

**AN AGREEMENT BETWEEN SAN BERNARDINO COUNTY AND THE CITY OF RANCHO CUCAMONGA TO ALLOW THE EXERCISE OF JOINT POWERS FOR THE PURPOSE OF ACQUIRING REAL PROPERTY INTERESTS ASSOCIATED WITH THE ETIWANDA GRADE SEPARATION PROJECT IN THE CITY OF RANCHO CUCAMONGA**

THIS AGREEMENT is executed as of \_\_\_\_\_, 2022, between San Bernardino County (the “County”), a political subdivision of the State of California, and the City of Rancho Cucamonga (the “City”), a municipal corporation organized in accordance with the laws of the State of California (collectively, the “parties”).

**WITNESSETH:**

WHEREAS, the City has undertaken construction of the Etiwanda Grade Separation Project in the City of Rancho Cucamonga (the “Project”). The purpose of the Project is to widen and construct Etiwanda Avenue as a four-lane grade separated roadway over the Southern California Regional Railway Authority/Burlington Northern and Santa Fe Railroad (“SCRRA/BNSF”) San Gabriel subdivision, currently a two-lane at-grade crossing;

WHEREAS, upon completion, the Project will reduce vehicle delays and queuing, and improve mobility, safety, and level of service at the crossing. It will also provide for safe transit of pedestrians, bicyclists, vehicles, trucks, and trains and improve response times of first responders in the vicinity of the Project and surrounding areas;

WHEREAS, as part of the Project, the City requires and seeks to acquire certain real property interests (“Property Interests”) located within unincorporated San Bernardino County. The Property Interests are identified as:

A 45 square foot permanent road easement and two temporary construction easements for 686 square feet and 11 square feet, both for a term of twelve months, over portions of the real property owned by Southern California Edison Company and located at 9333 Etiwanda Avenue in unincorporated San Bernardino County and further identified as San Bernardino County Tax Assessor’s parcel Number 0229-291-23.

WHEREAS, the Property Interests are further described in Exhibits “A-1” through “A-3” and depicted on Exhibits “B-1” through “B-3” which are attached hereto and incorporated herein by this reference;

WHEREAS, the County and the City have a mutual interest in improving train, vehicle, and pedestrian traffic and promoting safety for the general public at the SCRRA/BNSF San Gabriel crossing and surrounding areas located within San Bernardino County;

WHEREAS, public agencies may, by agreement, jointly exercise any power common to them;

WHEREAS, the County and the City are public agencies within the meaning of Government Code § 6500 *et seq.* (“Act”) and possess the common power to acquire, construct, finance and maintain real property and buildings and facilities thereon for street widening, grade separation and related purposes;

WHEREAS, the County desires to consent to the acquisition of the Property Interests by the City located within unincorporated San Bernardino County, pursuant to California Code of Civil Procedure Sections 1240.140 (a) and (b), Streets & Highways Code Section 1810, and Government Code Section 6500 *et seq.*; and

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the parties do hereby agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1. Definitions.** Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified.

“Project” means the Etiwanda Grade Separation Project in the City of Rancho Cucamonga.

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

“Agreement” means this Agreement.

“County” means San Bernardino County.

“City” means the City of Rancho Cucamonga.

“Property Interests” means the following real property interests to be acquired by the City:

A 45 square foot permanent road easement and two temporary construction easements for 686 square feet and 11 square feet, both for a term of twelve months, over portions of the real property owned by Southern California Edison Company and located at 9333 Etiwanda Avenue in unincorporated San Bernardino County and further identified as San Bernardino County Tax Assessor’s Parcel Number 0229-291-23.

## **ARTICLE II GENERAL PROVISIONS**

**Section 2.1. Purpose.** This Agreement is made pursuant to the Act providing for the joint exercise of powers common to public agencies. The purpose of this Agreement is to acquire and maintain the Property Interests for street widening and grade separation and related purposes, and all uses necessary and convenient thereto. Each of the parties has the powers necessary to

accomplish the purposes of this Agreement. The foregoing purposes will be accomplished and the common powers exercised in the manner hereinafter set forth.

### **ARTICLE III ORGANIZATION**

**Section 3.1. Board of Supervisors and City Council.** Each of the parties hereto has been designated specific responsibilities and powers associated with accomplishing the purposes of this Agreement. The County's Board of Supervisors and the City Council of the City shall each be responsible for the review, consideration and approval of its respective public agency's actions in accomplishing the purposes of this Agreement.

**Section 3.2. Staffing.** The parties to this Agreement shall each provide staffing and administrative services as necessary to accomplish their individual obligations under this Agreement. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. The provisions of Section 6513 of the Act are hereby incorporated into this Agreement.

### **ARTICLE IV POWERS**

**Section 4.1. General Powers.** The parties to this Agreement shall exercise in the manner herein provided the powers common to each other and necessary to the accomplishment of the purposes of this Agreement.

**Section 4.2. Specific Powers.** As provided in the Act, the parties hereto shall have the power to acquire and construct on the Property Interests for street widening and grade separation purposes, and all uses convenient and necessary thereto.

The parties to this Agreement specifically authorize the City to do all acts necessary or convenient to effectuate the acquisition of the Property Interests to construct the Project, including, without limitation, by purchase, lease, gift, bequest, devise, or through the exercise of the power of eminent domain pursuant to California Code of Civil Procedure Sections 1240.140 (a) and (b), and Government Code Section 6500 *et seq.*

It is intended that the parties to this Agreement will proceed to do all acts necessary or desirable to accomplish the purposes of this Agreement.

**Section 4.3. Restrictions on Exercise of Powers.** The powers of the parties to this Agreement shall be exercised in the manner provided in the Act and shall be subject to the restrictions upon the manner of exercising such powers that are imposed upon the parties in the exercise of similar powers.

### **ARTICLE V**

## CONTRIBUTIONS; ACCOUNTS & REPORTS; FUNDS

**Section 5.1. Contributions.** The parties to this Agreement acknowledge that the City will advance all fees and costs associated with the acquisition of the Property Interests.

The parties to this Agreement may, but are not required to: (a) make additional contributions from their treasuries for any of the purposes set forth herein; (b) make payments of public funds to defray the cost of such purposes; (c) make advances of public funds for such purposes, such advances to be paid as provided herein; or (d) use their personnel, equipment or property in lieu of other contributions or advances.

**Section 5.2. Separate Liability For Debts, Liabilities and Obligations.** The parties to this Agreement shall only be liable for their separate debts, liabilities and obligations. Nothing in this Agreement shall be construed to bind any of the parties to this Agreement for the debts, liabilities or obligations of the others.

## ARTICLE VI TERM

**Section 6.1. Term.** This Agreement shall become effective upon execution of this Agreement by the respective representatives for the County and the City, and shall continue in full force and effect until it is terminated upon the earlier of: (a) the complete acquisition of the Property Interests by the City or (b) two years after completion of construction of the Project, unless modified in writing by the parties.

**Section 6.2. Disposition of Assets.** Upon termination of this Agreement, all Property Interests acquired by the City for the Project shall be vested in the City.

## ARTICLE VII MISCELLANEOUS PROVISIONS

**Section 7.1. Notices.** Notices hereunder shall be in writing and shall be sufficient if delivered to:

County of San Bernardino  
Attn: Director of Real Estate Services  
385 N. Arrowhead Drive, Third Floor  
San Bernardino, California 91245

With a copy to: Manager of Acquisitions and Right-of-Way  
385 N. Arrowhead Drive, Third Floor  
San Bernardino, California 91245

City of Rancho Cucamonga  
Attn: Jason Welday  
10500 Civic Center Drive  
Rancho Cucamonga, California 91730

**Section 7.2. Section Headings.** All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

**Section 7.3. Law Governing.** This Agreement is made in the State of California under the constitution and laws of the State of California, and is to be so construed.

**Section 7.4. Severability.** Should any portion of this Agreement be held by any court of competent jurisdiction to be invalid, unenforceable, void or voidable for any reason whatsoever, the validity and enforceability of the remaining portions shall not be affected thereby.

**Section 7.5. Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective parties to this Agreement.

**Section 7.6. Indemnification.** The parties to this Agreement agree to hold each other, their Board Members and Council Members, officers, directors, employees, agents and representatives harmless from all liabilities, losses, damages, costs and expenses, including, without limitation, legal fees and disbursements, incurred by reason of any claims or litigation relating to the purposes of this Agreement and arising from acts, occurrences or matters that took place during the effective period of this Agreement.

**Section 7.7. Integration.** This Agreement constitutes the entire understanding of the parties as it relates to the purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested to by their designated officers, as of the day and year first above written.

SAN BERNARDINO COUNTY

By: \_\_\_\_\_  
Curt Hagman, Chairman  
Board of Supervisors

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Aaron Gest, Deputy County Counsel

CITY OF RANCHO CUCAMONGA

By: \_\_\_\_\_  
John Gillison, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nicholas Ghirelli, City Attorney