

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 and City of Riverside, a California charter city and municipal corporation, as their interest appears of record ("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 proceed 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 **1295 S. Waterman Avenue, within the City of San Bernardino**, San Bernardino County, California, designated as Assessor Parcel Number(s) **0281-431-01** 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:

1. **Fee/Partial Take.** The fee interest in that certain portion of the Property consisting of approximately **385** square feet (hereinafter referred to as the "**Transfer Portion**") and more fully described and depicted in EXHIBIT A and EXHIBIT B to the Grant Deed attached hereto as EXHIBIT 2 and incorporated herein by this reference (hereinafter referred to as the "**Grant Deed**").

2. **Permanent Easement.** A permanent easement interest (that is, an easement for access, including maintenance and emergency vehicle access purposes, but never to be used for overnight parking or storage; hereinafter referred to as the "**Permanent Easement**") in that certain portion of Property consisting of approximately **478** square feet (hereinafter referred to as the "**Easement Area**") and more fully described and depicted in EXHIBIT A and EXHIBIT B to the Easement Deed attached hereto as EXHIBIT 3 and incorporated herein by reference

(hereinafter referred to as the "Easement Deed"), including, without limitation, any and all improvements located thereon, for the purpose of developing, constructing, operating and maintaining the Project. Seller has a water transmission line that diagonally crosses the north-east corner of the Permanent Easement Area. To avoid damaging the pipeline, SBCTA agrees that it will not use any heavy equipment not otherwise permitted on public roadways, and it will not place or operate any permanent structures, within a ten (10) foot radius of that north-eastern corner of the Permanent Easement Area, unless SBCTA obtains prior written approval from Seller.

3. **Temporary Construction Easement.** 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 4 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 **45,506** 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 transfer the Transfer Portion and 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 Transfer Portion and Temporary Construction Easement are being acquired (i) for public use and are 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 Transfer Portion, Permanent Easement, and Temporary Construction Easement. Seller agrees to sell the Transfer Portion, Permanent Easement, and 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 Transfer Portion, Permanent Easement, and the Temporary Construction Easement is **SIXTY THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$60,500.00)** ("**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. A concrete block fencing pilaster, 2 linear feet of wrought iron fencing, and 2 four foot high pipe posts will remain in place during construction.

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, as well as, subject to the limitations set forth in the TCE Grant, demolition of improvements and related activities, whether on-site or off-site, 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, including Twenty-four (24) consecutive months for demolition activities, as the same may be extended pursuant to Subsection 1.4.4 and/or Subsection 1.4.5 below; provided, however, that the Twenty-four (24) month period during which demolition activities may take place on the Property shall be limited to Twenty-four (24) months from the anticipated commencement of such demolition activities within the Temporary Construction Easement Area, as established by a notice given to Seller by or on behalf of Buyer pursuant to this Agreement. 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; and, similarly, Buyer or any one or more of its Representatives will send or otherwise provide to Seller written notice of the commencement of demolition activities within the Temporary Construction Easement Area at least seven (7) days prior to the commencement of such activities.

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, including, without limitation, any improvements demolished as permitted by this Agreement and/or the TCE Grant, 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, but not the period during which demolition activities may be performed, 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 \$5,041.67 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 \$168.06 per day; said amount will be paid to Seller in a lump sum upon completion of construction of the Project; provided however, that the demolition activities of Buyer and its Representatives shall be limited to the Twenty-four (24) month period specified above.

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 Transfer Portion, Permanent Easement, and 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 Transfer Portion, Permanent Easement, and 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 Grant Deed, Easement Deed, and 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 Grant Deed, Easement Deed, and 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 Transfer Portion, Permanent Easement, and 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 Transfer Portion, Permanent Easement, and 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 Transfer Portion, Easement Area, and 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 Transfer Portion, Permanent Easement, and 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 Certificates accepting the Grant Deed, Easement Deed, and 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 Grant Deed, Easement Deed, and 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 Cause the satisfaction and removal of all exceptions to title to the Transfer Portion representing monetary liens or encumbrances and, with respect to the Permanent Easement and the Temporary Construction Easement Area, obtain consents and subordination agreements from the holders of such liens or encumbrances, sufficient to assure that the Permanent Easement and 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 Easement Deed and/or 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 Grant Deed, Easement Deed, and TCE Grant, as well as any other instruments, as appropriate, delivered through Escrow.

2.9.4 Subject to Subsection 2.8.3 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 Transfer Portion, Easement Area, and Temporary Construction Easement Area be subject only to the Permitted Exceptions and that the Easement Deed and the TCE Grant be superior to any lien or encumbrance which, through foreclosure or other enforcement, could cause the easements 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 Transfer Portion, Easement Area, and Temporary Construction Easement Area subject only to the Permitted Exceptions and the Easement Deed and the TCE Grant, including the easement(s) granted thereunder, as senior to any monetary lien or encumbrance which, through foreclosure or other enforcement, could cause the Easement Deed and/or TCE Grant, including the easement(s) 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 Easement Deed and/or 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 Transfer Portion, Easement Area, and 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 Transfer Portion, Easement Area, and 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 Transfer Portion, Easement Area, and 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 Transfer Portion, Easement Area, and Temporary Construction Easement Area are, or any of them 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 Transfer Portion, Permanent Easement, and/or Temporary Construction Easement, including, without limitation, any improvements thereon, as Buyer may desire or deem appropriate, in Buyer's sole discretion, to determine the suitability of the Transfer Portion, Permanent Easement, and Temporary Construction Easement for Buyer's intended use. Buyer will enter the Transfer Portion, Permanent Easement, and/or Temporary Construction Easement pursuant to a Temporary Right of Entry Agreement in the form of EXHIBIT 5 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 Transfer Portion, Permanent Easement, and Temporary Construction Easement, 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 Transfer Portion, Permanent Easement, and Temporary Construction Easement, 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 Transfer Portion, Permanent Easement, and Temporary Construction Easement 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 Transfer Portion, Permanent Easement, and/or Temporary Construction Easement at all reasonable times prior to the Closing Date for the purpose of conducting such inspections and testing. In the event the Transfer Portion, Permanent Easement, and/or Temporary Construction Easement 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 Transfer Portion, Easement Area, and 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 Transfer Portion, Permanent Easement, and 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 Transfer Portion, Easement Area, and 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 Transfer Portion, Easement Area, and 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 Transfer Portion, Easement Area, and/or 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 Transfer Portion, Permanent Easement (including, without limitation, all rights thereunder as well as in and to the Easement Area), and 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Seller acknowledges that with respect to the sale of the Transfer Portion, Easement Area under or pursuant to the Easement Deed, and 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 Grant Deed, Easement Deed, and 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 Easement Deed and 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 Permanent Easement and the Temporary Construction Easement or either of them.

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 ITS 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

BY INITIALING BELOW, BUYER HEREBY WAIVES THE PROVISIONS OF SAID SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING ACKNOWLEDGMENTS, WAIVERS AND RELEASES SET FORTH IN THIS ARTICLE 7.

Buyer's Initials

8. REPRESENTATIONS AND WARRANTIES

8.1 **Seller's Representations, Warranties and Covenants.** Seller hereby represents, warrants and covenants to Buyer as of the date of this Agreement, and upon the Close of Escrow, as follows, all of which shall survive the Close of Escrow:

8.1.1 Seller is a public body and has the full power and authority to enter into and carry out the agreements contained in, and transactions contemplated by, this Agreement. The person(s) signing this Agreement and any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Seller.

8.1.2 There are no attachments, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other

debtor relief actions contemplated by Seller or filed by Seller, or to the best of Seller's knowledge, pending in any current judicial or administrative proceeding against Seller.

8.1.3 Seller has not entered into any other written contracts or agreements for the sale or transfer of any portion of the Property, and the Property is not subject to any outstanding right of first refusal, or purchase option, in favor of any person or entity, except Buyer.

8.1.4 To Seller's knowledge, Seller has received no written notice of any hazardous materials located on, under, or about the Property, except as disclosed by Seller to Buyer; and, to Seller's actual knowledge without having conducted any investigations, no violation of any environmental laws has occurred at the Property, except as disclosed by Seller to Buyer.

The material truth and accuracy of the foregoing representations and warranties shall be a condition of Buyer's obligations hereunder. Prior to the Close of Escrow, Seller shall notify Buyer of any facts or circumstances which are contrary to the foregoing representations and warranties.

8.2 Buyer's Representations and Warranties. Buyer hereby represents, warrants and covenants to Seller as of the date of this Agreement, and upon the Close of Escrow, as follows, all of which shall survive the Close of Escrow: Buyer has the full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by this Agreement. The person(s) signing this Agreement and any documents and instruments in connection herewith on behalf of Buyer have full power and authority to do so. This Agreement 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 5.

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
and City of Riverside, a California charter
city and municipal corporation, as their
interest appears of record**

By: _____

Name: _____

Title: _____

EXHIBIT LIST

- Exhibit 1 - Legal Description of Property [APN(s): 0281-431-01]
- Exhibit 2 - Grant Deed
- Exhibit 3 - Easement Deed
- Exhibit 4 - Grant of Temporary Construction Easement

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

Legal Description of Property
[APN(s): 0281-431-01]

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

PARCELS 1, 2, 3 AND 4 OF PARCEL MAP NO. 19487, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 245, PAGES 54 THROUGH 58 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS AMENDED BY CERTIFICATE OF CORRECTION NO. 2016-001, RECORDED AUGUST 18, 2016 AS INSTRUMENT NO. 2016-0334250 OF OFFICIAL RECORDS.

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

Grant Deed
[APN(s): 0281-431-01]

[attached behind this page]

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

Easement Deed
[APN(s): 0281-431-01]

[attached behind this page]

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

Grant of Temporary Construction Easement
[APN(s): 0281-431-01]

[attached behind this page]