

RIGHT OF WAY CONTRACT

(Rev. 9/25)

PROJECT	WORK ORDER NO.	PROJECT PARCEL #	APN
Baker Blvd Over the Mojave River Project	H14278		

This ACQUISITION AGREEMENT ("Agreement") is made by and between _____, ("Grantor"), and San Bernardino County, a body corporate and politic of the State of California ("Grantee") each of them a "Party" and jointly the "Parties" as of the date the last of the parties executes this Agreement.

RECITALS

- A. Grantor is the fee owner of certain real property described as _____, commonly identified as APN _____ ("Grantor's Property").
- B. Grantee intends to complete a public project known as Baker Boulevard Over the Mojave River Project ("Project"), which generally consists of replacing the existing two-lane timber bridge on Baker Boulevard crossing over the Mojave River, with a new four lane structure.
- C. To complete the Project, the Grantee seeks and Grantor is willing to grant and convey to the Grantee a [permanent/temporary construction] easement ("Easement") over a portion/entirety of the Grantor's Property ("Easement Area"), as legally described and depicted in the plat[s] on Attachment "1".

AGREEMENT

1. In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:
- (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the Grantee of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) The Easement is necessary for County purposes and public use for which Grantee has the authority to exercise the power of eminent domain.
- (C) Grantee has not adopted a resolution of necessity nor taken any action to commence any eminent domain proceeding to acquire the Easement related to the Project.
- (D) Both Grantor and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain

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litigation. The compensation set forth herein for the property is voluntary in compromise and settlement, in lieu of such litigation.

- (E) The parties to this Agreement shall, pursuant 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. Part 21 and 28 C.F.R. Section 50.3.

Further, 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 Agreement.

2. Payment and Just Compensation

- (A) Grantee agrees to pay Grantor for said Easement and rights thereto the total sum of \$_____ (_____) ("Just Compensation"), which is calculated as set forth below. The Just Compensation shall be paid to Grantor within sixty (60) days after the latest to occur of the following: (i) approval of the acquisition of the Easement by the Grantee's Board of Supervisors ("Board") or the Board's Designee, (ii) mutual execution of this Agreement; and (iii) Grantor's execution of the Easement.

- (B) Amount Established as Just Compensation

Value of Grant of Easement (E- _ ; ____ sq. ft.)	=
\$_____	
Value of Temporary Construction Easement (TCE- _ ; ____ sq. ft.)	=
\$_____	
Administrative Settlement Amount (if applicable)	=
\$_____	
Subtotal	=
\$_____	
AMOUNT ESTABLISHED AS JUST COMPENSATION:	=
\$_____	

- (C) It is understood and agreed that the amount payable in Clause 2(A) above includes compensation in full for the actual possession and use of the Temporary Construction Easement identified as { Parcel # } for the period commencing on { Certification Date } and terminating on { Date on Legal Description }. This easement may also be terminated prior to the above date by the Grantee upon written notice to the Grantor. Written notification shall be given to the Grantor at the address listed on file pursuant to Section 10 of this Agreement.

- (D) [If applicable.] In addition to the Value of the Easement, it is agreed by and between the parties hereto that the amount in Paragraph 2(A) above includes

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the sum of \$_____, identified as an Administrative Settlement Amount. This Administrative Settlement represents the mutually agreed consideration necessary to resolve this acquisition in a timely manner and avoid potential delay, litigation, or other project delivery impacts. The determination of this Administrative Settlement is supported by written justification in the Grantee's parcel acquisition file, consistent with the procedures set forth in the Caltrans Right of Way Manual and in compliance with 49 CFR section 24.102(i).

- (E) Grantor agrees to use its best efforts to satisfy, of record, at or before conveying the Easement and the rights therein, all encumbrances and special assessments that are a lien against the Easement Area, as Grantee may require.
- (F) Grantor agrees that Grantee may, notwithstanding the prior acceptance of this Agreement, acquire easement rights to the Easement Area by condemnation or other judicial proceedings, in which event Grantor agrees to cooperate with Grantee in the prosecution of such proceedings; Grantor agrees that the consideration hereinabove stated comprises the full amount of Just Compensation, inclusive of interest, for the acquisition of the Easement; Grantor agrees that the Just Compensation set forth in this Agreement herein constitutes the full Just Compensation amount for the Easement Area and the respective rights therein, which shall be prorated among all persons having an interest in the Easement Area, as their respective interests may appear; and Grantor agrees that the Just Compensation shall be in full satisfaction of any and all claims of Grantor for payment for the rights in the Easement and to use the Easement Area.
- (G) Grantee agrees to pay all escrow and recording fees, including any and all notary fees incurred in this transaction and, if title insurance is desired by the Grantee, the premium charged therefor. Said escrow and recording charges shall not, however, include documentary transfer tax.
- (H) Grantor shall satisfy, at or before the Close of Escrow, any bond demands, delinquent taxes (together with penalties and interest thereon), and any delinquent or unpaid assessments that have become a lien as of the Close of Escrow, other than taxes for the year in which this escrow closes. The term "Close of Escrow" shall mean the consummation of the transaction contemplated by this Agreement to occur through the escrow including Grantor's conveyance of the Easement to the Grantee.
- (I) Grantee shall not be responsible for payment or cancellation of such obligations. The assessments remain the sole obligation of the Grantor, and, as between the assessing entity and Grantor, no contractual obligation is created requiring Grantee to pay them. Grantee shall also have the authority to deduct and pay from the amount shown in Paragraph 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, an/or delinquent and unpaid non-delinquent assessments which have become a lien at the Close of Escrow. The parties hereto agree that Grantee, in acquiring the Easement

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subject to any unpaid assessments, is not assuming responsibility for payment or subsequent cancellation of such assessments. The assessments remain the obligation of the Grantor; and, as between State and Grantor, no contractual obligation has been made requiring their payment.

- (J) Grantee shall comply with any applicable state or federal laws, regulations, orders, including, but not limited to Revenue and Taxation Code Section 18662.
3. This transaction will be handled through an escrow with Title Company Name and Address ("Escrow Holder").
 4. Any or all moneys payable under this Agreement up to and including the total amount of unpaid principal and interest on note secured by mortgage or deed of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed or mortgage, shall, upon demand, be made payable to the mortgagee or beneficiary(ies) entitle thereunder, said mortgagee(s) or beneficiary(ies) to furnish Grantor with good and sufficient receipt showing said moneys credited against the indebtedness secured by said mortgage or deed of trust.
 5. Grantor warrant(s) that there are no oral or written leases on all or any portion of the Easement Area exceeding a period of one month, and the Grantor further agrees to indemnify, defend (with counsel approved by Grantee), and hold the Grantee harmless and reimburse the Grantee for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month.
 6. Grantor shall indemnify, defend (with counsel reasonably approved by Grantee) and hold harmless Grantee and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including (without limitation): (1) the acts, errors or omissions of any person and for any costs or expenses (including attorneys' fees) incurred by Grantee on account of any claim except where such indemnification is prohibited by law; and/or (2) all responsibility, liability, judgements, penalties, consultants fees, attorneys' fees, any other cost and expenses, and claims for damages or injuries to persons, the environment, or property resulting from the existence or use of hazardous materials which are present on Grantor's Property as of the closing date. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. Grantor's indemnification obligation applies to Grantee's "active" as well as "passive" negligence but does not apply to Grantee's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. This Section shall survive the Close of Escrow or earlier termination of this Agreement.
 7. The Grantor agrees that no improvements, other than those already on the property, shall be placed thereon; and the planting of any crops, trees, or shrubs, or alterations, repairs, or additions to existing improvements which may hereafter

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be placed thereon are at Grantor's risk and without expectation of payment if removed by Grantee.

8. Hazardous Substances or Hazardous Wastes

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

(B) The acquisition price of the property being acquired in this transaction reflects the fair-market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the Grantee may elect to recover its cleanup costs from those who caused or contributed to the contamination. Grantor agrees to grant to Grantee, but only to the extent necessary (Grantor 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 Grantor, who may have caused or contributed to such contamination.

9. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement the right of possession and use of the Easement Area by the Grantee or its agents, employees, contractors, consultants, and assigns, including the right to remove and dispose of existing improvements thereon, shall commence on { *INSERT R/W CERTIFICATION DATE ONLY as the TCE and Permanent Easement Start Date* }, provided that the amount of funds shown in Paragraphs 2(A) and 2(B) herein are paid to Grantor. The amount shown in Paragraphs 2(A) and 2(B) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said commencement date for the respective interests in the Easement Area.

10. All notices or demands pursuant to this Agreement shall be given in writing by either party hereto to the other in person, by United States Mail (postage pre-paid), return receipt requested, or by reputable overnight courier service, and addressed to Grantee, as noted below, and to Grantor, whose address and email address shall be provided by Grantor in writing to Grantee prior to execution of this Agreement. Notice shall be deemed delivered on the date received or the date the recipient refuses to accept receipt. A courtesy copy of any notices or demands delivered in accordance with this paragraph shall be concurrently sent via e-mail to the e-mail address as agreed in this Paragraph, provided that such courtesy e-mail is not intended, nor shall it be deemed to substitute as the effective means of notice or alter the effective date of such notice. Either party may change its address for delivery of any notice or demand by giving written notice

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to each party. Also, Grantor shall notify the Grantee in writing within one (1) day of any property transfers.

To the Grantor at:

On file with Grantee.

To the Grantee at:

San Bernardino County
c/o Real Estate Services Department
Attention: Brandon Ocasio, Manager of Acquisitions
385 North Arrowhead Avenue, 3rd Floor San Bernardino, CA 92415-0180
Courtesy copy via email at: brandon.ocasio@res.sbcounty.gov

11. It is understood and agreed by and between the parties hereto that payment in Paragraph 2(A) above includes, but is not limited to, payment for _____ which are considered to be part of the realty and are being acquired by the Grantee in this transaction.
12. Cost to Cure (if applicable)
It is understood and agreed by and between the parties hereto that included in the amount payable under Paragraph 2(A) above is payment in full to compensate Grantors for the expense of performing the following work: _____
13. The Grantor agrees that no improvements, other than those already on the property, shall be placed thereon; and the planting of any crops, trees, or shrubs, or alterations, repairs, or additions to existing improvements which may hereafter be placed thereon are at Grantor's risk and without expectation of payment if removed by Grantee.
14. The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Grantor. Grantee must approve any assignment of this Agreement by Grantor. Governing law applicable to this Agreement is the State of California.
15. The Parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

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16. Levine Act - Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439) – Note: only applies to acquisitions more than \$50,000

Grantor (also referred to in this Paragraph and Attachment 2 as "Contractor") has disclosed to the County using Attachment 2 – Levine Act - Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439), whether it has made any campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Agreement was approved by the Board of Supervisors. Grantor acknowledges that under Government Code section 84308, Grantor is prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of this Agreement.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$500 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

17. No Withholding as Foreign Grantor. Grantor represents and warrants to Grantee that Grantor is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code section 1445 and that it will deliver to Grantee on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

18. Information Report. Escrow Holder shall file and Grantor and Grantee agree to cooperate with Escrow Holder and with each other in completing any report ("Information Report") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Grantor and Grantee also agree that Grantor and Grantee, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that

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neither Grantor nor Grantee shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information

19. The Recitals are incorporated into this Agreement by reference.
20. All terms and conditions with respect to this Agreement are expressly contained herein and Grantor agrees that no representative or agent of Grantee, has made any representation or promise with respect to this Agreement not expressly contained herein.
21. In the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
22. Time is of the essence in performance of this Agreement and of each of its provisions.
23. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under the indemnification provisions in Paragraphs 5 and 6 of this Agreement.
24. The acquisition of the Easement is subject to approval by the Grantee's Board of Supervisors, or the Board's authorized designee, which shall be required prior to the execution of this Agreement by the Grantee's authorized signatory below. Until such time that said approval is obtained and Grantee has accepted said interests, this Agreement and Easement shall be of no legal effect.

[Signatures on following page]

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In Witness Whereof, the parties have executed this Agreement the day and year first above written.

GRANTOR:

By: _____

Date

By: _____

Date

GRANTEE: San Bernardino County

By: _____

Director
Real Estate Services Department

Date

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

ATTACHMENT 1



ATTACHMENT 2

Levine Act –

Campaign Contribution Disclosure

(formerly referred to as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

DEFINITIONS

Actively supporting or opposing the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

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1. Name of Contractor: _____
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?
Yes ☐ If yes, skip Question Nos. 3-4 and go to Question No. 5 No ☐
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: _____
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

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9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer involved with this Contract within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☐

Yes ☐ If **yes**, please provide the contribution information in Question 11.

10. Has an agent of Contractor made a campaign contribution of any amount to any member of the San Bernardino County Board of Supervisors or other elected officer involved with this Contract while award of this Contract is being considered?

No ☐ If no, please skip question 11.

Yes ☐ If **yes**, please provide the contribution information in Question 11.

11. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor acknowledges that agents are prohibited from making any campaign contributions, regardless of amount, to any member of the Board of Supervisors or other County elected officer involved with this Contract, while award of this Contract is being considered and for 12 months after a final decision by the County. Contractor understands that the other individuals and entities (excluding agents) listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer involved with this Contract, while award of this Contract is being considered and for 12 months after a final decision by the County.