

**AMENDMENT NO. 6 TO
COOPERATIVE AGREEMENT 93-049
BETWEEN THE
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
AND
THE CITY OF RIALTO**

This Amendment No. 6 to Cooperative Agreement No. 93-049 is hereby made and entered into and effective this 6th day of July, 2022, by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA) and the CITY OF RIALTO (CITY) with regard to the management of jointly owned property at the Rialto Metrolink Station.

WHEREAS, under SANBAG Contract No. 93-049, dated February 16, 1993, SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG) and the REDEVELOPMENT AGENCY OF THE CITY OF RIALTO (AGENCY) entered into an agreement (Cooperative Agreement), for the design, construction, maintenance and security of a commuter rail station (Station) south of Rialto Avenue at South Palm Way; and

WHEREAS, SANBAG and the AGENCY amended the Cooperative Agreement by Amendment No. 1 on April 6, 1994, to include funding for the purchase of an additional 0.93 acres of land for the expansion of parking and the construction of the historic station replica; and

WHEREAS, SANBAG and the AGENCY amended the Cooperative Agreement by Amendment No. 2 on July 26, 1994, to fund an additional year of security services in recognition of the AGENCY's contribution of local revenues toward the purchase of additional property and construction of the replica station; and

WHEREAS, SANBAG and the AGENCY amended the Cooperative Agreement by Amendment No. 3 on February 2, 2005, to fund the preparation of a project report and environmental documents for further expansion of parking at the Rialto Metrolink Station; and

WHEREAS, SANBAG and the AGENCY amended the Cooperative Agreement Amendment No. 4 on July 2, 2008, to extend the time of performance term of Amendment No. 3; and

WHEREAS, SBCTA and the CITY amended the Cooperative Agreement Amendment No. 5 on July 25, 2017, to clarify all references to SANBAG and the AGENCY in the Cooperative Agreement shall mean SBCTA and the CITY, respectively, and to add language for the administration of leases and distribution of lease revenues; and

WHEREAS, SANBAG and the CITY completed construction of the Rialto Metrolink Phase I Parking Lot Expansion and subsequently have recorded the parking lot in a tenancy in common ownership amongst SBCTA and the CITY as documented by Instrument 2018-0039279 recorded in Official Record of the County of San Bernardino, State of California; and

WHEREAS, SBCTA and the CITY completed construction of the Rialto Metrolink Phase II Parking Lot Expansion project and have recorded the parking lot in a tenancy in common ownership amongst SBCTA and the CITY as documented by Instrument 2020-0248144 recorded in Official Record of the County of San Bernardino, State of California; and

WHEREAS, SBCTA and CITY (collectively PARTIES and individually PARTY) desire to further amend the aforesaid Cooperative Agreement to clarify the responsibility of the PARTIES with respect to the insurance of assets under the Cooperative Agreement and the apportionment of costs for said insurance and update the distribution of lease revenues as well as the distribution of proceeds.

NOW THEREFORE, the PARTIES hereto do mutually agree to amend the Cooperative Agreement as follows:

1. The recitals above are true and correct and are hereby incorporated herein by this reference.
2. Except as specifically amended by this Amendment No. 6, all other provisions of the Cooperative Agreement, as amended by Amendments Nos. 1 through 5 inclusive, shall remain in full force and effect.
3. The PARTIES incorporate the following property into the Non-operating property of the Station site and subject said property to the terms of the Cooperative Agreement:

Parcel 1 of Parcel Map No. 3426, in the City of Rialto, County of San Bernardino, State of California, as per plat recorded in Book 30, Page 60, of Parcel Maps in Official Records of said County, also known to the PARTIES as the Rialto Metrolink Phase I Parking Lot Expansion and generally depicted as Phase 1 Project Location on Attachment A, attached to this Amendment No. 6 and incorporated herein.

That portion of Parcel 3 of Parcel Map No. 8173, in the City of Rialto, County of San Bernardino, State of California, as per plat recorded in Book 88, Page 67, of Parcel Maps in Official Records of said County, which lies westerly of a line that is parallel with and distant easterly 156.00 feet, measured at right angles, from the westerly line of said parcel, also known to the parties as the Rialto Metrolink Phase II Parking Lot Expansion and generally depicted as Phase 2 Project Location on Attachment A, attached to this Amendment No. 6.

4. ADD Section 1.01.h as follows

Section 1.01.h "Operating hours" shall refer to that time period commencing thirty (30) minutes prior to the arrival of the first morning train operated by SCRRA at the Station site, and ending thirty (30) minutes after the departure of the last evening SCRRA train from the Station site.

5. DELETE the word "insure" from Article V, Section 5.05 Reservation of Commuter Rail Parking and REPLACE it with "ensure".

6. DELETE the word "insure" from Article V, Section 5.08 Station Security and REPLACE it with "ensure".
7. Article V, Section 5.11 Administration of Leases, is DELETED in its entirety and REPLACED as follows:

Section 5.11 Administration of Leases. CITY, at its cost, is authorized to act as the landlord on behalf of the PARTIES hereto in negotiating, entering into and administering agreements and leases for non-operating property. Such administration of leases includes, but is not limited to: screening and selecting tenants and uses; entering into or amending any lease for use of non-operating property; determining, collecting, depositing and disbursing rents, charges, fees, and/or deposits of any other amount payable or receivable with respect to the occupancy of non-operating property; extending or terminating tenancies; commencing evictions, executing notices to vacate, and initiating judicial proceedings to effect such actions (collectively, the "Lease Administration Services"). CITY shall enter into leases and perform the Lease Administration Services in a reasonable and good faith manner. CITY shall provide SBCTA with written justification that CITY has performed in a reasonable and good faith manner for each proposed lease, prior to amending a lease or entering into a new lease. CITY shall provide SBCTA staff with a copy of all amended or new leases. CITY may engage in any non-binding alternative dispute resolution arising from leases, provided CITY provides SBCTA notice of disputes and SBCTA has the option to participate in any such dispute resolution process. SBCTA shall be bound by any judgment entered into by a court of competent jurisdiction affecting the Non-Operating Property, to the extent necessary for CITY to comply with the judgment; provided, however, that CITY acknowledges and agrees that CITY is not released or relieved of or from any responsibility, obligation, liability or duty under or pursuant to this Agreement by SBCTA's agreement to be bound by such judgments, nor does SBCTA waive any rights or remedies provided hereunder or available pursuant to or at law or in equity.

8. ADD Article V, Section 5.12 CITY Provided Property Insurance:

Section 5.12 CITY Provided Property Insurance. CITY shall obtain and maintain property insurance covering the Non-Operating Property. Such insurance must be in such types and amounts as are or should be reasonably and typically maintained from time to time by CITY for other property owned by CITY, provided that, in any event, CITY shall provide SBCTA with an endorsement naming SBCTA as an additional insured. In the event of any damage to the Non-Operating Property, CITY and SBCTA shall reasonably cooperate with each other in obtaining and using proceeds of such insurance to repair such damage. The CITY shall reimburse SBCTA for fifty percent (50%) of the cost of property insurance provided by SBCTA under Section 6.08 one fiscal year in the arrears.

9. ADD Article VI, Section 6.08 SBCTA Provided Property Insurance:

Section 6.08 SBCTA Provided Property Insurance. SBCTA shall obtain and maintain real property insurance covering the Station Platforms and the canopies in amounts as are or should be reasonably and typically maintained from time to time by SBCTA for other real and personal property owned by SBCTA, provided that SBCTA shall provide CITY with an endorsement naming CITY as an additional insured on all such policies. In the event of any damage to the Station Platforms or canopies, CITY and SBCTA shall reasonably cooperate with each other in obtaining and using the proceeds of such insurance to repair such damage. Each fiscal year SBCTA shall notify the CITY of the cost of insurance described in this Section 6.08 in the then current fiscal year no later than January 31st of each fiscal year and shall invoice the CITY for reimbursement of fifty percent (50%) of the cost of the insurance provided under this Section 6.08.

10. Article IX, Section 9.01 Distribution to Parties is DELETED in its entirety and REPLACED as follows:

Section 9.01 Distribution to Parties. All proceeds that may accrue to the PARTIES under this Agreement shall be distributed to the PARTIES hereto in equal shares, except for any parking fees, which shall remain the sole property of the CITY as described in Section 5.06.

11. Article IX, Section 9.02 Distribution of Lease Revenues is DELETED in its entirety and REPLACED as follows:

Section 9.02 Distribution of Lease Revenues. CITY shall retain 3% of all gross lease revenues as its property management fee for the Administration of Leases defined in Section 5.11. The 3% property management fee shall first be deducted from the gross lease revenues and CITY shall use the balance of the gross revenues remaining after deduction of the property management fee to reimburse the PARTIES for all expenses associated with the operations of the STATION and/or any leases pursuant to this Agreement, including but not limited to utilities, security and maintenance and property insurance described in Article V and Article VI. Any lease revenue generated in given fiscal year remaining after all reimbursements have been paid shall be distributed by CITY to the CITY and SBCTA in equal shares in the following fiscal year. If there is insufficient lease revenue in a given fiscal year after the CITY retains 3% of the gross lease revenue and has applied parking fees collected pursuant to Section 5.06 towards defraying the costs described in Section 5.06, to cover all reimbursable expenses from that year, then the outstanding reimbursable expenses shall be reimbursed in direct proportion of the revenue generated to the total reimbursable expense outstanding. For example if, in a given fiscal year, after the CITY has retained 3% of all gross lease revenues, the remaining revenues are enough to cover only eighty percent (80%) of the total

reimbursable expenses, then each PARTY shall be reimbursed eighty percent (80%) of the reimbursable expenses incurred in the same fiscal year.

12. ADD Article XI, Section 11.07, Paragraph E:

E. Each PARTY shall obtain and maintain, during the time this Agreement as amended is in effect, adequate insurance or self-insurance to cover its liability, defense, and indemnification obligations in order to protect itself and the other party.

13. Exhibit "F", Rialto Station Site, depicting the Operating and Non-operating property associated with the commuter rail station, attached to Amendment Number No. 6 as Attachment 1, is incorporated by this reference.

[Signatures on the following page.]

IN WITNESS WHEREOF, the authorized parties have signed below;

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

CITY OF RIALTO

By: _____
Name: Art Bishop
Title: Board President

By: _____
Name: Marcus Fuller
Title: City Manager

Date: _____

Date: _____

ATTEST

By: _____
Name: Barbara A. McGee
Title: City Clerk

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

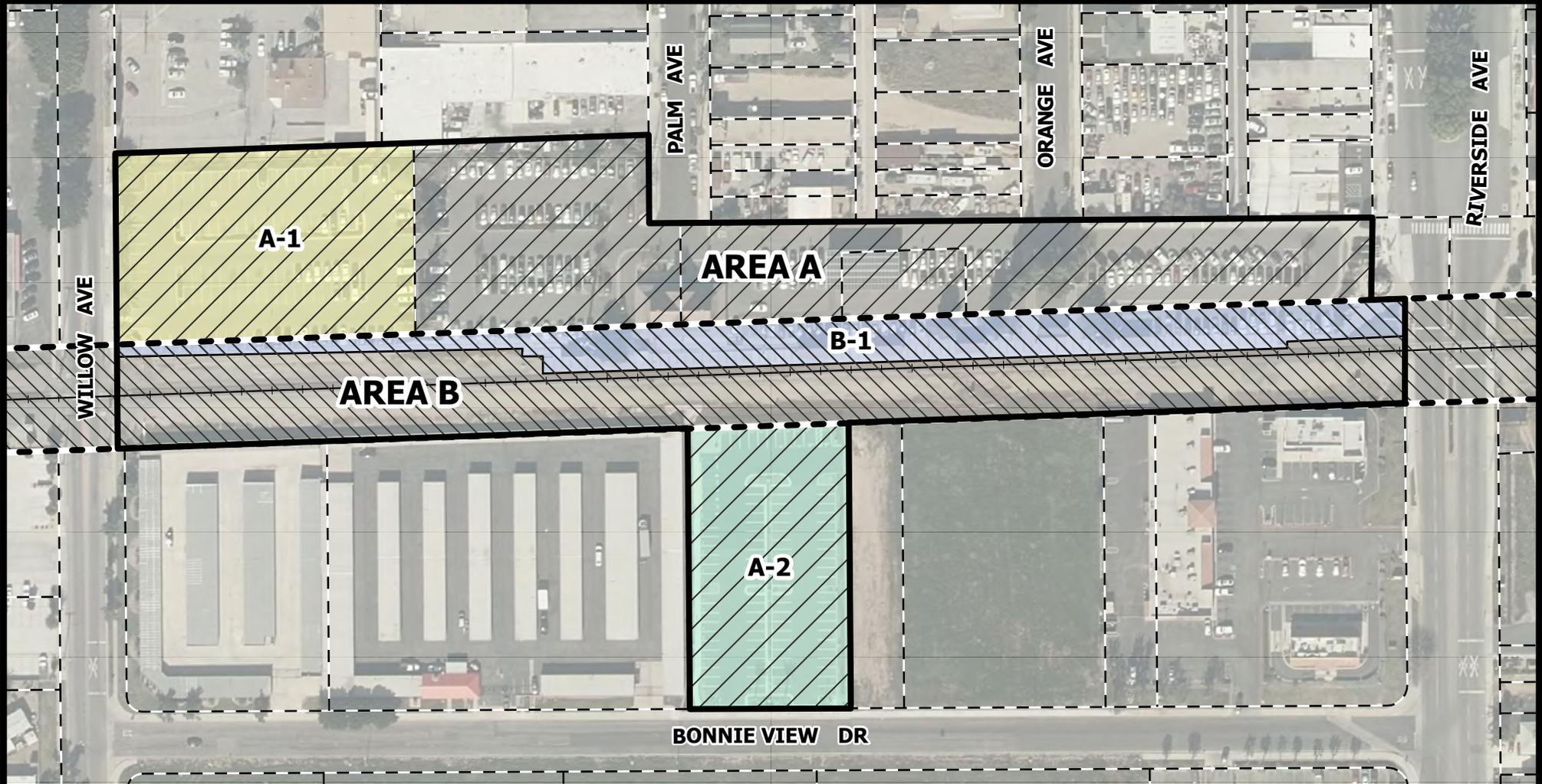
By: _____
Julianna K. Tillquist
SBCTA General Counsel

By: _____
Eric S. Vail
City Attorney

Date: _____

Date: _____

EXHIBIT F - Rialto Station Site - Cooperative Agreement 93-049



LEGEND

-  Commuter Rail Station
-  SBCTA Right of Way
-  Parcel Data
-  Rail Road Tracks
-  Area A Non-Operating Property
-  Area A-1 Phase I Parking Lot Expansion
-  Area A-2 Phase II Parking Lot Expansion
-  Area B Operating Property
-  Area B-1 Station Platform/Maintenance area within Operating Property

SBCTA Administrative Contract No. 00-1000147, 22-1002800

