

## COST SHARING AGREEMENT

This **COST SHARING AGREEMENT** (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 2021 (the “**Effective Date**”), by and between GLC FULLERTON LLC (“**GLC**”) and the CITY OF FULLERTON (“**City**”). GLC and the City are collectively referenced as “**Parties**” below.

### RECITALS:

- A. GLC is the fee owner of that certain real property located at 2001 E. Orangethorpe Avenue (Assessor Parcel Numbers 073-120-31 and -33) in the City of Fullerton, County of Orange, State of California (the “**Property**”).
- B. On November 2, 2020, the City Council approved an approximately 1.536-million square foot industrial logistics center on the Property (“**Project**”).
- C. As part of the Project, the three improvements below, among other improvements, will be completed by GLC (“**Improvements**”). The Improvements will require coordination with BNSF Railway Company (“**BNSF**”), which owns and operates a line of railroads in and through the City.
  - 1. Acacia Avenue and Kimberly Avenue. At the intersection of Acacia Avenue and Kimberly Avenue, the Project will install stop controls on the northbound and southbound approaches to implement an all-way stop control intersection. Flashing red beacons will be installed in conjunction with signage for the new all-way stop controlled intersection. Advance warning signs for the new all-way stop control will also be posted in the northbound and southbound directions.
  - 2. Kimberly Avenue Rail Spur. The Project will remove two rail spurs that cross Kimberly Avenue.
  - 3. North State College Boulevard and Kimberly Avenue. At the intersection of North State College Boulevard and Kimberly Avenue, the Project will contribute its fair share cost for installation of a traffic signal, up to a maximum of \$321,000. The Project’s maximum contribution to this installation is consistent with the terms of a Development Agreement between the City and GLC dated November 17, 2020 (“**Development Agreement**”), which outlined a maximum contribution of \$400,000, and a subsequent agreement between the City and GLC, which was approved by the City Council on November 16, 2021 and reduced the maximum contribution amount for said traffic signal installation by \$79,000 from \$400,000 to \$321,000. The traffic signal will (i) accommodate full turning movements; (ii) accommodate pedestrian facilities; (iii) be designed in coordination with the Public Utilities Commission (PUC); and (iv) be integrated with the train control system. The PUC will likely require safety upgrades at the crossing across North State College Boulevard immediately north of Kimberly Avenue.
- D. BNSF will only agree to coordination of the Improvements through the City, and the City is agreeable to entering into an agreement with BNSF to facilitate such coordination subject to the execution of this Agreement. The City has requested that BNSF perform certain engineering services with respect to its railroad facilities to facilitate the coordination of the Improvements. BNSF’s scope of work will include work mutually agreed upon by BNSF and the City pursuant to the terms of a Preliminary Engineering Services Agreement (“**PEA**”), attached hereto as Exhibit “A”, including but not limited to on-site visits, preliminary engineering services, developing cost

estimates for construction of the Improvements, and reviewing and/or providing comments on preliminary layouts or other designs, plans, and/or documents in connection with the Improvements (“**Work**”). The City will pay and reimburse BNSF for all actual costs and expenses that BNSF incurs in performing the Work pursuant to the terms of the PEA. BNSF estimates the cost for the Work will be fifty thousand dollars (\$50,000).

- F. The Parties desire to enter into this Agreement for GLC to reimburse the City for the cost of the Work, subject to the terms and conditions in this Agreement.

#### **AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby recognized, and the mutual agreements herein contained, and in reliance thereon, the Parties hereby agree as follows.

1. **GLC Cost Contribution for the Work.** GLC shall reimburse the City for all actual costs and expenses that the City incurs from BNSF in performing the Work related to the following Improvements: (1) Acacia Avenue and Kimberly Avenue and (2) the Kimberly Avenue Rail Spurs.

With respect to Improvement (3), North State College Boulevard and Kimberly Avenue, GLC’s reimbursement obligation for the total cost of a new signal is \$321,000. GLC agrees to reimburse the City for all actual costs and expenses that the City incurs from BNSF in performing the Work related to Improvement (3), up to a maximum of \$321,000 as more fully described in the Development Agreement (originally a maximum contribution of \$400,000, which was reduced by \$79,000 pursuant to a subsequent agreement between the City and GLC on November 16, 2021). The total cost contributed by GLC to the City for the Work shall be included as part of GLC’s maximum total cost contribution of \$321,000 to fund Improvement (3).

2. **Work Beyond BNSF Estimates.** Pursuant to the terms of the PEA, BNSF estimates that actual costs and expenses for the Work will be \$50,000 (“**Estimate**”). However, the PEA states that the Estimate is not a limitation on the costs and expenses which the City must reimburse to BNSF for the Work. The City hereby agrees that if BNSF notifies the City that BNSF’s costs and expenses for the Work will exceed the Estimate, the City will provide BNSF’s notification to GLC.

3. **Invoices.** The City shall send GLC all invoices from BNSF relating to the Work within ten (10) days of the City’s receipt of such invoices. GLC shall reimburse the City for the invoiced amounts, as provided in this Agreement, within thirty (30) days of receipt of each invoice. Upon completion of the Work, the City shall provide GLC any detailed invoice of BNSF’s final costs provided by BNSF. GLC shall pay the final invoice, consistent with the terms of this Agreement, within thirty (30) days of the date GLC receives the final invoice from the City.

4. **Miscellaneous.**

4.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior negotiations and discussions between them regarding such subject matter.

4.2 **Construction; Choice of Law.** This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction based on which party drafted the provisions hereof. The Parties acknowledge that each has had a full and

fair opportunity to review this Agreement and to have it reviewed by their own counsel. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

4.3 Modifications. This Agreement may be canceled, terminated, modified or amended only pursuant to a written document executed by the Parties.

4.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the California Uniform Electronic Transactions Act, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the year and day set forth above.

GLC FULLERTON LLC:

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

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

Title: \_\_\_\_\_

CITY OF FULLERTON:

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

Name: Bruce Whitaker, Mayor

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

Lucinda Williams, City Clerk

**APPROVED AS TO FORM:**

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Richard D. Jones, City Attorney

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Sean Matsler, Attorney for GLC Fullerton LLC

# Exhibit A