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**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Economic Development Agency/Facilities Management and
Transportation Department

SUBMITTAL DATE:
February 13, 2013

SUBJECT: Right of Way Acquisition Agreement and Temporary Construction Easement Agreement for
the Magnolia Avenue Grade Separation Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Right of Way Acquisition Agreement for Parcel 0784-012A and Temporary Construction Easement Agreement for Parcel 0784-012B, all within a portion of Assessor's Parcel Number 172-390-043;
2. Authorize the Chairman of the Board to execute these agreements on behalf of the County;

(Continued)

Juan C. Perez, Director
Transportation and Land Management

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 83,900	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: TUMF (100%)

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY:
Jennifer L. Sargent

County Executive Office Signature

Policy Policy

Dept't Recomm.: Consent
Per Exec. Ofc.: Consent

Prev. Agn. Ref.: 3.21 of 9/11/12, 9.9 of 10/16/12

District: 2/2

Agenda Number

3-29

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
PAUL ANGLIO, CPA, AUDITOR-CONTROLLER
BY:
Lisette Rose
Departmental Concurrence
APPROVED COUNTY COUNSEL
DATE: 1/23/13
TICIA MUNROE

RECOMMENDED MOTION: (Continued)

3. Authorize the Assistant County Executive Officer/EDA, or his designee, to execute any other documents and administer all actions necessary to complete this transaction; and
4. Authorize and allocate the sum of \$52,321 to acquire Parcel 0784-012A and \$7,679 to temporarily acquire Parcel 0784-012B all within a portion of Assessor's Parcel Number 172-390-043 and \$23,900 to pay all related transaction costs.

BACKGROUND:

The Riverside County Transportation Department (RCTD) proposes to replace the existing Magnolia Avenue/Burlington Northern Santa Fe (BNSF) at-grade railroad crossing in the community of Home Gardens in order to improve safety and traffic operations by eliminating the conflicts of trains passing through the flow of vehicular traffic (Project).

The Project would construct a new four-lane overhead bridge over the existing BNSF tracks, above the entire BNSF right-of-way. The total length of the improvements would extend from approximately 500 feet west of Lincoln Street to approximately 550 feet east of Buchanan Street. The new bridge would be striped for four lanes of traffic on Magnolia Avenue. The length and clearance of the proposed bridge structure would accommodate the existing skewed railroad crossing, as well as the two existing railroad tracks and two additional future tracks (planned separately from this Project), and would also provide space for frontage roads (proposed as part of the project).

The California Environmental Quality Act (CEQA) environmental determination (Statutory Exemption) Public Resources Code 21080.13 was approved on May 11, 2011, by the Riverside County Transportation Department.

The National Environmental Policy Act (NEPA) environmental determination (Categorical Exclusion) Section 6004: 23 CRF 771.117(d)(3) was approved on May 11, 2011, by District 8 Division of Environmental Planning for the California Department of Transportation.

The Economic Development Agency/Facilities Management (EDA/FM) has negotiated the partial acquisition and temporary rights of a portion of Assessor's Parcel Number 172-390-043 with N.G.N. Group, LLC, a California limited liability company (NGN Group) for the price of \$60,000. There are costs of \$23,900 associated with this transaction. NGN Group will execute an Easement Deed in favor of the County of Riverside for a portion of Assessor's Parcel Number 172-390-043 referenced as Parcel 0784-012A.

This Form 11 has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA: (Commences on Page 3)

FINANCIAL DATA:

The following summarizes the funding necessary for the right of way acquisition and temporary construction easement of a portion of Assessor's Parcel Number 172-390-043:

Right of Way Acquisition:	\$52,321
Temporary Construction Easement:	\$ 7,679
Estimated Title and Escrow Charges:	\$ 2,500
Preliminary Title Report:	\$ 400
County Appraisal:	\$ 6,000
EDA/FM Real Property Staff Time:	\$15,000
Total Estimated Acquisition Costs:	\$83,900

EDA/FM has already covered the costs for due diligence (appraisal and preliminary title report) and has been or will be reimbursed by the Transportation Department. The remaining costs will be paid directly by the Transportation Department. All costs associated with this property acquisition are fully funded in the Transportation Department's budget for FY 2012/13. Thus, no additional net county cost will be incurred as a result of this transaction.

Attachments:

Right of Way Acquisition Agreement
Temporary Construction Easement Agreement

1 PROJECT: Magnolia Avenue Grade Separation
2 PARCEL: 0784-012A
3 APN: 172-390-043 (Portion)
4

5 **RIGHT OF WAY ACQUISITION AGREEMENT**

6 This Right of Way Acquisition Agreement, ("Agreement"), is made by and
7 between the COUNTY OF RIVERSIDE, a political subdivision of the State of California
8 ("County"), and N.G.N. Group, LLC, a California limited liability company ("Grantor").
9 County and Grantor are sometimes collectively referred to as "Parties".

10 **RECITALS**

11 WHEREAS, Grantor owns that certain real property located in the
12 unincorporated area of Riverside, County of Riverside, State of California, as depicted
13 on the Plat Map identified as Attachment "1", attached hereto and made a part hereof.
14 The real property consisting of .5 acres of land and improved with two office buildings
15 and is also known as Assessor's Parcel Number: 172-390-043 ("Property"); and

16 WHEREAS, Grantor desires to sell to the County and the County desire to
17 purchase a portion for an easement for public road and utility purposes, including
18 drainage purposes, in the Property ("ROW"), for the purpose of constructing the
19 Magnolia Avenue Grade Separation Project ("Project") as follows: an Easement Deed
20 in favor of County referenced as Parcel 0784-012A and described on Attachment "2"
21 attached hereto and made a part hereof; pursuant to the terms and conditions set forth
22 herein; and

23 WHEREAS, concurrently with this Agreement, the Parties intend to enter into a
24 Temporary Construction Easement Agreement to grant County the right to temporarily
25 use portions of the Property, as described therein, for the construction of the Project;
26 and

1 WHEREAS, the Effective Date is the date on which this Agreement is approved
2 and fully executed by County and Grantor as listed on the signature page of this
3 Agreement;

4 NOW, THEREFORE, in consideration of the payment and other obligations set
5 forth below, Grantor and County mutually agree as follows:

6 1. County shall:

7 A. Open an escrow ("Escrow") with Lawyers Title Company ("Escrow
8 Holder") upon execution of a fully executed Agreement ("Effective Date").

9 B. Pay to the undersigned Grantor(s) by tendering payment to the
10 Escrow Holder in the amount of Fifty-Two Thousand Three Hundred Twenty-One
11 Dollars (\$52,321) ("Purchase Price"), which is specifically agreed by the Parties to be
12 the full amount of compensation due and owing to Grantor for the ROW, conveyed by
13 said deed, when title to said ROW vests in County free and clear of all liens,
14 encumbrances, easements, leases (recorded or unrecorded), and taxes except those
15 encumbrances and easements which, in the sole discretion of the County, are
16 acceptable, except:

- 17 a. Current fiscal year, including personal property tax, if any, and
18 any further assessment thereto under Chapter 3.5 of Revenue
19 and Taxation Code of the State of California.
- 20 b. Easements or rights of way of record over said land for public
21 or quasi-public utility or public street purposes, if any.
- 22 c. Any items on the Preliminary Title Report (PTR) not objected to
23 by County in a writing provided to Escrow Holder before the
24 Close of Escrow.
- 25 d. All other taxes owed whether current or delinquent are to be
26 current.

1 C. At closing or Close of Escrow, have the authority to deduct and
2 pay from amount shown in Paragraph 1B, any amount necessary to satisfy and handle
3 all real property taxes, bonds, and assessments in the following manner:

4 a. All real property taxes shall be prorated, paid, and canceled
5 pursuant to the provisions of Section 5081 et. Seq., of the
6 Revenue and Taxation Code.

7 b. As a deduction from the amount shown in Paragraph 1B,
8 County is authorized to pay any unpaid liens or taxes together
9 with penalties, cost and interest thereon, and any bonds or
10 assessments that are due on the date title is transferred to.

11 c. Pay reasonable escrow, recording, and reconveyance fees
12 incurred in this transaction, and if title insurance is desired by
13 the County, the premium charged therefore. Said escrow and
14 recording charges shall not, include documentary transfer tax.

15 D. Direct Escrow Holder to disburse purchase price minus any and all
16 charges due upon Close of Escrow in accordance with escrow instructions.

17 E. Pay Grantor to replace Items 1, 4 and 5 listed in Attachment "3".
18 The amount is included in Paragraph 1B above.

19 F. Not oversee nor bear responsibility for ensuring whether Grantor
20 expends the compensation tendered to Grantor to replace Items 1, 4 and 5 described
21 in Attachment "3".

22 G. Relocate Items 2 and 3 listed in Attachment "3" at County's sole
23 cost.

24 2. Grantor shall:

25 A. Execute and acknowledge and will deliver to Craig Olsen, Real
26 Property Agent for the County or to the designated escrow company, an Easement
27 Deed in favor of the County dated 1-7-13 identified as Parcel Number 0784-
28 012A;

1 B. Retain the contractors listed as Items 1, 4 and 5 in Attachment "3"
2 and directly compensate each contractor(s) for all costs, fees, and / or expenses. The
3 County is not responsible for any payment to the selected contractor(s) and Grantor
4 shall indemnify, defend, protect and hold County, its officers, employees, successors
5 and assigns free and harmless from and against any and all claims, liabilities,
6 penalties, forfeitures, losses, or expenses, including without limitation, attorneys' fees,
7 whatsoever, arising from or caused in whole or in part, directly or indirectly, by action of
8 the said contractors.

9 C. Indemnify, defend, protect, and hold the County of Riverside, its
10 Agencies, Districts, Departments, their respective directors, Board of Supervisors,
11 elected and appointed officials, employees, agents, representatives, successors, and
12 assigns free and harmless from and against any and all claims, liabilities, penalties,
13 forfeitures, losses, or expenses, including without limitation, attorneys' fees,
14 whatsoever, arising from or caused in whole or in part, directly or indirectly, by either
15 (a) the presence in, within, under, or about the parcel for the presence of hazardous
16 materials, toxic substances, or hazardous substances as a result of Grantor's use,
17 storage, or generation of such materials or substances or (b) Grantor's failure to
18 comply with any federal, state, or local laws relating to such materials or substances.
19 For the purpose of this Agreement, such materials or substances shall include without
20 limitation hazardous substances, hazardous materials, or toxic substances as defined
21 in the Comprehensive Environmental Response, Compensation, and Liability Act of
22 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials
23 Transportation Act, 49 U.S.C. Section 5101 to 5128; the Resource Conservation and
24 Recovery Act, 42 U.S.C. Section 6901-87 (1988); and those substances defined as
25 hazardous wastes in Section 25117 of the California Health and Safety Code or
26 hazardous substances in Section 25316 of the California Health; and in the regulations
27 adopted in publications promulgated pursuant to said laws.

28

1 D. Be obligated hereunder to include without limitation, and whether
2 foreseeable or unforeseeable, all costs of any required or necessitated repair, clean-up,
3 detoxification, or decontamination of the parcel, and the preparation and
4 implementation of any closure, remedial action, or other required plans in connection
5 therewith, and such obligation shall continue under the parcel has been rendered in
6 compliance with applicable federal, state, and local laws, statutes, ordinances,
7 regulations, and rules.

8 3. It is understood by the undersigned Grantor that the laws of the State of
9 California permit the owner of a business located at 12697 Magnolia Avenue, a portion
10 of the Property of which is to be acquired for the Project, to be compensated for the
11 loss of goodwill to the business provided the owner of the business established that:

12 A. The loss is caused by the acquiring of the Property or the injury to the
13 remaining Property.

14 B. The loss cannot reasonably be prevented by a relocation of the
15 business or by taking steps and adopting procedures that a reasonably prudent person
16 would take and adopt in preserving the goodwill.

17 C. Compensation for the loss will not be included in payment under
18 Section 7267.2 of the Government Code. (Relocation Assistance Program).

19 D. Compensation for the loss will not be duplicated in the compensation
20 otherwise awarded to the owner.

21 4. It is further understood and agreed that the undersigned Grantor, as
22 required by State law, shall make the State tax returns of the business available for
23 audit solely for the purpose of assisting and determining the amount of compensation
24 to be paid for the loss of goodwill. It is understood that payment under Paragraph 1B
25 above does not include compensation for the loss of goodwill, if any.

26 5. It is further understood and agreed that compensation, if any, for the loss
27 of goodwill shall be payable to the undersigned Grantor at a later date following the
28 establishment of proof of such loss. Claims for such loss must be submitted to the

1 County of Riverside Economic Development Agency/Facilities Management, Real
2 Estate Division, 3403 10th Street, Suite 500, Riverside, California 92501, on behalf of
3 the Transportation Department, by two years from the Effective Date of this
4 Agreement.

5 6. It is further understood and agreed that, if Grantor and County cannot
6 reach agreement on compensation, if any, for the loss of goodwill by three years from
7 the Effective Date of this Agreement, the County shall file a declaratory relief action in
8 superior court for the loss of Grantor's business goodwill. It is understood that the sole
9 issues to be determined in any declaratory relief action will be those contained in Code
10 of Civil Procedure Section 1263.510 including the amount of compensation, if any, for
11 Grantor's loss of business goodwill and that no other issues will be raised by Grantor
12 therein or in preliminary proceedings thereto challenging the public use or necessity of
13 the Project, or the utilization therefore of Grantor's Property.

14 7. It is mutually understood and agreed by and between the Parties hereto
15 that the right of possession and use of the subject property by County, including the
16 right to remove and dispose of improvements, shall commence upon the execution of
17 this Agreement by all parties. The amount shown in Paragraph 1B includes, but is not
18 limited to, full payment for such possession and use.

19 8. This Right of Way Acquisition Agreement embodies all of the
20 considerations agreed upon between the County and Grantor. This Agreement was
21 obtained without coercion, promises other than those provided herein, or threats of any
22 kind whatsoever by or to either party. By executing this Agreement, Grantor
23 represents that Grantor has no direct or indirect present or contemplated future
24 personal interest in the property being acquired or in any benefit from the acquisition of
25 subject property.

26 9. The performance of this Agreement constitutes the entire consideration
27 for the acquisition of the property under this Agreement and shall relieve the County of
28 all further obligations or claims on account of the acquisition of the property referred to

1 herein or an account of the location, grade or construction of the proposed public
2 improvement.

3 10. This Agreement is made solely for the benefit of the Parties to this
4 Agreement and their respective successors and assigns, and no other person or entity
5 may have or acquired any right of virtue of this Agreement.

6 11. This Agreement shall not be changed, modified, or amended except upon
7 the written consent of the Parties hereto.

8 12. This Agreement is the result of negotiations between the Parties and is
9 intended by the parties to be a final expression of their understanding with respect to
10 the matters herein contained. This Agreement supersedes any and all other prior
11 agreements and understandings, oral or written, in connection therewith. No provision
12 contained herein shall be construed against the County solely because it prepared this
13 Agreement in its executed form.

14 13. Any action at law or in equity brought by either of the Parties hereto for
15 the purpose of enforcing a right or rights provided for by this Agreement shall be tried
16 in a court of competent jurisdiction in the County of Riverside, State of California, and
17 the Parties hereby waive all provisions of law providing for a change of venue in such
18 proceedings to any other county.

19 14. Grantor, (his/her/its/their) assigns and successors in interest shall be
20 bound by all the terms and conditions contained in this Agreement, and all the Parties
21 thereto shall be jointly and severally liable thereunder.

22 15. This Agreement may be signed in counterpart or duplicate copies, and
23 any signed counterpart or duplicate copy shall be equivalent to a signed original for all
24 purposes.

25
26 (SIGNATURES ON NEXT PAGE)
27
28

1 In Witness Whereof, the Parties have executed this Agreement the day and year
2 below written.

3 Dated: _____

4 GRANTOR:
5 **N.G.N. GROUP, LLC, A CALIFORNIA**
6 **LIMITED LIABILITY COMPANY**

7 By:  _____

8 Name: Dwight M. Bupte

9 Its: President

10 By: _____

11 Name: _____

12 Its: _____

13 COUNTY OF RIVERSIDE, a political
14 subdivision of the State of California

15 ATTEST:
16 Kecia Harper-Ihem
17 Clerk of the Board

18 By: _____
19 John J. Benoit, Chairman
20 Board of Supervisors

21 By: _____
22 Deputy

23 APPROVED AS TO FORM:
24 Pamela J. Walls
25 County Counsel

26 By:  _____
27 Patricia Munroe
28 Deputy County Counsel

CAO:s/122612/291TR/14.688 S:\Real Property\TYPING\Docs-14.500 to 14.999\14.688.doc

ATTACHMENT "1"
Assessor's Plat Map

172-39
139-25

I.R.A. 004-01T
909-176
053-90T

SEC. 21 28 29 T. 3S. R. 6W
CITY OF RIVERSIDE - CORONA

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S LABEL MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

AUG 17 2006



- MB 1/8 RANCHO EL SOBRANTE DE SAN JACINTO
- MB 1/44 RESUB. RIVERSIDE LAND & IRRIGATING COMPANY
- PM 133/22-24 PARCEL MAP NO. 20451
- PM 149/39-42 PARCEL MAP NO. 22751
- PM 153/53-55 PARCEL MAP NO. 23359
- PM 158/1-5 PARCEL MAP NO. 20888
- PM 165/78-79 PARCEL MAP NO. 24692
- PM 172/54-56 PARCEL MAP NO. 25374

135
17

DATA: HWY 6/W MAPS 981575, 981581

ASSESSOR'S MAP BK172 PG. 39
Riverside County, Calif.

JCP

Aug 2006

DATE	DRAWN BY	NEW NUMBER
2006	JCP	31

ATTACHMENT "2"

Public Road and Utility Easement

1. A portion of APN: 172-390-043 Parcel 0784-012A in favor of the County

EXHIBIT "A"
MAGNOLIA AVENUE (GRADE SEPARATION)
LEGAL DESCRIPTION
0784-012A

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED BY GRANT DEED RECORDED NOVEMBER 10, 2010, AS INSTRUMENT NUMBER 2010-0542128, OFFICIAL RECORDS OF THE RECORDER OF RIVERSIDE COUNTY, CALIFORNIA, ALSO BEING A PORTION OF LOT 13 IN BLOCK 53, IN BOOK 1, PAGE 44, OF MAPS, RECORDS OF SAID RECORDER, LYING WITHIN RANCHO EL SOBRANTE DE SAN JACINTO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF MAGNOLIA AVENUE (66.00 FOOT NORTHWESTERLY HALF-WIDTH) AS DESCRIBED BY DEED RECORDED FEBRUARY 8, 1877, IN BOOK R, PAGES 548 AND 549, OFFICIAL RECORDS OF THE RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA, AND THE CENTERLINE OF LINCOLN AVENUE (44.00 FOOT NORTHEASTERLY HALF-WIDTH) AS DESCRIBED BY DEED RECORDED OCTOBER 22, 1969 AS INSTRUMENT NUMBER 107674, OFFICIAL RECORDS OF SAID RECORDER OF RIVERSIDE COUNTY;

THENCE N 33°36'46" W ALONG THE NORTHWESTERLY PROLONGATION OF SAID CENTERLINE OF LINCOLN AVENUE, A DISTANCE OF 66.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID INSTRUMENT NUMBER 2010-0542128, BEING A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID MAGNOLIA AVENUE AND THE **TRUE POINT OF BEGINNING**;

THENCE ALONG THE SOUTHWESTERLY LINE OF SAID INSTRUMENT NUMBER 2010-0542128 CONTINUING N 33°36'46" W, A DISTANCE OF 6.50 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 72.50 FEET NORTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, SAID CENTERLINE OF MAGNOLIA AVENUE;

THENCE N 56°22'11" E ALONG SAID PARALLEL LINE, A DISTANCE OF 122.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID INSTRUMENT NUMBER 2010-052128;

THENCE S 33°36'46" E ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 6.50 FEET TO A POINT ON SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF MAGNOLIA AVENUE;

THENCE S 56°22'11" W ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 122.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING: 793 SQUARE FEET, OR 0.018 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.000027271 TO OBTAIN GROUND DISTANCE.

REFERENCE IS HEREBY MADE TO RIVERSIDE COUNTY MAP NUMBER 955-M, ON FILE IN THE OFFICE OF THE COUNTY SURVEYOR OF RIVERSIDE COUNTY, CALIFORNIA.

SEE ATTACHED EXHIBIT "B"

APPROVED BY: *Timothy F. Rayburn*
DATE: 1/12/2012



INST #2010-0542128
 REC. 11/10/2010
 APN 172-390-043

EXHIBIT "B"



PARCEL 0784-012A
 793 SQ.FT.
 0.018 AC.

PARCEL 153/53-55

T.P.O.B.

P.O.C.

LINE DATA

- ① N 33°36'46" W - 6.50'
- ② S 33°36'46" E - 6.50'

- ① PCL NO. 6, RW PER BOOK 385 PGS 353-355, OF DEEDS, REC. 11/22/1913
- ② RW VACATED PER BOOK 386 PGS 249-250 REC 11/26/1913 & QUITCLAIMED TO PAC. ELEC. RY. CO. REC.11/5/1913, IN BOOK 385 PGS. 232-239, OF DEEDS
- ③ R/W PER INST # 107674 REC. 10/22/1969

LINCOLN AVE

MAGNOLIA AVE

RANCHO EL SOBRANTE DE SAN JACINTO

COUNTY OF RIVERSIDE

SECTION 22
 T.3S., R.6W.

ALL DISTANCES SHOWN ARE GRID DISTANCES. GROUND DISTANCES MAY BE OBTAINED BY MULTIPLYING THE GRID DIST. BY A COMBINATION FACTOR OF 1.000027271.



COUNTY OF RIVERSIDE TRANSPORTATION DEPT., SURVEY DIV.
 PROJECT: MAGNOLIA AVE (GRADE SEPARATION)
 THIS PLAT IS AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE PRECEDING DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DESCRIPTION.

PAR. NO.:	0784-012A
PREPARED BY:	DGO
SCALE:	N.T.S.
DATE:	JANUARY, 2012
W.O. NO.:	B7-0784
SHEET 1 OF 1 SHEET	

APPROVED BY: *Timothy F. Rayburn* DATE: 1/12/2012

ATTACHMENT "3"

Item	Description	Cost
1	587 Sq. Ft. concrete paving @ \$4/Sq. Ft.	\$2,348
2	480 Sq. Ft. wrought iron fence.	Contractor to relocate
3	143 Sq. Ft. wrought iron gate	Contractor to relocate
4	145 Sq. Ft. lawn area @ \$2/Sq. Ft.	\$290
5	2 – 4" steel posts @ \$100 each	\$200
	Total Site Improvements	\$2,838

1 COUNTY OF RIVERSIDE, a political subdivision of the State of California
2 (“County”), and

3
4 N.G.N. Group, LLC, a California limited liability company
5 (“Grantor”)

6
7 PROJECT: Magnolia Avenue Grade Separation
8 PARCEL: 0784-012B
9 APN: 172-390-043 (Portion)

10
11 TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

12 This Temporary Construction Easement Agreement (“Agreement”) is made by
13 and between the COUNTY OF RIVERSIDE, a political subdivision of the State of
14 California, (“County”) and N.G.N. Group, LLC, a California limited liability company
15 (“Grantor”). County and Grantor are sometimes collectively referred to as “Parties”.

16 1. The right is hereby granted to County to enter upon and use the land of
17 Grantor in the County of Riverside, State of California, described as portion of
18 Assessor’s Parcel Number 172-390-043, highlighted on Attachment “1”, attached
19 hereto (“Property”), and made a part hereof, for all purposes necessary to facilitate and
20 accomplish the construction of Magnolia Avenue Grade Separation Project.

21 2. The temporary construction easement, used during construction of the
22 Project, referenced as Parcel No. 0784-012B consisting of approximately .058 acres or
23 2,507 square feet as designated on Attachment “2”, attached hereto, and made a part
24 hereof (“TCE Area”).

25 3. A thirty (30) day written notice shall be given to Grantor prior to using the
26 rights herein granted. The rights herein granted may be exercised for 24 months from
27 the thirty (30) day written notice, or until completion of said project, whichever occurs
28 later.

1 4. It is understood that the County may enter upon the TCE Area where
2 appropriate or designated for the purpose of getting equipment to and from the TCE
3 Area. County agrees not to damage the TCE Area in the process of performing such
4 activities.

5 5. County agrees to relocate Item 1 listed in Attachment "3" at County's sole
6 cost.

7 6. The right to enter upon and use TCE Area includes the right to remove
8 and dispose of Item 2 listed in Attachment "3". Payment to the Grantor for Item 2 listed
9 in Attachment "3" is included in Paragraph 16 of this Agreement.

10 7. Grantor shall retain the contractor(s) for Item 2 of Attachment "3" and
11 directly compensate each contractor for all costs, fees, and/or expenses. The County is
12 not responsible for any payment to the selected contractor(s) and Grantor shall
13 indemnify, defend, protect, and hold County, its officers, employees, successors, and
14 assigns free and harmless from and against any and all claims, liabilities, penalties,
15 forfeitures, losses or expenses, including without limitations, attorney's fees,
16 whatsoever arising from or cause in whole or in part, directly or indirectly, by any
17 actions of the said contractors.

18 8. County agrees to replace the existing easterly gate with a swinging gate
19 at County's sole cost.

20 9. At the termination of the period of use of TCE Area by County, but before
21 its relinquishment to Grantor, debris generated by County's use will be removed and
22 the surface will be graded and left in a neat condition.

23 10. Grantor shall be held harmless from all claims of third persons arising
24 from the use by County of TCE Area.

25 11. Grantor hereby warrants that they are the owners of the Property
26 described above and that they have the right to grant County permission to enter upon
27 and use the Property.

28

1 12. This Agreement is the result of negotiations between the parties hereto.
2 This Agreement is intended by the parties as a final expression of their understanding
3 with respect to the matters herein and is a complete and exclusive statement of the
4 terms and conditions thereof. No provision contained herein shall be construed against
5 the County solely because it provided or prepared this Agreement in its executed form.

6 13. This Agreement shall not be changed, modified, or amended except upon
7 the written consent of the parties hereto.

8 14. This Agreement supersedes any and all other prior agreements or
9 understandings, oral or written, in connection therewith.

10 15. Grantor, their assigns and successors in interest, shall be bound by all
11 the terms and conditions contained in this Agreement, and all the parties thereto shall
12 be jointly and severally liable thereunder.

13 16. County shall pay to the order of Grantor the sum of Seven Thousand Six
14 Hundred Seventy Nine Dollars (\$7,679) for the right to enter upon and use the TCE
15 Area in accordance with the terms hereof.

16 17. Any action at law or in equity brought by either of the Parties hereto for the
17 purpose of enforcing a right or rights providing for by this Agreement shall be tried in a
18 court of competent jurisdiction in the County of Riverside, State of California, and the
19 Parties hereby waive all provisions of law providing for a change of venue in such
20 proceedings to any other county.

21 18. This Agreement may be signed in counterpart or duplicate copies, and any
22 signed counterpart or duplicate copy shall be equivalent to a signed original for all
23 purposes.

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27 (SIGNATURES ON NEXT PAGE)
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In Witness Whereof, the Parties have executed this Agreement the day and year below written.

Dated: _____

GRANTOR:
N.G.N. GROUP, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

By: 
Name: Dumfri M. Byrth
Its: President

By: _____
Name: _____
Its: _____

COUNTY OF RIVERSIDE, a political subdivision of the State of California

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____
John J. Benoit, Chairman
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
Pamela J. Walls
County Counsel

By: 
Patricia Munroe
Deputy County Counsel

ATTACHMENT "1"

Assessor's Plat Map

172-39
139-25

SEC. 21 28 29 T. 3S., R. 6W
CITY OF RIVERSIDE - CORONA

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S OFFICE MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

AUG 17 2006



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DATE	JOB NUMBER	REV	NUMBER
8/2/06	172-39	1	31

- MB 1/8 RANCHO EL SOBRANTE DE SAN JACINTO
- MB 1/44 RESUB. RIVERSIDE LAND & IRRIGATING COMPANY
- PM 133/22-24 PARCEL MAP NO. 20451
- PM 149/39-42 PARCEL MAP NO. 22751
- PM 153/53-55 PARCEL MAP NO. 23359
- PM 158/1-5 PARCEL MAP NO. 20688
- PM 165/78-79 PARCEL MAP NO. 24692
- PM 172/54-56 PARCEL MAP NO. 25374

DATA: INT. R/W MAPS SB1575, 981581

ASSESSOR'S MAP BK172 PG. 39
Riverside County, Calif.

Aug 2006

ATTACHMENT "2"

Parcel 0784-012B

EXHIBIT "A"
MAGNOLIA AVENUE (GRADE SEPARATION)
LEGAL DESCRIPTION
0784-012B

AN EASEMENT FOR TEMPORARY CONSTRUCTION PURPOSES, BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED BY GRANT DEED RECORDED NOVEMBER 10, 2010, AS INSTRUMENT NUMBER 2010-0542128, OFFICIAL RECORDS OF THE RECORDER OF RIVERSIDE COUNTY, CALIFORNIA, ALSO BEING A PORTION OF LOT 13 IN BLOCK 53, IN BOOK 1, PAGE 44, OF MAPS, RECORDS OF SAID RECORDER, LYING WITHIN RANCHO EL SOBRANTE DE SAN JACINTO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF MAGNOLIA AVENUE (66.00 FOOT NORTHWESTERLY HALF-WIDTH) AS DESCRIBED BY DEED RECORDED FEBRUARY 8, 1877, IN BOOK R, PAGES 548 AND 549, OFFICIAL RECORDS OF THE RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA, AND THE CENTERLINE OF LINCOLN AVENUE (44.00 FOOT NORTHEASTERLY HALF-WIDTH) AS DESCRIBED BY DEED RECORDED OCTOBER 22, 1969 AS INSTRUMENT NUMBER 107674, OFFICIAL RECORDS OF SAID RECORDER OF RIVERSIDE COUNTY;

THENCE N 33°36'46" W ALONG THE NORTHWESTERLY PROLONGATION OF SAID CENTERLINE OF LINCOLN AVENUE, A DISTANCE OF 66.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID INSTRUMENT NUMBER 2010-0542128, BEING A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID MAGNOLIA;

THENCE ALONG THE SOUTHWESTERLY LINE OF SAID INSTRUMENT NUMBER 2010-052128 CONTINUING N 33°36'46" W, A DISTANCE OF 6.50 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE N 33°36'46" W CONTINUING ALONG SAID SOUTHWESTERLY LINE, A DISTANCE OF 8.50 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 81.00 FEET NORTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, SAID CENTERLINE OF MAGNOLIA AVENUE;

THENCE N 56°22'11" E ALONG SAID PARALLEL LINE, A DISTANCE OF 80.00 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 42.00 FEET SOUTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTHEASTERLY LINE OF SAID INSTRUMENT NUMBER 2010-052128;

THENCE N 33°36'46" W ALONG SAID PARALLEL LINE, A DISTANCE OF 35.00 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 116.00 FEET NORTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, SAID CENTERLINE OF MAGNOLIA AVENUE;

THENCE N 56°22'11" E ALONG SAID PARALLEL LINE, A DISTANCE OF 42.00 FEET TO A POINT ON SAID NORTHEASTERLY LINE OF INSTRUMENT NUMBER 2010-052128;

THENCE S 33°36'46" E ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 43.50 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 72.50 FEET NORTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, SAID CENTERLINE OF MAGNOLIA AVENUE;

THENCE S 56°22'11" W ALONG SAID PARALLEL LINE, A DISTANCE OF 122.00 FEET TO THE **TRUE POINT OF BEGINNING**.

EXHIBIT "A"
MAGNOLIA AVENUE (GRADE SEPARATION)
LEGAL DESCRIPTION (CONTINUED)
0784-012B

CONTAINING: 2,507 SQUARE FEET, OR 0.058 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.000027271 TO OBTAIN GROUND DISTANCE.

REFERENCE IS HEREBY MADE TO RIVERSIDE COUNTY MAP NUMBER 955-M, ON FILE IN THE OFFICE OF THE COUNTY SURVEYOR OF RIVERSIDE COUNTY, CALIFORNIA.

SEE ATTACHED EXHIBIT "B"

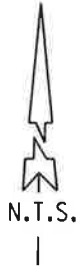
APPROVED BY: *Timothy F. Rayburn*

DATE: 1/12/2012



EXHIBIT "B"

TEMPORARY CONSTRUCTION EASEMENT



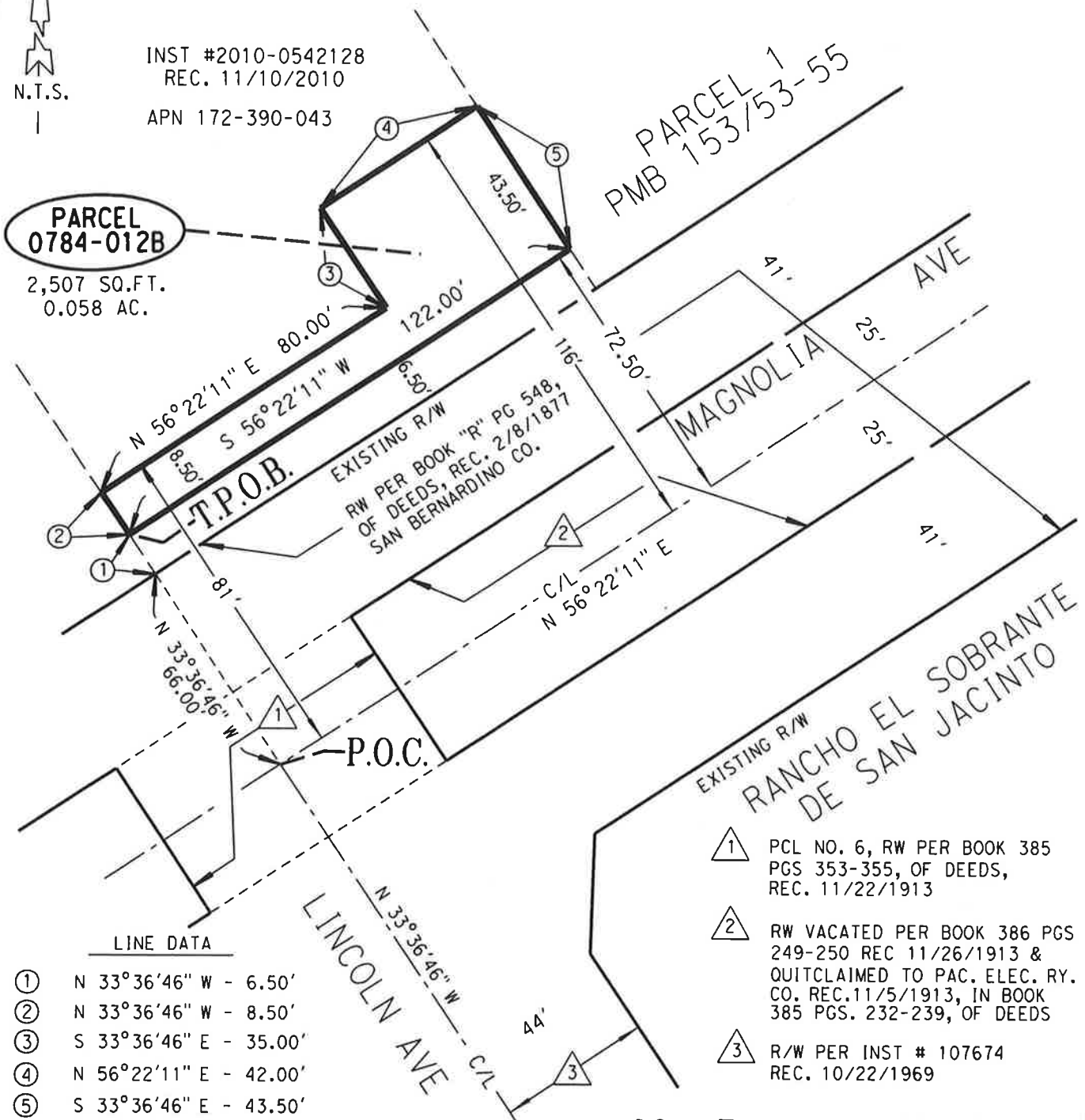
INST #2010-0542128
REC. 11/10/2010

APN 172-390-043

PARCEL 0784-012B

2,507 SQ.FT.
0.058 AC.

PARCEL 1
PMB 153/53-55



LINE DATA

- ① N 33°36'46" W - 6.50'
- ② N 33°36'46" W - 8.50'
- ③ S 33°36'46" E - 35.00'
- ④ N 56°22'11" E - 42.00'
- ⑤ S 33°36'46" E - 43.50'

- ① PCL NO. 6, RW PER BOOK 385 PGS 353-355, OF DEEDS, REC. 11/22/1913
- ② RW VACATED PER BOOK 386 PGS 249-250 REC 11/26/1913 & QUITCLAIMED TO PAC. ELEC. RY. CO. REC. 11/5/1913, IN BOOK 385 PGS. 232-239, OF DEEDS
- ③ R/W PER INST # 107674 REC. 10/22/1969

COUNTY OF RIVERSIDE

SECTION 22
T.3S., R.6W.

ALL DISTANCES SHOWN ARE GRID DISTANCES. GROUND DISTANCES MAY BE OBTAINED BY MULTIPLYING THE GRID DIST. BY A COMBINATION FACTOR OF 1.000027271.



COUNTY OF RIVERSIDE TRANSPORTATION DEPT., SURVEY DIV.	PAR. NO.: 0784-012B
PROJECT: MAGNOLIA AVE (GRADE SEPARATION)	PREPARED BY: DGO
THIS PLAT IS AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE PRECEDING DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DESCRIPTION.	SCALE: N.T.S.
APPROVED BY: <i>Timothy F. Rayburn</i>	DATE: JANUARY, 2012
DATE: 1/12/2012	W.O. NO.: B7-0784
	SHEET 1 OF 1 SHEET

ATTACHMENT "3"

Item	Description	Cost
1	278 Sq. Ft. wrought iron fence.	Contractor to relocate
2	6 – small bushes @ \$50	\$300
	Total Landscaping / Hardscape	\$300