

PROJECT: Pachappa Underpass Project
APN: 219-103-019, 219-182-012
RCPN: 1092, 1093 - A
Federal ID No.: 33-0072823

AGREEMENT FOR ACQUISITION OF TEMPORARY CONSTRUCTION EASEMENT

Title Order No.: 09201584 & 5

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

FOUR THOUSAND THREE HUNDRED FIFTY-FOUR DOLLARS
(\$4,354.00)

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 this Agreement for Acquisition of Temporary Construction Easement is fully executed ("Commencement Date"), and shall continue until completion of the Project, but no longer than six (6) 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. None

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.

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.

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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 Manger

Attested to:

By: _____
City Clerk

Approved as to form:

By:  _____
Senior Deputy City Attorney

EXHIBIT "A"

That certain portion of the Riverside Water Canal Company's Upper Canal, 33 feet wide, lying within Lot 171 of the lands of the Southern California Colony Association, in the City and County of Riverside, California, shown by a map on file in Book 7 page 3, of Maps, Records of San Bernardino County, California also shown by Map of Cuttle and Wilson's Subdivision, filed in Book 11 page 45, of Maps, Records of San Bernardino County, California and that portion of Brooks Street, 50 feet wide, vacated by Resolution No. 16454, recorded June 3, 1987 as Instrument No. 155520, Official Records of Riverside County, State of California, described as follows:

COMMENCING at the intersection easterly line of Lot 61, with the southerly line of Date Street, 50 feet wide, shown by said Map of Cuttle and Wilson's Subdivision; thence, the following 3 courses are along the easterly lines of Lots 61, 79 and that certain 15 foot wide Alley said easterly line also being the westerly line of said Upper Canal, shown by said Map of Cuttle and Wilson's Subdivision, along said easterly line, South $08^{\circ}54'01''$ West 83.76 feet to a curve concave easterly having a radius of 1,016.50 feet; thence southerly along said curve 192.42 feet through a central angle of $10^{\circ}50'46''$; thence South $1^{\circ}56'45''$ East 9.02 feet to the northerly corner of that certain triangular piece of land off the southeasterly portion of Lot 79, as described by an Indenture to the San Pedro, Los Angeles & Salt Lake Railroad Company, recorded January 19, 1903 in Book 123 page 124, of Deeds, Records of Riverside County, California said corner being the **POINT OF BEGINNING**; thence in a direct line, North $35^{\circ}56'19''$ East 54.71 feet, to a point on a line concentric with and distant easterly 33 feet measured radially from the westerly line of said Canal, a radial line to said point bears North $89^{\circ}57'20''$ West; thence, the following 3 courses are along the easterly line of said Canal, southerly along said concentric curve, 34.16 feet through a central angle of $01^{\circ}59'25''$; thence South $01^{\circ}56'45''$ East 10.34 feet; thence South $02^{\circ}38'42''$ West 42.10 feet to the northerly line of Brooks Street; thence North $60^{\circ}20'07''$ West, 19.33 feet, to a point on the easterly line of said Brooks Street vacated said point being on a non-tangent curve concave westerly having a radius of 3,274.17 feet a radial line to said point bears South $54^{\circ}00'35''$ East; thence southerly along said non-tangent curve 50.35 feet through a central angle of $00^{\circ}52'52''$ to the southerly line of Brooks Street; thence North $29^{\circ}39'53''$ East 25.00 feet to the centerline of Brooks Street; thence along said centerline North $60^{\circ}20'07''$ West 11.78 feet; thence North $29^{\circ}39'53''$ East 25.00 feet to the intersection of the easterly line of said Lot 79 with the northerly line of said Brooks Street; thence along said westerly line North $02^{\circ}38'42''$ East 23.95 feet to the **POINT OF BEGINNING**.

CONTINUE

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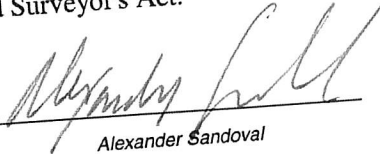
CONTINUED
EXHIBIT "A"

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.

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

Signature


Alexander Sandoval

Date: November 9, 2017



EXHIBIT "B"

That portion of Lot 192, of the Lands of the Southern California Colony Association, in the Jurupa Rancho, in the City of Riverside, California, shown by a map filed in Book 7, page 3 of Maps, Records of San Bernardino County, California, described as follows:

COMMENCING at the intersection of the northeasterly line of that certain real property described, as a strip of land of uniform width 220 feet, 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, with the southeasterly line of that certain real property described, as a strip of land of uniform width 100 feet, by an Indenture to the San Pedro, Los Angeles & Salt Lake Railroad Company, recorded January 19, 1903 in Book 123 page 224, of Deeds, Records of Riverside County, California, said intersection being on a non-tangent curve concave northwesterly having a radius of 3324.17 feet, a radial line to said intersection bears South 48°36'54" East; thence northeasterly along said southeasterly line and said non-tangent curve, 210.69 feet through a central angle of 03°37'53" to a point on the northwesterly line of the Upper Canal of the Riverside Water Company, by an Indenture to the Riverside Canal Company, recorded April 26, 1882 in Book 28, page 635, of Deeds, San Bernardino, California said point being the **POINT OF BEGINNING**; thence along said northwesterly line, North 02°38'42" east 63.99 feet to the southerly line of Brooks street; thence along said southerly line, South 60°20'07 East, 55.40 feet to a point on the westerly line of that strip of land 100 feet in width, described by a Deed to The Riverside Santa Ana and Los Angeles Railway Company, recorded June 14, 1886 in Book 48, page 25 of Deeds, Records of San Bernardino County, California, said point being on a non-tangent curve concave easterly having a radius of 2,342.01 feet, a radial line to said point bears North 66°42'54" West; thence along said westerly line and said non-tangent curve 50.34 feet through a central angle of 01°13'54" to the southeasterly line of the Upper Canal of the Riverside Water Company, by said Indenture to the Riverside Canal Company; thence (the remaining courses are along said Upper Canal of the Riverside Water Company) South 10°48'44" West, 114.05 feet; thence South 32°24'05" West, 88.93 feet; thence South 28°02'54" West, 60.89 feet; thence North 69°34'24" West, 3.32 feet; thence North 20°39'44" East 123.01 feet; thence North 10°48'44" East 136.97 feet to the **POINT OF BEGINNING**.

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 Commission upon notice to GRANTOR.

CONTINUED

EXHIBIT "B"

The distances used in the above description are based on the California Coordinate System of 1983, (1984.0)
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 Surveyor's Act.

Signature

Alexander Sandoval
Alexander Sandoval

Date: July 24, 2017



EXHIBIT C

