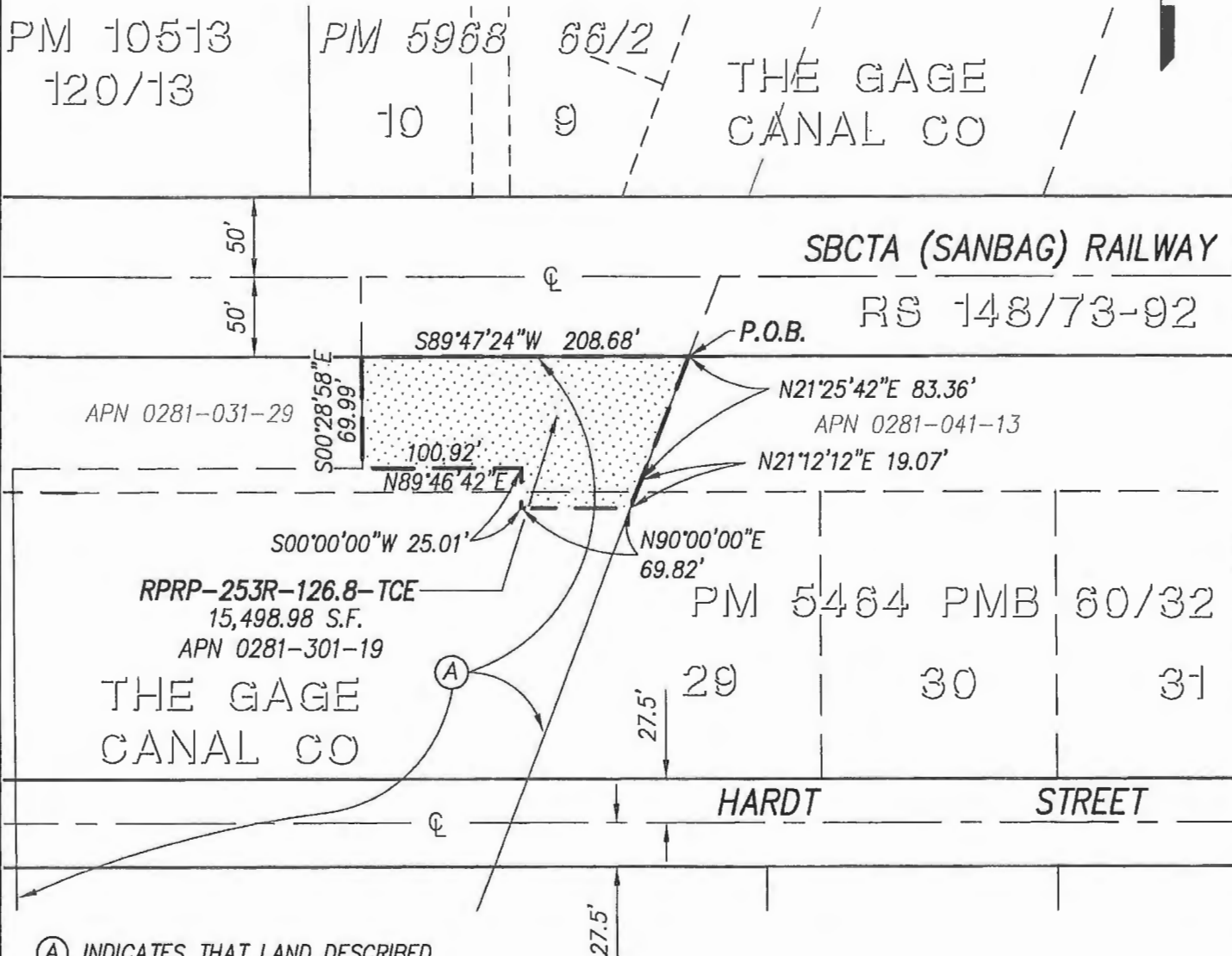
EXHIBIT B

RPRP-253R-126

APN 0281-301-19

City of San Bernardino, CA

SCALE: 1"=100'



(A) INDICATES THAT LAND DESCRIBED AS PARCEL 16 IN FINAL ORDER OF CONDEMNATION RECORDED 4-12-1966, IN BOOK 6606, PAGE 521 OF O.R.

David W. Ambler 12/06/2017
 DAVID W. AMBLER, L.S. 7322 DATE



PROJECT DESIGN CONSULTANTS
 Planning | Landscape Architecture | Engineering | Survey

701 B Street, Suite 600
 San Diego, CA 92101
 619.235.6471 Tel
 619.234.0349 Fax

**EXHIBIT 3 TO
AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

Temporary Right of Entry Agreement
[APN(s): 0281-301-18 and 0281-301-19]

[attached behind this page]

Project: Redlands Passenger Rail Project

Site Location: North and South Sides of Hardt Street, 720 Feet East of Gifford Avenue,
San Bernardino, CA

Assessor's Parcel Nos.: 0281-301-18 and 0281-301-19

TEMPORARY RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (“Agreement”) is made and entered into this _____ day of _____ 2019, by and between the **CITY OF RIVERSIDE, A MUNICIPAL CORPORATION** (“City), and San Bernardino County Transportation Authority (SBCTA) (“Grantee”). City owns the real property located at North and South Sides of Hardt Street, 720 Feet East of Gifford Avenue, and further identified by Assessor's Parcel Number(s) 0281-301-18 and 0281-301-19 (collectively, the “Property”) and Grantee would like to use the Property to perform tenant improvements as detailed in Section 1 below and for no other purpose.

1. **Scope.** City, owner of City of Riverside, a municipal corporation and further identified as Assessor’s Parcel Number 0281-301-18 and 0281-301-19 (“Property”), hereby grants permission to Grantee, its employees, agents and subcontractors to enter upon a portion of the Property as identified on Exhibit “A” attached hereto and incorporated herein by reference. Grantee’s use of the Property is to conduct inspections and testing of certain portions of the Property in connection with Grantee’s building of the Redlands Passenger Rail Project extension through the Property, pursuant to an Agreement of Purchase and Sale and Joint Escrow Instructions entered into between the parties.

2. **Term.** This Agreement shall be effective on the Effective Date and shall terminate on _____ unless earlier terminated as set forth in this Agreement or upon full execution of a Lease agreement between the parties for the space, whichever is earlier. Grantee shall provide City with twenty-four (24) hours advanced written notice directed to David Welch at (951) 826-5110 of the date upon which Grantee will enter and use the Property.

3. **Condition of Premises.** During the term of this Agreement, Grantee is to avoid damaging or contaminating the Property, including any existing trees, landscaping or plants, and shall take all reasonable steps to maintain the Property in an orderly and appealing manner. At the completion of the work, Grantee will restore the Property to a condition as near as practical to the condition it was in immediately prior to the commencement of Grantee’s use thereof, reasonable wear and tear excluded.

4. **Access to the Property.** Grantee shall make every reasonable effort to keep access to the Property open at all times and shall not unreasonably interfere with City’s activities in any way.

5. **Indemnification.** Except as to the sole negligence or willful misconduct of the City, Grantee agrees to indemnify, defend and hold the City, its officers and employees, harmless from and against all claims, damages, losses, liability, cost or expense, including attorney’s fees,

which arises out of the performance of work under this Agreement by Grantee or any of Grantee's employees, agents or subcontractors.

[6. **Workers' Compensation Insurance.** By executing this Agreement, Grantee certifies that it is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Grantee shall carry the insurance or provide for self-insurance required by California law to protect Grantee from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Grantee shall file with City either (1) a certificate of insurance showing that such insurance is in effect, or that they are self-insured for such coverage, or (2) a certified statement that they have no employees, and acknowledging that if they do employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days prior written notice before modification or cancellation thereof.]

[7. **General Commercial Liability and Automobile Insurance.** Prior to City's execution of this Agreement, Grantee shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Grantee against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Grantee. The City, and its officers, employees and agents, shall be named as additional insureds under the Contractor's insurance policies.]

8. **Hazardous Substances Indemnity.** Grantee expressly agrees to and shall indemnify, defend, release and hold the City, its officers, officials, directors, agents, servants, employees, attorneys and contractors harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorneys' fees, expert fees, and court costs) in any way related to the disposal, treatment, transportation, manufacture, or use of any Hazardous Substances on, in, under, or about the Property by Grantee, or its respective officers, directors, agents, servants, employees or contractors, or by any other third party acting under the control or request of Grantee, other than the City and its respective officers, agents, servants, employees or contractors, except to the extent any such liability, loss, damage, or cost arises as a result of pre-existing environmental conditions at the Property. This indemnity, defense and hold harmless obligation shall survive the expiration or termination of this Agreement.

9. **Hazardous Substances Defined.** Hazardous Substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, et seq.; The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("RCRA"); The Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; The Clean Water Act, 33 U.S.C. § 1251, et seq.; The Hazardous Waste Control Act, California Health and Safety Code ("H. & S.C.") § 25100, et seq.; the Hazardous

Substance Account Act, H. & S.C. § 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H. & S.C. § 25249.5, et seq.; Underground Storage of Hazardous Substances H.& S.C. § 25280, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act (H & S.C. § 25300 et seq.); The Hazardous Waste Management Act, H. & S.C. §§ 25170.1, et seq.; Hazardous Materials Response Plans and Inventory H. & S.C. § 25001 et seq.; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos and lead.

10. **Venue.** Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

11. **Nondiscrimination.** During Grantee's performance of this Agreement, it shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, sexual orientation, military or veterans status in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Grantee agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

12. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City

City of Riverside
c/o Colleen Nicol
City Clerk
3900 Main Street, 7th Floor
Riverside, CA 92522

Grantee

San Bernardino County Transportation Authority
Attn: Victor Lopez, PE
Project Office
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
Telephone: (909) 884-8276
Facsimile: (909) 885-4407

13. **Assignment.** It is mutually understood and agreed that this Agreement is personal to Grantee and shall be binding upon Grantee and its successors and may not be assigned or transferred in any way. Any transfer shall be void and of no effect.

14. **Authority.** The individuals executing this Agreement each represent and warrant that they have the legal power, right and actual authority to bind their respective entities to the terms and conditions hereof and thereof.

15. **Severability.** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date and year first written above.

CITY

GRANTEE

City of Riverside, a California charter city and municipal corporation

San Bernardino County Transportation Authority

By: _____
David Welch
Real Property Services Manager

By: _____
Raymond W. Wolfe, Ph.D.
Executive Director

Attested To:

Approved as to Form:

By: _____
City Clerk

By: _____
Rick Rayl
SBCTA Legal Counsel

Approved as to Form:

By: _____
Deputy City Attorney

Exhibit A

Legal Description of Property
[APN(s): 0281-301-18 and 0281-301-19]

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

Portions of Lots 11 and 12, Block 72, Rancho San Bernardino, in the City of San Bernardino, County of San Bernardino, State of California, as per Map Book 7, Page 2, San Bernardino County Records, described as follows:

Beginning at a point in the South line of said Lot 11, North 89°43' West, 73.32 feet from the Southeast corner of said Lot 11;
Thence North 89°43' West, 150.55 feet;
Thence North 00°06'30" West, 680.57 feet;
Thence South 89°50' East, 223.87 feet to the West line of Lot 12;
Thence North 00°06'30" West, 166.69 feet to the North line of the Atchison, Topeka and Santa Fe Railroad right of way;
Thence South 89°50' East, 262.40 feet;
Thence South 21°08'50" West 53.55 feet;
Thence South 21°69' West, 237.15 feet;
Thence South 21°35'30" West, 483.96 feet;
Thence South 19°00'30" West, 185.25 feet;
Thence South 16°37'30" West, 82.45 feet to the point of beginning.

Except therefrom that portion of said land conveyed to the Southern California Railway Company, a California Corporation, as set forth and described in that certain document recorded October 18, 1898 in Book 258, Page 226 of Deeds.

**EXHIBIT 4 TO
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

Entry, Possession and Use Provisions
[APN(s): 0281-301-18 & 19]

A. Grant of Use. Seller hereby irrevocably grants to Buyer and/or its assignee for no additional monetary consideration beyond the compensation that Seller will receive upon Buyer's acquisition of the Temporary Construction Easement Area either through a contract currently being or to be negotiated or, in the event the parties do not negotiate or are unable to agree to the terms of that contract, through a condemnation action, a right of entry, possession and use of the Temporary Construction Easement Area, on the terms described in item B below.

B. Use of the Property. Buyer shall have the right to enter upon and use the Temporary Construction Easement Area for the Temporary Construction Easement purposes set forth in Recital B.2 appearing after the preamble at the beginning of this Agreement, including, but not limited to, the purposes set forth in the TCE Grant (collectively, the “**Permitted Activities**”). Buyer's use of the Temporary Construction Easement Area shall be limited to a/an Twenty-four (24) month term, commencing upon and subject to a seven (7) day or more notice requirement consistent with Subsection 1.4.2 of this Agreement.

C. Buyer's Right to Terminate Work. Buyer shall have no obligation to commence or complete any of the Permitted Activities.

D. No Cost to Seller. Buyer shall bear all costs and expenses in connection with Buyer's use of the Property.

E. Eminent Domain. By granting the irrevocable right of entry, possession and use of the Temporary Construction Easement Area as set forth in this EXHIBIT 2 to Buyer, Seller agrees to the following: (1) Seller shall not object to the filing of an eminent domain proceeding to acquire the Temporary Construction Easement; (2) in any eminent domain action filed by Buyer to acquire the Temporary Construction Easement, Seller shall not challenge Buyer's right to take the Temporary Construction Easement, and the only issue shall be the amount of just compensation for the Temporary Construction Easement; (3) in the event proceedings in eminent domain are begun, the date of valuation for determining the amount of just compensation for the Temporary Construction Easement, as appropriate, shall be the date on which Buyer files the complaint in said proceeding; and (4) this Agreement, including, without limitation, the entry, possession and use provisions set forth in this EXHIBIT 2, shall control and, therefore, Buyer need not obtain a court order for possession in connection with any eminent domain action or proceedings.

F. Parties' Intent to Be Bound. The Parties intend that this Agreement, including, without limitation, the right of entry, possession and use provisions set forth above in this EXHIBIT 4, constitute a binding contract. In particular in this regard, Seller acknowledges and agrees that it is important for Buyer to have assurances that the Project may be constructed in a timely manner, and that the rights granted to Buyer in the right of entry, possession and use provisions set forth

above in this EXHIBIT 4 to the Agreement are crucial to the Project's success. In the event of any dispute concerning the right of entry, possession and use provisions set forth above in this EXHIBIT 4, the Parties agree that monetary damages will not be adequate to make them whole, and intend for the terms of such right of entry, possession and use provisions to be specifically enforceable.

**EXHIBIT 5 TO
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

Special Provisions

- 1) All improvements within the TCE will be protected in place or replace in-kind.