

September 9, 2021
6845 Phelan Road #22,
Phelan CA 92371

RE : PHELAN ROAD INTERSECTION IMPROVEMENT PROJECT – TEMPORARY CONSTRUCTION EASEMENT
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ACQUISITION AGREEMENT

In consideration of the mutual covenants and agreements herein set forth, Jose F. Tapia (hereinafter referred to as SELLER), agree(s) to sell and convey to San Bernardino County, a body corporate and politic (hereinafter referred to as BUYER) a portion of property in temporary easement. This portion of real property to be acquired by temporary construction easement (hereinafter referred to as PROPERTY) is described in the attached deed(s) and exhibit(s) and which is (are) attached hereto and made a part hereof. Conveyance of said PROPERTY is by easement as set forth below and the PROPERTY valuation is summarized as follows:

Value of Temporary Construction Easement (2,789 SF [one year]): = \$500 (nominal)

Total Just Compensation: = **\$500 (nominal)**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SELLER and BUYER agree as follows:

1. The parties have herein set forth the whole of their agreement herein (this "Acquisition Agreement"). The performance of this Acquisition Agreement constitutes the entire consideration for said PROPERTY and shall relieve the BUYER, and its agent(s) of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvements.
2. BUYER agrees to pay SELLER for said PROPERTY and rights thereto the sum of **\$500** (FIVE HUNDRED AND 00/100 DOLLARS), which sums shall be paid to SELLER within thirty (30) days of receipt of the executed temporary construction easement.
3. BUYER and SELLER have agreed that included in the amount payable in paragraph 2, above, the SELLER is compensated in full for the actual possession and use of the Temporary Construction Easement identified for a period of one year. Said period to commence February 1, 2022August 16, 2021 and to terminate no later than February 1, 2023. In the event an extension of said term is required by BUYER, the BUYER shall have the option, exercisable upon notice to SELLER, to extend the Temporary Construction

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Easement Term for up to an additional two (2) months. If COUNTY exercises said option, the COUNTY shall pay to SELLER an additional \$500 (FIVE HUNDRED AND 00/100 DOLLARS). Such amount for the extended term shall be paid to SELLER within ninety (90) days after the termination of the extended term.

4. SELLER represents and warrants to BUYER that the PROPERTY is not subject to any lease or tenancy, and there is no party other than SELLER who has an interest in the PROPERTY. However, if there are any leases on all or any portion of the PROPERTY with a term that coincides with that of the Temporary Construction Easement, including extension options, the SELLER agrees to hold BUYER, and assigns, harmless and reimburse the BUYER for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of SELLER for a period exceeding 60 days.

5. SELLER agrees to use its best efforts to satisfy, of record, at or before conveying said PROPERTY and rights, all encumbrances and special assessments that are a lien against the PROPERTY, as BUYER may require. PROPERTY will be free and clear of all encumbrances except:
 - a. Covenants, conditions, restrictions, and reservations of record.
 - b. Easements or rights-of-way over said land for public or quasi-public utility or public street purposes, if any.

6. Upon recordation of the instrument conveying the PROPERTY to BUYER, if applicable, BUYER will request cancellation of the real property taxes for the PROPERTY conveyed pursuant to Section 4986, California Revenue and Taxation Code, as amended. SELLER retains the right to apply to the County Tax Collector for refund of taxes paid for the period after closing pursuant to Revenue and Taxation Code Section 5096.7. The taxing authority will notify SELLER of any refund due SELLER resulting from the sale of the PROPERTY after a review and any subsequent adjustment of the property tax assessment by the County Assessor.

7. SELLER agrees that BUYER may, notwithstanding the prior acceptance of this Acquisition Agreement, acquire title to said PROPERTY and rights by condemnation or other judicial proceedings, in which event SELLER agrees to cooperate with BUYER in the prosecution of such proceedings; SELLER agrees that the consideration hereinabove stated shall be the full amount of just compensation, inclusive of interest, for the acquisition of said PROPERTY and rights; SELLER agrees that the consideration recited in paragraph 2 hereof constitutes the full amount of the purchase price for the PROPERTY and rights and shall be prorated among all persons having an interest in this PROPERTY as their respective interests may appear.

8. Unless a prior Possession and Use Agreement is executed by BUYER and SELLER, BUYER shall not occupy the PROPERTY prior to the commencement of the temporary construction easement.

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SELLER hereby represents and warrants that during the period of SELLER's ownership of the PROPERTY, there have been no disposals, releases or threatened releases of hazardous substances or hazardous wastes on, from, or under the PROPERTY. SELLER further represents and warrants that SELLER has no knowledge of any disposal, release, or threatened release of hazardous substances or hazardous wastes on, from, or under the PROPERTY which may have occurred prior to SELLER taking title to the PROPERTY.

The purchase price of the PROPERTY acquired in this transaction reflects the fair market value of the PROPERTY without the presence of a Hazardous Substance Condition. If the PROPERTY being acquired is found to be contaminated by the presence of a Hazardous Substance Condition which requires remediation, mitigation or cleanup under Federal or State law, BUYER may elect to recover its remediation, mitigation and cleanup costs from those who caused or contributed to the contamination. SELLER agrees to grant to BUYER, but only to the extent necessary (SELLER may reserve equal or greater rights), any rights to require/recover remediation, mitigation or cleanup costs it may have against any person or entity, including but not limited to SELLER, who may have caused or contributed to such contamination.

11. All terms and conditions with respect to this Acquisition Agreement are expressly contained herein and SELLER agrees that no representative or agent of BUYER, has made any representation or promise with respect to the purchase of the PROPERTY or this Acquisition Agreement not expressly contained herein.

12. The parties to this contract shall, pursuant to Section 21.7 (a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Section 50.3.

13. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity that is the subject of this contract.

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[SIGNATURES ON THE FOLLOWING PAGE]

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The foregoing ACQUISITION AGREEMENT is subject to approval by the Board of Supervisors of San Bernardino County and shall become effective and contractually binding only upon Board of Supervisors approval at a properly noticed public meeting at which a quorum of the Board of Supervisors was present, and execution by a duly authorized County of San Bernardino officer, and SELLER approval and execution.

SELLER(s):

By: _____
Date

By: _____
Date

BUYER: County of San Bernardino

By: Curt Hagman, Chairman of the Board of Supervisors _____
Date