

PROJECT: Pachappa Underpass Project
APN: 219-182-006, 007, 016
RCPN: 1086
Federal ID No.: 33-0072823

AGREEMENT FOR ACQUISITION OF TEMPORARY CONSTRUCTION EASEMENT

Title Order No.: 09201580

THIS AGREEMENT ("**Agreement**") is entered into as of this ____ day of _____, 20____ by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a public agency of the State of California ("**Buyer**"), and CITY OF RIVERSIDE, a California charter city and municipal corporation ("**Seller**") for acquisition by Buyer of a temporary construction easement ("TCE") as described herein.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. AGREEMENT TO SELL AND PURCHASE. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, a TCE over all that certain real property (hereinafter called "**Property**") situated in the City of Riverside, County of Riverside, State of California, and described in Exhibit "A" and depicted in Exhibit "B", as being conveyed in Exhibit "C", all of which are attached hereto for the purposes of constructing the Pachappa Underpass ("**Project**").
2. PURCHASE PRICE. The total purchase price, payable in cash through escrow, shall be the sum of

ONE HUNDRED FIVE THOUSAND AND NO/100 DOLLARS
(\$105,000.00)
3. CONVEYANCE OF EASEMENT. Seller agrees to convey to Buyer a TCE in, on, over and above the Property.
4. CLOSING.
 - a. ESCROW. Buyer may elect to open an escrow in accordance with this Agreement at an escrow company of Buyer's choice. This Agreement constitutes the joint escrow instructions of Buyer and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties agree to perform all acts reasonably necessary to close this escrow in the shortest possible time.

Seller shall execute and deliver said TCE(s) as referenced in Paragraph 3, above, to Escrow Agent concurrently with this Agreement, or as soon as possible thereafter when said deeds are available. After opening of escrow, Buyer will

deposit an executed Certificate of Acceptance with Escrow Agent. Buyer agrees to deposit the purchase price upon demand of Escrow Agent. Buyer and Seller agree to deposit with Escrow Agent any additional instruments as may be reasonably necessary to complete this transaction.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

- b. CLOSE OF ESCROW. Escrow Agent is authorized to and shall disburse funds and deliver deed when conditions of this escrow have been fulfilled by Buyer and Seller. The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is authorized if necessary or proper in the issuance of said policy of title insurance.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the parties hereto. Any amendment of, or supplement to, any instructions must be in writing.

TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE.

- c. ESCROW FEES, CHARGES AND COSTS. Buyer agrees to pay all Buyer's and Seller's usual fees, charges, and costs which arise in this escrow.
 - d. If Buyer elects to open an escrow, Buyer shall deliver the purchase price to Seller in exchange for a fully executed and recordable TCE together with any required third party consents such as tenants or mortgage holders.
- 5. TERM. The term of the TCE shall commence on the day that the Right of Way Certification is issued by the California Department of Transportation ("Commencement Date"), and shall continue until completion of the Project, but no longer than twenty-four (24) months from the Commencement Date ("Termination Date"). Buyer shall notify Seller of the Commencement Date. In the event the Project is not completed on or before the Termination Date, the Buyer shall provide written notice to Seller not less than one month prior to the Termination Date of its election to extend the temporary construction easement and the Termination Date. Such extension shall be documented in an amendment to this Agreement and just compensation for said extension shall be determined by an appraisal prepared by a State licensed appraiser secured by the Buyer.
 - 6. FULL AND COMPLETE SETTLEMENT. Seller hereby acknowledges that the compensation paid to Seller through this Agreement constitutes the full and complete settlement of any and all claims in inverse condemnation and for precondemnation damages, and any and all other claims that Seller may have, whether or not specifically mentioned here, relating directly or indirectly to the acquisition by Buyer of the TCE.

Seller and Buyer, and each and all of their agents, representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby release the other party, and each of them, from any and all obligations, liabilities, claims, costs, expenses, demands, debts, controversies, damages, causes of action, including without limitations those relating to just compensation, damages which any of them now have, or might hereafter have by reason of any matter or thing arising out or in any way relating to acquisition of the TCE by Buyer as a public entity. Buyer and Seller agree that this Agreement is being entered into in order to avoid litigation and in lieu of Buyer's exercise of its eminent domain authority.

7. CONSTRUCTION CONTRACT AND CURATIVE WORK.

a. In addition to the compensation shown in Paragraph 2 hereinabove, Buyer, its contractors or assigns, shall perform the following construction contract items at the time of the installation of the Project:

- i. Re-store the street pavement and curb/gutter at the southeast corner of the property to its original condition;
- ii. Provide a letter from the Regional Water Control Board stating that it is acceptable to leave approximately 22,000 cubic yards of soil on site.
- iii. Provide a letter from an environmental firm indicating the origin of the soil left on site is free of contaminants and consolidation suited for the intended use;
- iv. Provide temporary Best Management Practices (BMPs) during construction;
- v. Provide multiple and permanent BMPs (including RPU's approved grading for a passive drain), to eliminate soil erosion at the site and prevent flooding at the Chase Booster Pump Station. Construct a permanent installation of hydro-seeding once the use of the site is complete

All work performed under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances and regulations relating to such work and shall be completed in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated or reconstructed by the Buyer, shall be left in as good condition as found. Buyer also agrees to:

b. The compensation paid to Seller through this Agreement includes the value of and cost to remove, relocate, reconstruct, and/or refurbish the following improvements located on the Property.

- i. None

8. PERMISSION TO ENTER PROPERTY. Seller hereby grants to Buyer, its authorized agents or contractors, the right to enter upon the Property upon forty-eight (48) hours prior written notice to make necessary and reasonable inspections.
9. POSSESSION. Buyer shall be entitled to possession of the Property immediately upon recordation of TCE deed and payment delivery to Seller.
10. DISCLOSURE. In the event Seller plans to sell, lease, or rent the Property prior to the completion of the Project or the final expiration of the TCE, Sellers shall inform, in writing, or any and all parties involved in said sale, lease, or rental of this TCE and the Project and shall obtain any third party consents or subordinations deemed necessary by Buyer.
11. PROPERTY CONDITION. Seller agrees that no improvements, other than those already on the TCE area shall be placed thereon; and the planting of any crops, trees, or shrubs, or alterations, repairs, or additions to existing improvements within the easement area, which may hereafter be placed thereon, are at Seller's risk and without expectation of payment if removed by Buyer or Buyer's agent.
12. EMINENT DOMAIN DISMISSAL. Seller and Buyer acknowledge that this transaction is a negotiated settlement in lieu of condemnation. Seller acknowledges that the sums received from Buyer under this Agreement constitute full payment of just compensation in eminent domain (including, but not limited to, compensation for the fair market value of the real property taken, severance damages, improvements to the realty, furniture, fixtures, equipment, the value of any leasehold interest, loss of inventory, loss of business goodwill, court costs, litigation expenses and any interest which might be due on such matters). Seller acknowledges that the amounts paid under this Agreement constitute the total amount due Seller, and that no further payments are due, owing or payable. Seller waives any other claims it might have for further payment or further compensation, and also waives any and all claims to any money on deposit in said action and further waives all attorney's fees, costs, disbursements, and expenses incurred in connection therewith.
13. WARRANTIES, REPRESENTATIONS, AND COVENANTS OF SELLER. Seller hereby warrants, represents, and/or covenants to Buyer that:
 - a. To the best of Seller's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.
 - b. To the best of Seller's knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements encroach on other properties.
 - c. Until the closing, Seller shall not do anything which would impair Seller's title to any of the Property.

- d. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument to which Seller's property may be bound.
 - e. Until the closing, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Paragraph 13 not to be true as of closing, immediately give written notice of such fact or condition to Buyer.
 - f. Seller, at the time of execution of this Agreement, is in legal possession of the Property in fee simple absolute and is the lawful owner of and has good, indefeasible title to the Property. Seller further represents and warrants that there are no leases or third parties with rights of possession in the Property who are not parties to this Agreement. To the extent such parties shall exist, Seller shall obtain their written consent to the TCE a form acceptable to Buyer.
14. INDEMNITY. The Parties agree to indemnify, defend and hold the other harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the performance of this Agreement.
15. COUNTERPARTS. This Agreement may be executed in counterparts, 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.
16. CONTINGENCY. The completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the Buyer herein. The execution of these documents and the delivery of same to Escrow Agent constitute said acceptance and approval.
17. NO BROKERS. Buyer and Seller each represents to the other that no brokers have been involved in this transaction. Buyer and Seller agree to indemnify one another against any claim, suits, damages and costs incurred or resulting from the claims of any person for any fee or remuneration due in connection with this transaction pursuant to a written agreement made with said claimant.
18. JURISDICTION AND VENUE. This Agreement shall be governed by and constructed in accordance with the laws of the State of California. The parties consent to the jurisdiction of the California Courts with venue in Riverside County.
19. ASSIGNMENT. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto. Buyer may freely assign any or all of its interests or rights under this Agreement or under the Escrow without the consent of Seller.
20. COOPERATION. Each party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably

necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

21. ENTIRE AGREEMENT, WAIVER AND MODIFICATION. This Agreement is the entire Agreement between the parties with respect to the subject matter of this Agreement. It supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth hereinabove.

MAILING ADDRESS OF BUYER

4080 Lemon Street, 3rd Floor
Riverside, CA 92501

BUYER

RIVERSIDE COUNTY TRANSPORTATION
COMMISSION, a public agency of the State
of California

By: _____
Anne Mayer, Executive Director

Approved as to Form:

By: _____
Steven C. DeBaun
Attorney For Riverside County
Transportation Commission

MAILING ADDRESS OF SELLER

3900 Main Street
Riverside, CA 92522

SELLERS

CITY OF RIVERSIDE, a California charter
city and municipal corporation

By: _____
City Manager

Attested to:

By: _____
City Clerk

Approved as to form:


By:  _____
~~Chief Assistant~~ City Attorney
Deputy

EXHIBIT "A"

A Temporary Construction Easement and incidents thereto over, upon and across that portion of Lot 193, shown by the Map of the Southern California Colony Association, in the City of Riverside, California, filed in Book 7 page 3, of Maps, Records of San Bernardino County, California, and those portions of Lots 2, 3 and Chase Road, 30 foot wide, shown by the Map of Rancheria de Pachappa, in the City of Riverside, California, filed in Book 2 page 38, of Maps, Records of Riverside County, California, described as follows:

BEGINNING at the Southwesterly terminus of Course "E" being the Southerly boundary of Parcel 1, described in a Director's Deed, to the City of Riverside, recorded December 22, 1967 as Instrument No. 113089 Official Records of Riverside County, California, cited therein as "South 69°42'24" West 53.22 feet"; thence along said course "E" North 69°44'31" East, 7.73 feet; thence North 3°09'47" East, 352.35 feet; thence North 35°49'09" West, 75.51 feet ; thence North 07°38'07" East, 88.77 feet to a point on the Southeasterly right of way of the Union Pacific Railroad, described by an Indenture to the San Pedro, Los Angeles & Salt Lake Railroad Company, recorded December 17, 1902 in Book 123 page 214, of Deeds, Records of Riverside County, California, said point also being on a non-tangent curve concave southeasterly having a radius of 3384.17 feet, a radial line bears South 39°04'57" East; thence southwesterly along said right of way and said non-tangent curve, 427.14 feet through a central angle of 7°13'54" to the Northerly right of way of the Riverside Upper Canal (33 feet wide); thence along said Northerly right of way, the following two courses, North 61°22'57" West, 182.88 feet; thence North 70°26'35" West, 40.56 feet; thence South 38°18'04" West, 34.85 feet to the Southerly right of way of said Riverside Upper Canal (33 feet wide); thence along said Southerly right of way the following two courses, South 70°26'35" East, 49.14 feet; thence South 61°22'57" East, 90.49 feet to the Easterly right of way of that strip of land described by an Indenture to the San Pedro, Los Angeles & Salt Lake Railroad Company, recorded May 18, 1903 in Book 163 page 229, of Deeds, Records of Riverside County, California; thence along said Easterly right of way South 58°33'53" West, 76.57 feet to the Northerly right of way of Panorama Road (formerly Chase Road) 15 feet half width; thence along said Northerly right of way, the following three courses, South 71°06'14" East, 283.27 feet; thence South 84°18'19" East, 135.03 feet; thence South 84°10'32" East, 8.06 feet to the beginning of a curve concave southwesterly having a radius of 115.00 feet; thence southeasterly along said curve, 178.72 feet through a central angle of 89°02'37" to the **POINT OF BEGINNING**.

CONTINUE

EXHIBIT "A"

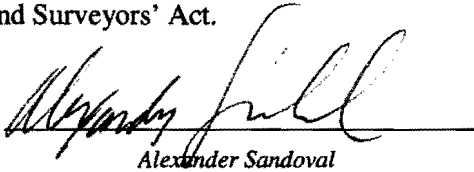
CONTINUED

Rights to the above described temporary easement shall cease and terminate on October 12, 2019. Said rights may also be terminated prior to the above date by Riverside County Transportation Committee upon notice to GRANTOR.

The distances used in the above description are on the California Coordinate System of 1983, Zone 6. Multiply all distances used in the above description by 1.0000273 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature


Alexander Sandoval

Date: July 24, 2017



EXHIBIT B

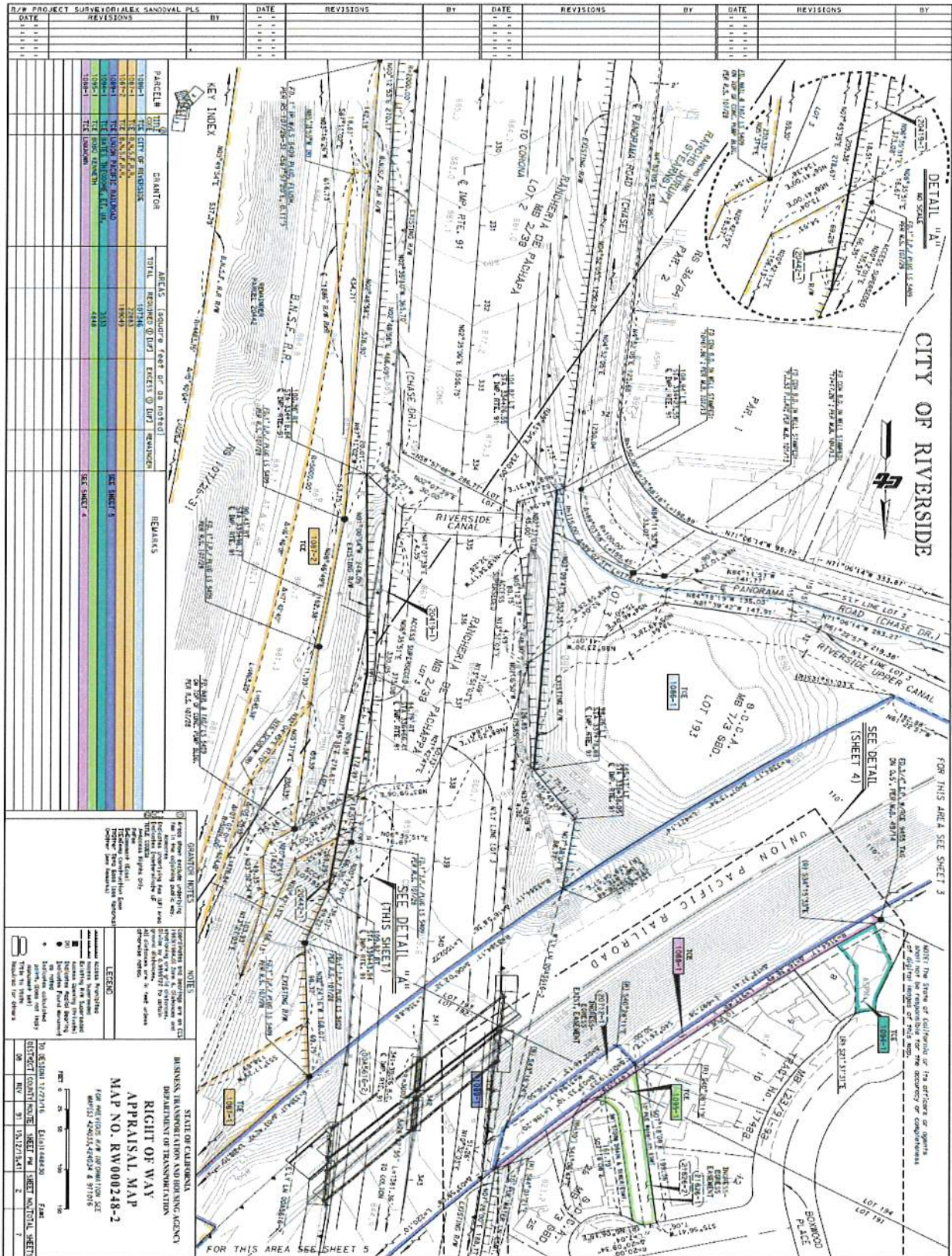


EXHIBIT C

RECORDING REQUESTED BY

WHEN RECORDED RETURN TO:

RIVERSIDE COUNTY TRANSPORTATION
COMMISSION
4080 Lemon Street, 3rd Floor
Riverside, California 92502-2208
Attn: Right of Way Department

FREE RECORDING:

This instrument is for the benefit of Riverside County Transportation Commission, and is entitled to be recorded without fee or tax. (Govt. Code 6103, 27383 and Rev. & Tax Code 11922)

APN: 219-182-006, 007, 016

Above Space for Recorder's Use

District	County	Route	Post	Number
08	Riv	91	19.30	1086

GRANT OF EASEMENT (Temporary Construction Easement)

CITY OF RIVERSIDE, a California charter city and municipal corporation (collectively "**Grantor**"), FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, hereby grants to **RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a public agency of the State of California, ("Grantee")**, its agents, representatives, successors and assigns, a temporary and non-exclusive construction easement and right of way over, on, under, in, across, along and through that portion of Grantor's property more particularly described in Exhibit "A" attached hereto ("**Easement Area**"), for the purpose of all reasonably necessary and convenient activities associated with construction of the Pachappa Underpass Project ("**Project**").

The easement described herein will expire on the date that is twenty-four (24) months from the date of Right of Way Certification or until completion of the Project, whichever occurs first.

DATED: _____, 20__

GRANTOR: CITY OF RIVERSIDE, a California
charter city and municipal
corporation

By _____

Name _____

Its _____

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)