

RIGHT OF WAY CONTRACT STATE HIGHWAY

RW 8-3 (Rev. 6/95)

CONFIDENTIAL

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APN: 1167-151-14

District	County	Route	P.M. (KP)	E. A.	Program	Fed. Ref.	Name	Parcel
8	SB	215	0.60/1.70	0J070	ACNHPI	2151 (233)	City of Riverside	23765

City of Riverside, a California charter city and
municipal corporation

Grantor

RIGHT-OF-WAY CONTRACT -- STATE HIGHWAY

Grantor, City of Riverside, a California charter city and municipal corporation, owns the real property located South of De Berry Street, Southeast of I-215 Freeway in the City of Grand Terrace, in the County of San Bernardino, Assessor Parcel Number 1167-151-14. A portion of the property is needed for a Temporary Construction Easement ("TCE") for the purpose of constructing the Interstate 215 (I-215) Barton Road Interchange Improvement Project, a public project designed to accommodate the widening of Interstate 215, realign the on-ramps and off-ramps and modify local streets to improve traffic flow (the "Project"). Document No. 23765-1 in the form of a Temporary Construction Easement Deed to the San Bernardino County Transportation Commission ("SANBAG"), covering the property as described and depicted in the attached Exhibit "1" (the "Property") has been executed and delivered to Albert Harmon, Right-of-Way Agent for Overland, Pacific & Cutler, Inc., agent for SANBAG.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement ("Agreement"). The performance of this Agreement constitutes the entire consideration and shall relieve SANBAG of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) SANBAG requires said Property described and depicted in Document No. 23765-1 for the Project. SANBAG has the authority to exercise the power of eminent domain.
- (C) Both Grantor and SANBAG recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.
- (D) It is agreed that SANBAG may open an escrow in accordance with this Agreement at Commonwealth Land Title Company ("Escrow Agent"), Escrow No. to be determined, or may open an internal escrow. This Agreement constitutes the joint escrow instructions of SANBAG and Grantor, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to perform all acts reasonably necessary to close this escrow within sixty (60) days following the opening of escrow.
2. SANBAG shall:
 - (A) Pay the undersigned Grantor the sum of Five Hundred Dollars and Zero Cents (\$500.00) for the Property or interest conveyed by the Temporary Construction Easement when title to said Property vests in SANBAG free and clear of all liens, deeds of trusts, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - i. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.

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- ii. Covenants, conditions, restrictions and reservations of record as contained in the title report (Commonwealth Land Title Company order number 08024955).
 - iii. Easements or rights-of-way over said land for public or quasi-public utility or public street purposes, if any.
 - (B) Pay all escrow and recording fees incurred in this transaction, and if title insurance is desired by SANBAG, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax.
 - (C) Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.
3. **FULL AND COMPLETE SETTLEMENT.** Grantor hereby acknowledges that it is the sole and lawful owner of the Property and the compensation paid to Grantor through this Agreement constitutes the full and complete settlement of any and all claims against SANBAG, the State of California Department of Transportation, the City of Colton and the City of Grand Terrace (collectively "Releasees") by reason of the Project and/or acquisition of the Property, including, but not limited to, any and all rights or claims that Grantor had, currently has or may in the future have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation, except as provided herein. Grantor, on behalf of itself and its successors and assigns, further knowingly and voluntarily waives and expressly releases and discharges Releasees and any and all of Releasees' employees, agents, officers, servants, representatives, contractors, attorneys, partner agencies and assigns, from liability in regard to any claims for the following: pre-condemnation damages, inverse condemnation, lost business goodwill, lost profits, lost rents, severance damages, damage to or loss of improvements pertaining to the realty, machinery, fixtures, inventory, equipment and/or personal property, interest, any right to repurchase, leaseback, or receive any financial gain from, the sale of any portion of the Property, any right to challenge the adoption of a resolution of necessity, any right to receive any notices pursuant to Code of Civil Procedure section 1245.235, any right to enforce any obligation pursuant to the Eminent Domain Law, any other rights conferred upon Grantor pursuant to the Eminent Domain Law, and claims for litigation expenses, attorney's fees, statutory interest and/or costs.
4. The parties intend that this Agreement will result in a full, complete and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them as to the acquisition, possession and/or use of the Property, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of any rights, damages, compensation or benefits to which Grantor is, or may be, entitled is intended to be full and complete. Accordingly, except as provided herein,:
- (A) Pursuant to the releases set forth in this Agreement, Grantor specifically waives the provision of section 1542 of the Civil Code of the State of California which provides:

"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."
 - (B) Grantor represents and warrants that it understands the effect of this waiver of section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of its choice.
5. Any monies payable under this Agreement up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said deed(s) of trust or mortgage(s), shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) are to furnish Grantor

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with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.

6. Grantor represents and warrants that it is the fee simple owner of the Property and that it has the right to grant the TCE.
7. Grantor represents and warrants that there are no oral or written leases on all or any portion of the Property exceeding a period of one month and Grantor agrees to hold SANBAG harmless and reimburse SANBAG for any and all of its losses and expenses occasioned by reason of any lease of said Property held by any tenant of Grantor for a period exceeding one month. Grantor acknowledges that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided by Grantor, prior to the close of escrow.
8. It is understood and agreed by and between the parties hereto that included in the amount payable under Clause 2(A) above is payment in full to compensate Grantor for all improvements within the TCE area.
9. It is understood and agreed by and between the parties hereto that payment as provided in Clause 2(A) includes, but is not limited to, payment for any and all damages, and any and all damages which may accrue to Grantor's remaining property by reason of its severance from the property conveyed herein and the construction and use of the proposed Project, including, but not limited to, any expense which Grantor may incur in restoring the utility of the remaining property.
10. It is agreed between the parties hereto that SANBAG is not assuming responsibility for payment or subsequent cancellation of unpaid assessments on the Property acquired under this transaction. Said assessments include but are not limited to Commonwealth Land Title Company order number 08024955. The assessments remain the obligation of Grantor. Payment for the Property acquired under this transaction is made upon the basis that the Grantor retains its obligation to the levying body respecting said assessments. The Property acquired under this transaction is to be free and clear of any liens, bonds and/or assessments at the close of escrow.
11. The TCE shall be for a period of forty (40) months ("TCE Term"). The TCE Term shall commence on the date of recordation of the Temporary Construction Easement Deed.
12. Any notice either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by registered or certified mail, return receipt requested. If by mail, service shall be deemed to have been received by such party at the time the notice is delivered to the following addresses:

To Grantor:

City of Riverside
3900 Main Street
Riverside, CA 92501

To SANBAG:

1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
Attn: Paula Beauchamp
Project Delivery Manager

With a copy to:

Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626
Attn: Craig Farrington/Alyson Suh

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13. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and/or assignees. SANBAG may freely assign any or all of its interests or rights under this Agreement.
14. It is understood and agreed that the fully executed Temporary Construction Easement Deed may be recorded in the Recorder's Office for the County of San Bernardino.
15. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement and may not be modified except by an instrument in writing signed by the party to be bound thereby.
16. If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.
17. Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.
18. This Agreement may be executed in counterparts, including by facsimile, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

In Witness Whereof, the Parties vested have executed this Agreement the day and year set forth below.

CITY OF RIVERSIDE, a California charter city and
municipal corporation

By: _____
City Manager

Date: _____

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: Susan Wilson
Assistant City Attorney

SAN BERNARDINO COUNTY TRANSPORTATION
COMMISSION (SANBAG)

By: _____
Raymond W. Wolfe, PhD
Executive Director

Date: _____

APPROVED AS TO FORM:

By: _____
Craig Farrington/Alyson Suh
Attorneys for San Bernardino County
Transportation Commission