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- San Bernardino County Transportation Commission
 - San Bernardino County Transportation Authority
 - San Bernardino County Congestion Management Agency
 - Service Authority for Freeway Emergencies
-

AGENDA ITEM 31A

Board of Directors Meeting

February 1, 2012

11:00 am

Location:

San Bernardino Associated Government
Santa Fe Depot – SANBAG Lobby 1st Floor
1170 W. 3rd Street
San Bernardino, CA

Discussion Calendar

31A. Interstate 10 Westbound Lane Addition Project Additional Easement and Joint Use Agreement

1. Determine that there is a need to take immediate action on this new agenda item per Govt. Code 54952.2(b)(2). (2/3 vote required.)
2. Authorize Executive Director to approve appraisals and offers for permanent and temporary right of way required for the I-10 Westbound Lane Addition Project on parcels APN 0300-021-25 and 0300-021-02 and approve and sign acquisition agreements and documents as required to secure said rights, in the basic form attached hereto as Exhibit C, subject to Legal Counsel review and approval, at a total not to exceed limit of \$50,000.00 Measure I Valley Major Projects funds with a report back to the Board upon completion of these activities. **Garry Cohoe**

This item is being brought before you as an exception to the Brown Act. Staff was advised of a dangerous slope condition associated with the I-10 Westbound Lane Addition project after the agenda was posted. To stabilize the slope, the right-of-way to allow for the regrading needs to be purchased as soon as possible.



- San Bernardino County Transportation Commission
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Minute Action

AGENDA ITEM: 31A

Date: February 1, 2012

Subject: Interstate 10 Westbound Lane Addition Project Additional Easement and Joint Use Agreement

- Recommendation:***
1. Determine that there is a need to take immediate action on this new agenda item per Govt. Code 54952.2(b)(2). (2/3 vote required.)
 2. Authorize Executive Director to approve appraisals and offers for permanent and temporary right of way required for the I-10 Westbound Lane Addition Project on parcels APN 0300-021-25 and 0300-021-02 and approve and sign acquisition agreements and documents as required to secure said rights, in the basic form attached hereto as Exhibit C, subject to Legal Counsel review and approval, at a total not to exceed limit of \$50,000.00 Measure I Valley Major Projects funds with a report back to the Board upon completion of these activities.

Background: **This item is brought as an exception to the agenda requirements of The Brown Act:** On January 30, 2012, SANBAG staff was advised of a dangerous slope condition that is impacting the construction of the I-10 Project. As the Board Agenda was posted on January 26, 2012, staff was not aware of the need for this additional item prior to the posting of the Board's agenda. Construction has been underway on the Interstate 10 (I-10) Westbound Lane Addition Project since March, 2011. Part of the required work is adding in a large retaining wall needed to accommodate the lane addition between Wabash Avenue and Yucaipa Boulevard. In order to construct this wall, a temporary construction easement was

*

Approved
 Board of Directors

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

BRD1202g-das

Attachments: BRD1202G1-das, BRD1202G2-das, and BRD1202g3-das

acquired from the abutting property owner. As the contractor excavated out the hillside to allow for the construction of the wall, several portions of the remaining hillside area behind the wall began to slide. Exhibit "A" includes pictures of the slides. The debris falling from the hillside has been contained by the temporary construction K-rail.

Construction in this area was halted and geotechnical engineers were brought in to evaluate the conditions and recommend remedial action. Yesterday the geotechnical engineers recommended that to stabilize the slope, the entire slope be regraded in the areas of the slide. This geotechnical recommendation has been concurred to by the construction staff involved with the project. Regrading the slope needs to be completed as soon as possible so as to prevent future slides that may impact public safety on the freeway, allow safe construction of the retaining wall and avoid delay of the contractor which may result in a contractor claim. In order to accommodate this additional excavation, additional right of way is required from the abutting property owner. SANBAG staff is therefore requesting this item be accepted for Board consideration as an additional agenda item even though it was not posted 72 hours prior to the Board meeting as required by The Brown Act.

The authority contained in Recommendation No. 2, if approved by the Board, will allow for a process to acquire the necessary right of way to include preparing a new appraisal of the required property (Exhibit "B" shows the approximate limits of property required) which will be concurred by SANBAG's Right of Way advisor. Upon this concurrence, the Executive Director would be authorized to approve this appraisal; be authorized to make an offer to purchase this right of way for an amount not-to-exceed \$550,000; and be authorized to execute a purchase and sale agreement to secure the necessary right of way. Staff's recommendation of the amount of \$50,000 is based upon a 2-year old appraisal for the acquisition of the property first acquired from this same property owner for the project. A new appraisal will be obtained to determine current market value and for negotiations with the property owner. Upon completion of the purchase, staff will provide a report back to the Board detailing the specifics of such purchase.

Staff recommends approval of this item.

Financial Impact: This item is consistent with the adopted Fiscal Year 2011/2012 budget, Task No. 86212000.

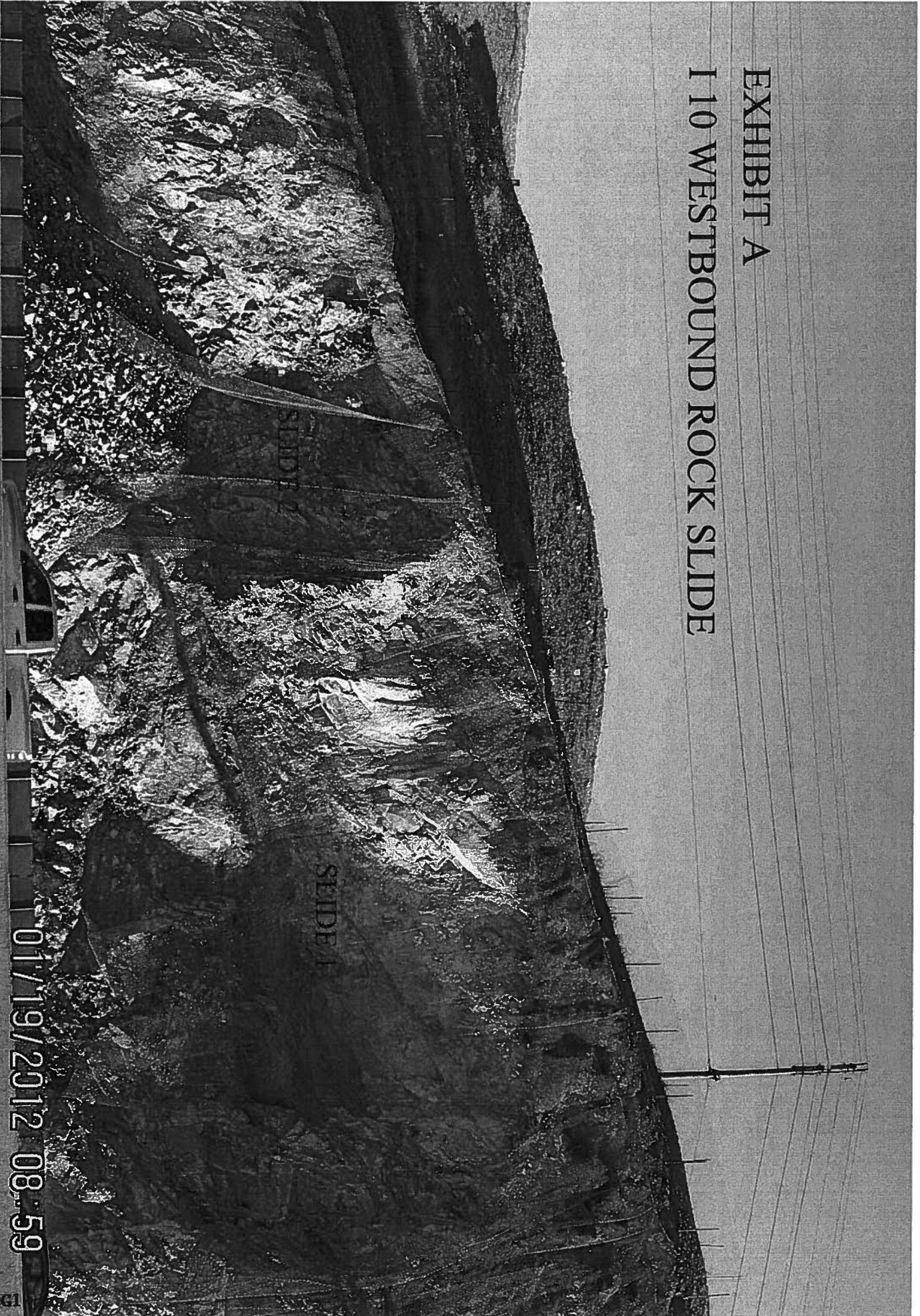
Reviewed By: This item has not had any prior committee review and is being requested for review as an urgency item. This item has been reviewed with SANBAG Legal Counsel.

Responsible Staff: Garry Cohoe, Director of Project Delivery

BRD1202g-das

Attachments: BRD1202G1-das, BRD1202G2-das, and BRD1202g3-das

EXHIBIT A
I 10 WESTBOUND ROCK SLIDE



SLIDE 2

SLIDE 1

01/19/2012 08:59

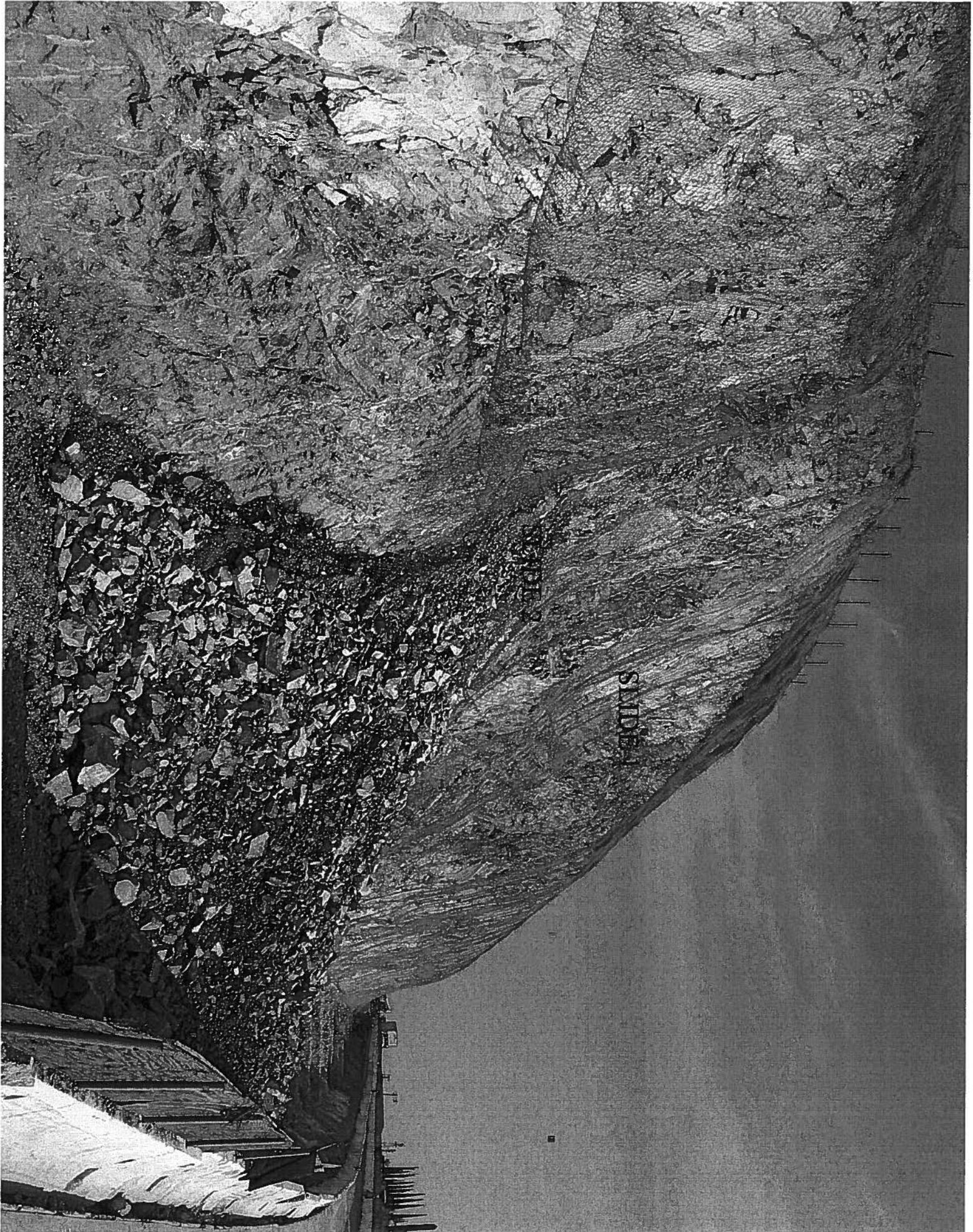


EXHIBIT C

PARCEL NO.:
APN:
TITLE REPORT NO:
PROJECT: I-10 WESTBOUND LANE ADDITION
FEDERAL ID NO:

**AGREEMENT FOR ACQUISITION OF REAL PROPERTY
AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT is entered into this ____ day of _____, 2012 by and between the San Bernardino County Transportation Commission, (hereinafter called Commission), and _____ (hereinafter called Seller) for acquisition by Commission of certain real property hereinafter set forth.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **AGREEMENT TO SELL AND PURCHASE.** Seller agrees to sell to Commission, and Commission agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement (hereinafter called Agreement), all that certain real property (hereinafter called Property) situated in the City of San Bernardino County of San Bernardino, State of California, and legally described as follows:

SEE EXHIBIT "A" ATTACHED HERETO
AND BY THIS REFERENCE MADE A PART HEREOF

2. **PURCHASE PRICE.** The total purchase price, payable in cash through escrow, shall be the sum of

AND NO/100 DOLLARS
(\$000,000)

3. **CONVEYANCE OF TITLE.** Seller agrees to convey by Grant Deed to Commission _____ title to the Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes EXCEPT:

- a. Non-delinquent taxes for the fiscal year in which this transaction closes which shall be cleared and paid in the manner required by Section 4986 of the Revenue and Taxation Code, if unpaid at the close of this transaction.
- b. Quasi-public utility, public alley, public street easements, and rights of way of record (except rights in any such items conveyed under this Agreement).
- c. Items numbered _____ in the above referenced preliminary title report issued by _____ Title Company dated _____.

- 3.1. Seller agrees to convey to Commission a Temporary Construction Easement in, on, over and above the portion of the subject property depicted on the attached Exhibit "B" and incorporated herein by this reference.

- 3.2. Seller further agrees to convey to the respective public or quasi-public entity referenced in the Easement Deed(s) attached hereto as Exhibit "C" and incorporated herein by this reference.

4. **TITLE INSURANCE POLICY.** Escrow Agent shall, following recording of said deed(s) to

Commission, provide Authority with CLTA Standard Coverage Policy of Title Insurance in the amount of \$000,000 issued by _____ Title Company showing the title to the property vested in Commission, subject only to the exceptions set forth in Paragraph 3 of this Agreement and the printed exceptions and stipulations in said policy. Commission agrees to pay the premium charged therefore.

5. **ESCROW**. Commission agrees to open an escrow in accordance with this Agreement at an escrow company of Commission's choice. This Agreement constitutes the joint escrow instructions of Commission and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to perform all acts reasonably necessary to close this escrow within ninety (90) days following the Opening Date.

Seller shall execute and deliver said deed(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, Commission will deposit an executed Certificate of Acceptance with Escrow Agent. Commission agrees to deposit the purchase price upon demand of Escrow Agent. Commission 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.

6. **ESCROW AGENT IS AUTHORIZED TO, AND SHALL:**

- a. Pay and charge Seller, upon Seller's written approval, for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement;
- b. Pay and deduct from the amount shown in Paragraph 2 above, any amount necessary to satisfy any delinquent taxes together with penalties and interest thereon, and/or delinquent or non-delinquent assessments or bonds except those which title is to be taken subject to in accordance with the terms of this Agreement;
- c. Pay and deduct from the amounts payable to Seller under Paragraph 2 of this Agreement, up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deed(s) or mortgage(s) including late charges, if any, except penalty (if any), for payment in full in advance of maturity, shall, upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder;
- d. Pay and charge Commission for all recording fees incurred in this transaction including payment of reconveyance fees and forwarding fees for partial or full reconvenances of deeds of trust or release or mortgage by Commission;
- e. Pay and charge Commission for any escrow fees, charges, and costs payable under Paragraph 7 of this Agreement;
- f. Disburse funds and deliver deed when conditions of this escrow have been fulfilled by Commission 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 WITHIN (90) DAYS FOLLOWING THE ESCROW OPENING DATE.

7. **ESCROW FEES, CHARGES AND COSTS.** Commission agrees to pay all Commission's and Seller's usual fees, charges, and costs which arise in this escrow.
8. **POSSESSION AND USE.** It is the intent of this Agreement to consummate the escrow.

Commission requires immediate possession of a portion of the Easement Area to construct the proposed Project. One of the purposes of this Agreement is to allow Commission to proceed with the construction of the Project without delay.

In consideration of the sum to be paid to Seller and any other consideration set forth herein, Seller hereby grants to Commission, its contractors, agents and all others deemed necessary by Commission, the irrevocable right to possession and use of the Easement Area including the right to remove and dispose of improvements located therein. In consideration for this irrevocable grant of possession and use, concurrently with the opening of escrow (as defined above), Commission will deposit in escrow the full cash portion of the Purchase Price. Commission's right to possession of the Easement Area shall be conditioned upon and shall commence on the date said sum is paid into escrow (as defined above).

Upon taking possession, Commission shall be solely responsible for the Easement Area and shall defend, indemnify and hold Seller harmless from and against any and all claims arising out of or related to Commission's possession and use thereof. If Commission does not complete the purchase of the Easement Area and this Agreement is terminated or canceled, for any reason except Seller's default, Commission shall, at Commission's sole cost and expense, completely restore the Easement Area to its condition as existed immediately prior to Commission taking possession under this Section 8.

By granting the irrevocable right to possession and use of the Easement Area to Commission as described herein, Seller agrees that (a) Seller specifically waives the notice required by Code of Civil Procedure Section 1245.235 of the hearing of the matter referred to in Code of Civil Procedure Section 1240.030 and the adoption of the resolution of necessity by Commission, authorizing the taking of the Easement Area; and (b) Seller shall not object to the filing of an eminent domain proceeding to acquire the Easement Area; and (c) in any eminent domain action filed by Commission to acquire the Easement Area, Seller shall not challenge Commission's right to take such property, and the only issue shall be the amount of just compensation for the Easement Area. The right to possession described in this Section 8 will survive any termination of escrow prior to Closing.

9. **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 against Commission, by reason of Commission's acquisition of the Property, specifically including, but not limited to, any and all damage to Seller's remainder property by reason of the acquisition of the subject Property or the installation of the improvement

project in the manner proposed, the value of improvements pertaining to the realty, leasehold improvements, any and all claims of rental or leasehold value and loss of business goodwill (excluding relocation benefits, if any), and any and all claims in inverse condemnation and for precondemnation damages, and any and all other claim that Seller may have, whether or not specifically mentioned here, relating directly or indirectly to the acquisition by Commission of this subject Property; however Seller and Commission, and each and all of their individual collective 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 any condemnation action affecting the subject Property.

10. CONSTRUCTION CONTRACT AND CURATIVE WORK.

- a. It is understood and agreed by and between the parties hereto in addition to the compensation shown in Paragraph 2 hereinabove, the Commission, its contractors or assigns, shall perform the following construction contract items at the time of the installation of the proposed project:

- i. (i.e. Adjust grade of ingress, egress area if any.)
- ii.

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 Commission, shall be left in as good condition as found.

- b. It is understood and agreed by and between the parties hereto that 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.

It is further understood between the parties hereto that if the improvements referred to in Paragraph 9b above are not removed from the subject property prior to _____, but not sooner than the close of escrow, Commission, its agents, contractors, or assigns, shall have the right to remove said improvements and dispose of same in any manner Commission deems appropriate without further notice or responsibility to Seller whatsoever.

- 11. PERMISSION TO ENTER ON PREMISES.** Seller hereby grants to Commission, its authorized agents or contractors, if necessary by reason of the above-mentioned improvement, the right to enter upon Seller's property upon 48 hours prior written notice to perform the construction items referred to in Paragraph 9a above and for any of the following reasons.

- a. To make necessary and reasonable inspections.
- b.

12. RENTAL AND LEASEHOLD INTEREST. Seller warrants that there are no third parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers, or invitees, and that there are no oral or written recorded or unrecorded leases or other agreements concerning all or any portion of the Property exceeding a period of one month. Seller further agrees to hold Commission harmless and reimburse Commission 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 one month, EXCEPT: None.
13. EMINENT DOMAIN DISMISSAL. Seller and Commission acknowledge that this transaction is a negotiated settlement in lieu of condemnation. Seller acknowledges that the sums received from Commission 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.
14. WARRANTIES, REPRESENTATIONS, AND COVENANTS OF SELLER. Seller hereby warrants, represents, and/or covenants to Commission 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 these Warranties, Representations, and Covenants of Seller Section not to be true as of closing, immediately give written notice of such fact or condition to Commission.
 - f. Seller, at the time of execution of this Agreement, is seized of the Property in fee simple absolute and is the lawful owner of and has good, indefeasible title to the Property.
15. HAZARDOUS WASTE. Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous

Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. S1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. S6901 et seq. (42 U.S.C. S6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, as amended by Liability Act, 42. U.S.C. S9601 et seq. (42 U.S.C. S9601).

16. **COMPLIANCE WITH ENVIRONMENTAL LAWS.** To the best of Seller's knowledge the Property complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environment Quality Act, and the rules, regulations, and ordinances of the city within which the subject property is located, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.
17. **INDEMNITY.** Seller agrees to indemnify, defend and hold Commission 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 (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in or about, or the transportation of any such materials to or from, the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in, or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment). This indemnity extends only to liability created prior to or up to the date this escrow shall close. Seller shall not be

responsible for acts or omissions to act post close of this escrow.

18. **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.
19. **CONTINGENCY**. It is understood and agreed between the parties hereto that the completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the Commission herein. The execution of these documents and the delivery of same to Escrow Agent constitutes said acceptance and approval.
20. **NO BROKERS**. Commission and Seller each represents to the other that no brokers have been involved in this transaction. Commission 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.
21. **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 Orange County.
22. **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. Commission may freely assign any or all of its interests or rights under this Agreement or under the Escrow without the consent of Seller.
23. **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.
24. **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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth hereinabove.

MAILING ADDRESS OF SELLER

SELLER

MAILING ADDRESS

SB COUNTY COMMISSION

Approved:

By: _____
{name}
{title}

Date
Approved as to Form:

By: _____
{name}
General Counsel

PLACEHOLDER FOR EXHIBIT A

PLACEHOLDER FOR EXHIBITS B AND/OR C
(If Applicable)