

**RIGHT OF WAY CONTRACT STATE HIGHWAY**

RW 8-3 (Rev. 6/95)

District	County	Route	P.M. (KP)	E. A.	Name	Parcel
8	SB	SR-210	R25.0/R33.2	08-0C70U	San Bernardino County Flood Control District, a body corporate and politic, of the State of California	1191-121-35

San Bernardino County Flood  
Control District, a body  
corporate and politic, of the State of  
California

Grantor

**RIGHT-OF-WAY CONTRACT -- STATE HIGHWAY**

Grantor owns the real property identified as the vacant land, adjacent to and south of 6678 Robinson Road, in the City of Highland, in the County of San Bernardino, Assessor Parcel Number 1191-121-35 (the "Property"). A portion of the Property is needed for future maintenance of a sound wall in connection with the SR-210 Improvements Project, a public project designed to improve the operational efficiency of the freeway by providing one additional lane in each direction, (the "Project"). An Access Easement Deed (Exhibit "1") to the State of California ("State"), covering the property as described and depicted in the attached Exhibit "1" (the "Property Interest") has been executed and delivered to Kari Anvick, Right-of-Way Agent for Epic Land Solutions, Inc acting on behalf of SBCTA.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement ("Agreement"). The performance of this Agreement constitutes the entire consideration and shall relieve SBCTA and the State of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) SBCTA requires said Property Interest described in Exhibit "1" for the Project. SBCTA has the authority to exercise the power of eminent domain.
- (C) Both Grantor and SBCTA recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property Interest by eminent domain litigation. The compensation set forth herein for the Property Interest is in compromise and settlement, in lieu of such litigation.
- (D) It is agreed that SBCTA shall record the accepted Access Easement Deed at the San Bernardino County Recorder's Office. This transaction will be handled through an internal escrow.
2. SBCTA shall:
  - (A) Pay the undersigned Grantor the sum of ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00) for the Property Interest conveyed by the above document upon SBCTA's receipt of the executed Access Easement Deed.
  - (B) Pay all escrow and recording fees incurred in this transaction, and if title insurance is desired by SBCTA, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax.

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3. **FULL AND COMPLETE SETTLEMENT.** Grantor hereby acknowledges that it is the sole and lawful owner of the Property and the compensation paid to Grantor through this Agreement constitutes the full and complete settlement of any and all claims against SBCTA, the State of California Department of Transportation, and the City of Highland (collectively “Releasees”) by reason of the Project and/or acquisition of the Property Interest, including, but not limited to, any and all rights or claims that Grantor had, currently has or may in the future have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation, except as provided herein. Grantor, on behalf of itself and its successors and assigns, further knowingly and voluntarily waives and expressly releases and discharges Releasees and any and all of Releasees’ employees, agents, officers, servants, representatives, contractors, attorneys, partner agencies and assigns, from liability in regard to any claims for the following: pre-condemnation damages, inverse condemnation, lost rents, severance damages, damage to or loss of improvements pertaining to the realty, machinery, fixtures, inventory, equipment and/or personal property, interest, any right to repurchase, leaseback, or receive any financial gain from, the sale of any portion of the Property, any right to challenge the adoption of a resolution of necessity, any right to receive any notices pursuant to Code of Civil Procedure section 1245.235, any right to enforce any obligation pursuant to the Eminent Domain Law, any other rights conferred upon Grantor pursuant to the Eminent Domain Law, and claims for litigation expenses, attorney’s fees, statutory interest and/or costs. Grantor further consents to the dismissal of any Eminent Domain proceeding that is filed pertaining to the Property and further waives all attorney’s fees, costs, claims to money on deposit, disbursements and expenses in connection with the dismissal of said proceeding.
4. The parties intend that this Agreement will result in a full, complete and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them as to the acquisition, possession and/or use of the Property Interest, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of any rights, damages, compensation or benefits to which Grantor is, or may be, entitled is intended to be full and complete. Accordingly, except as provided herein:
  - (A) Pursuant to the releases set forth in this Agreement, Grantor specifically waives the provision of section 1542 of the Civil Code of the State of California which provides:

“A general release does not extend to claims which 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.”
  - (B) Grantor represents and warrants that it understands the effect of this waiver of section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of its choice.
5. Grantor represents and warrants that it is the fee simple owner of the Property and that it has the right to convey the Property Interest. Grantor represents and warrants that it has made no assignment of any interest in the Property.
6. Grantor acknowledges that there are no oral or written leases on all or any portion of the Property exceeding a period of one month.
7. It is understood and agreed by and between the parties hereto that included in the amount payable under Clause 2(A) above is payment in full to compensate Grantor for all site improvements within the Property Interest. The fence that is owned by Grantor and located within the Property Interest, as well as the trees within the Property Interest, will be protected in place or replaced at the end of construction.
8. It is understood and agreed by and between the parties hereto that payment as provided in Clause 2(A) includes, but is not limited to, payment for any and all damages, and any and all damages which may accrue to Grantor’s remaining property by reason of its severance from the property conveyed herein and the construction and use of the proposed Project, including, but not limited to, any expense which Grantor may incur in restoring the utility of the remaining property. This release is not intended to and shall not extend to unanticipated physical damage caused by construction of the Project.

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9. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by SBCTA, including the right to remove and dispose of improvements, shall commence on the date the amount of funds as specified in Clause 2(A) are paid in full to Grantor and the Access Easement Deed has been executed, delivered and recorded in the official records of the County of San Bernardino. The amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.
10. Any notice either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by registered or certified mail, return receipt requested. If by mail, service shall be deemed to have been received by such party at the time the notice is delivered to the following addresses:

**To Grantor:**

San Bernardino County Flood Control District  
825 E. 3<sup>rd</sup> St  
San Bernardino CA 92415-0835  
Attn: Right of Way Section

**To SBCTA:**

1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410-1715  
Attn: Paula Beauchamp  
Director of Project Delivery

**With a copy to:**

Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626  
Attn: Craig Farrington/Alyson Suh

11. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and/or assignees. SBCTA may freely assign any or all of its interests or rights under this Agreement.
12. Grantor represents and warrants that during the period of Grantor's ownership of the Property, Grantor has no knowledge of any disposal, release or threatened release of hazardous substances or hazardous wastes on, from, or under the 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 Property which may have occurred prior to Grantor taking title to the Property.

The acquisition price of the Property Interest being acquired in this transaction reflects the full and complete settlement of the Property Interest without the presence of contamination. If the Property Interest being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, SBCTA may elect to recover its clean-up costs from those who caused or contributed to the contamination including, but not limited to, Grantor.

13. It is understood and agreed that the fully executed Access Easement Deed shall be recorded in the Recorder's Office for the County of San Bernardino.
14. SBCTA reserves the right to cancel escrow and terminate this Agreement if at any time SBCTA determines that the Property Interest is no longer needed for the Project.

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- 15. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement and may not be modified except by an instrument in writing signed by the party to be bound thereby.
- 16. If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.
- 17. Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.
- 18. This Agreement may be executed in counterparts, including by facsimile, 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.

*In Witness Whereof*, the Parties vested have executed this Agreement the day and year set forth below.

SAN BERNARDINO FLOOD CONTROL DISTRICT, a body corporate and politic of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA)

APPROVED AS TO FORM:

By: \_\_\_\_\_

Raymond W. Wolfe, PhD  
Executive Director

By: \_\_\_\_\_

Craig Farrington/Alyson Suh  
Attorneys for San Bernardino County  
Transportation Authority

Date: \_\_\_\_\_

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Exhibit 1