



**San Bernardino Associated Governments**

1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA 92410  
Phone: (909) 884-8276 Fax: (909) 885-4407  
www.sanbag.ca.gov



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

**AGENDA**

**Board of Directors Metro Valley Study Session**

**December 13, 2012**

**\*\*\*\* Start Time: 9:00 a.m. \*\*\*\***

**Location:**

**SANBAG Offices**

*The Super Chief Room*

**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410**

***Board of Directors***

**Valley Representatives**

**Study Session Chair**

Dick Riddell, Mayor  
City of Yucaipa

**Study Session Vice-Chair**

Michael Tahan, Council Member  
City of Fontana  
Dennis Yates, Mayor  
City of Chino  
Ed Graham, Vice Mayor  
City of Chino Hills  
Sarah Zamora, Mayor  
City of Colton

Walt Stanckiewitz, Mayor  
City of Grand Terrace

Larry McCallon, Mayor  
City of Highland

Rhodes "Dusty" Rigsby, Mayor  
City of Loma Linda

Paul M. Eaton, Mayor  
City of Montclair

Alan Wapner, Council Member  
City of Ontario

L. Dennis Michael, Mayor  
City of Rancho Cucamonga

Pete Aguilar, Mayor  
City of Redlands

Ed Scott, Mayor Pro Tem  
City of Rialto

Pat Morris, Mayor  
City of San Bernardino

Ray Musser, Mayor  
City of Upland

**Mountain/Desert Representatives**

Cari Thomas, Mayor  
City of Adelanto

Rick Roelle, Council Member  
Town of Apple Valley

Julie McIntyre, Mayor Pro Tem  
City of Barstow

Bill Jahn, Mayor  
City of Big Bear Lake

Mike Leonard, Council Member  
City of Hesperia

Edward Paget, Mayor  
City of Needles

Jim Harris, Council Member  
City of Twentynine Palms

Ryan McEachron, Mayor  
City of Victorville

George Huntington, Council Member  
Town of Yucca Valley

**County Board of Supervisors**

Robert Lovingood, First District

Janice Rutherford, Second District

James Ramos, Third District

Gary Ovitt, Fourth District

Josie Gonzales, Fifth District

**SANBAG**

Ray Wolfe, Executive Director  
Eileen Teichert, SANBAG Counsel

*San Bernardino Associated Governments (SANBAG) is a council of governments formed in 1973 by joint powers agreement of the cities and the County of San Bernardino. SANBAG is governed by a Board of Directors consisting of a mayor or designated council member from each of the twenty-four cities in San Bernardino County and the five members of the San Bernardino County Board of Supervisors.*

*In addition to SANBAG, the composition of the SANBAG Board of Directors also serves as the governing board for several separate legal entities listed below:*

***The San Bernardino County Transportation Commission**, which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.*

***The San Bernardino County Transportation Authority**, which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.*

***The Service Authority for Freeway Emergencies**, which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.*

***The Congestion Management Agency**, which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.*

*As a **Subregional Planning Agency**, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.*

*Items which appear on the monthly Board of Directors agenda are subjects of one or more of the listed legal authorities. For ease of understanding and timeliness, the agenda items for all of these entities are consolidated on one agenda. Documents contained in the agenda package are clearly marked with the appropriate legal entity.*

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

**Board of Directors  
Metro Valley Study Session**

**December 13, 2012  
9:00 a.m.**

**LOCATION:  
Santa Fe Depot  
The Super Chief Room**

**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino**

***CALL TO ORDER – 9:00 a.m.***  
*(Meeting chaired by Mayor Dick Riddell.)*

- I. Pledge of Allegiance
- II. Attendance
- III. Announcements
- IV. Agenda Notices/Modifications – Nessa Williams

**1. Possible Conflict of Interest Issues for the SANBAG Board of Directors Metro Valley Study Session Meeting December 13, 2012. Pg. 7**

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Member abstentions shall be stated under this item for recordation on the appropriate item.

**Consent Calendar**

Consent Calendar items shall be adopted by a single vote unless removed by Board member request. Items pulled from the consent calendar will be brought up at the end of the agenda.

**2. Board of Directors Metro Valley Study Session Attendance Roster Pg. 11**

A quorum shall consist of a majority of the membership of the SANBAG Board of Directors.

***Notes/Action***

- 3. **Construction Contract Change Orders to on-going SANBAG Construction Contracts with, Brutoco Engineering and Construction, Diversified Landscape Inc., Skanska/Rados Joint Venture, and Skanska USA** Pg. 13

Review and ratify change orders. **Garry Cohoe**

**Discussion Calendar**

**Project Delivery**

- 4. **Interstate 10 (I-10)/Tippecanoe Avenue Interchange Construction Project** Pg. 15

That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled Board meeting:

1. Approve Amendment No. 3 to Contract No. C09092 with Transystems, Inc. in the amount of \$1,250,240 for additional project management, utility plan, and right-of-way support for the preparation of the Plans, Specifications, and Estimates phase of project development, and for the remediation of petroleum fuel releases to soil and groundwater at the former M&M Smog facility located at 1915 South Tippecanoe Avenue in the City of San Bernardino, which is a parcel needed as part of the right-of-way acquisition for Phase 2 of the Project; and

2. Approve Contingency amount of \$125,024 and authorize the Executive Director, or his designee, to release contingency as required for Contract No. C09092.

3. Approve a budget amendment increasing the Fiscal Year 2012/2013 budget for Task No. 0842 – Interstate 10 Tippecanoe Interchange by \$450,000. **Garry Cohoe**

- 5. **Interstate 215 Segments 1 and 2 in the City of San Bernardino** Pg. 38

That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled meeting:

Approve Amendment No. 2 to Contract No. 06-044 with Ninyo & Moore for Materials Testing Services for Interstate 215 Segments 1 and 2 in the City of San Bernardino for an additional \$480,000.00 and \$80,000 in contingency to increase the total contract value to \$4,910,166.56.

**Garry Cohoe**

**6. Right-of-Way Appraisals and Acquisitions for the Interstate 15/Interstate 215(I-15/I-215) Devore Interchange Reconstruction Project Pg. 43**

That the following be reviewed and recommended for final approval by the Board of Directors acting in its capacity as the San Bernardino County Transportation Commission (Commission) at a regularly scheduled Board meeting:

1. Approve revised appraisals and just compensation on properties needed for the I-15/ I-215 Devore Interchange Reconstruction Project listed in Attachment "A" ("Properties") of this agenda item, copies of which are on file with the Director of Project Delivery.
2. Authorize acquisition of the Properties in a not-to-exceed additional aggregate total of \$175,000, increasing the total allowance for property acquisitions for the project to \$16,505,000.
3. Authorize the Executive Director or his designee to act on behalf of the Commission in signing Purchase & Sale Agreements and other documents deemed necessary or convenient that are approved as to form by General Counsel or her designee for the Properties with the Property Owners, consistent with the procedure set out in SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507). Property owners: Ronald Kenaston and Atchison, Topeka, and Santa Fe Railroad. **Garry Cohoe**

**7. Hearings to Consider Resolutions of Necessity for Parcels for the Laurel Street Grade Separation Project in the City of Colton Pg. 48**

That the following be reviewed and recommended for approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at the next regularly scheduled Board of Directors meeting:

1. Conduct public hearings to consider condemnation of real property required for the Laurel Street Grade Separation project (Project) in the City Colton, and
2. By at least a two-thirds majority, adopt Resolutions of Necessity Nos. 13-039 and 13-040 and authorize and direct general counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from the following property owners: Burchco LLC (APN 0160-151-16) and Reider Enterprises LLC (APN 0160-242-23).

**Garry Cohoe**

**8. Construction and Maintenance (C&M) Agreement, and Underpass Bridge Removal Agreement for the Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure Project Pg. 76**

That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at a regularly scheduled Board meeting:

1. Approve Construction and Maintenance Agreement No. C13082 with Union Pacific Railroad Company (UPRR) and the State of California (CALTRANS) for the Colton-Loma Linda Yard Overhead bridge on Interstate 215 Bi-County High Occupancy Vehicle Gap Closure Project, with SANBAG responsible for contributing \$810,625.00.
  
2. Approve Underpass Bridge Removal Agreement No. C13081 with Union Pacific Railroad Company (UPRR) and the State of California (CALTRANS) for the Grand Terrace Underpass railroad structure on Interstate 215 Bi-County High Occupancy Vehicle Gap Closure Project, with SANBAG responsible for contributing \$79,950.00. **Garry Cohoe**

**Public Comments**

**Additional Items from Committee Members**

**Director's Comments**

**Brief Comments by General Public**

**Additional Information**

**Acronym Listing**

**Pg. 226**

**ADJOURNMENT**

**The next Metro Valley Study Session:**

**January 17, 2013**

Complete packages of this agenda are available for public review at the SANBAG offices and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov). Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

## Meeting Procedures and Rules of Conduct

### **Meeting Procedures**

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

### **Accessibility**

The SANBAG meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is (909) 884-8276 and office is located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA.

**Agendas** – All agendas are posted at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino at least 72 hours in advance of the meeting, Staff reports related to agenda items may be reviewed at the SANBAG offices located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov).

**Agenda Actions** – Items listed on both the "Consent Calendar" and "Items for Discussion" contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.

**Closed Session Agenda Items** – Consideration of closed session items *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

**Public Testimony on an Item** – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a "Request to Speak" form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for *each* item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

**Agenda Times** – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

**Public Comment** – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board's authority. *Matters raised under "Public Comment" may not be acted upon at that meeting. "Public Testimony on any Item" still apply.*

**Disruptive Conduct** – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for meetings. Your cooperation is appreciated!*

**SANBAG General Practices for Conducting Meetings  
of  
Board of Directors and Policy Committees**

**Basic Agenda Item Discussion.**

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on "Request to Speak" forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.

**The Vote as specified in the SANBAG Bylaws.**

- Each member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

**Amendment or Substitute Motion.**

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he would like to amend his motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is not addressed until after a vote on the first motion.
- Occasionally, a motion dies for lack of a second.

**Call for the Question.**

- At times, a member of the Board/Committee may "Call for the Question."
- Upon a "Call for the Question," the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair's discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

**The Chair.**

- At all times, meetings are conducted in accordance with the Chair's direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Board/Committee Chair.

**Courtesy and Decorum.**

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

*Adopted By SANBAG Board of Directors January 2008*



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

*Minute Action*

AGENDA ITEM 1

**Date:** December 13, 2012

**Subject:** Information Relative to Possible Conflict of Interest

**Recommendation\*:** Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

**Background:** In accordance with California Government Code 84308, members of the SANBAG Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Principals & Agents	Subcontractors
3-A	C12036	Brutoco Engineering and Construction, Inc. <i>Andy Acosta</i>	A.C. Dike Company ACL Construction, Inc. Alcorn Fence Company All American Asphalt AVAR Construction Systems, Inc. Cal Strip, Inc. Castle Walls LLC

\*

*Approved*  
 Board Metro Valley Studay Session

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

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.  
 MPC1212z-gc

Board Metro Valley Study Session Agenda Item

December 13, 2012

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3-A (Cont).	C12036		<p>CGO Construction Company, Inc.                  Coffman Specialties, Inc.                  Cooper Engineering, Inc.                  C.P. Construction Company, Inc.                  Diversified Landscape Company                  Dywidag Systems International                  Griffith Company                  Harber Companies, Inc.                  Integrity Rebar Placers                  KEC Engineering                  KRC Safety Co., Inc.                  Leinaia's Transportation                  S.D. Precast Concrete, Inc. dba                  Pomeroy                  Sully-Miller Contracting Company                  Treesmith Enterprises, Inc.                  Truesdale Corporation of California                  Visual Pollution Technologies                  West Coast Boring, Inc.</p>
3-B	C11169	<p>Diversified Landscape Company  <i>Vicki Moraliz</i></p>	<p>Global Environmental                  T.E. Roberts                  Crosstown Electrical &amp; Data</p>
3-C	C09196	<p>Skanska/Rados Joint Venture  <i>Chad Mathes</i></p>	<p>All American Asphalt                  Anderson Drilling                  CGO Construction                  Chrisp Company                  Coffman Specialties                  Cleveland Wrecking                  CMC Fontana Steel                  D C Hubbs                  Dywidag-Systems Int.                  Elmore Pipe Jacking                  Foundation Pile Inc.                  Gerco Contracting                  Giken America Corp.                  Robert B. Longway                  Malcolm Drilling Co, Inc.</p>

3-C (Cont.)	C09196		Merli Concrete Pumping Modern Alloy MSL Electric Inc. Olivas Drilling Pacific Restoration Group Penhall Pomeroy Reycon Construction, Inc. Southwest V-ditch Statewide Safety & Sign Steve Bubalo Construction Valley Concrete Placing, Inc. VP – Visual Pollution Vertical Earthwork
3-D	C11184	Skanska <i>Tim Wilson</i>	Ace Fence Company Anderson Drilling Empire Steel J P Striping Inc. J.V. Land Clearing Marina Landscape, Inc. MSL Electric Municon Consultants Reycon Construction Inc. Statewide Safety & Signs Tipco Engineering
4	C09092-03	Transystems, Inc. <i>Jamal Salman</i>	Stantec David Evans Associates AECOM LDP Design Group LSA
5	C06044-02	Ninyo & Moore <i>Kurt Yoshii</i> <i>Jala Vakili</i>	None
6	<u>APN No:</u> 0348-132-17 0349-174-07	<u>Property Owner:</u> Ronald Kenaston Atchison, Topeka and Santa Fe Railroad	None

Board Metro Valley Study Session Agenda Item

December 13, 2012

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7	<u>APN No:</u> 0160-151-16 0160-242-23	<u>Property Owner:</u> Burchco LLC Reider Enterprises LLC	None
8	C13082	Union Pacific Railroad Company (UPPR) <i>James P. Gade</i>	None
8	C13081	Union Pacific Railroad Company (UPPR) <i>James P. Gade</i>	None

**Financial Impact:** This item has no direct impact on the SANBAG budget.

**Reviewed By:** This item is prepared monthly for review by SANBAG Board and Committee members.

**AGENDA ITEM 2  
BOARD METRO VALLEY STUDY SESSION (MVSS) ATTENDANCE RECORD – 2012 \***

Name	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Dick Riddell</b> City of Yucaipa	X	X	X	X	X	X	X	X	X	X	X	
<b>Ray Musser</b> City of Upland	X	X	X			X	X	X	X	X	X	
<b>Janice Rutherford</b> Board of Supervisors	X			X		X	X	X	X		X	
<b>Sarah Zamora</b> City of Colton	X	X	X			X	X	X	X	X		
<b>Rhodes "Dusty" Rigsby</b> City of Loma Linda	X	X	X	X	X	X	X		X	X	X	
<b>Walt Stanckiewitz</b> City of Grand Terrace	X	X	X	X	X	X	X	X	X	X		
<b>Pete Aguilar</b> City of Redlands	X	X	X	X		X	X	X	X	X	X	
<b>Josie Gonzales</b> Board of Supervisors	X	X	X	X		X		X	X	X		
<b>Neil Derry</b> Board of Supervisors		X	X	X	X	X						
<b>Larry McCallon</b> City of Highland	X		X	X	X	X		X	X		X	
<b>Patrick Morris</b> City of San Bernardino	X	X	X	X	X	X	X	X	X	X	X	
<b>Ed Graham</b> City of Chino Hills	X	X	X	X	X		X	X	X	X	X	
<b>Michael Tahan</b> City of Fontana	X	X		X		X		X	X	X	X	

X = Member attended meeting.

Empty box = Member did not attend meeting

Shaded box = Not a member at the time.

\* Board of Directors established MVSS effective November 2012.

January through October reflects Major Projects Committee, Attendance Record which included Board Members representing valley jurisdiction only.

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**AGENDA ITEM 2  
BOARD METRO VALLEY STUDY SESSION (MVSS) ATTENDANCE RECORD – 2012 \***

Name	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Gary Ovit</b> Board of Supervisors		X	X	X						X	X	
<b>Paul Eaton</b> City of Montclair	X	X		X	X	X	X		X	X		
<b>Ed Scott</b> City of Rialto				X	X				X	X		
<b>Alan Wapner</b> City of Ontario	X	X	X		X	X			X	X		
<b>L. Dennis Michael</b> City of Rancho Cucamonga	X		X		X	X		X	X	X	X	
<b>Dennis Yates</b> City of Chino	X	X	X		X	X	X	X	X	X		
<b>Jim Harris</b> City of Twentynine Palms											X	

X = Member attended meeting.

Empty box = Member did not attend meeting

Shaded box = Not a member at the time.

\* Board of Directors established MVSS effective November 2012.

January through October reflects Major Projects Committee Attendance Record which included Board Members representing valley jurisdiction only.

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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

*Minute Action*

AGENDA ITEM:   3  

**Date:** December 13, 2012

**Subject:** Construction Contract Change Orders to on-going SANBAG Construction Contracts with, Brutoco Engineering and Construction, Diversified Landscape Inc., Skanska/Rados Joint Venture, and Skanska USA

**Recommendation:** Review and ratify change orders.

**Background:** Of SANBAG's fourteen on-going Construction Contracts, four have had Construction Change Orders (CCO's) approved since the last reporting to the Major Projects Committee. The CCO's are listed below:

- A. Contract Number (CN) 12036 with Brutoco Engineering and Construction, Inc. for construction of the I-10 Citrus Interchange project: CCO No. 8 (\$143,397.00 decrease for realignment of 60" RCP Drainage system); CCO # 13, (\$141,180.48 decrease revise traffic handling plans at westbound off ramp; CCO # 12, (\$11,483.50. increase added over excavation and recompaction at UPRR overhead abutment footing due to site conditions).
- B. CN 11169 with Diversified Landscape Company for the SR-210 Segment 9 Landscaping project: CCO No. 9 (\$10,000.00 increase for force account work to remove and disposal of rocks larger than 6" diameter and other debris found during excavations in accordance with the Standard Specifications for preparing planting areas.).

	<p><i>Approved</i>  <i>Board Metro Valley Study Session</i></p> <p>Date: _____</p> <p>Moved: _____ Second: _____</p> <p>In Favor: _____ Opposed: _____ Abstained: _____</p> <p>Witnessed: _____</p>										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">COG</td> <td style="width: 10%;"></td> <td style="width: 10%;">CTC</td> <td style="width: 10%; text-align: center;">X</td> <td style="width: 10%;">CTA</td> <td style="width: 10%; text-align: center;">X</td> <td style="width: 10%;">SAFE</td> <td style="width: 10%;"></td> <td style="width: 10%;">CMA</td> <td style="width: 10%;"></td> </tr> </table>	COG		CTC	X	CTA	X	SAFE		CMA		
COG		CTC	X	CTA	X	SAFE		CMA			

Check all that apply.  
 MPC1212b-tk

- C. CN C09196 with Skanska/Rados Joint Venture for construction of the I-215 Segments 1 and 2 project: CCO No. 57 Supplement 2 (\$25,000.00 additional funds for graffiti removal in accordance with the Standard Specifications); CCO No. 9 Supplement 1 (\$950,000.00 increase to provide, maintain and remove on a force account basis temporary stormwater pollution prevention measures as required to maintain conformance with current State Water Resources Control Board and Caltrans standards.)
  
- D. CN C11184 with Skanska for the Hunts Lane Grade Separation project: CCO No. 14 (\$10,000.00 increase to install, maintain and remove temporary pedestrian sidewalk in accordance with the Standard Specifications).

**Financial Impact:** This item imposes no financial impact, as all CCOs are within previously approved contingency amounts. Task No. 0824, Task No. 0838, and Task No. 0870

**Reviewed By:** This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee.

**Responsible Staff:** Garry Cohoe, Director of Project Delivery



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

*Minute Action*

AGENDA ITEM: 4

**Date:** December 13, 2012

**Subject:** Interstate 10 (I-10)/Tippecanoe Avenue Interchange Construction Project

**Recommendation:\*** That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled Board meeting:

1. Approve Amendment No. 3 to Contract No. C09092 with Transystems, Inc. in the amount of \$1,250,240 for additional project management, utility plan, and right-of-way support for the preparation of the Plans, Specifications, and Estimates phase of project development, and for the remediation of petroleum fuel releases to soil and groundwater at the former M&M Smog facility located at 1915 South Tippecanoe Avenue in the City of San Bernardino, which is a parcel needed as part of the right-of-way acquisition for Phase 2 of the Project; and
2. Approve Contingency amount of \$125,024 and authorize the Executive Director, or his designee, to release contingency as required for Contract No. C09092.
3. Approve a budget amendment increasing the Fiscal Year 2012/2013 budget for Task No. 0842 – Interstate 10 Tippecanoe Interchange by \$450,000.

**Background:** **This is an amendment to an existing contract.** In August 2011, the Tippecanoe project was broken into two phases. Phase 1 includes improvement to the

\*

*Approved*  
 Board Metro Valley Study Session

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

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC		X	CTA		SAFE		CMA	
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Check all that apply.

MPC1212b-bf

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C09092-03.docx>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C09092-3%20Att%20A.pdf>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C09092-3%20Att%20B.pdf>

eastbound I-10 mainline and off-ramp at Tippecanoe Avenue, and located entirely within existing right-of-way. Construction of the Phase 1 project began in August, 2012 and is expected to be complete in June, 2013. The Phase 2 project contains an estimated \$34M in right-of-way acquisitions and utility relocations, and an estimated \$17.8M in improvements to the westbound I-10 mainline with a new westbound on and off-ramp and improvements to the local streets.

As part of the environmental studies prepared for the project, contamination was identified on a parcel necessary for the project which previously was the site of an operating gas station. A detailed site investigation was performed to determine the nature and extent of the petroleum hydrocarbons in the soil and groundwater on the site. Following a meeting with the California Regional Water Quality Control Board (RWQCB), a soil vapor extraction (SVE) test was conducted on three wells. At the end of the operation, total petroleum hydrocarbons were reduced significantly, although not enough to satisfy RWQCB's closure requirements. During this same period, Caltrans evaluated the extent of the plume to the west of the site and determined that the petroleum fuel releases were contained onsite.

Upon further discussion with the RWQCB, Stantec Consulting, a subconsultant for Transystem, Inc., has prepared a remediation plan which involves installation of six dual phase extraction wells on the site. The wells will be located in an area that has minimal grading and construction activities so these wells can operate prior to, during, and after construction of the Phase 2 project, if necessary. The proposal presented assumes an extraction operation of twelve months with quarterly monitoring during and after extraction for a total of eight quarters. Based on the data presented, the dual phase extraction is likely the most cost effective method for removing the contaminant mass from the soil and groundwater at the site.

Because of the extended effort required for addressing the contamination on this site, involvement in the condemnation process, and new maintenance and design requirements, design costs have risen. Transystems has been asked to support the extended project schedule duration, provide coordination and support for to the environmental, appraisal and acquisition staff for condemnation proceedings and contaminant remediation. In addition, to avoid costs associated with extended maintenance, a new landscaping concept and plan has been developed to reduce an extended maintenance period in accordance with the new Caltrans maintenance policy. Likewise, Caltrans Highway Design Manual was updated in May 2012 resulting in an update of the plans and specifications to the new design standards.

The remediation cost and the additional PS&E support costs are estimated at \$1,250,240 with a contingency budget in the amount of \$125,024 is requested. It

is recommended that authorization be given to the Executive Director, or designee, to release contingency as needed to compensate the consultant for performing additional unforeseen work.

Recommendation 3 is to approve an amendment to Fiscal Year (FY) 2012/2013 budget for Task No. 0842 for the Interstate 10 Tippecanoe Interchange project. The budget adjustment increases the overall FY 2012/2013 budget by \$450,000 of Measure I Valley Interchange funds to accommodate the consulting services cost related to the right of way component of the proposed amendment to C090902. There are sufficient funds available within the approved right of way and construction cooperative agreement R10200 to account for the addition of these funds.

At the time of publication of this document, the dollar amounts included are tentative. The consultant is currently requesting bids from their equipment vendors and drillers in order to finalize their cost proposal. The updated costs and updated budget amendment will be distributed at the Board of Directors Metro Valley Study Session.

**Financial Impact:** Approval of this item will increase the Measure I Valley Freeway Interchange funds in the FY 2012/2013 budget for Task No. 0842 by \$450,000.

**Reviewed By:** This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee. General Counsel has not yet reviewed this item or the draft agreement, however, General Counsel's approval of the item and agreement will be obtained prior to Board approval.

**Responsible Staff:** Garry Cohoe, Director of Project Delivery



## CONTRACT SUMMARY SHEET

Contract No. C 09092 Amendment No. 3

By and Between

San Bernardino County Transportation Commission and Transystems, Inc. (formerly RMC, Inc.)

Contract Description Engineering and Professional Services for the I-10/Tippecanoe Interchange

**Board of Director's Meeting Date:** January 5, 2013  
**Overview of BOD Action:** Original contract award date: 11/5/08 for PA&ED; Amendments followed on 10/7/09 to add in PS&E and 8/3/11 to split the project and apply for CMIA funds.

Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW					
Original Contract Amount	\$	1,089,531	Original Contingency Amount	\$	108,953
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	\$5,013,180	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	450,300
Current Amendment Amount	\$	\$1,250,240	Contingency Amendment	\$	\$125,024
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>\$7,352,951</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>684,277</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ \$8,037,228</b>

Contract Start Date 11/05/08	Current Contract Expiration Date 6/30/14	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0842</u> .				
<input checked="" type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? Measure I				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input checked="" type="checkbox"/> Measure I Funds
Provide Brief Overview of the <b>Overall</b> Funding for the duration of the Contract: \$7,274,309 MSI 1990 Valley Fund for PSE/ \$762,919 of MSI Valley Int for r/w component (amendment 3)				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
<b>Check all applicable boxes:</b>	
<input type="checkbox"/> Retention? If yes, indicate % _____.	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ %	

Barbara Fortman

Project Manager (Print Name)	Signature	Date
Task Manager (Print Name)	Signature	Date
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

**AMENDMENT NO. 3 TO**

**CONTRACT NO. C09092**

**BY AND BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**TRANSYSTEMS INC. (FORMERLY RMC, INC.)**

This AMENDMENT No. 3 to Contract No. C09092 is effective on the Effective Date as defined herein by and between San Bernardino County Transportation Authority (hereafter called AUTHORITY) and the firm of Transystems, Inc. (formerly RMC, Inc. and hereafter called CONSULTANT):

**RECITALS,**

WHEREAS, AUTHORITY, under Contract No. C09092, has engaged the services of CONSULTANT to provide services for the Project Approval and Environmental Document (PA&ED) phase of project development for the I-10/Tippecanoe Avenue Interchange Project, and

WHEREAS, AUTHORITY, under Contract Amendment No. 1 to Contract No. C09092, has engaged the services of CONSULTANT to provide services for the Plans, Specifications and Estimates (PS&E) phase of project development for the I-10/Tippecanoe Avenue Interchange Project, and

WHEREAS, AUTHORITY has previously identified an opportunity to expedite delivery of the finished interchange improvement project by constructing it in two phases, and

WHEREAS, the parties hereto desire to amend the aforesaid Contract to include out-of-scope work: additional project management, utility plan, and right-of-way support for the preparation of the Plans, Specifications and Estimate (PS&E); and for remediation of petroleum fuel releases to soil and groundwater at the former M&M Muffler site.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, CONSULTANT and AUTHORITY do hereby agree as follows:

1. Amend the Contract scope of services to include additional out of scope work as described in Attachment "A", and Attachment "B" Scope of Service, of this Amendment No. 3 which is hereby incorporated into the Contract.
2. Amend Article 3, entitled "Contract Price and Cost Principles", paragraph 3.2 to delete \$6,661,964 as the Not-To-Exceed Amount and replace with \$7,912,204 as the new Not-To-Exceed Amount.
3. The Effective Date is the date that the AUTHORITY executes this Amendment No. 3.

C09092-03

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C09092-3%20Att%20B.pdf>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C09092-3%20Att%20A.pdf>

4. Except as amended by this Amendment No. 3, all other provisions of Contract No. C09092 shall remain in full force and effect.

IN WITNESS WHEREOF, the Effective Date of this Amendment No. 3 is the date this Amendment is executed by AUTHORITY.

Transsystems, Inc. hereby represents and acknowledges that it is the successor in interest to RMC, Inc. with respect to Contract No. C09092 and all amendments to it, having purchased all of the assets and liabilities of RMC, Inc. on or about August 7, 2010.

Effective as of that date, Transsystems, Inc. hereby expressly assumes all of the obligations, liabilities and responsibilities of RMC, Inc. under said contract and all amendments to it.

**Transsystems, Inc.**

**San Bernardino Associated Governments**

By: \_\_\_\_\_  
Jamal Salman, P.E.  
Vice President

By: \_\_\_\_\_  
Janice Rutherford, President  
SANBAG Board of Directors

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

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

**APPROVED AS TO LEGAL FORM:**

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

**CONCURRENCE:**

By: \_\_\_\_\_  
Jeffery Hill  
SANBAG Contracts Administrator

C09092-03

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C09092-3%20Att%20B.pdf>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C09092-3%20Att%20A.pdf>

# Attachment "A"

## I-10/Tippecanoe Avenue Interchange Improvements Project

### Preparation of Plans, Specifications, and Estimates

## SCOPE OF SERVICES

### Amendment No. 3

The following scope of work has been prepared for additional PS&E services for the I-10/Tippecanoe Avenue Interchange project.

#### **TASK 100 – PROJECT MANAGEMENT**

This task covers project management services including the requirements for meetings, schedules, progress reports, invoicing, and administration of the TranSystems team work.

#### ***Proposed Scope Change:***

Additional project management effort is required to support the extended project schedule duration for the project, and additional PS&E services included in this amendment. The previous scope of work assumed a PS&E phase completion date of September 2012. In coordination with the Regional Water Quality Control Board (RWQCB) and during further site investigation of the levels of contamination underneath the former M&M Smog and Muffler property (Site), it became apparent that the levels of contamination are higher than the early testing results indicated. The RWQCB continued to request additional mapping and analysis of the plume, and recently requested that the Site be cleaned to current acceptable standards. This request by the RWQCB has resulted in extending the completion date of the PS&E phase to July 2013, with a construction contract award date in December 2013. The project schedule extension will require additional monthly meetings for two (2) staff, including one PDT meeting and two focus meetings each at four (4) hours per meeting. The extended duration will also require additional monthly effort including PDT coordination, schedule updates, progress reports, and project controls.

Additional monthly focus meetings have been required than originally budgeted (one per month). An additional 19 focus meetings have been attended by one to two staff at four (4) hours per meeting.

## **TASK 230 – PREPARE DRAFT PS&E**

### *Proposed Scope Change:*

#### **230.25 Utility Plans**

Additional coordination and support for utility relocations has been required during the process of determining relocations for Southern California Edison (SCE). Project improvements required SCE to relocate transmission facilities from the east side of Anderson Street to the west side, which required coordination with the Omnitrans sbX project due to a bus station and park and ride facility to be constructed. During this coordination an independent maintenance easement and access issue was identified where the Omnitrans project restricted SCE maintenance vehicles from accessing the existing transmission corridor along San Timoteo Creek. Additional effort is required by TranSystems to coordinate the SCE relocations with the Omnitrans project, including review of Omnitrans' plans, easement documents, and preparation of coordination meeting materials and exhibits.

At the request of the City of Loma Linda, TranSystems has prepared utility relocation plans for City of Loma Linda water and sewer facilities. The work includes relocation of a water line at the intersection of Redlands Blvd. and Anderson Street, and a sewer line along Tippecanoe Avenue / Anderson Street and Redlands Blvd. The City also requested that the existing fiber optic communication line be protected in place, which required additional roadway design revisions. The original scope of work assumed that all utility companies and agencies will perform relocation design for their own facilities.

### *Proposed Scope Change:*

#### **220.15 Right of Way Update**

Additional coordination and support for Caltrans Right of Way Appraisals and Acquisitions staff and SANBAG's Right of Way consultant, Overland, Pacific, and Cutler, Inc. (OPC) has been required during the Right of Way process. This scope includes support for condemnation proceedings on up to three parcels (Parcel 21745 [billboard]; Parcel 21741 [former M&M Smog and Muffler]; Parcel 21742 [Thrifty Oil/USA Gas]), which includes condemnation proceedings attendance (1<sup>st</sup> level at District 8 and 2<sup>nd</sup> level at CTC meeting), formal presentation of the project design, and preparation of meeting materials, exhibits, and condemnation documents such as the Appearance Information Sheet with attachments. "Pre-meeting" preparation with SANBAG and Caltrans is also included in this effort.

This scope of work includes support for R/W acquisition of a contaminated property, including the request submittal from Caltrans District 8 to Caltrans Headquarters (Parcel 21741 [former M&M Smog and Muffler]). Per SANBAG request TranSystems prepared the Request for Acquisition of Contaminated Property (form ENV-0002) and all supporting documentation for submittal to Caltrans Headquarters. TranSystems will

continue to provide support to respond to comments and requests for additional information needed for Headquarters approval.

Additional preparation of Resolution of Necessity (RON) documents has been required for more parcels than originally scoped. Caltrans and OPC have requested RON documents for a total of 39 parcels to date. This scope of work assumes that RON documents will be required for up to 41 parcels. Based on the current scope of work that includes preparation of RON documents for 30 parcels, this scope of work requires documents for an additional 11 parcels.

This scope of work includes additional effort for preparation of Director's Deed documents for one parcel requested by Caltrans. The deed documents are being prepared for a portion of excess land to be used for relocation of an existing billboard sign.

This scope of work also includes one resubmittal of the Right of Way Requirement Maps, Appraisal Maps, Hard Copy Map, and deed documents based on anticipated design and schedule revisions.

## **TASK 235 – MITIGATE ENVIRONMENTAL IMPACTS AND HAZARDOUS WASTE**

### ***Proposed Scope Change:***

#### **235.10.15 Detailed Hazardous Waste Site Investigation**

Based on the results of the Detailed Site Investigation, the case for the former M&M Smog property (Site) was proposed to be closed citing the State Water Resources Control Board (SWRCB) new low threat policy. The Santa Ana Regional Water Quality Control Board (RWQCB) does not agree that this Site satisfies the new low threat policy and recommended remediation of soil and groundwater on the Site. This scope of work includes effort for additional coordination with the RWQCB, SANBAG, and Caltrans to evaluate case closure and to develop remediation strategies and cost estimates.

This scope of work assumes that up to an additional four borings will be conducted on the west side of Tippecanoe Avenue west of the Site to delineate the westerly boundary of the contaminated groundwater plume as requested by the RWQCB. It is assumed that Caltrans will obtain right-of-entry to private properties if RWQCB requires the borings to be on private property. Groundwater samples will be collected from the borings and the results will be incorporated into the Detailed Site Investigation (DSI). The DSI will be resubmitted to Caltrans and RWQCB for review.

This scope of work assumes that actual site remediation will be completed by others through Caltrans or SANBAG's consultant. TranSystems will continue to provide support for remediation and acquisition of the property and coordinate through the final PS&E to accommodate the necessary workaround on the property.

## **TASK 255 - FINAL PS&E (100 PERCENT) SUBMITTAL**

### *Proposed Scope Change:*

#### **255.20 Highway Planting Plans**

The planting and irrigation PS&E was prepared based on the Design Intent Statement and concept plans reviewed and approved by Caltrans and the Cities of San Bernardino and Loma Linda. Based on the level of landscaping Caltrans maintenance policy required that the local agency maintain the landscaping for a period of 12 years after the initial plant establishment period. The City of San Bernardino indicated that based on the City's financial situation the City could not enter the required maintenance agreement. In order to avoid the long term maintenance by the City, Caltrans, SANBAG, and the City agreed to revise the proposed landscaping to be consistent with replacement planting guidelines. This scope of work includes inventory of existing landscaping based on field observations and as-builts; coordination with Caltrans Landscape Architecture and Maintenance to develop a revised landscaping concept; and Final PS&E revisions to provide reduced maintenance landscaping and irrigation. The PS&E revisions will require updates to the planting and irrigation plans, hardscape details, quantities, specifications, and cost estimate.

### *Proposed Scope Change:*

#### **255.20 Roadway Plans and Supplemental Fact Sheets for Exceptions to Design Standards**

The Caltrans Highway Design Manual (HDM) was updated on May 7, 2012. As a result, Caltrans requested that the Phase 2 project Final PS&E meet the updated design standards in this recent release of the HDM. This scope of work includes review of the design standards that have been modified and determination of impacts to the Final PS&E. The final plans will be revised as necessary to comply with the updated design standards. If it is not feasible to revise the plans, Supplemental Fact Sheets for exceptions to design standards will be prepared and submitted to Caltrans. This scope of work assumes that one Supplemental Advisory Fact Sheet and one Supplemental Mandatory Fact Sheet will be required to address the HDM updates.

This scope of work also includes design revisions required based on the right-of-way proceedings for a parcel on Redlands Blvd west of Anderson Street. Based on SANBAG and Caltrans request, TranSystems evaluated reducing the proposed length of the Redlands Blvd eastbound right turn pocket in order to eliminate impacts to parcel 21750 and avoid condemnation of the parcel. The City of Loma Linda has approved this design change. This scope of work includes Final PS&E revisions to address this design change, including revisions to the typical sections, layouts, construction details, grading, utilities, stage construction, pavement delineation, quantities, and cost estimate.

## TASK 265 – AWARDED AND APPROVED CONSTRUCTION CONTRACT

### *Proposed Scope Change:*

#### **3.265.50 Contract Ready for Advertising**

Based on the services requested by SANBAG on the Phase 1 construction contract documents, the following additional services will be required for Phase 2.

##### **SANBAG Constructability Review**

SANBAG's construction management consultant (CM) will conduct a constructability review prior to contract advertisement. TranSystems will prepare responses to comments and attend one constructability review workshop with SANBAG and the CM to resolve comments. TranSystems will revise the Final PS&E as needed to address the comments prior to advertisement. This scope of work assumes that revisions to the Final PS&E will not include major design changes that would require Caltrans Design Oversight review and approval. Additional review cycles and coordination with Caltrans is not included in this scope of work.

##### **SANBAG Construction Contract Bid Document Review**

The following additional services will be provided to support SANBAG in preparation of the construction contract documents and funding requirements:

1. Preparation of a Quality Management Plan as requested by Caltrans and SANBAG.
2. Coordination with Caltrans Local Assistance to provide the items required for the construction request for authorization package.
3. Review of the SANBAG contract specifications and bid documents, edits to the document to maintain consistency throughout the various sections including the Federal requirements.

**COST PROPOSAL**



**I-10/Tippecanoe Avenue Interchange Improvements Project**

San Bernardino Association of Governments

**Amendment No. 3**

**Phase 2 PS&E Additional Services**

**TRANSYSTEMS | RMC, INC.**

**LABOR**

Task 100 - Project Management	\$ 182,679
Task 220 - Right-of-Way Plans and Engineering	\$ 71,278
Task 230 - Draft PS&E (Utilities)	\$ 51,258
Task 235 - Mitigate Environmental Impacts and Hazardous Waste	\$ 50,609
Task 255 - Final PS&E	\$ 80,520
Task 265 - Awarded and Approved Construction Contract	\$ 31,291

**SUBTOTAL** \$ 467,636

**OTHER DIRECT COSTS**

Additional Hazardous Waste Investigation	\$ 29,405
Mileage	\$ 3,440
Travel for CTC Hearings	\$ 2,364

**SUBTOTAL** \$35,209

**SUBCONSULTANTS**

DEA	\$ 20,991
LDP	\$ 14,012

**SUBTOTAL** \$ 35,003

**TOTAL** \$ 537,848

**CONTINGENCY**

Remaining Contingency Under Existing Contract	\$ 569
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**AMENDMENT AMOUNT** \$ 537,279

- \$50,608.80  


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 \$487,240

# ATTACHMENT 'B'

TranSystems

## San Bernardino Associated Governments (SANBAG)

Amendment 3

Phase 2 PS&E Additional Services

October 11, 2012

### I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Manager	\$112.99	648	\$73,217.52
Roadway Engineer	\$60.44	196	\$11,846.24
Senior Engineer	\$63.20	236	\$14,915.20
Project Engineer	\$69.29	862	\$59,727.98
Junior Engineer	\$32.32	320	\$10,342.40

<b>Subtotal Hours &amp; Direct Labor Costs</b>	2,262	<u>\$170,049.34</u>
<b>Anticipated Salary Increases</b>		<u>\$0.00</u>
<b>Total Direct Labor Costs</b>		<u>\$170,049.34</u> (1)

### II. INDIRECT COSTS

**INDIRECT RATE**     150.00 % x     \$ 170,049.34     =     Subtotal     \$255,074.01     (2)

Subtotal (1)

### III. FEE (PROFIT)

10 % x     \$ 425,123.35     =     Subtotal     \$42,512.34     (3)

Total (1) + (2)

### IV. OTHER DIRECT COSTS

Item	Amount
Stantec (Additional Haz Waste Borings for M&M Site)	\$29,405.37
Mileage	\$3,439.70
Travel to CTC Hearing for R/W Condemn. Review (3 Parcels)	\$2,364.00

Subtotal \$     \$35,209.07     (4)

### V. SUBCONSULTANTS COST

DEA	\$20,991.00
LDP	\$14,012.07

Subtotal \$     \$35,003.07     (5)

### VI. TOTAL AMOUNT

~~\$537,848~~     (Total 1-5)

537,848 -  
50,608.80  
487,239

**LABOR & OTHER DIRECT COST (ODC) SUMMARY**  
 I-10/Tippeance Avenue Interchange Improvements Project  
 Phase 2 PS&E Additional Services

October 11, 2012

STAFF CLASSIFICATION	STAFF NAME	RANGE OF DIRECT HOURLY RATES		TOTAL HOURS	INITIAL DIRECT HOURLY RATE	SUB-TOTAL DIRECT LABOR COST	ANTICIPATED SALARY INCREASES	TOTAL DIRECT LABOR COST	TOTAL INDIRECT COST	FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		LOW	HIGH									
Project Manager	Jamial Salmán	\$72.12	\$115.38	648	\$112.99	\$73,217.52	\$0.00	\$73,217.52	\$109,826.28	\$16,304.38	\$201,348.18	\$310.72
Roadway Engineer	Jimmy Vuong	\$57.69	\$67.50	196	\$60.44	\$11,846.24	\$0.00	\$11,846.24	\$17,769.36	\$2,961.56	\$32,577.16	\$166.21
Senior Engineer	Carl Sosa	\$62.50	\$86.54	236	\$63.20	\$14,915.20	\$0.00	\$14,915.20	\$22,372.80	\$3,728.80	\$41,016.80	\$173.80
Project Engineer	Michael Han	\$57.69	\$72.11	862	\$69.29	\$59,727.98	\$0.00	\$59,727.98	\$89,591.97	\$14,932.00	\$164,251.95	\$190.55
Junior Engineer	Courtney Endo	\$27.40	\$42.95	320	\$32.32	\$10,342.40	\$0.00	\$10,342.40	\$15,513.60	\$2,585.60	\$28,441.60	\$88.88
<b>TOTAL =</b>					<b>2,262</b>	<b>\$170,049.34</b>	<b>\$0.00</b>	<b>\$170,049.34</b>	<b>\$255,074.01</b>	<b>\$42,512.34</b>	<b>\$467,635.69</b>	

FEE (PROFIT) 10.00%

INDIRECT COST	
Overhead	150.00%
General & Admin	
<b>Total</b>	<b>160.00%</b>

OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Stanlec (Additional Haz Waste Borings for M&M SI Mileage	\$29,405.37	ea	1	\$29,405.37	3,235.10
Travel to CTC Hearing for RAW Condemn. Review (3 Parcels)	\$0.55	mi	6254	\$3,438.70	3,100.15
Air Travel	\$500.00	roundtrip	3	\$1,500.00	4,220.15
Vehicle Rental	\$50.00	day	6	\$300.00	4,220.15
Fooding	\$140.00	day	3	\$420.00	4,220.15
Per Diem	\$24.00	day	6	\$144.00	4,220.15
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
<b>TOTAL OTHER DIRECT COSTS</b>				<b>\$35,209.07</b>	

NO ESCALATION ASSUMED FOR THIS AMENDMENT

Year	# of Months	Escalation Per Year =	
		Esc.	Value
2012	3	1,000	3,000
2013	7	1,000	7,000
<b>TOTAL</b>		<b>10</b>	<b>10,000</b>
<b>Escalation Factor for Contract</b>		<b>1.000</b>	

TOTAL COSTS \$502,844.76



**Stantec**

Stantec Consulting Services Inc.  
25864-F Business Center Drive  
Redlands, CA 92374  
Tel: (909) 335-6116  
Fax: (909) 335-6120

August 13, 2012

Mr. Michael C. Han, P.E.  
TranSystems  
6 Hutton Centre Drive, Suite 1250  
Santa Ana, California 92707

**RE: REMEDIATION ANALYSIS AND COST ESTIMATE**  
Former M&M Smog Property  
1915 South Tippecanoe Avenue  
I-10 at Tippecanoe Avenue Interchange Phase 2 Improvement Project  
San Bernardino County, California  
08-SBd-10, PM 26.0/26.7  
EA 448121  
PN 0800020467

Dear Mr. Han,

Pursuant to your request, Stantec Consulting Services Inc. (Stantec) has prepared this Remediation Analysis and Cost Estimate to mitigate petroleum fuel releases to soil and groundwater at the former M&M Smog facility located at 1915 South Tippecanoe Avenue in San Bernardino, California (Site). This cost estimate has been prepared based on the understanding of the extent of soil and groundwater impact described in the Detailed Site Investigation Report dated July 16, 2012, by Stantec and discussions with the Regional Water Quality Control Board (RWQCB) at a meeting on August 7, 2012.

The following paragraphs summarize closure requirements under State Water Resources Control Board (SWRCB) Resolution 2012-0016 (Low Threat Case Closure Policy), a comparison of Site characteristics/conditions with the Low Threat Policy closure criteria, a discussion of three alternatives for achieving Site closure and the estimated costs associated with each alternative.

#### **CRITERIA FOR LOW-THREAT CASE CLOSURE**

On May 1, 2012 the SWRCB passed Resolution 2012-0016, which adopted the Low-Threat Underground Storage Tank Case Closure Policy (Low Threat Policy).

The SWRCB justified the adoption of a "state-wide policy" stating that it "... recognizes that the technical and economic resources available for environmental restoration are limited, and that the highest priority for these resources must be the protection of human health and environmental receptors."

The Board developed and adopted the policy stating that "...experience has...shown that residual contaminant mass usually remains after the investment of reasonable effort, and that this mass is difficult to completely remove regardless of the level of additional effort and resources invested. It has been well-documented in the literature and through experience at individual UST release sites that petroleum fuels naturally attenuate in the environment through adsorption, dispersion, dilution, volatilization, and biological degradation. This natural attenuation slows and limits the migration of dissolved petroleum plumes in groundwater. The biodegradation of petroleum, in particular, distinguishes petroleum products from other hazardous substances...."

The Low Threat Policy states that,

"In the absence of unique attributes of a case or site-specific conditions that demonstrably increase the risk associated with residual petroleum constituents, cases that meet the general and media-specific criteria described in this policy pose a low threat to human health, safety or the environment and are appropriate for closure.... Cases that meet the criteria in this policy do not require further corrective action and shall be issued a uniform closure letter. It is important to emphasize that the criteria described in this policy do not attempt to describe the conditions at all low-threat petroleum UST sites in the State. The regulatory agency shall issue a closure letter for a case that does not meet these criteria if the regulatory agency determines the site to be low-threat based upon a site specific analysis."

If a regulatory agency believes that the Site does not warrant closure under the Low Threat Policy, it is the responsibility of the regulatory agency to identify the conditions that make closure inappropriate:

This policy relies on the regulatory agency's use of the conceptual site model to identify the special attributes that would require specific attention prior to the application of low-threat criteria. In these cases, it is the regulatory agency's responsibility to identify the conditions that make closure under the policy inappropriate.

There are eight criteria that must be met for closure under the Low Threat Policy.

1. The unauthorized release is located within the service area of a public water system;
2. The unauthorized release consists only of petroleum;
3. The unauthorized ("primary") release from the UST system has been stopped;
4. Free product has been removed to the maximum extent practicable;
5. A conceptual site model that assesses the nature, extent, and mobility of the release has been developed;
6. Secondary source has been removed to the extent practicable;
7. Soil or groundwater has been tested for methyl tert-butyl ether (MTBE); and
8. Nuisance as defined by Water Code section 13050 does not exist at the site.

Each of these is described below along with a discussion of conditions at the M&M Smog Site relative to each of these criteria.

#### **1. The unauthorized release is located within the service area of a public water system**

The policy states,

"This policy is protective of existing water supply wells. New water supply wells are unlikely to be installed in the shallow groundwater near former UST release sites. However, it is difficult to predict, on a statewide basis, where new wells will be installed, particularly in rural areas that are undergoing new development. This policy is limited to areas with available public water systems to reduce the likelihood that new wells in developing areas will be inadvertently impacted by residual petroleum in groundwater. Case closure outside of areas with a public water system should be evaluated based upon the fundamental principles in this policy and a site specific evaluation of developing water supplies in the area. For purposes of this policy, a public water system is a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year."

- ✓ **M&M Smog:** *This facility is located in an existing service area. Although it is difficult to predict where new wells might be installed, it is likely that additional wells would be installed along San Timoteo*



Canyon Wash or the Gage Canal where wells are currently located. These areas are located more than 1,500 feet from the Site.

**2. The unauthorized release consists only of petroleum**

The policy states,

"For the purposes of this policy, petroleum is defined as crude oil, ...motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils, including any additives and blending agents such as oxygenates contained in the formulation of the substances."

- ✓ **M&M Smog:** *Analytical data demonstrate that the contamination is weathered gasoline. The absence of fuel oxygenates suggests that the gasoline pre-dates the mid 1980s when MTBE and other oxygenates were added to gasoline. This is consistent with records indicating that the USTs were removed in 1981.*

**3. The unauthorized release has been stopped**

The policy states,

"The tank, pipe, or other appurtenant structure that released petroleum into the environment (i.e. the primary source) has been removed, repaired or replaced. It is not the intent of this policy to allow sites with ongoing leaks from the UST system to qualify for low-threat closure."

- ✓ **M&M Smog:** *The USTs have been removed and any remaining piping disconnected from the gasoline storage source.*

**4. Free product has been removed to the maximum extent practicable**

The policy states,

"At petroleum unauthorized release sites where investigations indicate the presence of free product, free product shall be removed to the maximum extent practicable. In meeting the requirements of this section:

a) Free product shall be removed in a manner that minimizes the spread of the unauthorized release into previously uncontaminated zones,

b) Abatement of free product migration shall be used as a minimum objective for the design of any free product removal system...."

- ✓ **M&M Smog:** *At one time, free product was observed immediately south of the Site in Thrifty well MW-6. However, free product disappeared prior to remedial actions at the Thrifty site. In addition, petroleum concentrations decreased substantially due to natural attenuation prior to any remediation at the Thrifty site. It is noted that TPH concentrations reported in groundwater samples from CB-1 are approximately 10 percent of the water solubility level. A sheen was observed in samples collected from this well. If free product exists, the evidence suggests that it is not spreading, but rather it is shrinking. Consequently, it may be argued that the minimum objective for free product removal has been achieved.*

**5. A conceptual site model that assesses the nature, extent, and mobility of the release has been developed**

The policy states,



"The Conceptual Site Model (CSM) is a fundamental element of a comprehensive site investigation. The CSM establishes the source and attributes of the unauthorized release, describes all affected media (including soil, groundwater, and soil vapor as appropriate), describes local geology, hydrogeology and other physical site characteristics that affect contaminant environmental transport and fate, and identifies all confirmed and potential contaminant receptors (including water supply wells, surface water bodies, structures and their inhabitants). All relevant site characteristics identified by the CSM shall be assessed and supported by data so that the nature, extent and mobility of the release have been established to determine conformance with applicable criteria in this policy."

- ✓ **M&M Smog:** A CSM has been presented in the Detailed Site Investigation (DSI) Report and presented in a Power Point presentation at a meeting with the Regional Water Quality Control Board (RWQCB) office in Riverside on August 7, 2012. According to Ken Williams, the CSM lacks adequate definition of the plume west of the Site, which is true. However, according to Thrifty monitoring data, the groundwater gradient is south to southwest and not to the west. Thrifty monitoring well data southwest and south of the Site indicate that the plume is shrinking and water quality objectives have been achieved at those locations.

#### 6. Secondary source has been removed to the extent practicable

The Low Threat Policy states,

"Secondary source" is defined as petroleum-impacted soil or groundwater located at or immediately beneath the point of release from the primary source. Unless site attributes prevent secondary source removal (e.g. physical or infrastructural constraints exist whose removal or relocation would be technically or economically infeasible), petroleum-release sites are required to undergo secondary source removal to the extent practicable as described herein. "To the extent practicable" means implementing a cost-effective corrective action which removes or destroys-in-place the most readily recoverable fraction of source-area mass. It is expected that most secondary mass removal efforts will be completed in one year or less. Following removal or destruction of the secondary source, additional removal or active remedial actions shall not be required by regulatory agencies unless (1) necessary to abate a demonstrated threat to human health or (2) the groundwater plume does not meet the definition of low threat as described in this policy."

- ✓ **M&M Smog:** Secondary source was removed by Thrifty Oil as a result of remedial efforts along the property line. More recently, approximately 2,300 pounds of secondary source TPH was removed by SVE. Additional secondary source remains, but has not been demonstrated to be a health risk.

#### 7. Soil and groundwater have been tested for MTBE and results reported in accordance with Health and Safety Code section 25296.15

The Low Threat Policy states,

"Health and Safety Code section 25296.15 prohibits closing a UST case unless the soil, groundwater, or both, as applicable have been tested for MTBE and the results of that testing are known to the Regional Water Board."

- ✓ **M&M Smog:** Soil and groundwater have been tested for MTBE. The results indicate that MTBE is not a constituent of concern at this Site. The results are consistent with the age of release (~30 years) which predates the time when MTBE became a major additive to gasoline.



**8. Nuisance as defined by Water Code section 13050 does not exist at the site**

The Low Threat Policy states,

"Water Code section 13050 defines "nuisance" as anything which meets all of the following requirements:

- (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (3) Occurs during, or as a result of, the treatment or disposal of wastes. For the purpose of this policy, waste means a petroleum release."

- ✓ **M&M Smog:** *The contamination below the Site has not been determined to meet the criteria of a nuisance under Water Code 13050.*

**REMEDIAL ACTION REQUIREMENTS AND ESTIMATED COSTS**

As of the date of this correspondence, the RWQCB verbally stated that the Low Threat Policy does not apply to the Site, but has not identified "...the conditions that make closure under the policy inappropriate", as required under the Low Threat Policy. Although vague, it appears that the RWQCB believes that the following are necessary for the RWQCB to consider a Low Threat closure:

1. Evaluate the extent of the plume to the west of the Site (this would require two to three borings and potentially at least one monitoring well west of Tippecanoe Avenue).
2. Evaluate the groundwater gradient in the plume area (this would require installation of monitoring wells and groundwater monitoring for a period of time)
3. Additional soil and groundwater remediation to remove mass below the site (Based on data from the Thrifty Site, dual phase extraction (DPE) is likely the most cost effective method for removing contaminant mass from soil and groundwater at the Site).

Stantec has identified three alternatives that could be conducted to achieve closure at the Site.

1. **Appeal to the State Water Resources Control Board (SWRCB)**—To increase the likelihood of success, the western extent of the plume should be defined. This would require at least three borings on the western edge of Tippecanoe Avenue. If the impacts extend further west, additional borings on private property may be necessary to demonstrate that the plume does not encroach within 1,000 feet of existing production wells which currently are located more than 1,500 to 1,800 feet from the Site. To support the appeal, a report will be developed for submittal to the SWRCB followed by a meeting and presentation in Sacramento. Assumptions and estimated costs are provided in Table 1.

**The estimated cost for this alternative is \$88,000.**

2. **Conduct DPE for one year and groundwater monitoring for one additional year**—The policy states that secondary mass removal is expected to require less than one year. Table 2 describes the assumptions under this alternative, which includes three borings on the west side of Tippecanoe Avenue, installation of nine DPE and groundwater monitoring wells (no offsite monitoring wells), installation of a DPE system with above grade piping, operation of DPE for up to one year followed by groundwater monitoring for one additional year.



The estimated cost for this alternative is \$765,000.

3. **Conduct DPE for three years and groundwater monitoring for one additional year in an attempt to achieve RWQCB stated goal of 250 ug/L benzene**—Although not a criteria of the Low Threat Policy, RWQCB stated that its policy is to require remediation of groundwater until benzene levels are reduced below 250 ug/L. Stantec estimates that these goals could be achieved within two to three years of DPE. Table 3 describes the assumptions under this alternative, which includes five borings on the west side of Tippecanoe Avenue, installation of 11 DPE and groundwater monitoring wells (including one off site monitoring well), installation of a DPE system with above grade piping, operation of DPE for up to three years followed by groundwater monitoring for one additional year.

The estimated cost for this alternative is \$1,205,000.

Stantec believes that the scope of work and remediation costs to achieve closure will likely be a hybrid of Alternative 1 and 2. However, the potential need to implement Alternative 3 based on the uncertain direction received from the RWQCB cannot be ruled out.

Stantec appreciates the opportunity to serve you on this project. If you have any questions, please contact the undersigned at your convenience.

Respectfully,  
STANTEC CONSULTING CORPORATION

Kevin K. Miskin, P.E.

Principal Engineer

Tel: 909.255.8210

Fax: 909.335.6120

Email: [Kevin.Miskin@stantec.com](mailto:Kevin.Miskin@stantec.com)

Attachments: Tables 1 through 3

**Table 1**  
**Cost Estimate for Additional Investigation and Appeal to SWRCB**  
**Former M&M Smog**

**Scope of Work/Assumptions:**

- Three direct push technology (DPT) borings on the west side of Tippecanoe Avenue to delineate west side of plume. Assume three groundwater samples and 6 soils samples analyzed for TPHg and VOCs. Assume permits for GW, city access, and traffic control.
- Assume one closure report and meeting with SWRCB in Sacramento, and follow up
- Support costs for SANBAG and Caltrans staff are not included in the total estimated cost below

<b>DPT Investigation West Side of Tippecanoe Avenue</b>	
3 borings, 6 soil samples, 3 GW samples, permits, traffic control	<b>\$20,000</b>
<b>Appeal to SWRCB</b>	
Consultant reporting, meetings and followup	<b>\$30,000</b>
Administrative	<b>\$30,000</b>
<b>Subtotal</b>	<b>\$80,000</b>
10% Contingency	<b>\$8,000</b>
<b>Total Estimated Cost</b>	<b>\$88,000</b>

**Notes:**

- TPHg = Total Petroleum Hydrocarbons-Gasoline
- VOCs = Volatile Organic Compounds
- GW = Groundwater
- SWRCB = State Water Resources Control Board

**Table 2**  
**Cost Estimate for 12 Months Dual Phase Extraction Followed by Natural Attenuation**  
**Former M&M Smog**

**Scope of Work/Assumptions:**

- Install 6 Dual Phase Extraction (DPE) wells and 3 groundwater (GW) monitoring wells (all to 40 feet)
  - GW wells are proposed to be installed on the M&M Smog property, however the results of the DPT boring investigation will determine where the groundwater wells will ultimately be located.
- Design and Permit (SCAQMD air quality permit, NPDES stormwater discharge permit)
- Install 250 SCFM/10 gallons per minute (GPM) DPE system - fenced compound, above grade piping, site is vacant
- Install perimeter fence and interior temporary equipment compound fence for equipment security.
- Compound and wells to be removed at completion of remediation
- Assume discharge of treated water to storm drain
- Assume no power available at site
- Operate system for 12 months (1 year)
- Assume quarterly GW monitoring for 8 quarters, which includes 4 quarters of remediation monitoring and 4 quarters of post remediation monitoring
- Assume site will remain vacant during remediation and post remediation monitoring
- Support costs for SANBAG and Caltrans staff are not included in the total estimated cost below

**Design, Permit, Capital Equipment and Construction**

One 10 GPM groundwater treatment system skid	\$25,000
One 250 SCFM electric-heated oxidizer (15 HP blower, 25 KW electric heater)	\$75,000
Installation of one temporary power pole	\$6,000
Three 2,000-pound carbon vessels w/ initial carbon	\$20,000
One 7.5 HP air compressor	\$8,000
Six groundwater extraction well pumps	\$20,000
System Design and Bid Package	\$12,000
Discharge permit(s)	\$10,000
System construction (above ground piping, site vacant, install fence and temporary compound)	\$165,000
<b>Total Design/Permit/Capital Equipment/Construction Cost</b>	<b>\$341,000</b>

**DPT Investigation West Side of Tippecanoe Avenue**

3 borings, 6 soil samples, 3 GW samples, permits, traffic control	\$20,000
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**Drilling Costs**

Number of DPE wells	6
Number of monitoring wells	3
Drillers cost for well install (\$/foot)	\$60
Depth per well (feet)	40
Permits	\$2,500
Consultant fees	\$9,500
<b>Total Drilling Costs</b>	<b>\$33,600</b>

**Utility Costs**

Power cost (\$/KW-hour)	\$0.18
Monthly power cost	\$3,068
Natural gas	\$0
<b>Monthly Utilities</b>	<b>\$3,068</b>

**Operations and Maintenance (O&M) Costs**

Expected duration (months)	12
Monthly O&M (excluding Utilities)	\$2,500
Carbon usage (\$/month)	\$250
Laboratory analytical fees (\$/month)	\$1,500
Discharge reporting (\$/month)	\$1,000
<b>Total O&amp;M Costs (Including utilities)</b>	<b>\$99,816</b>

**GW Monitoring and Reporting Costs**

Number of quarters - 4 remediation events + 4 quarters post-remediation monitoring events	8
Number of Wells	9
<b>Total Groundwater Monitoring Costs</b>	<b>\$77,600</b>

**System Decommissioning and Well Abandonment**

<b>Subtotal</b>	<b>\$635,766</b>
10% Contingency	\$63,577
10% Administrative	\$63,577
<b>Total Estimated Cost</b>	<b>\$762,919</b>

Notes:

- SCFM = standard cubic feet per minute
- SCAQMD = South Coast Air Quality Management District
- NPDES = National Pollutant Discharge Elimination System
- KW = Kilowatt

**Table 3**  
**Cost Estimate for Three Years Dual Phase Extraction Followed by Natural Attenuation**  
**Former M&M Smog**

**Scope of Work/Assumptions:**

- Install 6 Dual Phase Extraction (DPE) wells and 5 groundwater (GW) monitoring wells (all to 40 feet)
  - 3 GW wells proposed to be installed onsite, 2 GW wells proposed to be installed on the west side of Tippecanoe Avenue in the roadway near the curb. However, the results of the DPT boring investigation will determine where the groundwater wells will ultimately be located.
- Design and Permit (SCAQMD air quality permit, NPDES stormwater discharge permit)
- Install 250 SCFM/10 gallons per minute (GPM) DPE system - fenced compound, below grade piping (250 ft to 7 feet deep),
  - Site will be developed as part of the interchange.
- Install perimeter fence and interior temporary equipment compound fence for equipment security.
- Compound and wells to be removed/abandoned at completion of remediation
- Assume discharge of treated water to storm drain on northwest corner of property
- Assume no power available at site
- Operate system for 36 months (3 years)
  - Assume GW system will run for 18 months until construction
  - SVE will be continued after construction for an additional 18 months
- Assume quarterly GW monitoring for 16 quarters, which includes 12 quarters of remediation monitoring (3 years) and 4 quarters of post remediation monitoring
- Assume construction will be conducted on vacant land
- Support costs for SANBAG and Caltrans staff are not included in the total estimated cost below

**Design, Permit, Capital Equipment and Construction**

One 10 GPM groundwater treatment system skid	\$25,000
One 250 SCFM electric-heated oxidizer (15 HP blower, 25 KW electric heater)	\$100,000
Installation of one temporary power pole	\$6,000
Three 2,000-pound carbon vessels w/ initial carbon	\$20,000
One 7.5 HP air compressor	\$8,000
Six groundwater extraction well pumps	\$20,000
System Design and Bid Package	\$12,000
Discharge permit(s)	\$10,000
System construction (below ground piping (250 feet of trench to 7 feet bgs), site vacant, install fence and temporary compound)	\$175,000
<b>Total Design/Permit/Capital Equipment/Construction Cost</b>	<b>\$376,000</b>

**DPT Investigation West Side of Tippecanoe Avenue**

5 borings, 10 soil samples, 6 GW samples, permits, traffic control	\$40,000
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**Drilling Costs**

Number of DPE wells	6
Number of monitoring wells	5
Drillers cost for well install (\$/foot)	\$60
Depth per well (feet)	40
Permits	\$3,000
Consultant fees	\$9,500
<b>Total Drilling Costs</b>	<b>\$38,900</b>

**Utility Costs**

Power cost (\$/KW-hour)	\$0.18
Monthly power cost	\$3,068
Natural gas	\$0
<b>Monthly Utilities</b>	<b>\$3,068</b>

**Operations and Maintenance (O&M) Costs .**

Expected duration (months)	36
Monthly O&M (excluding Utilities)	\$2,500
Carbon usage (\$/month)	\$250
Laboratory analytical fees (\$/month)	\$1,500
Discharge reporting (\$/month)	\$1,000
<b>Total O&amp;M Costs (including utilities)</b>	<b>\$299,448</b>

**GW Monitoring and Reporting Costs**

Number of quarters - 12 remediation events + 4 quarters post-remediation monitoring events	16
Number of Wells	11
<b>Total Groundwater Monitoring Costs</b>	<b>\$180,800</b>

**System Decommissioning and Well Abandonment**

	\$68,750
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<b>Subtotal</b>	<b>\$1,003,898</b>
10% Contingency	\$100,390
10% Administrative	\$100,390
<b>Total Estimated Cost</b>	<b>\$1,204,678</b>

Notes:

- SCFM = standard cubic feet per minute
- SCAQMD = South Coast Air Quality Management District
- NPDES = National Pollutant Discharge Elimination System
- KW = Kilowatt



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

*Minute Action*

AGENDA ITEM: 5

**Date:** December 13, 2012

**Subject:** Interstate 215 Segments 1 and 2 in the City of San Bernardino.

**Recommendation:\*** That the following be reviewed and recommended for final approval by the Board of Directors at a regularly scheduled meeting:

Approve Amendment No. 2 to Contract No. 06-044 with Ninyo & Moore for Materials Testing Services for Interstate 215 Segments 1 and 2 in the City of San Bernardino for an additional \$480,000.00 and \$80,000 in contingency to increase the total contract value to \$4,910,166.56.

**Background:** This is a second amendment to an existing contract. SANBAG executed a contract with Ninyo & Moore for materials testing services for the I-215 5<sup>th</sup> Street Bridge project in 2006 for a total of \$467,500.00 of which \$42,500.00 was contingency. Amendment No. 1 was approved by the Board in July 2009 to expand the scope of services to include work on Interstate 215 Segment 1 and 2. This amendment also increased the contract by \$3,559,166.56, and added \$323,500 in contingency which brought the total contract value to \$3,984,166.56 with a total contingency of \$366,000. Material testing services are provided on an "as-need" basis based on the Caltrans testing requirements.

Through September 2012, the latest month invoiced, \$4,110,437.52 has been expended on the Ninyo & Moore contract, with approximately \$240,000.00

\*

*Approved*  
 Board Metro Valley Study Session

Date: December 13, 2012

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: \_\_\_\_\_

COG	CTC	x	CTA	SAFE	CMA
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Check all that apply.

remaining in the contract balance. Historically, materials testing services under this contract have been invoiced at an average of approximately \$60,000 monthly, with several months when major concrete pours occurred the cost reached \$150,000 per month. Based on this historical information, it is anticipated the remaining contract amount will adequately cover work required through January 2013. Construction is scheduled to be completed in October 2013, therefore necessitating the amendment to Ninyo & Moore's contract.

Reasons the original contract estimated amount is being exceeded include additional night shift work which requires overtime and shift differential, construction change orders as a result of changed field conditions, and additional testing required for concrete work based on contractors pour sequencing and construction schedule.

Based on our review of the issues, the contractor schedule, historical expenditures and the remaining materials testing work, Staff is requesting to increase the Ninyo & Moore base contract by \$480,000.00, bringing the total base contract value to \$4,464,166.56. Staff is also recommending approval to increase contingency by \$80,000.00 for a total contingency of \$446,000.00, resulting in a new total contract amount of \$4,910,166.56.

**Financial Impact:** This item is consistent with the adopted fiscal year budget. The funding for this contract is State Regional Improvement Funds (RIP). Task No. 0838.

**Reviewed By:** This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the contract amendment.

**Responsible Staff:** Garry Cohoe, Director of Project Delivery

**CONTRACT SUMMARY SHEET**

Contract No. 06-044 Amendment No. 02

By and Between

San Bernardino Associated Governments and Ninyo and Moore

Contract Description Materials Testing Services, Interstate 215 5<sup>th</sup> Street Bridge and Segment 1 and 2.

**Board of Director's Meeting Date: December 13, 2012**  
**Overview of BOD Action:** amendment No. 2 to Contract No. 06-044 with Ninyo and Moore for Materials Testing Services for Interstate 215 Segment 1 and 2 in the City of San Bernardino.

Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW					
Original Contract Amount	\$	425,000.00	Original Contingency Amount	\$	42,500.00
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	3,559,166.56 (AI)	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	323,500.00 (AI)
Current Amendment Amount	\$	480,000.00	Contingency Amendment	\$	80,000.00
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>4,464,166.56</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>446,000.00</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>				<b>\$</b>	<b>4,910,166.56</b>

<b>Contract Start Date</b> 11/06/2006	<b>Current Contract Expiration Date</b> 01/15/2014	<b>Revised Contract Expiration Date</b>
Has the contract term been amended? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - please explain. Amendment No. 1 was for materials testing services during construction of the Interstate 215 Segment 1 and 2 project in San Bernardino, California.		

FINANCIAL INFORMATION	
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No.0838.	
<input type="checkbox"/> A Budget Amendment is required.	
How are we funding current FY? Regional Improvement Program (RIP)	
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds
<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds
<input checked="" type="checkbox"/> Measure I Funds	
Provide Brief Overview of the Overall Funding for the duration of the Contract: Regional Improvement Program (RIP) is \$4,442,666.56 and MSI Valley Fund – Major Projects is \$467,500.	
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	

CONTRACT MANAGEMENT INFORMATION	
Check all applicable boxes:	
<input type="checkbox"/> Retention? If yes, indicate % _____.	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ %	

Mike Barnum  
 Project Manager (Mike Barnum)

Garry Cohoe  
 Task Manager (Garry Cohoe)

Andrea Zureick  
 Dir. of Fund Admin. & Programming (Andrea Zureick)

Jeffery Hill  
 Contract Administrator (Jeffery Hill)

\_\_\_\_\_  
 Chief Financial Officer (William Stawarski)

[Signature] 11/29/12  
 Signature Date

[Signature] 11-30-12  
 Signature Date

Andrea Zureick 12-6-12  
 Signature Date

[Signature] 12-6-12  
 Signature Date

\_\_\_\_\_  
 Signature Date

AMENDMENT NO. 2

AGREEMENT BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

NINYO & MOORE

FOR

MATERIALS TESTING SERVICES, INTERSTATE 215 5<sup>TH</sup> STREET BRIDGE AND SEGMENTS 1 AND 2

This AMENDMENT NO. 2 to CONTRACT NO. 06044 is made by and between the firm of Ninyo & Moore (hereafter called CONSULTANT) and San Bernardino County Transportation Authority (hereafter called AUTHORITY):

WITNESSETH:

WHEREAS, AUTHORITY, under Contract No. 06-044 (Contract) has engaged the services of CONSULTANT to provide Materials Testing Services for the I-215, 5<sup>th</sup> Street Overcrossing Project and for I-215 Segments 1 and 2 Project; and

WHEREAS, the parties desire to amend the Contract terms and increase the Contract not to exceed value.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, CONSULTANT and AUTHORITY agree as follows:

1. Under Contract Article 3, Contract Price and Principles, revise and replace Section 3.2 to read as follows:

“The total cost shall not exceed **\$4,910,166.56** which includes a contingency of **\$446,000.00** which can only be released with approval of the Director of Project Delivery. Services to be provided under the terms of this contract are to be provided on an as needed basis and compensated for as set forth in Attachment “A” for the 5<sup>th</sup> Street Overcrossing work and Attachment “C” for the work on Segments 1 and 2 which are incorporated herein by reference. Utilization of the contingency is not permitted unless directed in writing by AUTHORITY Project Manager. CONSULTANT’s fee for services is included in the total estimated contract cost and shall be based on a fixed percentage rate, as noted in Attachment “B” for the 5<sup>th</sup> Street Overcrossing and Attachment “C” for the work on Segments 1 and 2. CONSULTANT’s fee will be paid by AUTHORITY on an earned basis as set forth in Section 6.5.”

2.Except as amended by this Amendment, all other provisions of Contract No. 06-044 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment that is effective as of the day and year executed by AUTHORITY:

**NINYO & MOORE**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

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

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

Janice Rutherford, Chairperson

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

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

**APPROVED AS TO FORM:**

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

Eileen Monaghan Teichert  
General Counsel

**CONCURRENCE:**

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

Jeffery Hill  
Contract Administrator



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

*Minute Action*

AGENDA ITEM: 6

**Date:** December 13, 2012

**Subject:** Right-of-Way Appraisals and Acquisitions for the Interstate 15/Interstate 215(I-15/I-215) Devore Interchange Reconstruction Project

**Recommendation:\*** That the following be reviewed and recommended for final approval by the Board of Directors acting in its capacity as the San Bernardino County Transportation Commission (Commission) at a regularly scheduled Board meeting:

1. Approve revised appraisals and just compensation on properties needed for the I-15/ I-215 Devore Interchange Reconstruction Project listed in Attachment "A" ("Properties") of this agenda item, copies of which are on file with the Director of Project Delivery.
2. Authorize acquisition of the Properties in a not-to-exceed additional aggregate total of \$175,000, increasing the total allowance for property acquisitions for the project to \$16,505,000.
3. Authorize the Executive Director or his designee to act on behalf of the Commission in signing Purchase & Sale Agreements and other documents deemed necessary or convenient that are approved as to form by General Counsel or her designee for the Properties with the Property Owners, consistent with the procedure set out in SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507). Property owners: Ronald Kenaston and Atchison, Topeka, and Santa Fe Railroad.

\*

*Approved*  
 Board Metro Valley Study Session

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

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.  
 MPC1212e-ds \*

<http://portal.sanbag.ca.gov/mgmt/committee/major/mpc2012/mpc2012/AgendaItems/MPC1212e1-das.xlsx>

**Background:**

The Commission, in conjunction with Caltrans is proceeding with the right-of-way phase of the I-15/I-215 Devore Interchange Reconstruction Project (Devore Interchange Project). Cooperative Agreement No. C11103 with Caltrans was approved for this phase of the project at the June 1, 2011, Board meeting and was amended at the March 7, 2012, Board meeting. In this agreement the San Bernardino Associated Governments (SANBAG) acting in its capacity as the Commission is designated as the implementing agency for the appraisal, acquisition, and management of the right-of-way properties needed for this important design-build project. The approved agreement commits up to \$50,353,825 in Measure I 2010-2040 Cajon Pass funds for the acquisition of right-of-way, utility relocations, Caltrans right-of-way engineering and condemnation work, and mitigation expenses. At the June 6, 2012, SANBAG Board meeting, the Board approved appraisals and authorized making offers on 15 parcels for an aggregate not-to-exceed amount of \$3,000,000; at the July 11, 2012, SANBAG Board meeting, the Board approved appraisals and authorized making offers on an additional 31 parcels for an aggregate not-to-exceed amount of \$1,610,000; at the August 1, 2012, SANBAG Board meeting, an additional 62 parcels for an aggregate \$9,930,000 was approved; at the September 5, 2012, SANBAG Board meeting, an additional 18 properties were approved at an aggregate \$1,625,000, and at the October 3, 2012 SANBAG Board meeting, an additional 3 properties were approved at an aggregate \$165,000.

**Recommendation 1:** SANBAG's right-of-way consultant, Overland, Pacific and Cutler (OPC) Services, has been proceeding with acquisition of properties for this project. Through discussions/negotiations with the property owners, some additional information has been received which affects the value and basis of the appraisals. On two of these parcels, one residential, and one railroad parcel, additional information was obtained which affects the basis and value of the appraisal. As a result, the appraisals need to be revised and reapproved with the additional information included. The residential property increased due to the right-of-way acquisition going from a partial take to a full take. The final railroad appraisal decreased in value.

The two properties are summarized in Attachment "A" and include fee takes and easements with a total additional estimated value of \$175,000 above the previously approved appraisals. The estimated cost includes the property acquisition costs and a contingency of approximately 20%. Copies of these revised appraisals are on file with the Director of Project Delivery. These appraisals have been reviewed by a senior appraiser and by SANBAG's independent right-of-way advisor for compliance with necessary processes and meeting fair compensation requirements. In addition, Caltrans has reviewed and approved these appraisals. Staff recommends approval of these appraisals.

**Recommendation 2:** Staff requests that the Board authorize proceeding with revised offers of acquisition for all properties identified in Attachment "A" for an additional aggregate amount of \$175,000. The addition of the funds for these properties increases the total authorized amount for property acquisition for this project to \$16,505,000.

The Board should be aware that while condemnation actions for these properties is a last resort and SANBAG's consultant will make every reasonable attempt to avoid such actions, there is a potential that these properties may need to be acquired through eminent domain proceedings. Per the cooperative agreement, all resolution of necessity hearings will be coordinated by Caltrans through the California Transportation Commission (CTC).

**Recommendation 3:** Acquisition of these properties in a timely manner is critical to maintaining the planned construction schedule for the project. To assist in maintaining the schedule, staff is recommending that the Board authorize the Executive Director or his designee to act on behalf of the Commission in signing Purchase & Sale Agreements and other documents deemed necessary or convenient and that are approved as to form by General Counsel, similar to the procedure used pursuant to SANBAG Valley Freeway Program Policy No. 40004 (reference: Administrative Settlement Policy No. 34507).

This Board-approved policy establishes a standard administrative process for acquisition of right-of-way whereby the Executive Director is authorized to pursue acquisitions utilizing certain factors, such as an available appraisal, the inexact nature of the process by which just compensation is determined through legal processes, and the impact of such acquisitions through voluntary settlement on the project-wide perspective, including, e.g., project deadlines and funding issues.

A standard agreement and easement generally in the format that is consistent with the Caltrans standard template and their standard supplemental clauses will be used for these acquisitions and previously approved project acquisitions with the Commission signing the agreements as buyer, not Caltrans. The final documents will be approved as to form by SANBAG's General Counsel or her designee prior to presenting to the Executive Director for signature. Pursuant to the cooperative agreement the property will be acquired in Caltrans' name, but the agreement will be signed by the Commission and paid for by the Commission.

**Financial Impact:** This item is consistent with the SANBAG Fiscal Year 2012/2013 budget. Task No. 0880.

**Reviewed By:** SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the standard contract. This item is also scheduled for review by the Mountain Desert Committee on December 14, 2012.

**Responsible Staff:** Garry Cohoe, Director of Project Delivery

## Devore ROW Parcels for Acquisition

Caltrans Parcel No (CPN)	APN(s)	Owner	Type
22491	0348-132-17	Ronald Kenaston	Fee, Full Take Occupied Residential
22518	0349-174-07	Atchison, Topeka and Santa Fe Railroad	Fee, Part-Take Vacant Railroad Property



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

*Minute Action*

AGENDA ITEM: 7

**Date:** December 13, 2012

**Subject:** Hearings to Consider Resolutions of Necessity for Parcels for the Laurel Street Grade Separation Project in the City of Colton

**Recommendations:**\* That the following be reviewed and recommended for approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at the next regularly scheduled Board of Directors meeting:

1. Conduct public hearings to consider condemnation of real property required for the Laurel Street Grade Separation project (Project) in the City Colton, and
2. By at least a two-thirds majority, adopt Resolutions of Necessity Nos. 13-039 and 13-040 and authorize and direct general counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from the following property owners: Burchco LLC (APN 0160-151-16) and Reider Enterprises LLC (APN 0160-242-23).

**Background:** The Laurel Street Grade Separation Project will improve safety and reduce traffic delays along Laurel Street by separating pedestrians and vehicles from train traffic on six tracks along the BNSF Railway Company (BNSF) rail line. SANBAG is the lead agency for the design, right-of-way, and construction phases according to Memorandum of Understanding (MOU) No. C10201 between SANBAG, the City of Colton, Union Pacific Railroad (UPRR), and BNSF, and

\*

*Approved*  
 Board Metro Valley Study Session

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

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.  
 MPC1212b-pm  
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/RES%2013-039.pdf>  
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/RES%2013-040.pdf>

Construction Cooperative Agreement No. C12037 between SANBAG and the City of Colton.

SANBAG has made steady progress towards the start of construction on the Laurel Street Grade Separation project. One of the remaining critical path items is right-of-way acquisition. The SANBAG Board has approved appraisals and authorized offers for properties required for the grade separation project. SANBAG's right-of-way agent, Overland, Pacific, and Cutler (OPC) sent offers to each property owner and some parcels are being acquired through negotiated sale. While SANBAG and OPC continue to negotiate with property owners of the subject parcels, not all parcels will be acquired through a negotiated sale. Although negotiations are ongoing, dialogues with the property owners for the parcels listed have not yet resulted in settlements, and these parcels may need to be acquired through eminent domain which requires compliance with a statutorily prescribed process. During the eminent domain process, SANBAG's right-of-way agent will continue to negotiate with the property owners and attempt to achieve negotiated sales for the necessary property interests.

SANBAG, acting as the County Transportation Commission, is authorized to acquire property by eminent domain pursuant to California Public Utilities Code Section 130220.5. On December 5, 2012, the Board scheduled a public hearing for January 9, 2013, for the Board acting as the Commission to consider adopting Resolutions of Necessity regarding the parcels referenced in this agenda item, located in the County of San Bernardino and the City of Colton.

The adoption of the attached Resolutions of Necessity by the Commission allows for the eminent domain process to proceed, which results in obtaining legal rights to the property needed for the project. Since the process takes several months, it is necessary to start this process now to ensure that the property is obtained in time for construction of the Project to commence in 2013 as scheduled.

In order to adopt the Resolutions of Necessity, the Commission must make five findings discussed below for each of the parcels. The issue of just compensation value for these property interests is not addressed by these resolutions and is not to be considered at the hearings. The five necessary findings are:

1. The public interest and necessity require the Project.

This project will increase safety, reduce traffic delay, and establish a railroad quiet zone crossing by separating Laurel Street and the BNSF tracks. It was estimated that in 2012, 50 trains crossed the Laurel Street/BNSF railroad crossing daily and this number is projected to double up to 100 trains daily in 2035. The gate "down time" in 2010 is 2.5 hours a day and is expected to

increase to 4 hours daily in 2035. The project would remove the requirement for vehicles to stop while trains are passing. In addition, the project would enhance safety by separating vehicles and pedestrians from six railroad tracks and a future Metrolink track. The project is also a component of quiet zone improvements within the City limits and would reduce train noise related impacts by removing the requirements for trains to blow their horns as they pass the crossing.

2. The Project is planned and located in the manner that will be most compatible with the greatest public good and least private injury.

The project is being constructed as an underpass along the existing alignment of Laurel Street with proposed retaining walls to minimize right-of-way impacts to adjacent properties. The proposed design minimizes the property required, but includes full takes, partial takes, and temporary easements. During the preliminary design phase, project planners and engineers considered six alternatives that would provide access to adjacent properties whose access would be affected by the proposed underpass. Each alternative was assessed based on the needs and constraints of each property owner and Staff and OPC have also had numerous communications with the property owners about their needs in order to design the project in a manner that causes the least private injury while accomplishing the greatest public good through construction of the Project.

3. The properties sought to be acquired are necessary for the Project.

While some of the project is being constructed within existing right-of-way, some acquisition from the subject properties are needed to allow the construction of a new bridge, retaining walls, drainage systems, and required utility relocations. For the subject properties the following right-of-way interest are required.

- A temporary construction easement is needed from the Burchco LLC property (APN 0160-151-16) to accommodate a temporary railroad signal structure during construction. The easement being sought is located in a vacant and unused portion of the property.
- A permanent subsurface utility easement, permanent utility easement, and a temporary construction easement for a new electrical transformer pad is needed from the Reider LLC property (APN 0160-242-23) for utility relocations as part of the project. The permanent utility easement is needed to provide electrical service to the property and the existing pole-mounted transformer that currently serves the property will be replaced with an

above-ground transformer. A temporary construction easement will also be required to accommodate the work.

4. Offers required by Section 7267.2 of the Government Code have been made to the owner or owners of record.

The subject properties were appraised and offers for the full amount of the appraisals were made to the owner or owners of record in accordance with Section 7267.2 of the Government Code.

- The first offer for the Burchco LLC property (APN 0160-151-16) was made on 5/18/12.
- The first offer for the Reider LLC property (APN 0160-242-23) was made on 5/18/12.

5. All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the properties have been complied with.

The Commission has complied with all conditions and requirements to exercise the power of eminent domain.

Upon completion of the project, the Commission will transfer properties acquired for this project to the City of Colton.

**Financial Impact:** This item has no impact on the adopted SANBAG Fiscal Year 2012/2013 budget. Task No. 0884.

**Reviewed By:** SANBAG General Counsel and SANBAG's Right-of-Way Counsel, Woodruff, Spradlin & Smart, have approved this item as to form. This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee.

**Responsible Staff:** Garry Cohoe, Director of Project Delivery

**RESOLUTION NO. 13-039**

**A RESOLUTION OF THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF AN INTEREST IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF A PORTION OF APN 0160-151-16**

**WHEREAS**, the San Bernardino County Transportation Commission (the "Commission") is undertaking the Laurel Street Grade Separation Project (the "Project") that necessitates the Commission to acquire by eminent domain a portion of the property located at 1620, 1750 and 1641 North 8<sup>th</sup> Street, in the City of Colton, California; and

**WHEREAS**, the Project is intended to improve public safety, decrease traffic congestion and improve passenger rail operations by building grade separations between the roadway and the rail lines; and

**WHEREAS**, the Project requires the acquisition of property interests from private parties; and

**WHEREAS**, the Project will be a transportation improvement project serving the public interest; and

**WHEREAS**, subsection (a) of the California Public Utilities Code section 130220.5, authorizes the Commission to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

**WHEREAS**, the hereinafter described real property required for the Project includes a temporary construction easement as legally described in Exhibit "A" and depicted in Exhibit "B" and located at 1620, 1750 and 1641 North 8<sup>th</sup> Street, in the City of Colton, California; and

**WHEREAS**, reasonable pedestrian and vehicular access to the remainder property will be maintained during construction; and

**WHEREAS**, in accordance with section 1245.235 of the California Code of Civil Procedure, on December 6, 2012 there was mailed a Notice of Hearing on the Intent of the Commission to adopt a Resolution of Necessity for acquisition by eminent domain of the interest in real property described and depicted in Exhibits "A" and "B" herein. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the property described and depicted in Exhibits "A" and "B" (collectively the "Property"); and

**WHEREAS**, the Commission provided written notice to the City of San Bernardino as required by subsection (c) of California Public Utilities Code section 130220.5; and

**WHEREAS**, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Commission at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

**WHEREAS**, pursuant to section 1245.235 of the California Code of Civil Procedure, the Commission scheduled a hearing for January 9, 2012 at 10:00 a.m. at Santa Fe Depot--SANBAG Lobby 1<sup>st</sup> Floor, 1170 W. 3<sup>rd</sup> Street, San Bernardino, California and gave to each person whose property is to be acquired notice and a reasonable opportunity to appear at said hearing and to be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, said hearing has been held by the Commission and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on those matters specified in the Commission's notice of intention to conduct a hearing on whether to adopt a Resolution of Necessity as referred to in section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, the Commission may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

**NOW, THEREFORE**, by a vote of two-thirds or more of its members, the San Bernardino County Transportation Commission does hereby find, determine, resolve and order as follows:

**Section 1. Incorporation of Findings and Recitals.** The above findings and recitals are true and correct and are incorporated herein in full by this reference.

**Section 2. Compliance with California Code of Civil Procedure.** The Commission has complied with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

**Section 3. Public Use.** The public use for which the Property is to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Commission to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

**Section 4. Necessity.**

(a) The Project is necessary to improve public safety, decrease traffic congestion and improve passenger rail operations by building grade separations between the roadway and the rail lines; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of a temporary construction easement as legally described in Exhibit "A" and depicted in Exhibit "B" attached to this Resolution of Necessity.

Section 5. Description of Property Interest. The property interest to be acquired is more particularly described and depicted in Exhibits "A" and "B" attached hereto and incorporated herein by reference.

Section 6. Findings. The Commission hereby finds, determines and declares each of the following:

- (a) The public interest and necessity require the proposed Project;
- (b) The Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The above-described property interest, as described and depicted in Exhibits "A" and "B", are necessary for the proposed Project;
- (d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record; and
- (e) All conditions and statutory requirements necessary to exercise the power of eminent domain ("the right to take") to acquire the Property have been complied with by the Commission.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the real property to be acquired is already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the real property, or any portion thereof, is already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the real property, or any portion thereof, is already devoted.

Section 8. Authority to Exercise Eminent Domain. The Commission is hereby authorized and empowered to acquire a temporary construction easement as legally described in Exhibit "A" and depicted in Exhibit "B," including the improvements thereon, if any, by eminent domain for the Project.

Section 9. Further Activities. Legal Counsel for the Commission ("Counsel") is hereby authorized and empowered to acquire the hereinabove described interest in real property in the name of and on behalf of the Commission by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court and to permit the Commission to take possession of and use real property at the earliest possible time. Counsel is further authorized to correct any errors in this Resolution of Necessity or to make or agree to non-

material changes in the legal descriptions of the real property that are deemed necessary for the conduct of the eminent domain action or other proceedings or transactions required to acquire the interests in the subject real property.

**Section 10. Effective Date.** This Resolution shall take effect upon adoption.

Adopted by the San Bernardino County Transportation Commission on \_\_\_\_\_, 2012,  
by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
**Janice Rutherford, Chairperson**  
**San Bernardino County Transportation Commission**

ATTEST:

\_\_\_\_\_  
**Vicki Watson,**  
**Clerk of the Commission**

PROPERTY CONTROL SECTION (REVISED)  
ATTACHMENT TO THE PROVISIONS  
PART 100-11.6

The intent of this section is to provide a clear and concise definition of the term "property control" as used in the provisions of the Property Control Act. The term "property control" shall mean the right to control, manage, or dispose of real or personal property, including the right to lease, mortgage, or otherwise encumber the same. This definition shall apply to all property, whether real or personal, and whether owned by an individual or a corporation.

Notwithstanding the above, the term "property control" shall not include the right to control, manage, or dispose of property which is held in trust for the benefit of another person.

The provisions of this section shall apply to all property, whether real or personal, and whether owned by an individual or a corporation.

# EXHIBIT "A"

**TEMPORARY CONSTRUCTION EASEMENT  
ATTACHMENT TO LEGAL DESCRIPTION  
APN: 0160-242-17**

The parcel of land in the attached legal description and map is to be used for temporary construction purposes in connection with the construction of the Laurel Street Grade Separation Project. The right of usage acquired for the temporary construction easement parcel described in the attached legal description and depicted in the attached map shall be for a period of eighteen (18) months.

Reasonable pedestrian and vehicular access to the remainder property will be maintained during construction.

The San Bernardino County Transportation Commission is expressly granted the right to convey, transfer or assign the easement rights described above.

**EXHIBIT 'A'**  
**Legal Description**

That certain portion of Lot 11, of the Colton Land and Water Company Addition, in the City of Colton, County of San Bernardino, State of California, as per map recorded in Book 1 of Maps, Page 40, records of said County, lying West of the Westerly line of the A.T. and S.F. Railway Company Right of Way, East of the Easterly line of Eighth Street, and South of the Southerly line of Citrus Street, said portion of land described in a deed recorded January 24, 2000 as Document Number 20000024384, Official Records of said County, more particularly described as follows:

**BEGINNING** at the southerly corner of said Document No. 20000024384, said corner being the intersection of the easterly line of said Eighth Street with the westerly line of said Railway Right of Way, Thence northerly along the westerly line of said Document No. 20000024384, North  $00^{\circ}24'56''$  West, a distance of 62.51 feet;

Thence leaving said westerly line, South  $89^{\circ}40'01''$  East, a distance of 21.15 feet to a point on the easterly line of said Document No. 20000024384;

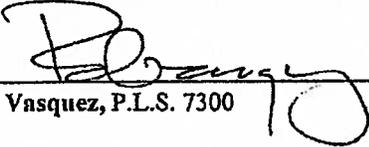
Thence southwesterly along said easterly line, South  $18^{\circ}21'19''$  West, a distance of 65.73 feet to the **POINT OF BEGINNING.**

The above described parcel contains 661 square feet or 0.015 acres, more or less.

The bearings and distances shown in the above description are on the California Coordinate System of 1983 (2007.00), Zone 5. Divide distances shown in the above description by 0.99994626 to obtain ground distances.

As shown on Exhibit 'B', attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

  
Robert D. Vasquez, P.L.S. 7300  
Date 8-9-12





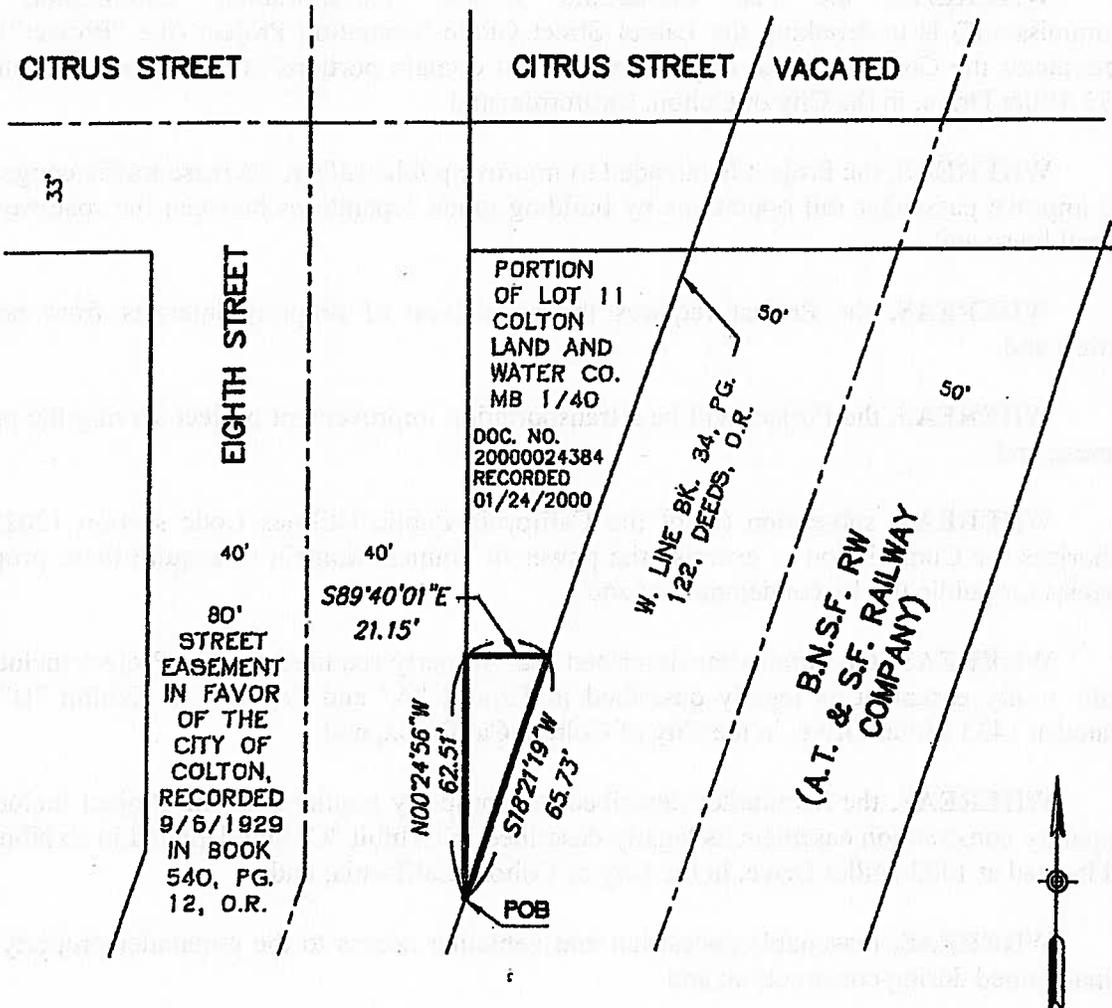
**LEGEND**

— PROPERTY LINES

▭ EASEMENT AREA

POB POINT OF BEGINNING

AREA: 661± SQUARE FEET



 <p><b>DAVID EVANS AND ASSOCIATES INC.</b> 4200 Concourse, Suite 200 Ontario California 91764 Phone: 909.481.6760</p>	<b>EXHIBIT "B"</b>		COUNTY: SAN BERNARDINO	CITY: COLTON	SHEET NO: 1 OF 1
	Job No. : TRAN00000004		<b>TEMPORARY CONSTRUCTION EASEMENT</b>		DRAWN BY: MARA/DGH
	APN: 0160-242-17				DATE: 08/08/12
					SCALE: 1"=40'

**RESOLUTION NO. 13-040**

**A RESOLUTION OF THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF INTERESTS IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF PORTIONS OF APN 0160-242-23**

**WHEREAS**, the San Bernardino County Transportation Commission (the "Commission") is undertaking the Laurel Street Grade Separation Project (the "Project") that necessitates the Commission to acquire by eminent domain portions of the property located at 1433 Miller Drive, in the City of Colton, California; and

**WHEREAS**, the Project is intended to improve public safety, decrease traffic congestion and improve passenger rail operations by building grade separations between the roadway and the rail lines; and

**WHEREAS**, the Project requires the acquisition of property interests from private parties; and

**WHEREAS**, the Project will be a transportation improvement project serving the public interest; and

**WHEREAS**, subsection (a) of the California Public Utilities Code section 130220.5, authorizes the Commission to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

**WHEREAS**, the hereinafter described real property required for the Project includes a public utility easement as legally described in Exhibit "A" and depicted in Exhibit "B" and located at 1433 Miller Drive, in the City of Colton, California; and

**WHEREAS**, the hereinafter described real property required for the Project includes a temporary construction easement as legally described in Exhibit "C" and depicted in Exhibit "D" and located at 1433 Miller Drive, in the City of Colton, California; and

**WHEREAS**, reasonable pedestrian and vehicular access to the remainder property will be maintained during construction; and

**WHEREAS**, in accordance with section 1245.235 of the California Code of Civil Procedure, on December 6, 2012 there was mailed a Notice of Hearing on the Intent of the Commission to adopt a Resolution of Necessity for acquisition by eminent domain of the interests in real property described and depicted in Exhibits "A" through "D" herein. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the property described and depicted in Exhibits "A" through "D" (collectively the "Property"); and

**WHEREAS**, the Commission provided written notice to the City of San Bernardino as required by subsection (c) of California Public Utilities Code section 130220.5; and

**WHEREAS**, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Commission at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

**WHEREAS**, pursuant to section 1245.235 of the California Code of Civil Procedure, the Commission scheduled a hearing for January 9, 2012 at 10:00 a.m. at Santa Fe Depot--SANBAG Lobby 1<sup>st</sup> Floor, 1170 W. 3<sup>rd</sup> Street, San Bernardino, California and gave to each person whose property is to be acquired notice and a reasonable opportunity to appear at said hearing and to be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, said hearing has been held by the Commission and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on those matters specified in the Commission's notice of intention to conduct a hearing on whether to adopt a Resolution of Necessity as referred to in section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, the Commission may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

**NOW, THEREFORE**, by a vote of two-thirds or more of its members, the San Bernardino County Transportation Commission does hereby find, determine, resolve and order as follows:

**Section 1. Incorporation of Findings and Recitals.** The above findings and recitals are true and correct and are incorporated herein in full by this reference.

**Section 2. Compliance with California Code of Civil Procedure.** The Commission has complied with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

**Section 3. Public Use.** The public use for which the Property is to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Commission to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

**Section 4. Necessity.**

(a) The Project is necessary to improve public safety, decrease traffic congestion and improve passenger rail operations by building grade separations between the roadway and the rail lines; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of a public utility easement as legally described in Exhibit "A" and depicted in Exhibit "B" and a temporary construction easement as legally described in Exhibit "C" and depicted in Exhibit "D" attached to this Resolution of Necessity.

Section 5. Description of Property Interests. The property interests to be acquired are more particularly described and depicted in Exhibits "A" through "D" attached hereto and incorporated herein by reference.

Section 6. Findings. The Commission hereby finds, determines and declares each of the following:

- (a) The public interest and necessity require the proposed Project;
- (b) The Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The above-described property interests, as described and depicted in Exhibits "A" through "D", are necessary for the proposed Project;
- (d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record; and
- (e) All conditions and statutory requirements necessary to exercise the power of eminent domain ("the right to take") to acquire the Property have been complied with by the Commission.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the real property to be acquired is already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the real property, or any portion thereof, is already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the real property, or any portion thereof, is already devoted.

Section 8. Authority to Exercise Eminent Domain. The Commission is hereby authorized and empowered to acquire a public utility easement as legally described in Exhibit "A" and depicted in Exhibit "B" and a temporary construction easement as legally described in Exhibit "C" and depicted in Exhibit "D", including the improvements thereon, if any, by eminent domain for the Project.

Section 9. Further Activities. Legal Counsel for the Commission ("Counsel") is hereby authorized and empowered to acquire the hereinabove described interests in real property

in the name of and on behalf of the Commission by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court and to permit the Commission to take possession of and use real property at the earliest possible time. Counsel is further authorized to correct any errors in this Resolution of Necessity or to make or agree to non-material changes in the legal descriptions of the real property that are deemed necessary for the conduct of the eminent domain action or other proceedings or transactions required to acquire the interests in the subject real property.

Section 10. Effective Date. This Resolution shall take effect upon adoption.

Adopted by the San Bernardino County Transportation Commission on \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Janice Rutherford, Chairperson  
San Bernardino County Transportation Commission

ATTEST:

\_\_\_\_\_  
Vicki Watson,  
Clerk of the Commission

of the name of the individual of the Government of the United States and is intended to provide and preserve such individual's privacy as may be required in connection with the conduct of his or her official duties and to prevent the disclosure of such information to unauthorized persons and to prevent the disclosure of such information to unauthorized persons and to prevent the disclosure of such information to unauthorized persons.

Section 10. Information. This document shall be classified as follows:

Classified by the FBI pursuant to the following information in the following way:

- SECRET
- CONFIDENTIAL
- SECRET

Approved for Release by the FBI pursuant to the following information in the following way:

SECRET

Approved for Release by the FBI pursuant to the following information in the following way:

# EXHIBIT "A"

**PUBLIC UTILITIES EASEMENT  
ATTACHMENT TO LEGAL DESCRIPTION  
APN: 0160-242-23**

This permanent, subsurface, nonexclusive utility easement allows the San Bernardino County Transportation Commission, and its employees, agents, representatives and contractors the right to use the property in the attached legal description and map for the purpose of constructing, maintaining, repairing, relocating and adjusting, as applicable, utility facilities.

There shall not be constructed any improvements within the easement area that would impede the rights as defined herein. The affected portion of the easement area will be backfilled to grade with dirt or with pavement material. Once the utilities are in place, the surface of the easement area may be used for access or automobile parking purposes.

Reasonable pedestrian and vehicular access to the remainder property will be maintained during construction.

The San Bernardino County Transportation Commission is expressly granted the right to convey, transfer or assign the easement rights described above.



**EXHIBIT 'A'**  
**Legal Description**

That portion of Block 11, according to map of Subdivision of Lands of the Colton Land and Water Company Subdivision, in the City of Colton, County of San Bernardino, State of California, as shown on the map recorded in Book 1, Page 40 of Maps, in the Office of the County Recorder of said County, being more particularly described as Parcel A conveyed in the deed to Rieder Enterprises LLC, recorded March 12, 2002 as Document No. 2002-0122835 of Official Records of said County, described as follows:

A strip of land, 10.00 feet wide, the sidelines of said strip lying 5.00 feet on each side of the following described line:

**COMMENCING** at the intersection of the North line of Laurel Street, 66 feet wide, as shown on Parcel Map No. 15689 filed in Book 193, Pages 24 and 25 of Parcel Maps, in the Office of the County Recorder of said County, with the West line of Miller Drive, 60 feet wide, also as shown on said Parcel Map No. 15689;

Thence along said West line, North 00°15'42" West 408.04 feet to the **TRUE POINT OF BEGINNING**;

Thence leaving said West line, North 90°00'00" West 193.35 feet to the **POINT OF TERMINUS**.

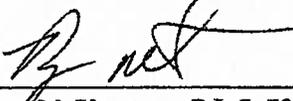
The sidelines of said strip shall be lengthened or shortened to terminate easterly in the West line of said Miller Drive and westerly in a line having a bearing of North 00°00'00" East passing through said point of terminus.

The above described parcel contains 1934 square feet, more or less.

The bearings and distances shown in the above description are on the California Coordinate System of 1983 (2007.00), Zone 5. Divide distances shown in the above description by 0.99994626 to obtain ground distances.

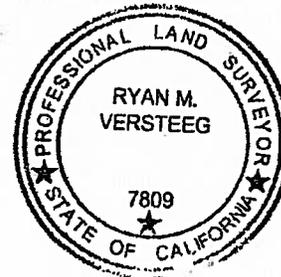
As shown on Exhibit 'B', attached hereto and made a part hereof.

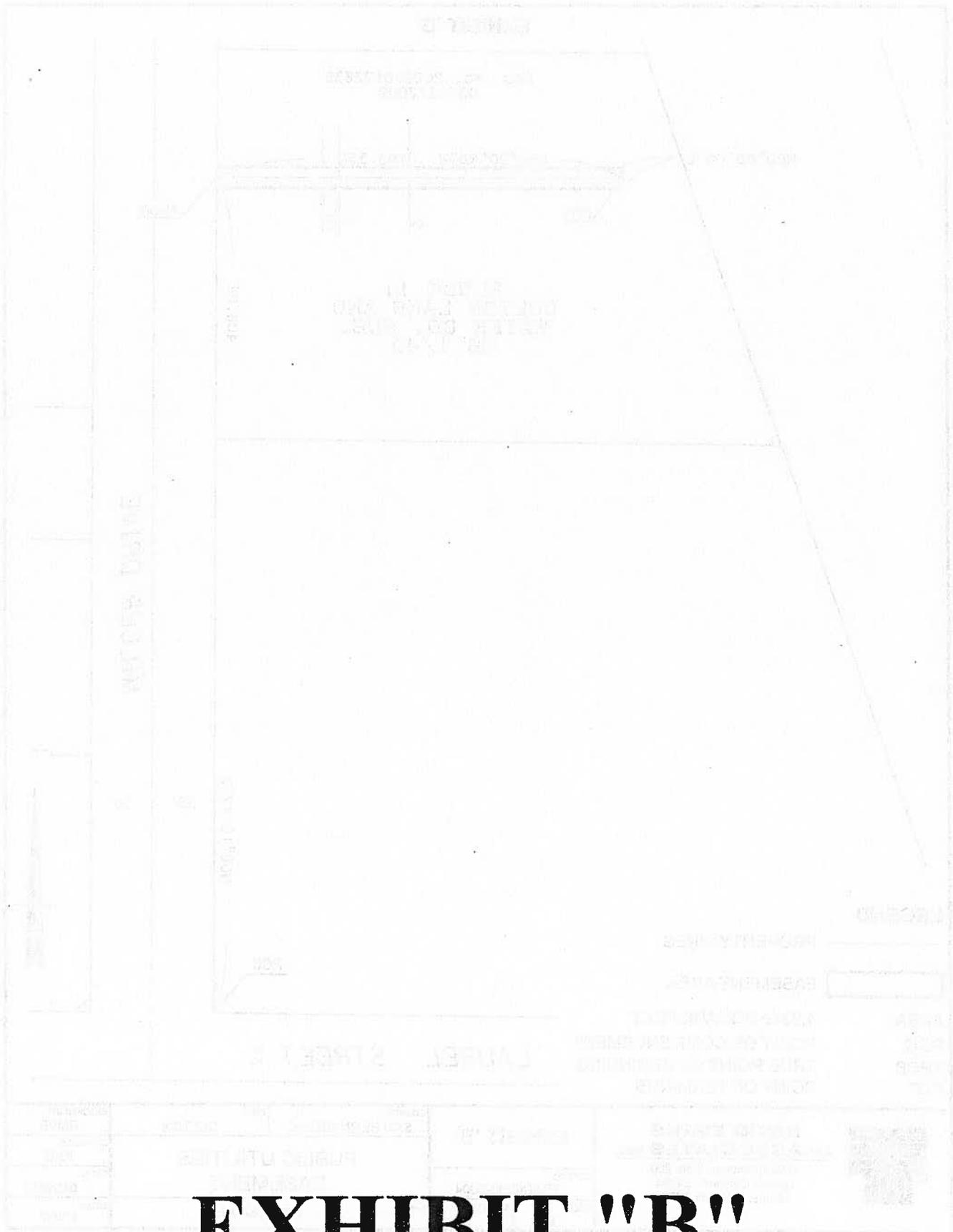
This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

  
\_\_\_\_\_  
Ryan M. Versteeg, P.L.S. 7809

2-2-2012

Date





# EXHIBIT "B"

**EXHIBIT 'B'**

Doc. No. 2002-0122835  
03/12/2002

N00°00'00"E

N90°00'00"W

193.35'

POT

TPOB

BLOCK 11  
COLTON LAND AND  
WATER CO. SUB.  
MB 1/40

408.04'

MILLER DRIVE

N00°15'42"W

30'

30'

POC

LAUREL STREET 33'

**LEGEND**

— PROPERTY LINES

▭ EASEMENT AREA

AREA: 1,934± SQUARE FEET

POC POINT OF COMMENCEMENT

TPOB TRUE POINT OF BEGINNING

POT POINT OF TERMINUS



**DAVID EVANS  
AND ASSOCIATES INC.**

4200 Concourse, Suite 200  
Ontario California 91764  
Phone: 909.481.5750

**EXHIBIT 'B'**

JOB NO.:  
TRAN0000-0004

SHEET: 1 TOTAL: 1

COUNTY:  
SAN BERNARDINO

CITY:  
COLTON

**PUBLIC UTILITIES  
EASEMENT**

APN: 0160-242-23

CHECKED BY:  
RMVE

DRAWN BY:  
KXG

DATE:  
01/26/12

SCALE:  
1"=60'

THE HONORABLE JUSTICE OF THE PEACE  
ATTACHED TO THE COURT OF JUSTICE  
FOR THE DISTRICT OF COLUMBIA

The Court of Justice of the District of Columbia is a court of law and equity. It is a court of record and its decisions are final. The Court of Justice of the District of Columbia is a court of law and equity. It is a court of record and its decisions are final. The Court of Justice of the District of Columbia is a court of law and equity. It is a court of record and its decisions are final.

The Court of Justice of the District of Columbia is a court of law and equity. It is a court of record and its decisions are final. The Court of Justice of the District of Columbia is a court of law and equity. It is a court of record and its decisions are final.

The Court of Justice of the District of Columbia is a court of law and equity. It is a court of record and its decisions are final. The Court of Justice of the District of Columbia is a court of law and equity. It is a court of record and its decisions are final.

# EXHIBIT "C"

**TEMPORARY CONSTRUCTION EASEMENT  
ATTACHMENT TO LEGAL DESCRIPTION  
APN: 0160-242-23**

The parcel of land in the attached legal description and map is to be used for temporary construction purposes in connection with the construction of the Laurel Street Grade Separation Project. The right of usage acquired for the temporary construction easement parcel described in the attached legal description and depicted in the attached map shall be for a period of eighteen (18) months.

Reasonable pedestrian and vehicular access to the remainder property will be maintained during construction.

The San Bernardino County Transportation Commission is expressly granted the right to convey, transfer or assign the easement rights described above.

**EXHIBIT 'A'**  
**Legal Description**

That portion of Block 11, according to map of Subdivision of Lands of the Colton Land and Water Company Subdivision, in the City of Colton, County of San Bernardino, State of California, as shown on the map recorded in Book 1, Page 40 of Maps, in the Office of the County Recorder of said County, being more particularly described as Parcel A conveyed in the deed to Rieder Enterprises LLC, recorded March 12, 2002 as Document No. 2002-0122835 of Official Records of said County, described as follows:

**Parcel A**

A strip of land, 10.00 feet wide, the sidelines of said strip lying 5.00 feet on each side of the following described line:

**COMMENCING** at the intersection of the North line of Laurel Street, 66 feet wide, as shown on Parcel Map No. 15689 filed in Book 193, Pages 24 and 25 of Parcel Maps, in the Office of the County Recorder of said County, with the West line of Miller Drive, 60 feet wide, also as shown on said Parcel Map No. 15689;

Thence along said West line, North 00°15'42" West 408.04 feet to the **TRUE POINT OF BEGINNING**;

Thence leaving said West line, North 90°00'00" West 193.35 feet to Point "A", also the **POINT OF TERMINUS**.

The sidelines of said strip shall be lengthened or shortened to terminate easterly in the West line of said Miller Drive and westerly in a line having a bearing of North 00°00'00" East passing through said point of terminus.

**Parcel B**

A strip of land, 5.00 feet wide, the sidelines of said strip lying 2.50 feet on each side of the following described line:

**COMMENCING** at said Point "A";

Thence South 00°00'00" East 0.77 feet to the **TRUE POINT OF BEGINNING**, also being the beginning of a non-tangent curve concave southeasterly having a radius of 30.00 feet, a radial line to said curve bears North 25°40'32" West;

Thence southeasterly along said curve 24.08 feet through a central angle of 45°58'56";

Thence South 18°20'31" West 80.88 feet to the beginning of a curve concave easterly having a radius of 20.00 feet;

Thence southerly along said curve 15.77 feet through a central angle of 45°10'28";

Thence South 26°49'57" East 11.08 feet to the **POINT OF TERMINUS**.

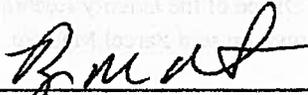
The sidelines of said strip shall be lengthened or shortened to terminate northeasterly in a line having a bearing of North 00°00'00" East passing through said true point of beginning and southeasterly in a line having a bearing of North 01°40'09" West passing through said point of terminus.

The above described parcel contains 2593 square feet, more or less.

The bearings and distances shown in the above description are on the California Coordinate System of 1983 (2007.00), Zone 5. Divide distances shown in the above description by 0.99994626 to obtain ground distances.

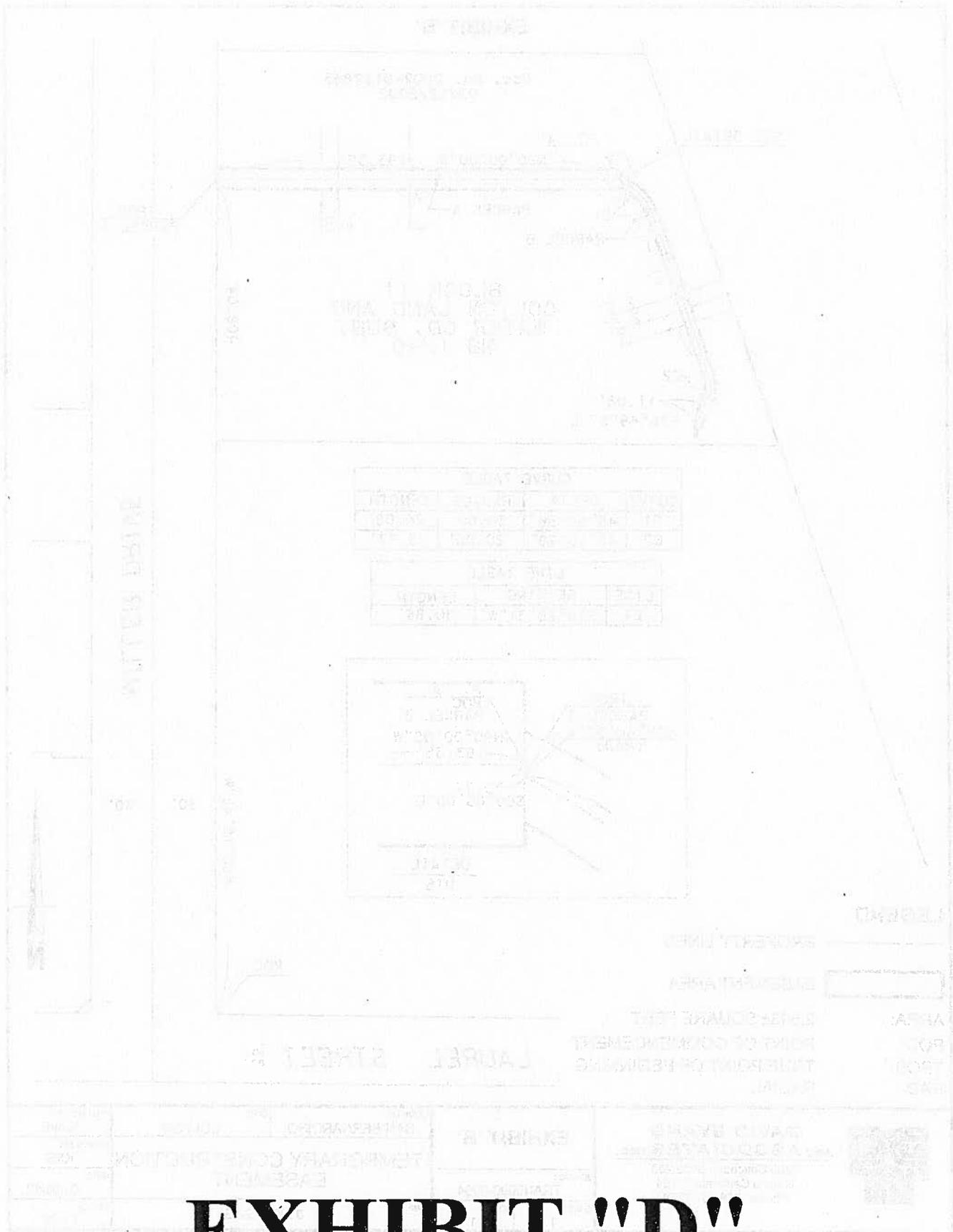
As shown on Exhibit 'B', attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

  
\_\_\_\_\_  
Ryan M. Versteeg, P.L.S. 7809

1-26-2012  
\_\_\_\_\_  
Date



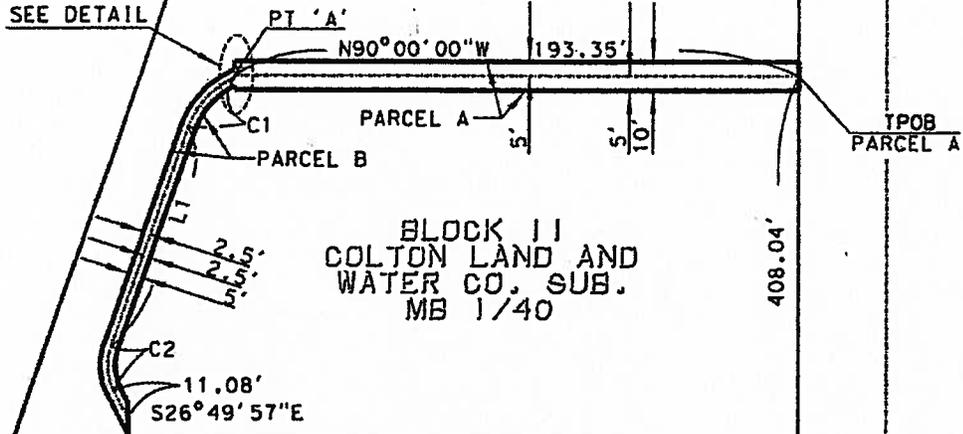


# EXHIBIT "D"

**EXHIBIT 'B'**

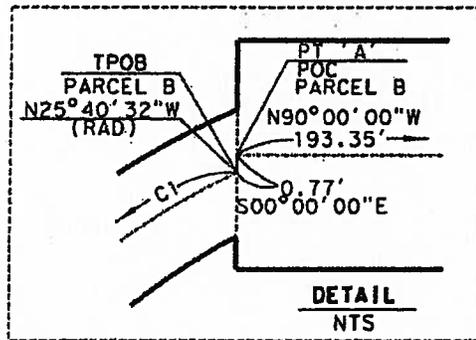
Doc. No. 2002-0122835  
03/12/2002

SEE DETAIL



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	45°58'56"	30.00'	24.08'
C2	45°10'28"	20.00'	15.77'

LINE TABLE		
LINE	BEARING	LENGTH
L1	S18°20'31"W	80.88'



**LEGEND**

— PROPERTY LINES

▭ EASEMENT AREA

AREA: 2,593± SQUARE FEET

POC POINT OF COMMENCEMENT

TPOB TRUE POINT OF BEGINNING

RAD RADIAL

**LAUREL STREET**



**DAVID EVANS  
AND ASSOCIATES INC.**

4200 Concourse, Suite 200  
Ontario California 91764  
Phone: 909.481.5750

**EXHIBIT 'B'**

JOB NO.:  
TRAN0000-0004

SHEET: 1 TOTAL: 1

COUNTY: SAN BERNARDINO

CITY: COLTON

**TEMPORARY CONSTRUCTION  
EASEMENT**

APN: 0160-242-23

CHECKED BY:  
RMVE

DRAWN BY:  
KXG

DATE:  
01/03/12

SCALE:  
1"=60'



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

*Minute Action*

AGENDA ITEM:   8  

**Date:** December 13, 2012

**Subject:** Construction and Maintenance (C&M) Agreement, and Underpass Bridge Removal Agreement for the Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure Project

**Recommendation:\*** That the following be reviewed and recommended for final approval by the Board of Directors, acting as the San Bernardino County Transportation Commission, at a regularly scheduled Board meeting:

1. Approve Construction and Maintenance Agreement No. C13082 with Union Pacific Railroad Company (UPRR) and the State of California (CALTRANS) for the Colton-Loma Linda Yard Overhead bridge on Interstate 215 Bi-County High Occupancy Vehicle Gap Closure Project, with SANBAG responsible for contributing \$810,625.00.
2. Approve Underpass Bridge Removal Agreement No. C13081 with Union Pacific Railroad Company (UPRR) and the State of California (CALTRANS) for the Grand Terrace Underpass railroad structure on Interstate 215 Bi-County High Occupancy Vehicle Gap Closure Project, with SANBAG responsible for contributing \$79,950.00.

\*

*Approved*  
 Board Metro Valley Study Session

Date:   December 13, 2012  

Moved:   Second:

In Favor:   Opposed:   Abstained:

Witnessed: \_\_\_\_\_

COG		CTC	X	CTA	X	SAFE		CMA	
-----	--	-----	---	-----	---	------	--	-----	--

Check all that apply.

MPC1212c-pm

Attachments: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13081.pdf>  
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13082.pdf>

**Background:**

The Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure project involves the construction of approximately 7.5 miles of HOV lanes between State Routes 60, 91 and I- 215 Interchange in the City of Riverside, and Orange Show Road in the City of San Bernardino. Under Cooperative Agreement No. 08-1530 with CALTRANS dated April 9, 2012, SANBAG agreed to be the Project sponsor, and funding agency funding all capital outlay, support costs, and all Railroad expenses. CALTRANS agreed to be the Implementing Agency constructing the widened and reconstructed structures for the project. Construction activities for the project are about to start. These C&M and bridge removal agreements with UPRR are needed in order to avoid potential delays and claims during construction.

**Recommendation No. 1. This is a new agreement.** The project involves widening of the two existing bridges at the Colton-Loma Linda Yard location. Widening these two bridges will require the removal of an existing advertising billboard that encroaches into UPRR's airspace, resulting in loss of license revenue to UPRR from Clear Channel. The subject Agreement No. C13082 defines the roles and responsibilities and funding commitments of the parties relative to the Project. The Agreement requires SANBAG to pay UPRR for an aerial easement which is necessary for the Project and to compensate UPRR for loss of income resulting from the removal of the billboard in the amount of \$296,000.00. This compensation requirement is found within the Outdoor Advertising Act Section 5412 of the California Business and Professions Code. SANBAG still retains responsibility for compensating the billboard owner for removal of the billboard and such compensation will be addressed in a separate agreement.

In addition SANBAG is responsible for paying UPRR an estimated \$514,625.00 for UPRR's work associated with the shoo-fly construction, flagging and track work. The total estimated cost under Agreement No. C13082 is \$810,625.00.

**Recommendation No. 2. This is a new agreement.** Under Agreement No. C13081, UPRR will be abandoning the existing Grand Terrace Underpass in the City of Grand Terrace, and the demolition and removal of the existing structure will be done during construction by the general contractor. In order to facilitate the construction activities, two temporary construction easements are needed from UPRR. Under the Agreement SANBAG is responsible to pay UPRR \$29,200.00 for the temporary construction easements and to pay an additional estimated amount of \$50,750.00 for UPRR to complete its work associated with bridge removal. The total estimated cost under Agreement C13081 is \$79,950.00

Staff is recommending that the Board approve C&M Agreement No. C13082, and Underpass Bridge Removal Agreement No. C13081 with UPRR and CALTRANS.

**Financial Impact:** This item is consistent with Fiscal Year 2012/2013 budget. Funding is provided under Task Number No. 0839. The funding source is Measure I Valley Fund – Freeway Projects.

**Reviewed By:** SANBAG General Counsel has reviewed this item and the draft agreements.

**Responsible Staff:** Garry Cohoe, Project Delivery Manager

Item	Description	Amount	Source
1	Freeway Project A	\$1,000,000	Measure I
2	Freeway Project B	\$1,000,000	Measure I
3	Freeway Project C	\$1,000,000	Measure I
4	Freeway Project D	\$1,000,000	Measure I
5	Freeway Project E	\$1,000,000	Measure I
6	Freeway Project F	\$1,000,000	Measure I
7	Freeway Project G	\$1,000,000	Measure I
8	Freeway Project H	\$1,000,000	Measure I
9	Freeway Project I	\$1,000,000	Measure I
10	Freeway Project J	\$1,000,000	Measure I
11	Freeway Project K	\$1,000,000	Measure I
12	Freeway Project L	\$1,000,000	Measure I
13	Freeway Project M	\$1,000,000	Measure I
14	Freeway Project N	\$1,000,000	Measure I
15	Freeway Project O	\$1,000,000	Measure I
16	Freeway Project P	\$1,000,000	Measure I
17	Freeway Project Q	\$1,000,000	Measure I
18	Freeway Project R	\$1,000,000	Measure I
19	Freeway Project S	\$1,000,000	Measure I
20	Freeway Project T	\$1,000,000	Measure I
21	Freeway Project U	\$1,000,000	Measure I
22	Freeway Project V	\$1,000,000	Measure I
23	Freeway Project W	\$1,000,000	Measure I
24	Freeway Project X	\$1,000,000	Measure I
25	Freeway Project Y	\$1,000,000	Measure I
26	Freeway Project Z	\$1,000,000	Measure I



## CONTRACT SUMMARY SHEET

Contract No. C 13081 Amendment No. \_\_\_\_\_

By and Between

San Bernardino County Transportation Commission      and      California Department of Transportation and Union Pacific Railroad

Contract Description I-215 Bi-County HOV Grand Terrace Underpass Bridge Removal Agreement

**Board of Director's Meeting Date:** January 9, 2013  
**Overview of BOD Action:** Approve three party Underpass Bridge Removal Agreement C13081 between SANBAG, Caltrans, and Union Pacific Railroad

Is this a Sole-Source procurement?    Yes       No

CONTRACT OVERVIEW					
Original Contract Amount	\$	79,950.00	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>79,950.00</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 79,950.00</b>

<b>Contract Start Date</b> 1/09/13	<b>Current Contract Expiration Date</b>	<b>Revised Contract Expiration Date</b>
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0839</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? MSI Valley Fund – Freeway Project (4110)				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input checked="" type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: MSI Valley Fund Freeway Project.				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
<b>Check all applicable boxes:</b>	
<input type="checkbox"/> Retention? If yes, indicate % _____.	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ %	

PAUL MELOTON  
Project Manager (Print Name)

Garry Cohen  
Task Manager (Print Name)

\_\_\_\_\_  
Dir. of Fund Admin. & Programming (Print Name)

\_\_\_\_\_  
Contract Administrator (Print Name)

Signature

12/5/12  
Date

Signature

12.6.12  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Chief Financial Officer (Print Name)

Signature

Date

UNIVERSITY BRIDGE REMOVAL  
AGREEMENT

TO:

UNION PACIFIC RAILROAD COMPANY

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

AND

SAN BERNARDINO ASSOCIATED GOVERNMENTS

BY:

MUNICIPALITY OF GRAND TERRACE  
DALL ROAD SIDE CURVE

AND

RAILROAD FIELD PORT SITE - RAILROAD INDUSTRIAL  
PORT

FOR THE

CITY OF GRAND TERRACE  
SAN BERNARDINO COUNTY  
CALIFORNIA

# **UNDERPASS BRIDGE REMOVAL AGREEMENT**

---

AMONG

**UNION PACIFIC RAILROAD COMPANY**

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

AND

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

COVERING THE

**REMOVAL OF GRAND TERRACE UNDERPASS  
RAILROAD STRUCTURE**

AT

**RAILROAD MILE POST 541.55 - RIVERSIDE INDUSTRIAL LEAD  
DOT NO.: 747048T**

IN OR NEAR

**CITY OF GRAND TERRACE  
SAN BERNARDINO COUNTY,  
CALIFORNIA**

State Agreement No. 08R177  
UPRR Folder No. 2599-28  
08-SBD-215-PM 0.80  
PUC No. 001BJ-541.50-B  
DOT No. 747048T  
Railroad Mile Post 541.55  
Riverside Industrial Lead  
City of Grand Terrace  
San Bernardino County, California

## UNDERPASS BRIDGE REMOVAL AGREEMENT

---

### GRAND TERRACE UNDERPASS

THIS AGREEMENT ("**Agreement**") is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ ("**Effective Date**"), by and among UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Railroad**"); STATE OF CALIFORNIA, acting by through its DEPARTMENT OF TRANSPORTATION ("**State**"), and SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting as the San Bernardino County Transportation Commission ("**SANBAG**").

### RECITALS

A. State, acting by and through its then Department of Public Works, entered into an Agreement dated February 28, 1958, with Southern Pacific Company, predecessor in interest to Railroad, as identified in Railroad's records as its Audit No. 108180 (the "**Original Construction Agreement**") for the construction and maintenance of an underpass bridge crossing structure known as the Grand Terrace Underpass (the "**Structure**") upon the property of Railroad on Railroad's Riverside Industrial Lead at Railroad Milepost 541.55, DOT No. 747 048T in or near the City of Grand Terrace in San Bernardino County, California.

B. By Indenture dated February 28<sup>th</sup>, 1958, and identified in Railroad's records as its Deed Audit Number 25427, the Southern Pacific Company granted the State an easement to construct the Structure across the property of the Railroad as such property is described in the Indenture (the "**Original Easement**").

C. As part of State's Cooperative Agreement No. 08-1530 as signed by State and the San Bernardino Associated Governments ("**SANBAG**") on April 1, 2012 (the "**Cooperative Agreement**"), State, intends to reconstruct and widen the existing Interstate Highway I-215 in order to accommodate High Occupancy Vehicle (HOV) lanes by closing and demolishing the Structure. The demolition and removal of the Structure is hereinafter referred to as the "**Project**".

D. SANBAG is the Project's sponsor and the funding agency for the Project and will fund all capital outlay support costs for the Project. Pursuant to the Cooperative Agreement, State will be paying Railroad for all actual costs incurred by Railroad involving the Project with SANBAG reimbursing State for such expenses.

E. State, at SANBAG's expense, agreed to advertise, award and administer the Project under the Cooperative Agreement.

F. Under Surface Transportation Board ("STB") proceeding Docket No. AB 33 (Sub No. 296X), the STB in its June 21, 2011 Decision (the "**STB Decision**") granted the Railroad the right to abandon certain portions of the Railroad's Riverside Industrial Lead trackage, including the portion at the location of the Structure, subject to certain conditions including, but not limited to, the condition that the Railroad may not consummate such abandonment until (i) the Railroad and the BNSF Railway Company ("BNSF") have executed a trackage rights agreement allowing Railroad to use certain BNSF trackage, (ii) the construction by the Railroad of a new track connection for the Railroad between BNSF's San Jacinto line of railroad and the portion of the Railroad's Riverside Industrial Lead near Marlborough Avenue in Riverside, California, at Railroad Milepost 543.88 (the "**Marlborough Avenue Connection**") has been completed and the Railroad has filed a report with the STB certifying the completion of the construction of the Marlborough Avenue Connection and (iii) the STB has confirmed the completion of the Marlborough Avenue Connection and has amended its Decision by removing such condition from its Decision (collectively the "**STB Conditions**").

G. The Railroad's print marked **Exhibit A** shows the location of the Structure.

H. List of Exhibits. The following attached Exhibits are hereby made a part of this Agreement:

Exhibit A	Railroad's print showing the location of the Structure
Exhibit B	Final Railroad approved Structure Demolition and Removal Plans
Exhibit C	Railroad's Summary Cost Estimate Sheet and Railroad estimates covering the track and signal work
Exhibit D	Form of Right of Entry Agreement
Exhibit E	Form of Temporary Construction Easement
Exhibit F	The State's Right of Way Appraisal Map showing Parcels 22390-2 and 22390-3

I. In order to facilitate the Project work, the State needs temporary construction easements from the Railroad on the portions of the Railroad's property shown on **Exhibit F** as Parcels 22390-2 and 22390-3 (the "**Temporary Use Areas**").

J. The Parties desire to set forth herein their understanding and agreement relating to the closure, demolition, and removal of the Structure and other matters described above.

## AGREEMENT

### **Section 1. RESTRICTION ON WHEN PROJECT WORK CAN COMMENCE**

The Parties confirm that no Project work involving the Railroad Work described in Section 3 nor the demolition and removal of the Structure shall commence until (i) the Railroad has completed its construction of the Marlborough Avenue Connection and BNSF has commenced serving the Railroad's customers located on the Riverside Industrial Lead south of Marlborough Avenue, (ii) all STB Conditions have been met and (iii) the STB has amended its Decision by removing the Marlborough Avenue Connection condition from its Decision.

### **Section 2. RIGHTS GRANTED FOR TEMPORARY USE AREAS**

Subject to the provisions of Section 1 of this Agreement, and for and in consideration of the sum of Twenty-Nine Thousand Two Hundred Dollars (\$29,200.00) to be paid by State to the Railroad within forty five (45) days after the Railroad has sent written notice to the State and SANBAG that the conditions set forth in Section 1 of this Agreement have been met, the Railroad and the State shall execute a Temporary Construction Easement in the form marked **Exhibit E**. The State's use of the Temporary Use Areas shall be subject to the terms and conditions of this Agreement and the obligation of the State and its Contractor (as defined in Section 7 of this Agreement) to comply with such provisions. The temporary rights granted shall commence as of the Effective Date of the Right of Entry Agreement marked **Exhibit D**, and continue until May 19<sup>th</sup>, 2015, or until the State has completed its Project work, whichever occurs earlier.

### **Section 3. WORK TO BE PERFORMED BY RAILROAD**

Railroad, at SANBAG's expense and at no cost to Railroad, shall (i) comply with the STB Decision and abandon the portion of the Riverside Industrial Lead at the location of the Structure, and (ii) perform the track and signal removal work described in **Exhibit C** (the "Railroad Work").

### **Section 4. BILLING SENT BY RAILROAD TO STATE; STATE PAYMENT OF RAILROAD BILLS**

A. Railroad shall send progressive billing to State and final billing to State within one hundred eighty (180) days after receiving written notice from State that the State has completed its removal of the Structure in compliance with the Plans (as defined in Section 8).

B. State agrees to pay Railroad for all actual costs and expenses incurred by Railroad in connection with the Railroad performing the Railroad Work including, but not limited to, all actual costs of preliminary engineering review, inspection, procurement of materials, equipment rental, manpower and deliveries to the job site, and all direct and indirect overhead labor/construction costs. State recognizes that it can elect under 23 CFR 140.907 to reimburse Railroad for all direct and indirect overhead labor/construction costs (using Railroad's standard additive rates) and agrees to do so.

C. Notwithstanding any provisions in the Cooperative Agreement regarding the payment of Project expenses, State agrees to pay Railroad for progressive and final billings received from Railroad within forty-five (45) days of State's receipt of billing from Railroad, pursuant to the California Prompt Payment Act, Government Code Sections 927 et seq.

**Section 5. RAILROAD NOT TO BEAR ANY PROJECT COSTS**

The State and SANBAG confirm that the Railroad shall not be required to bear any Project costs nor be required to contribute any funds for the Project, in accordance with 23 CFR 646.210 (b) (2), and/or any other applicable provisions of law.

**Section 6. WORK PERFORMED BY STATE; SALVAGE OF STRUCTURE MATERIAL; AT&T FIBER CABLE**

A. Upon the Railroad providing written notice to the State and SANBAG that all STB Conditions have been met and that the Railroad has completed the Railroad Work, the State, at SANBAG's expense and at no cost to Railroad, shall (i) protect all existing utility and communication lines as set forth in Section 9 including, but not limited to, protecting the AT&T fiber optic cable located on the Structure as set forth in Paragraph C below and (ii) perform all Project work that will not be performed by the Railroad including, without limitation, all drainage and other applicable work, in a good and workmanlike manner and prosecuted diligently to conclusion and in compliance with the provisions of this Agreement, the Plans and Exhibit D.

B. The Railroad and the State confirm that the State shall retain all salvage material involved with the State's demolition and removal of the Structure. In its demolition, removal, salvage work and/or disposal of the Structure and all appurtenances and material, the State agrees to comply with all applicable federal, state and local laws, rules and regulations involving such work and disposal.

C. There is an existing AT&T fiber optic cable located on the Structure and AT&T has an existing easement agreement (or alternatively a temporary easement) for the cable. The State and the Railroad shall work together with AT&T in determining where AT&T shall bury the cable. The State, at SANBAG's expense and at no cost to the Railroad, shall bear all costs involved with relocating and burying the cable and appurtenant facilities to the extent AT&T is not obligated to bear such costs under the existing easement, and State shall be the responsible lead agency working directly with AT&T covering such work.

**Section 7. DEFINITION OF CONTRACTOR**

For purposes of this Agreement, all references in this Agreement to "Contractor" shall mean the contractor or contractors hired by, or on behalf of, State, and/or its successors and assigns, to perform any Project work on any portion of Railroad's property. The Contractor shall be responsible for the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority and shall

ensure their full compliance with all terms and conditions of this Agreement. Nothing in this section is intended to create rights in third parties or third party beneficiaries.

**Section 8. PLANS**

A. State, at SANBAG's expense, and at no cost to the Railroad, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to Railroad's Assistant Vice President Engineering - Design, or his authorized representative, for review and approval.

B. The final project plans once they are approved in writing by the Railroad without conditions, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless Railroad has consented to such changes in writing.

D. Railroad's review and approval of the Plans will in no way relieve State from its responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by State on the Plans is at the risk of State.

**Section 9. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocating, replacing, removing, and abandoning in place all non-railroad facilities ("NR Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The NR Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for NR Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted NR Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit NR Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted NR Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with NR Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for NR Facilities. NR Facilities work shall not commence before a supplemental or new agreement has been fully executed by Railroad and the NR Facilities owner or operator or before Railroad and State mutually agree in writing to (i) deem the approved NR Facilities plans and specifications to be Plans pursuant to Section 7B, and

(ii) supplement this Agreement with terms and conditions covering the NR Facilities.

**Section 10. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of State, SANBAG and the Federal Highway Administration for a period of three (3) years following the date of Railroad's final billing, as defined in Section 4, sent to State.

**Section 11. RESTRICTIONS ON COMMENCEMENT OF PROJECT WORK**

A. Neither State nor any Contractor shall commence any Project work on any Railroad property until:

- (i) The conditions set forth in Section 1 have been met.
- (ii) State has obtained all necessary governmental permits, zoning clearances and approvals including, without limitation, those from the California Public Utilities Commission.
- (iii) Railroad and State have executed the Right of Entry Agreement marked Exhibit D.
- (iv) Each Contractor hired by State has executed the Contractor's Endorsement that is part of the Right of Entry Agreement.
- (v) Railroad has received the insurance policies, binders, certificates and/or endorsements set forth in the Right of Entry Agreement.

B. The insurance coverage set forth in the Right of Entry Agreement shall remain in full force and effect by each Contractor during the performance of said work upon and adjacent to Railroad's property and thereafter until the Contractor removes all tools, equipment and materials from Railroad's property and cleans up the premises to a safe condition satisfactory to Railroad.

C. State and each Contractor shall give the advance notice described in the Right of Entry Agreement to Railroad's authorized representative before commencing any Project work on Railroad's property, and shall observe Railroad's rules and regulations with respect thereto. All work on Railroad's property shall be done at such times and in such manner so as not to interfere with or endanger the operations of Railroad.

**Section 12. EFFECTIVE DATE; TERM; TERMINATION**

A. This Agreement is effective as of the date this Agreement is fully signed and executed by Railroad, SANBAG and State authorized signatories.

B. If the Agreement is terminated for any reason, State, at SANBAG's expense, and at no cost to the Railroad shall pay to Railroad all actual costs and expenses incurred by Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by Railroad in connection with reviewing all preliminary or final plans and specifications.

**Section 13. FEDERAL AID POLICY GUIDE**

The current rules, regulations and provisions of the Federal Aid Policy Guide, as contained in 23 CFR 140, subpart I and 23 CFR 646, subparts A and B are incorporated into this Agreement by reference.

**Section 14. STATE'S ADVERTISEMENT FOR BIDS**

A. The State's advertised bids shall require the Contractor awarded the contract to perform all demolition and removal work in compliance with the approved Plans marked Exhibit B.

B. Railroad shall have the right to amend its Insurance Requirements from time to time to conform to its standard provisions.

**Section 15. TERMINATION OF ORIGINAL CONSTRUCTION AGREEMENT**

Upon the completion of the Project work, the Original Construction Agreement shall terminate.

**Section 16. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Neither the State nor SANBAG may assign this Agreement, unless compelled by law, without the prior written consent of Railroad, which consent shall not be unreasonably withheld.

B. Subject to the provisions of Section 16A, above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad, State, and SANBAG.

**Section 17. AMERICAN RECOVERY AND INVESTMENT ACT OF 2009 (ARRA)**

The State and SANBAG confirm that neither the State nor SANBAG will be using any ARRA funds for the Project.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in quadruplicate as of the Effective Date, by their officers thereunto duly authorized.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_  
**DONALD E. GREBE, Chief**  
**Office of Project Delivery**  
**Division of Right of Way and Land Surveys**

APPROVED AS TO FORM AND PROCEDURE:

By \_\_\_\_\_  
**ROGER FORMANEK, Attorney**  
**Department of Transportation**

APPROVAL RECOMMENDED

By \_\_\_\_\_  
**DENNY FONG, P.E.**  
**Railroad Agreements Engineer**

[Signatures continued on next page]

[Signatures continued from previous page]

**UNION PACIFIC RAILROAD COMPANY**

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

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

[Signatures continued on next page]

[Signatures continued from previous page]

**SAN BERNARDINO ASSOCIATED  
GOVERNMENTS**

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

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

**EXHIBIT A**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

of the Railroad's Location Print

**EXHIBIT B**

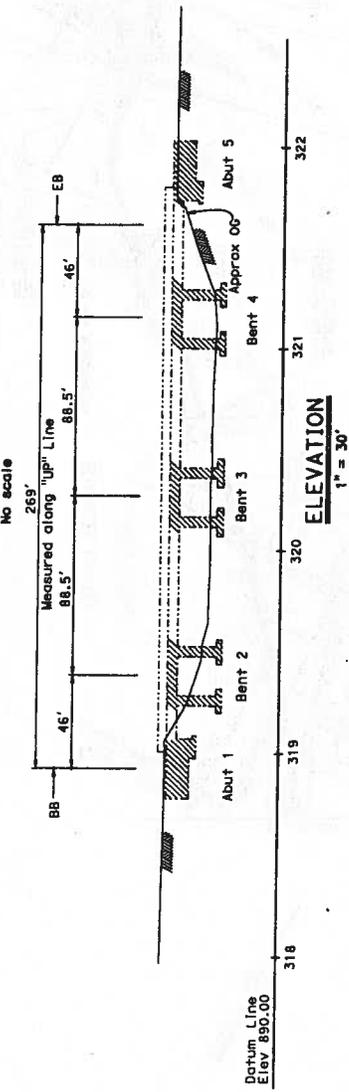
**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

**Final Railroad Approved Structure Demolition and Removal Plans**



DATE	COUNTY	ROUTE	POST MILES	SHEET TOTAL
08	SBa, Riv	91,215	Var	Var
REGISTERED CIVIL ENGINEER DATE				
PLANS APPROVAL DATE				
BY: [Signature] CIVIL ENGINEER				
FOR: [Signature] CIVIL ENGINEER				
PROJECT: GRAND TERRACE UNDERPASS				

**EXISTING STRUCTURE PROFILE**

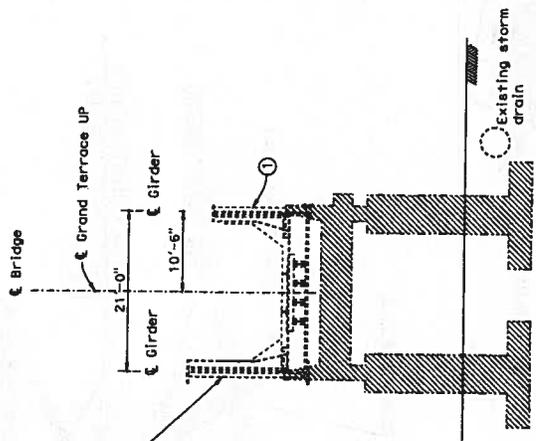


**LEGEND:**

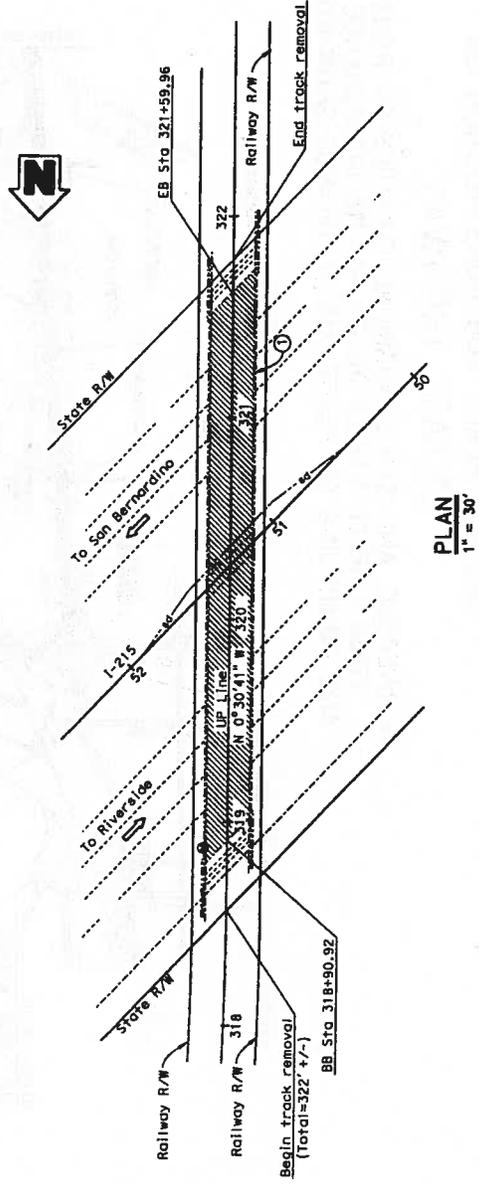
- ▨ Limits of Bridge Salvage/Removal
- ⊕ Point of minimum vertical clearance
- ⊙ Steel Through Girder

**ABBREVIATIONS:**  
UP Union Pacific Railway (Bridge Owner)

**SALVAGE STRUCTURE**



**TYPICAL SECTION**  
1/8" = 1'-0"



**PLAN**  
1" = 30'

**GRAND TERRACE UNDERPASS (SALVAGE/REMOVE)**  
Bt. No. 54-0518

DESIGNED BY	DESIGNED BY	REVISIONS	DATE
BEN AMIRI	ALEX SANCHEZ		
CHECKED BY	DATE REVISION		
BEN AMIRI			



**EXHIBIT C**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

**Railroad's Summary Cost Estimate Sheet  
And Railroad Estimates Covering the Track and Signal Work**

**EXHIBIT C**

**UNION PACIFIC RAILROAD COMPANY  
SUMMARY ESTIMATE SHEET**

**Location:** Grand Terrace Overhead, San Bernardino County, California  
PUC No. 001BJ-541.50-B, (DOT # 747048T)  
Railroad Milepost 541.50, Colton Subdivision

**Project:** The project consists of the removal of the existing railroad structure.

**Estimate:**

Description	Amount
Flagging (\$1,200/day at 0 days)	\$0.00
Trackwork (Removal)	\$36,130.00
Engineering Review & Inspection	\$ 8,000.00
<i>15% Contingency</i>	<i>\$ 6,620.00</i>
<b>Estimate Total</b>	<b>\$50,750.00</b>

**Note:** This is an estimate only. Railroad shall bill on an actual cost basis.

# Material And Force Account Estimate

## CalTrans

Estimate Number: 68525 Version: 1

Standard Rates: Labor Additive = 204.59% WT Labor Additive = 168.94%  
 Estimate Good for 6 Months Until 11/15/12

Location: YUMA SUB, CONN, 538.5-542

Description of Work: Track removal for removal of Grand Terrace grade separation, Located on Riverside Industrial Lead off of the Yuma Sub MP 541.5

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	
<b>ENGINEERING</b>									
		ENGINEERING	1	LS	8,000.00	8,000	0	8,000	
<b>Sub-Total =</b>						<b>8,000</b>	<b>0</b>	<b>8,000</b>	
<b>TRACK CONSTRUCTION - COMPANY</b>									
		MOBILIZATION: COMPANY	2	DA	11,450.00	22,900	0	22,900	
<b>Sub-Total =</b>						<b>22,900</b>	<b>0</b>	<b>22,900</b>	
<b>TRACK REMOVAL - COMPANY</b>									
	TRACK	REMOVE TRACK	800	TF	10.29	8,230	0	8,230	
<b>Sub-Total =</b>						<b>8,230</b>	<b>0</b>	<b>8,230</b>	
<b>EQUIPMENT RENTAL</b>									
		EQUIPMENT RENTAL	1	LS	5,000.00	0	5,000	5,000	
<b>Sub-Total =</b>						<b>0</b>	<b>5,000</b>	<b>5,000</b>	
<b>HOMELINE FREIGHT</b>									
		HOMELINE FREIGHT	0	Per Ton	0	0	0	0	
<b>Sub-Total =</b>						<b>0</b>	<b>0</b>	<b>0</b>	
<b>Total Wgt. in Tons =</b>						<b>Totals =</b>	<b>39,130</b>	<b>5,000</b>	<b>44,130</b>

**Grand Total =** **\$44,130**

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, CalTrans will pay actual construction costs at the current rates effective thereof.

**EXHIBIT D**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

**Cover Sheet for Form of Right of Entry Agreement**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_ 20\_\_ by and between UNITED PACIFIC RAILROAD COMPANY, a Colorado corporation (hereinafter "Railroad") and STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (hereinafter "State").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

**ARTICLE I - DEFINITION OF TERMS**

The purpose of this Agreement is to provide for the removal of the bridge over the railroad crossing at \_\_\_\_\_, California. The parties hereto have agreed to the following terms and conditions:

**ARTICLE II - RIGHT OF ENTRY PURPOSE**

Railroad hereby grants to State the right to enter the land hereinafter described and other lands to which the right of entry may extend, for the purpose of performing work relating to the removal of the bridge over the railroad crossing at \_\_\_\_\_, California. The right of entry is limited to the land hereinafter described and hereby given a first priority lien in favor of the State. The right of entry is limited to the land hereinafter described and hereby given a first priority lien in favor of the State. The right of entry is limited to the land hereinafter described and hereby given a first priority lien in favor of the State.

**ARTICLE III - TERM AND EXTENSION OF TERM IN WRITING BY A JUDGE**

The term of this agreement shall be as stated in Article II, Section 1, and shall be extended for a period of \_\_\_\_\_ months.

**ARTICLE IV - ALL EXPENSES TO BE BORNE BY RAILROAD**

All expenses incurred by the State in the performance of its duties under this agreement shall be borne by the Railroad.

**CALTRANS  
RIGHT OF ENTRY AGREEMENT**

**THIS AGREEMENT** is made and entered into as of \_\_\_\_\_, 20\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter "Railroad") and **STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION** (hereinafter "Licensee").

**IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**ARTICLE 1 - DEFINITION OF LICENSEE**

For purposes of this Agreement, all references in this Agreement to Licensee shall include Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE**

Railroad hereby grants to Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property located at or near Milepost 541.55, on Railroad's Riverside Industrial Lead located near Grand Terrace, San Bernardino County, California, for the purpose of performing work relating to the demolition and removal of the existing Grand Terrace underpass bridge structure (the "Work"), in the general location shown on the print, marked **Exhibit A**, attached hereto and hereby made a part hereof. The right herein granted to Licensee is limited to those portions of Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C, D AND E**

The terms and conditions contained in **Exhibit B**, **Exhibit C**, **Exhibit D** and **Exhibit E**, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE**

A. Licensee shall bear any and all costs and expenses associated with any work performed by Licensee, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Licensee shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

**Kenneth Tom**  
**Manager, Industry and Public Projects**  
**Union Pacific Railroad Company**  
**2015 South Willow Avenue**  
**Bloomington, California 92316**  
**Phone: (909) 685-2288**  
**Fax: (909) 685-2289**  
**E-mail: ktom@up.com**

C. Licensee, at its own expense, shall adequately police and supervise all Work to be performed by Licensee and shall ensure that such Work is performed in a safe manner as set forth in Section 7 of Exhibit B. The responsibility of Licensee for safe conduct and adequate policing and supervision of Licensee's work shall not be lessened or otherwise affected by Railroad's approval of the plans and specifications involving the Work, or by Railroad's collaboration in performance of any of the Work, or by the presence at the work site of a Railroad Representative, or by compliance by Licensee with any requests or recommendations made by the Railroad Representative.

#### **ARTICLE 5 - TERM: TERMINATION**

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and continue until **May 19<sup>th</sup>, 2015** unless sooner terminated as herein provided, or at such time as Licensee has completed its Work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its Work on Railroad's property.

B. Railroad may terminate this Agreement if it reasonably determines in good faith that Licensee has failed to comply with any of the material terms and conditions of this Agreement and has not cured such failure within ten (10) days after receiving notice (oral or written) from Railroad describing such failure in reasonable detail.

#### **ARTICLE 6 - INSURANCE - CONTRACTOR ENDORSEMENT**

A. Licensee is self-insured. Licensee shall provide Railroad defense and indemnification at least equal to the defense, indemnification and insurance provisions (including the endorsements) contained in Exhibit C. Nothing herein shall be deemed to insure Railroad against its sole negligence or willful misconduct.

B. In the event any of the Work to be done upon the property of Railroad is to be done by a contractor or subcontractor of Licensee, said contractor or subcontractor may have the benefit of the license herein granted, while performing work for Licensee,

provided such contractor or subcontractor agrees to be subject to and bound by the terms and conditions of this Agreement by: (1) executing an endorsement to this Agreement in the form set forth in Contractor's Endorsement marked **Exhibit E**, attached hereto, (2) providing to Railroad the insurance policies, certificates, binders, and/or endorsements described in **Exhibit C**, and (3) providing to Railroad the insurance endorsements required under Section 12 of **Exhibit B** of this Agreement.

C. All insurance correspondence, certificates, endorsements, binders or originals shall be sent to:

*Union Pacific Railroad Company  
Senior Manager Contracts  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
Folder No. 2599-28*

#### **ARTICLE 7 - CHOICE OF FORUM**

Unless otherwise preempted by applicable federal laws, rules or regulations, this Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the State of California only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

#### **ARTICLE 8 - REMOVAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE**

At the request of Railroad, Licensee shall remove from Railroad property any contractor, subcontractor, officer, agent and/or employee of Licensee who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Licensee shall be suspended until such removal has occurred. Licensee shall indemnify Railroad against any claims arising from the removal of any such contractor, subcontractor, officer, agent and/or employee from Railroad property.

#### **ARTICLE 9 - ADMINISTRATIVE FEE**

Upon the execution and delivery of this Agreement, Licensee shall pay to Railroad Five Hundred Dollars (\$500.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - SPECIAL PROVISIONS**

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Licensee without the prior written permission of Railroad.

B. Explosives or other highly flammable substances shall not be stored on Railroad property without the prior written approval of the Railroad Representative.

C. The parties agree that this agreement is not, and is not intended to be, a construction contract for purposes of Cal. Civ. Code § 2782(a). Accordingly, to the maximum extent permitted by law, the provisions of Cal. Civ. Code § 2782(a), as interpreted by the California courts in Southern Pacific Transportation Co. v. Sandyland Protective Association, 224 Cal.App.3d 1494, 274 Cal.Rptr. 626 (1990), and in other past and future cases, shall not apply to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

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

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

**STATE OF CALIFORNIA,  
DEPARTMENT OF TRANSPORTATION**

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

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

**EXHIBIT A  
TO  
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

Exhibit A will be a print showing the general location of the right of entry area.

The parties agree that the location of the right of entry area shall be as shown on the print attached hereto for purposes of the Code of Civil Procedure, Chapter 4, Section 41.02, as amended, and the provisions of the Code of Civil Procedure, Chapter 4, Section 41.02, as amended, shall apply to this agreement.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_  
BY \_\_\_\_\_  
TITLE \_\_\_\_\_

**EXHIBIT B  
TO  
STATE'S RIGHT OF ENTRY AGREEMENT**

**Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

a. Licensee agrees to notify the Railroad Representative at least ten (10) working days in advance of Licensee commencing its Work and at least ten (10) working days in advance of proposed performance of any Work by Licensee in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No Work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 10-day notice, the Railroad Representative will determine and inform Licensee whether a flagman need be present and whether Licensee need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, such services will be provided at Licensee's expense with the understanding that if Railroad provides any flagging or other services, Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein. Licensee shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefor.

b. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight hour day for the class of persons used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the Work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Employee's Liability & Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee shall pay on the basis of the new rates and charges.

c. Reimbursement to Railroad will be required covering the full eight hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad

work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though the Licensee may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Railroad a minimum of five (5) days' notice prior to the cessation of the need for a flagman. If five (5) days' notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days-notice must then be given to Railroad if flagging services are needed again after such five (5) day cessation notice has been given to Railroad.

## **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be reasonably done at any time or times by Railroad without liability to Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

## **Section 3. NO INTERFERENCE WITH OPERATION OF RAILROAD AND ITS TENANTS**

a. Licensee shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including, without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Licensee at any time that would in any manner impair the safety of such operations. When not in use, Licensee's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

b. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Licensee caused by such railroad operations and work are expected by Licensee, and Licensee agrees that Railroad shall have no

liability to Licensee, or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Licensee.

#### **Section 4. LIENS.**

Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Licensee shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

#### **Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

a. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and shall commence no work on the right of way until all such protection or relocation has been accomplished.

b. In addition to other indemnity provisions in this Agreement, Licensee shall, pursuant to Cal. Gov. Code §14662.5, indemnify and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Licensee, its contractor, agents and/or employees, that proximately causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work, including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

a. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee shall at a minimum comply with Railroad's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Railroad if Licensee determines that any of Railroad's safety standards are contrary to good safety practices. Licensee shall furnish copies of Exhibit D to each of its employees before they enter the job site.

b. Without limitation of the provisions of paragraph A above, Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

c. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Licensee shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

d. If and when requested by Railroad, Licensee shall deliver to Railroad a copy of Railroad's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

a. To the extent not prohibited by Cal. Gov. Code §14662.5, Licensee shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party,

Licensee, or any employee of Licensee or of any Indemnified Party) arising out of or in any manner connected with (i) any Work performed by Licensee, or (ii) any act or omission of Licensee, its officers, agents or employees, or (iii) any breach of this agreement by Licensee.

b. To the extent not prohibited by Cal. Gov. Code §14662.5, the right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence or willful misconduct of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence or willful misconduct of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

c. To the extent not prohibited by Cal. Gov. Code §14662.5, Licensee expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Licensee's own employees. Licensee waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Licensee acknowledges that this waiver was mutually negotiated by the parties hereto.

d. To the extent not prohibited by Cal. Gov. Code §14662.5, no court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employer's Liability Act against a party to this Agreement may be relied upon or used by Licensee in any attempt to assert liability against Railroad.

e. The provisions of this Section 8 shall survive the completion of any Work performed by Licensee or the termination or expiration of this Agreement. To the extent not prohibited by Cal. Gov. Code §14662.5, in no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Licensee may have to any Indemnified Party by statute or under common law.

#### **Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Licensee to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the Work to be performed by Licensee, then in that event Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Licensee shall remove all of Licensee's tools, equipment and materials from Railroad's property promptly upon completion of the Work, restoring Railroad's property to the same state and condition as when Licensee entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Licensee shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Licensee and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Licensee and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Licensee.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

**EXHIBIT C  
TO  
STATE'S  
RIGHT OF ENTRY AGREEMENT**

**INSURANCE PROVISIONS**

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
  - Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.
- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
  - Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.
- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the State of California.

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.
- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### **Other Requirements**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing

equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of California.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT D  
TO  
STATE'S RIGHT OF ENTRY AGREEMENT**

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Licensee as well as all employees of any subcontractor or agent of Licensee.

**I. Clothing**

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
  - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools

- 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49 CFR 214, Subpart C and Railroad's On-Track Safety Rules. Under 49 CFR 214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

### IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from the Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of

the crane and the minimum clearances to overhead power lines.

**V. General Safety Requirements**

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.**
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.**
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49 CFR 213.**
- D. All employees comply with the following safety procedures when working around any railroad track:**
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.**
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.**
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).**
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.**
  - (v) Before stepping over or crossing tracks, look in both directions first.**
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.**
- E. All employees must comply with all federal and state regulations concerning workplace safety.**

**EXHIBIT E  
TO  
STATE'S RIGHT OF ENTRY AGREEMENT**

**CONTRACTOR'S ENDORSEMENT**

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A. As a condition to entering upon the Railroad's right-of-way to perform Work pursuant to this agreement, State's contractor, \_\_\_\_\_

*(Name of Contractor)*

whose address is \_\_\_\_\_

*(Contractor's Mailing Address)*

(hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of the attached Caltrans Right of Entry Agreement that was signed by Union Pacific Railroad Company ("Railroad") and the State of California, Department of Transportation ("State") relating to the Work to be performed in connection with State's Project No. 0800000506 (EA OM940) covering work in San Bernardino County, California and the insurance requirements set forth in Exhibit C of the Right of Entry Agreement. The Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of Exhibit B to the Right of Entry Agreement does not apply to the Contractor and in no way limits the indemnities set forth in those provisions, to which the Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in Section 2 of the Contract Information Handout Provisions, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage and endorsements required pursuant to Section 2 of the Contract Information Handout Special Provisions.

C. All insurance correspondence, binders or originals shall be directed to:

*Union Pacific Railroad Company  
Senior Manager Contracts  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
Folder No. 2702-64*

D. Please note that fiber optic cable may be buried on the Railroad's property. Prior to commencing any work, the Contractor agrees to contact the Railroad's Telecommunications Operation Center as provided in Section 5 of Exhibit B of the Right of Entry Agreement to determine if any fiber optic cable is located on the Railroad's property on or near the location where the work is to be performed. If there is, the Contractor must comply with the terms and conditions of Section 5 of Exhibit B before commencing any work on the Railroad's property.

E. The Contractor agrees to also provide to the Railroad's Manager-Track Maintenance at [Insert phone number] the advance notice required in Section 1 of Exhibit B of the Right of Entry Agreement prior to working on the Railroad's property in order for the Railroad to coordinate the Contractor's work with the Railroad's operations and to make arrangements for flagging protection (if applicable).

This endorsement shall be completed and sent to the person named in Paragraph C above.

**STATE'S RIGHT OF ENTRY AGREEMENT**

\_\_\_\_\_  
(Name of Contractor)

By \_\_\_\_\_

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

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

**EXHIBIT E**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

**Form of Temporary Construction Easement**

EXHIBIT E

NO.	DESCRIPTION	DATE	STATUS

TEMPORARY  
CONSTRUCTION  
EASEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, between \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_ and \_\_\_\_\_ of the County of \_\_\_\_\_ State of \_\_\_\_\_.

WHEREAS, the above-named parties are desirous of entering into an agreement whereby the above-named party shall have the right to use the property of the above-named party for the purpose of \_\_\_\_\_ and \_\_\_\_\_;

AND WHEREAS, the above-named party is desirous of granting the above-named party the right to use the property of the above-named party for the purpose of \_\_\_\_\_ and \_\_\_\_\_;

THE PARTIES HERETO have agreed upon the following terms and conditions:

1. The term of this Temporary Construction Easement shall be for a period of \_\_\_\_\_ months, commencing on the date hereof and terminating on the date \_\_\_\_\_.

2. The above-named party shall have the right to use the property of the above-named party for the purpose of \_\_\_\_\_ and \_\_\_\_\_ during the term of this easement.

3. The above-named party shall be responsible for the cost of all materials and labor necessary for the construction and maintenance of the easement.

Space above this line for Recorder's Use

**EXHIBIT E**

**TEMPORARY  
CONSTRUCTION  
EASEMENT**

District	County	Route	Postmile	Number

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter, "GRANTOR"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the STATE OF CALIFORNIA, Department of Transportation, a public agency, its successors and assigns (hereinafter, "STATE") (subject to the reservations, covenants, terms and conditions hereof), a temporary non-exclusive easement (hereinafter "Temporary Easement") upon, over and across GRANTOR's real property at or near the City of Grand Terrace, San Bernardino County, California, near GRANTOR's Milepost 541.55 on GRANTOR's Riverside Industrial Lead, as described in **Exhibit A**, attached hereto and hereby made a part hereof (hereinafter the "Property") for the sole purpose of demolishing and removing the existing underpass bridge structure (the "Structure") on the Property.

The grant of this Temporary Easement shall be effective \_\_\_\_\_, 20\_\_\_\_, and shall terminate \_\_\_\_\_ ( ) months after such date, or upon completion of the removal of the Structure, whichever is sooner.

GRANTOR acknowledges that the Temporary Easement is compatible with railroad operations, within the meaning of California Code of Civil Procedure section 1240.510, so long as it does not impede railroad operations, create an undue safety risk, or interfere with GRANTOR's common carrier obligations as regulated by the Surface Transportation Board or by any successor agency.

GRANTOR further grants to STATE the non-exclusive right of ingress to and egress from the Property over and across GRANTOR's other property, subject to advance notification and coordination with GRANTOR to ensure safety and the compatibility of GRANTOR's other property for such ingress and egress (which coordination by GRANTOR shall not be unreasonably withheld), and provided further that such right of ingress and egress shall be in

accordance with the terms and provisions of the parties' separate Underpass Bridge Removal Agreement dated \_\_\_\_\_, 20\_\_\_\_, and as thereafter amended by mutual agreement, and known in GRANTOR's records as part of Real Estate Folder Number 2599-28 (the "Bridge Removal Agreement").

RESERVING unto GRANTOR, its successors and assigns, all rights in and to the Property and all uses of the Property that are not inconsistent with STATE's use and enjoyment of the Temporary Easement, including, but not limited to the following:

- (1) All rights in and to airspace above the Property.
- (2) The right to construct, reconstruct, upgrade, place, replace, remove, inspect, maintain, repair, alter, renew, improve and operate pipelines, utility lines and communication lines above, below and on the surface of the Property. Railroad reserves and shall have the exclusive right to grant such rights to third parties. Communication lines shall include, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information.
- (3) All rights as may be required to investigate and remediate environmental contamination and hazards affecting the Property.
- (4) All oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within the Property together with the perpetual right of drilling, mining, exploring and operating therefor and removing the same from the Property, including the right to whipstock or directionally drill and mine from lands other than the Property hereinbefore described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells, or mines, without, however, the right to drill, mine, explore and operate through the surface or the upper one hundred (100) feet of the subsurface of the Property or otherwise in such manner as to endanger the safety of any Structure that may be constructed on the Property.

This Temporary Easement is SUBJECT and SUBORDINATE to the following:

- (1) The terms and conditions of the Bridge Removal Agreement.
- (2) All prior and outstanding licenses, leases, easements, restrictions, conditions, covenants, liens and claims of title which may affect the Property, whether recorded or both unrecorded and known by Grantor, including, but not limited to, all easements for petroleum and/or hydrocarbon pipelines (including, but not limited to, those owned by SFPP, L.P., and/or its successors or assigns), and easements and licenses for telephone, electric and fiber optic lines (collectively "Prior Rights"), and, if

applicable, further subject to the provisions in **Exhibit B**, attached hereto and hereby made a part hereof. The word "grant" as used in this Temporary Easement shall not be construed as a covenant against the existence of any Prior Rights affecting the Property.

(3) The continuing right and obligation of GRANTOR, its successors and assigns, to use the Property in the performance of its duties as a common carrier, including, but not limited to, the right to construct, reconstruct, maintain and operate existing or any additional facilities and appurtenances thereto in, upon, over, along and across the Property in such manner as may be consistent with STATE's use and enjoyment of the easement herein granted; *provided, further that in the event the Property is transferred to a non-transportation entity, such transferee's use of the Property shall be subject to the following limitations and conditions:*

(a) No use may be made of the Property which would impair the full use and safety of the Structures, or would otherwise interfere with the free flow of traffic thereon or would unreasonably impair the construction thereof.

(b) No use may be made of the Property for the manufacture or storage of flammable, volatile, explosive or corrosive substances, and such substances shall not be brought onto said land except in such quantities as are normally required for the maintenance operations of occupants of said land and except as may be transported by rail or pipelines. Installation of any pipelines by a non-railroad or other non-transportation entity, or pipelines not otherwise subject to Federal and/or State regulations and safety standards, carrying volatile substances shall have the written approval of the STATE as to the safety and compatibility with the Temporary Easement and such discretion shall not be exercised in a capricious or arbitrary manner. The use of any such substances shall be in conformance with all applicable code requirements.

(c) No hazardous or unreasonably objectionable smoke, fumes, vapors, dust or odors shall be permitted, which would adversely affect the use of the Property or the Structure.

(d) No building of combustible construction shall hereafter be constructed on the Property. The STATE shall be given the opportunity to review and approve plans for any construction within the Property sixty (60) days prior to said construction. No buildings, no permanent structures, and no advertising displays, may be constructed within eight (8) feet of the undersides nor within fifteen (15) feet (measured horizontally) of the sides of the Structure without the express written approval of the STATE. The STATE shall have the discretion to determine whether such proposed construction will be inimical to or incompatible with

the full enjoyment of the public rights in the Temporary Easement or against the public interest, but such discretion shall not be exercised in a capricious or arbitrary manner.

STATE, at its sole expense, and at all times during the term of this Temporary Easement, shall keep and maintain the Property in a safe, clean and good condition. Upon termination of this Temporary Easement, STATE, at STATE's sole expense, shall restore the Property to the condition and contours that existed immediately prior to granting this Temporary Easement. Any work by STATE to so restore the Property shall be in accordance with the then current standards of GRANTOR, including, but not limited to engineering, land use and railroad operating standards, and with the terms and provisions of the Bridge Removal Agreement.

Consideration for this grant includes compensation for damages to the value of the remainder of GRANTOR's property, if any, caused by the existence of the Temporary Easement herein granted and/or by the construction or maintenance of the Structure. GRANTOR hereby waives any additional claim for such damages to the value of the remainder, if any. This waiver shall not apply to compensation for any physical damages to GRANTOR's remaining property, if any, caused by STATE.

In WITNESS WHEREOF, GRANTOR has caused its corporate name to be hereunder subscribed and its corporate seal to be affixed hereto, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Attest:

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation

\_\_\_\_\_  
Assistant Secretary

By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_





## EXHIBIT "A"

### Parcel 22390-2

That portion of Lot 25 of Section 5, Township 2 South, Range 4 West, SAN BERNARDINO MERIDIAN, in the City of Grand Terrace, County of San Bernardino, State of California, according to the official plat thereof, as described in those certain deeds recorded in Book 226, Pg. 230 on June 30, 1896, Book 250, Pg. 77 on March 26, 1898, and Book 226, Pg. 374 on Aug. 26, 1896, all in Official Records of said County, described as follows:

**BEGINNING** at the Southeast corner of that certain parcel of land described in an indenture deed between Southern Pacific Company and the State of California recorded May 8, 1958 in Book 4504, Pg. 407 of said Official Records, being also on the East line of said deed recorded in Book 226, Pg. 230; thence along said East line, South  $00^{\circ}30'16''$  East, 59.92 feet; thence South  $41^{\circ}21'43''$  West, 97.79 feet to the West line of said Section 5; thence along said West line, North  $00^{\circ}29'24''$  West, 59.95 feet to the Southwest corner of said indenture deed; thence along the Southeasterly line of last said deed, North  $41^{\circ}22'02''$  East, 97.76 feet to the **POINT OF BEGINNING**.

### Parcel 22390-3

That portion of Lot 24 of Section 5, Township 2 South, Range 4 West, SAN BERNARDINO MERIDIAN, in the City of Grand Terrace, County of San Bernardino, State of California, according to the official plat thereof, as described in those certain deeds recorded in Book 250, Pg. 77 on March 26, 1898 and Book 226, Pg. 374 on Aug. 26, 1896, all in Official Records of said County, described as follows:

**BEGINNING** at the intersection of the West line of said Section 5 and the Westerly prolongation of the South line of De Berry Street (66 feet wide) as shown on map filed in Book 7, Pages 65 & 66 of Records of Survey in said Official Records; thence along said South line and it's prolongation, North  $89^{\circ}33'29''$  East, 86.87 feet to the Easterly line of that certain railroad right of way conveyed to Southern Pacific Railroad Company in a deed recorded August 26, 1896 in Book 226, Page 374 in said Official Records, being also the beginning of a non-tangent curve concave Easterly and having a radius of 1894.43 feet, a radial line to said point bears North  $77^{\circ}11'45''$  West; thence Southerly along said Easterly line, 278.59 feet through a central angle of  $08^{\circ}25'32''$  to the beginning of a non-tangent reverse curve concave Westerly and having a radius of 17460.08 feet, a radial line to said point bears South  $87^{\circ}52'03''$  East; thence continuing Southerly along said right of way, 168.07 feet through a central angle of  $00^{\circ}33'05''$ ; thence continuing along said right of way, South  $00^{\circ}01'15''$  East, 19.78 feet to the Southwest corner of that certain parcel of land conveyed to the State of California in a grant deed recorded August 15, 1957 in Book 4303, Page 150 of Deeds in said Official Records; thence South  $47^{\circ}33'46''$  West, 46.08 feet to the Southeast corner of that certain parcel of land conveyed to Gary L. and

Annette I. Bailey in a grant deed recorded November 5, 1973 in Book 8301, Page 540 of Deeds in said Official Records, being also said West line of said Section 5; thence along said West line, North 00°29'24" West, 493.35 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM** that certain parcel of land described in an indenture deed between Iona N. Robison and Pacific Electric Railway Company recorded September 10, 1912 in Book 511, Page 280 of said Official Records.

All rights granted herein shall terminate on May 19, 2015.

The bearings and distances used in the above descriptions are based on the California Coordinate System of 1983, Zone 5. Divide distances shown by 0.9999594 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: \_\_\_\_\_

Professional Land Surveyor

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



08-SBd-215-PM 0.78-22390 (22390-2, 22390-3)

**Exhibit B**

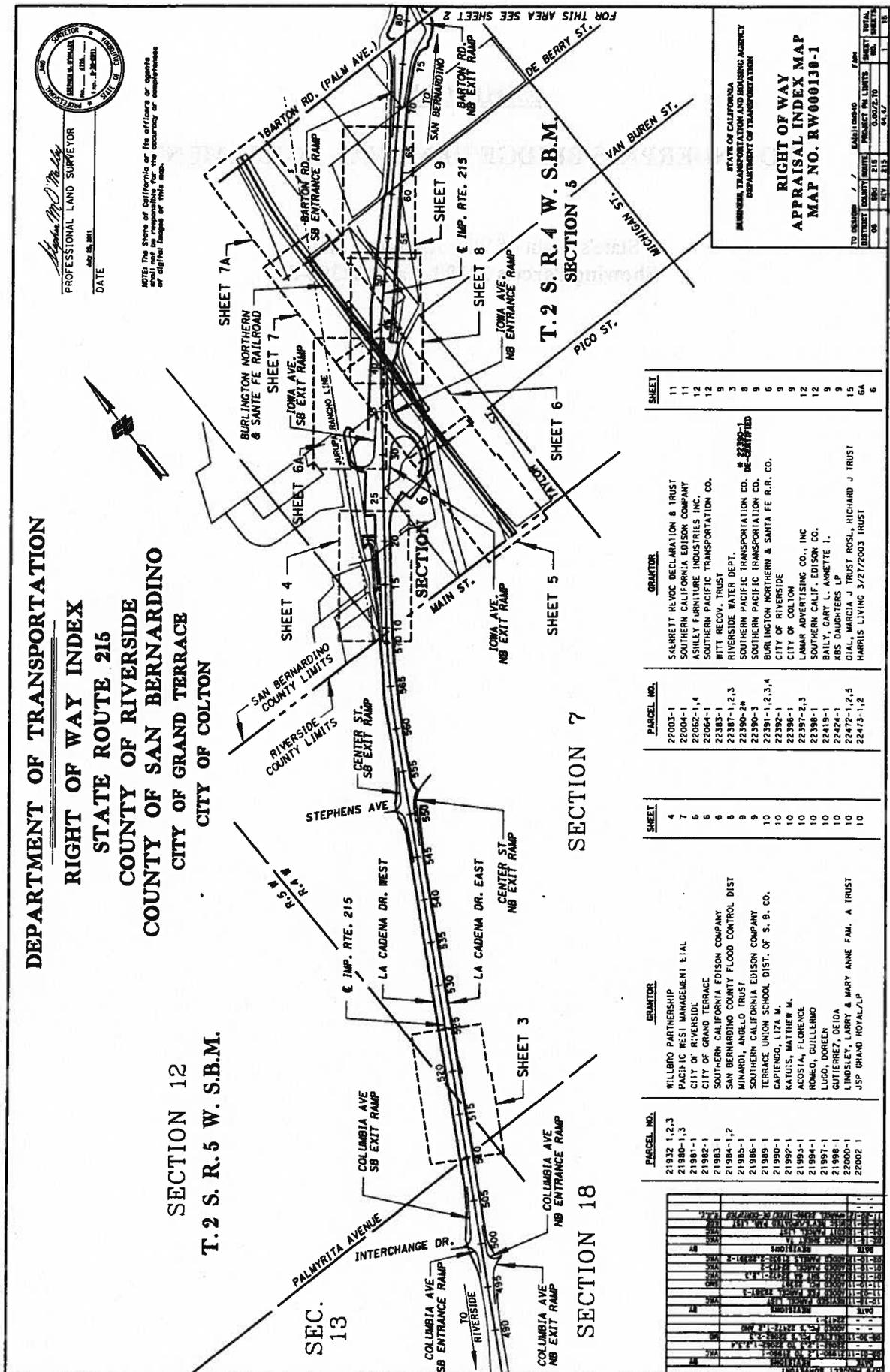
**Provisions of Prior Rights**

STATE shall be responsible to GRANTOR and to SFPP, L.P., and/or its successors and assigns as the lawful holder of Prior Rights (as defined hereinbefore) for (1) damages caused by any interference with an existing facility maintained pursuant to such Prior Rights and, (2) when conducting excavation, installation or construction activities within ten (10) feet of such an existing facility, for the reasonable cost of any reasonably necessary protection measures taken by SFPP, L.P., and/or its successors and assigns, as a result of or arising out of STATE's use of the easement granted herein (including, without limitation, inspection and monitoring of STATE's activities).

Notwithstanding anything to the contrary in the foregoing, STATE shall not be responsible to SFPP, L.P., and/or its successors and assigns relating to initially locating its facility(ies). In addition, STATE shall not be responsible to SFPP, L.P., and/or its successors and assigns for costs otherwise relating to locating or potholing the holder's facility, or for the cost of protection measures (including, without limitation, inspection and monitoring of STATE's activities), except where STATE is conducting excavation, installation or construction activities within ten (10) feet of a facility owned by SFPP, L.P., and/or its successors and assigns. SFPP, L.P., and/or its successors or assigns, shall be an express third-party beneficiary of this provision in any location where SFPP, L.P., and/or its successors or assigns, owns or operates pipeline facilities pursuant to Prior Rights that are subject to this provision and, accordingly, may enforce this provision directly against STATE.







**DEPARTMENT OF TRANSPORTATION**  
**RIGHT OF WAY INDEX**  
**STATE ROUTE 215**  
**COUNTY OF RIVERSIDE**  
**COUNTY OF SAN BERNARDINO**  
**CITY OF GRAND TERRACE**  
**CITY OF COLTON**

DATE: 02/28/2011  
 PROFESSIONAL LAND SURVEYOR  
 [Signature]  
 STATE OF CALIFORNIA  
 REGISTERED PROFESSIONAL LAND SURVEYOR  
 No. 12528  
 EXPIRES 02/28/2015

NOTE: The sheets of this map or its portions or copies thereof are not to be used for any purpose other than that for which they were prepared or approved by the State of California.

STATE OF CALIFORNIA  
 REVENUE, TRANSPORTATION AND HOUSING AGENCY  
 DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY**  
**APPRAISAL INDEX MAP**  
**MAP NO. RW000130-1**

TO SHEET	FROM
DISTRICT	DISTRICT
COUNTY	COUNTY
SHEET	SHEET
NO.	NO.
REV.	REV.
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18

PARCEL NO.	GRANTOR	SHEET
27003-1	SAKRETT REVOC DECLARATION B TRUST	11
22004-1	SOUTHERN CALIFORNIA EDISON COMPANY	11
22062-1,4	ASHLEY FURNITURE INDUSTRIES INC.	12
22064-1	SOUTHERN PACIFIC TRANSPORTATION CO.	12
22383-1	BITT RECOV. TRUST	9
22387-1,2,3	RIVERSIDE WATER DEPT.	3
22390-2*	SOUTHERN PACIFIC TRANSPORTATION CO. OF DENVER	8
22390-3	SOUTHERN PACIFIC TRANSPORTATION CO.	9
22391-1,2,3,4	BURLINGTON NORTHERN & SANTA FE R.R. CO.	9
22392-1	CITY OF RIVERSIDE	9
22396-1	LAMAR ADVERTISING CO., INC	9
22397-2,3	SOUTHERN CALIF. EDISON CO.	12
22419-1	BAILY, GARY L. ANNETTE I.	9
22424-1	ABS DAUGHTERS LP	9
22472-1,2,5	DIAL, MARCIA J TRUST ROSL, RICHARD J TRUST	15
22473-1,2	HARRIS LIVING 3/27/2003 TRUST	6

PARCEL NO.	GRANTOR	SHEET
21932 1,2,3	WILLBRO PARTNERSHIP	4
21980-1,3	PACIFIC WEST MANAGEMENT ETAL	7
21981-1	CITY OF RIVERSIDE	6
21982-1	CITY OF GRAND TERRACE	6
21983 1	SOUTHERN CALIFORNIA EDISON COMPANY	6
21984-1,2	SAN BERNARDINO COUNTY FLOOD CONTROL DIST	8
21985-1	MINARDI, ANGELO TRUST	9
21986-1	SOUTHERN CALIFORNIA EDISON COMPANY	9
21989-1	TERRACE UNION SCHOOL DIST. OF S. B. CO.	10
21990-1	CAPIENDO, LITZA M.	10
21997-1	KAYOIS, MATTHEW M.	10
21998-1	ACOSTA, FLORENCE	10
21999-1	ROMEO, GUILLEMO	10
21991-1	LUIGI, DOREEN	10
21996-1	COUTERREZ, DEIDA	10
22000-1	LINDSEY, LARRY & MARY ANNE FAM. A TRUST	10
22002 1	JSP GRAND HOTEL/LLP	10





## CONTRACT SUMMARY SHEET

Contract No. C 13082 Amendment No. \_\_\_\_\_

By and Between

San Bernardino County Transportation Authority and Union Pacific Railroad and  
California Department of Transportation

Contract Description I-215 Bi-County HOV: C&M Agmt for the Colton/Loma Linda Overhead

<b>Board of Director's Meeting Date:</b> January 9, 2013	
<b>Overview of BOD Action:</b> Approve three party Construction and Maintenance Agreement No. C13082 with UPRR and Caltrans for the Colton/Loma Linda Overhead for the I-215 Bi-County HOV Project	
Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	810,625.00	Original Contingency Amount
			\$ 0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$
Current Amendment Amount	\$		Contingency Amendment
			\$
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>810,625.00</b>	<b>TOTAL CONTINGENCY VALUE</b>
			<b>\$ 0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ 810,625.00</b>

<b>Contract Start Date</b> January 9, 2013	<b>Current Contract Expiration Date</b>	<b>Revised Contract Expiration Date</b>
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0839</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? Congestion Mitigation & Air Quality (CMAQ) and MSI - Valley Fund Freeway Project (4110)				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input checked="" type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: Congestion Mitigation MSI - Valley Fund Freeway Project				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
<b>Check all applicable boxes:</b>	
<input type="checkbox"/> Retention? If yes, indicate % _____.	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ % <input type="checkbox"/> Underutilized DBE (UDBE) Goal _____ %	

PAUL MELUON	
Task Manager (Print Name)	Signature
Project Manager (Print Name)	Date 12/5/12
Contracts Administrator (Print Name)	Signature
Chief Financial Officer (Print Name)	Date 12/6/12

1000 North Main Street  
P.O. Box 1000  
Tulsa, Oklahoma 74103  
Phone: (918) 581-1000  
Fax: (918) 581-1001  
www.tulsa.gov

CONTRACT ADMINISTRATION  
AGREEMENT  
FOR THE STATE OF OKLAHOMA

The Agreement ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the State of Oklahoma ("State") and the contractor ("Contractor") for the purpose of providing services to the State of Oklahoma. The Contractor shall provide the services described in the attached Statement of Work ("SOW") and shall be responsible for all costs associated with the performance of the SOW. The Contractor shall also be responsible for obtaining all necessary permits and licenses required for the performance of the SOW. The Contractor shall maintain all records and documents related to the performance of the SOW for a period of three (3) years after the completion of the SOW. The Contractor shall be bound by the terms and conditions of the Agreement and the SOW.

ARTICLE I

1.1 The Contractor shall provide the services described in the attached Statement of Work ("SOW") and shall be responsible for all costs associated with the performance of the SOW. The Contractor shall also be responsible for obtaining all necessary permits and licenses required for the performance of the SOW. The Contractor shall maintain all records and documents related to the performance of the SOW for a period of three (3) years after the completion of the SOW. The Contractor shall be bound by the terms and conditions of the Agreement and the SOW.

1.2 The Contractor shall provide the services described in the attached Statement of Work ("SOW") and shall be responsible for all costs associated with the performance of the SOW. The Contractor shall also be responsible for obtaining all necessary permits and licenses required for the performance of the SOW. The Contractor shall maintain all records and documents related to the performance of the SOW for a period of three (3) years after the completion of the SOW. The Contractor shall be bound by the terms and conditions of the Agreement and the SOW.

1.3 The Contractor shall provide the services described in the attached Statement of Work ("SOW") and shall be responsible for all costs associated with the performance of the SOW. The Contractor shall also be responsible for obtaining all necessary permits and licenses required for the performance of the SOW. The Contractor shall maintain all records and documents related to the performance of the SOW for a period of three (3) years after the completion of the SOW. The Contractor shall be bound by the terms and conditions of the Agreement and the SOW.

State Agreement No. 08R176  
UPRR Folder No. 2702-64  
08-SBD-215PM 3.72  
PUC No. 001B-540.50-A  
001B-540.54-A  
DOT No. 747166V & 747165N  
Railroad Mile Post 540.50 & 540.54  
Yuma Subdivision  
San Bernardino County, California

**CONSTRUCTION AND MAINTENANCE  
AGREEMENT  
(COLTON-LOMA LINDA OVERHEAD)**

---

This Agreement ("**Agreement**") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ ("**Effective Date**"), by and among the **UNION PACIFIC RAILROAD COMPANY**, a corporation of the State of Delaware, herein called "**Railroad**"; **STATE OF CALIFORNIA**, acting by and through its DEPARTMENT OF TRANSPORTATION, herein called "**State**" and **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, acting in its capacity as the San Bernardino County Transportation Commission, herein called "**SANBAG**". Railroad, State and SANBAG collectively referred to as the "**Parties**."

**RECITALS**

- A. State, acting by and through its then Department of Public Works, entered into an Agreement on September 18, 1969, with Southern Pacific Company, a former corporation, to construct, reconstruct, maintain and use a highway by means of a pair of overhead structures referred to as the Colton-Loma Linda Yard Overhead upon the property of Railroad in San Bernardino County, California ("**The 1969 Agreement**"). Railroad is the successor to Southern Pacific Company. The Department of Public Works is now the Department of Transportation.
- B. Under Project No. 800000506, EA OM940, (the "**Project**"), SANBAG in association with State, intends to widen approximately 7.5 miles of Interstate 215 (I-215) consisting of roadway widening, median barriers, interchange reconstruction, and bridge widening and bridge replacement. As part of these improvements, State, at SANBAG's expense, also desires to perform the work described in Paragraph C below affecting Railroad.
- C. Currently, I-215 is a six-lane divided highway running in a north-south direction and is grade-separated from Railroad's tracks with the Colton-Loma Linda Overhead structures at the Highway 10 Interchange at Railroad Milepost 540.50 & 540.54, DOT #747166V & 747167C, on Railroad's Yuma Subdivision in San Bernardino County, California. The

existing overhead consists of two separate parallel structures. The southbound structure (747166V) will be widened to the east and will carry 6 lanes of traffic including 2 lanes from the connector from the SR 10 eastbound. The northbound structure (747167C) will be widened to the west to carry 4 lanes of traffic and both structures will include barriers to help prevent items from falling on the track and roadway below. The two structures to be widened and reconstructed are collectively referred to as the "Structures". The location of the Structures is shown on Exhibit A.

- D. As defined by Cooperative Agreement 08-1530 executed on April 9, 2012, between State and SANBAG, SANBAG is the Project sponsor and the funding agency and will fund all capital outlay, support costs, and all Railroad expenses.
- E. State, at SANBAG's expense, agreed to advertise, award, and administer construction of Project and work involving the Structures as an Implementing Agency under Cooperative Agreement 08-1530.
- F. The Project will require the construction of a temporary Railroad shoofly (the "Shoofly"). The Shoofly's alignment and typical cross sections are marked **Exhibit B**.
- G. The Project will require the removal of an advertising signboard (the "Signboard"). SANBAG confirms that it will be reimbursing the Railroad for all expenses involving the easement of the Signboard and paying the Railroad for loss of compensation required by Outdoor Advertising Act Section 5412 of the California Business Code.
- H. List of exhibits. The following attached exhibits are hereby made a part of this Agreement:
  - Exhibit A Railroad Location Print
  - Exhibit A-1 Print showing the Easement Area (3 pages)
  - Exhibit A-2 Legal Description of Easement Area
  - Exhibit B General Structure Plans and Shoofly Alignment Plan
  - Exhibit C Railroad Estimate and Railroad's Summary Estimate Sheet
  - Exhibit D State's Railroad Relations and Insurance Requirements
  - Exhibit E Railroad's Minimum Requirements
  - Exhibit F Railroad's Demolition guidelines for Overpass Structures
  - Exhibit G State's Right of Entry Agreement
  - Exhibit H Form of Easement Deed
- I. The parties desire to set forth herein their understanding and agreement relating to the widening of the existing structures including the construction, use, maintenance and repair of the Structures.

## **AGREEMENT**

### **Section 1. RIGHTS GRANTED FOR EASEMENT AREA AND LOSS OF INCOME FOR BILLBOARD SIGN ENCROACHING ON RAILROAD PROPERTY**

For and in consideration of the sum of Two Hundred Ninety Six Thousand Dollars (\$296,000.00) to be paid by SANBAG to the Railroad within forty-five (45) after delivery of this Agreement and receipt of the Easement to the State by the Railroad in the form marked **Exhibit H**. This compensation also includes compensation for the loss of income to the Railroad within the Easement Area. The Railroad will pay whatever sign site withdrawal fee expense is due Clear Channel Outdoor, Inc. under the 1997 Master Signboard site license out of the landowner compensation proceeds. The statutory obligation to negotiate, resolve and pay sign owner compensation remains solely with SANBAG and State.

### **Section 2. WORK TO BE PERFORMED BY RAILROAD**

The Railroad, at SANBAG's expense and at no cost to Railroad, shall perform (i) engineering and review work, (ii) inspection, (iii) flagging protection, and (iv) the Shoofly work described in Section 3 below as deemed necessary by Railroad. Railroad's estimated costs for performing such work is Five Hundred Fourteen Thousand Six Hundred Twenty Five Dollars (\$514,625.00) as set forth in Railroad's Summary Estimate Sheet, and Material and Force Account Estimate dated May 15, 2012, both marked **Exhibit C**, (the "**Railroad Estimate**").

### **Section 3. RAILROAD SHOOFLY**

A. The Railroad, at SANBAG's expense and at no cost to Railroad, perform all grading and drainage work, shall supply and install the subballast and ballast, ties, rail and other track material that is required to construct the Shoofly and shall also connect the Shoofly to existing trackage. Upon the State's completion of the Project, the Railroad, at SANBAG's expense and at no cost to Railroad, shall remove the Shoofly with all salvage credits accruing to the Railroad. The Railroad's estimated cost for performing such work is described in the **Railroad Estimate**.

B. The Railroad, at SANBAG's expense and at no cost to Railroad, shall maintain and repair the Shoofly during the course of the Project.

**Section 4. BILLING SENT BY RAILROAD TO STATE;  
STATE'S PAYMENT OF RAILROAD BILLS**

- A. Railroad shall send progressive billing to State and final billing to State within one hundred eighty (180) days after receiving written notice from State that all Project work affecting Railroad's property has been completed.
- B. State, at SANBAG's expense, agrees to pay Railroad for all actual costs and expenses incurred by Railroad in connection with the Project including, but not limited to, all actual costs of preliminary engineering review, construction, inspection, procurement of materials, equipment rental, manpower and deliveries to the job site, flagging and all direct and indirect overhead labor/construction costs. State recognizes that it can elect under 23 CFR 140.907 to reimburse Railroad for all direct and indirect overhead labor/construction costs (using Railroad's standard additive rates) and agrees to do so.
- C. State, at SANBAG's expense, agrees to pay Railroad for billings received from Railroad within forty-five (45) days of State's receipt of billing from Railroad, pursuant to the California Prompt Payment Act, Government Code Sections 927 et seq.

**Section 5. RAILROAD NOT TO BEAR ANY PROJECT COSTS**

The State confirms that the Railroad shall not be required to bear any Project costs nor be required to contribute any funds for the Project, in accordance with 23 CFR 646.210 (b) (2), and/or any other applicable provisions of law.

**Section 6. WORK PERFORMED BY STATE**

State, as a Project expense and at no cost to Railroad, shall perform all Project work including, without limitation, drainage and other applicable work, all of which shall be performed in compliance with the Plans and Minimum Requirements described and defined in Sections 7 and 12, respectively, and in a good and workmanlike manner and prosecuted diligently to conclusion.

**Section 7. PLANS**

- A. State, at SANBAG's expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to Railroad's Assistant Vice President Engineering - Design, or his authorized representative, for review and approval. The plans and specifications shall include the Shoofly plans and Shoofly alignment as shown on the Shoofly alignment print marked Exhibit B and shall also include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to Railroad's tracks.
- B. The final project plans once they are approved in writing by the Railroad without conditions, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

- C. No changes in the Plans shall be made unless Railroad has consented to such changes in writing.
- D. Railroad's review and approval of the Plans will in no way relieve State from its responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by State on the Plans is at the risk of State.

**Section 8. MAINTENANCE AND REPAIR OF STRUCTURES,  
AND OF HIGHWAY LOCATED ON THE STRUCTURES**

State, and/or its successors and assigns, at their expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the Structures and all other improvements constructed on Railroad's property as part of the Project, including, without limitation, all graffiti removal or over-painting involving the Structures, in a safe, clean, sturdy and sound condition. If any maintenance, repairs or reconstruction of the Structures require a Contractor (as defined in Section 13), to enter upon and use any portion of Railroad property, and/or if such work could jeopardize the safety of Railroad personnel and equipment beneath the Structures, such as, but not limited to, falling concrete or other debris, the State, and or its successors and assigns, shall require each Contractor to execute the Railroad's then current form of Contractor's Right of Entry Agreement and to provide to the Railroad the insurance policies, binders, certificates and endorsements that are required in the Contractor's Right of Entry Agreement prior to commencing any such work. The State, and/or its successors and assigns, shall also pay the Railroad for its use of any Railroad property for which it does not at such time already hold easement or other access rights, and for all flagging costs.

**Section 9. NON-RAILROAD IMPROVEMENTS**

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocating, replacing, removing, and abandoning in place all non-railroad facilities ("NR Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 7. The NR Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for NR Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted NR Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit NR Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted NR Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with NR Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for NR Facilities. NR Facilities work shall not

commence before a supplemental or new agreement has been fully executed by Railroad and the NR Facilities owner or operator or before Railroad and State mutually agree in writing to (i) deem the approved NR Facilities plans and specifications to be Plans pursuant to Section 7B, (ii) deem the NR Facilities part of the Structures, and (iii) supplement this Agreement with terms and conditions covering the NR Facilities.

**Section 10. NO CLAIMS BY STATE**

Notwithstanding any other provisions of this Agreement, State shall not make any claim against Railroad for any damages related to any and all work delays which arise in whole or in part from accommodating or performing railroad train operations, including, without limitation, train schedule changes, and/or increased railroad train operations by Railroad.

**Section 11. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of State, and the Federal Highway Administration for a period of three (3) years following the date of Railroad's final billing, as defined in Section 4A, sent to State.

**Section 12. RAILROAD'S SPECIAL PROVISIONS  
AND RAILROAD'S MINIMUM REQUIREMENTS**

In the event any of the work upon property of Railroad, as herein contemplated, will be advertised for bids by State, the awarded contract shall include:

- (i) State's "Railroad Relations and Insurance Requirements," marked **Exhibit D**,
- (ii) Railroad's "Minimum Requirements," marked **Exhibit E**, and
- (iii) Railroad's "Demolition Guidelines," marked **Exhibit F**.

Railroad shall have the right to amend its Insurance Requirements from time to time to conform to its standard provisions.

**Section 13. DEFINITION OF CONTRACTOR**

For purposes of this Agreement, all references in this Agreement to "Contractor" shall mean the contractor or contractors hired by, or on behalf of, State, and/or its successors and assigns, to perform any Project work on any portion of Railroad's property. The Contractor shall be responsible for the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority and shall ensure their full compliance with all terms and conditions of this Agreement. Nothing in this section is intended to create rights in third parties or third party beneficiaries.

**Section 14. FEDERAL AID POLICY GUIDE**

The current rules, regulations and provisions of the Federal Aid Policy Guide, as contained in 23 CFR 140, subpart I and 23 CFR 646, subparts A and B are incorporated into this Agreement by reference.

**Section 15. RESTRICTIONS ON COMMENCEMENT OF PROJECT WORK**

A. Neither State nor any Contractor shall commence any Project work on any Railroad property until:

(i) State has obtained all necessary governmental permits, zoning clearances and approvals including, without limitation, those from the California Public Utilities Commission.

(ii) State has received approval of the Plans from the Railroad, which approval shall not be unreasonably withheld.

(iii) Railroad and State have executed the Right of Entry Agreement marked **Exhibit G**.

(iv) Each Contractor hired by State has executed the Contractor's Endorsement that is part of the Right of Entry Agreement.

(v) Railroad has received the insurance policies, binders, certificates and/or endorsements set forth in the Right of Entry Agreement.

B. The insurance coverage set forth in the Right of Entry Agreement shall remain in full force and effect by each Contractor during the performance of said work upon and adjacent to Railroad's property and thereafter until the Contractor removes all tools, equipment and materials from Railroad's property and cleans up the premises to a presentable condition satisfactory to Railroad.

C. State and each Contractor shall give the advance notice described in the Right of Entry Agreement to Railroad's authorized representative before commencing any Project work on Railroad's property, and shall observe Railroad's rules and regulations with respect thereto. All work on Railroad's property shall be done at such times and in such manner so as not to interfere with or endanger the operations of Railroad.

**Section 16. EFFECTIVE DATE; TERM; TERMINATION**

A. This Agreement is effective as of the date this Agreement is fully signed and executed by Railroad and State authorized signatories.

B. Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to State in the event State does not commence construction on the portion of the Project located on Railroad's property within twelve (12) months from the Effective Date.

- C. If the Agreement is terminated as provided above, or for any other reason, State shall pay to Railroad all actual costs and expenses incurred by Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by Railroad in connection with reviewing any preliminary or final plans and specifications.

**Section 17. FUTURE PROJECTS**

In future projects after initial completion of construction of the Structure, State and/or SANBAG may, at State's or SANBAG's sole expense, alter or reconstruct the Structures if necessary or desirable ("**Future Projects**"), provided, however, that State and SANBAG shall have no right (i) to expand the dimensions of the Structures or (ii) to erect falsework or other structures, temporary or permanent, or make any other use of the surface of Railroad's right-of-way other than for inspection or maintenance of the Structures as originally constructed, without obtaining Railroad's prior written consent and the execution of a supplement to this Agreement, or the completion of a separate construction and maintenance agreement, providing, without limitation, for the submission and approval of plans and specifications for such Future Project as contemplated by Section 7 of this Agreement and for a then-current standard contractor's right of entry form as contemplated by Sections 8 and 15 of this Agreement. Future Projects may require additional compensation to Railroad.

**Section 18. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

- A. Neither the State nor SANBAG may assign this Agreement, unless compelled by law, without the prior written consent of Railroad, which consent shall not be unreasonably withheld.
- B. Subject to the provisions of Section 18A, above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad, State and SANBAG.

**Section 19. AGREEMENT AS A SUPPLEMENT**

The 1969 Agreement shall be supplemented by this Agreement. In the event of any conflict between the 1969 Agreement and this Agreement, the terms and provisions of this Agreement shall control.

**Section 20. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

State and SANBAG represent and warrant that it is currently their intention to not use any American Recovery and Reinvestment Act ("ARRA") funding for the Project. However, if for any reason, State and/or SANBAG uses ARRA funding for this Project, State and SANBAG agree that it is their responsibility for performing and completing all ARRA reporting documents for the Project. State and SANBAG confirm and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of State and SANBAG and not of Railroad and (ii) State and SANBAG shall not delegate any ARRA reporting responsibilities to Railroad. State and SANBAG also confirm and acknowledge that (i)

Railroad shall provide to State and SANBAG Railroad's standard and customary billing for expenses incurred by Railroad for the Project including Railroad's standard and customary documentation to support such billing and (ii) such standard and customary billing and documentation from Railroad provides the information needed by State and SANBAG to perform and complete the ARRA reporting documents. Railroad confirms that State and SANBAG and the Federal Highway Administration shall have the right to audit Railroad's billing and documentation for the Project as provided in the Federal Aid Policy Guide.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in quadruplicate as of the Effective Date, by their officers thereunto duly authorized.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_  
DONALD E. GREBE, Chief  
Office of Project Delivery  
Division of Right of Way and Land Surveys

APPROVED AS TO FORM AND PROCEDURE:

By \_\_\_\_\_  
ROGER FORMANEK, Attorney  
Department of Transportation

APPROVAL RECOMMENDED

By \_\_\_\_\_  
DENNY FONG, P.E.  
Railroad Agreements Engineer

[Signatures continued on next page]

[Signatures continued from previous page]

**UNION PACIFIC RAILROAD COMPANY**

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

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

[Signatures continued on next page]

[Signatures continued from previous page]

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

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

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

**EXHIBIT A**

**To Construction & Maintenance Agreement**

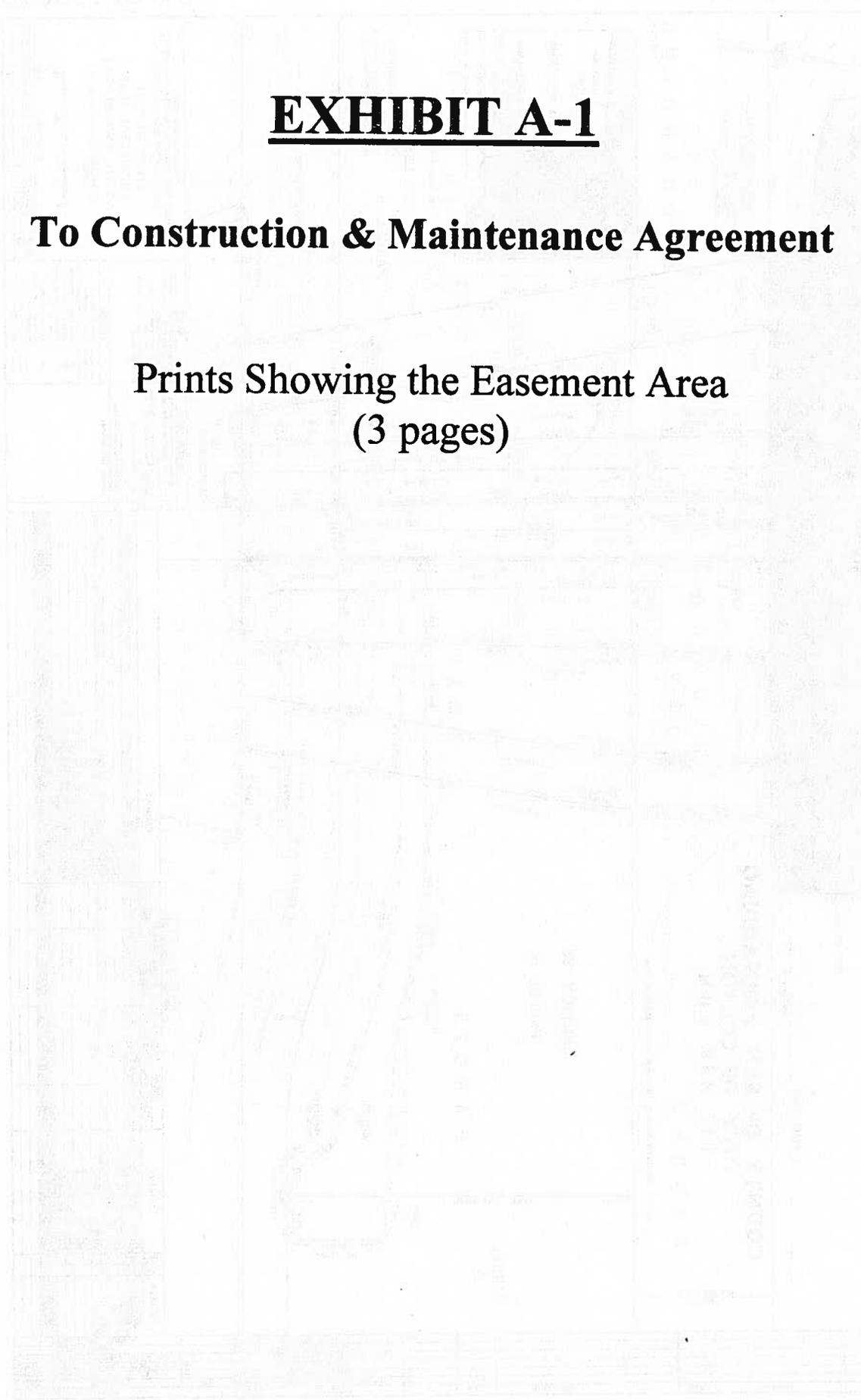
**Railroad's Location Print**

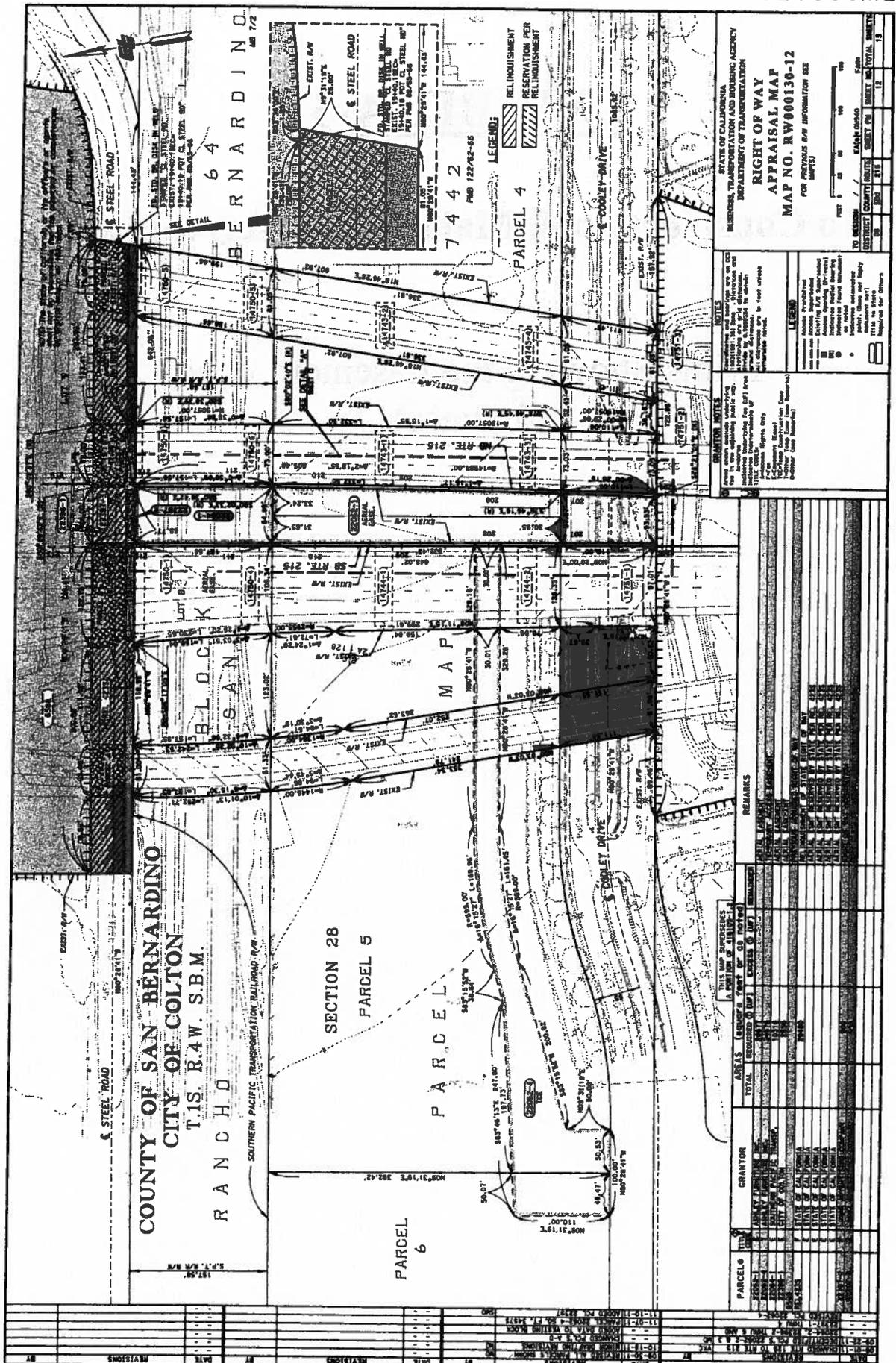
PROJECT 120-15 PROJECT 120-15

# EXHIBIT A-1

## To Construction & Maintenance Agreement

Prints Showing the Easement Area  
(3 pages)

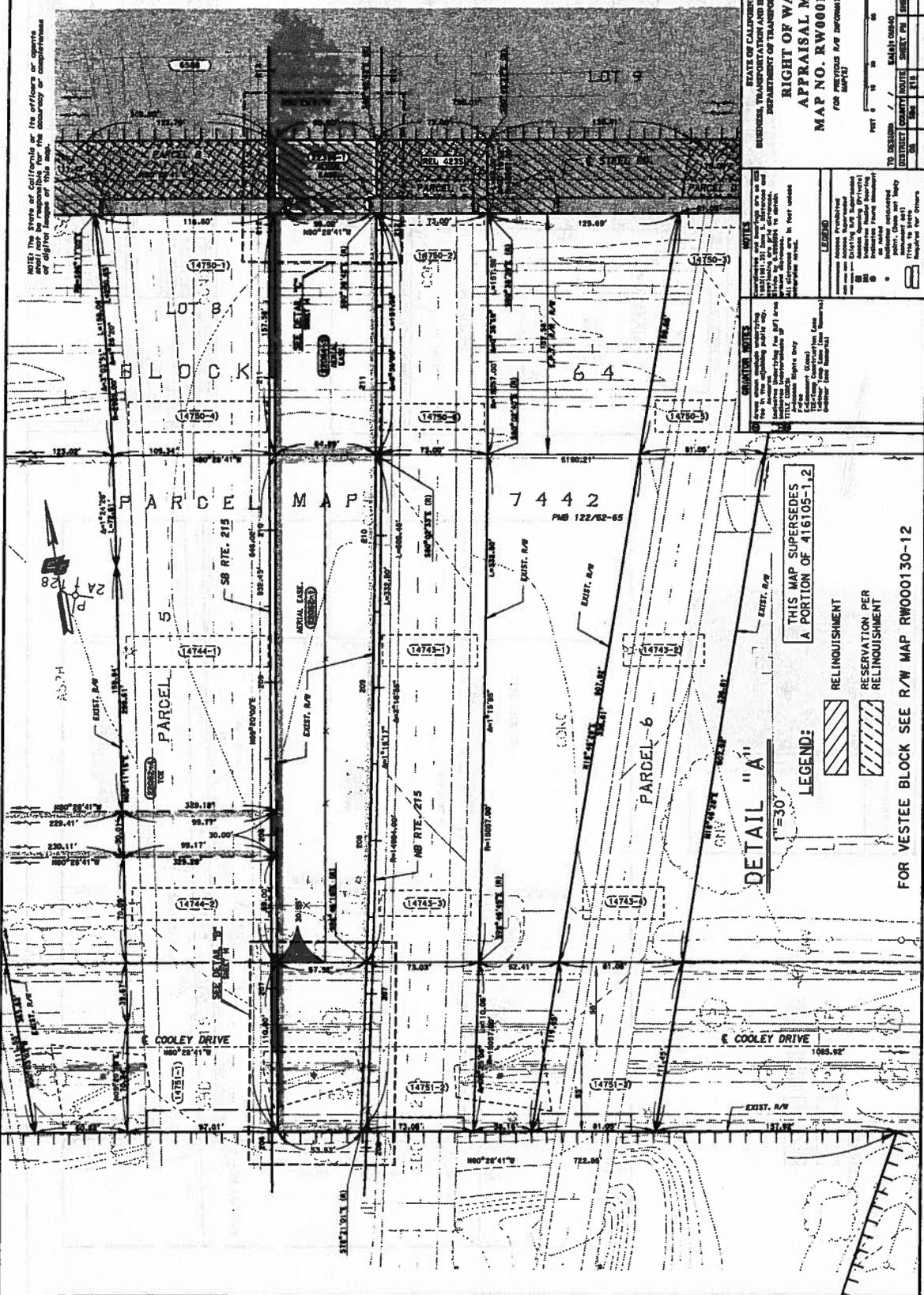




# RANCHO SAN BERNARDINO

MS 7/2

NOTE: The State of California and its officers or agents shall not be liable for the accuracy or completeness or other features of this map.



STATE OF CALIFORNIA  
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
 DEPARTMENT OF TRANSPORTATION

**RIGHT OF WAY  
 APPRAISAL MAP**  
 MAP NO. RW000130-13  
 FOR AERIALS R/W INFORMATION SEE  
 MAP #1

TO DESIGN: / SAGUO CANYON FARM  
 COUNTY: SAN BERNARDINO COUNTY  
 SHEET NO: 13  
 SHEETS TOTAL: 15

**EXPLANATION**

LOT LINES: Shown as solid lines with bearings and distances. Lot lines shown on this map are based on the latest available survey data. Lot lines shown on this map are in feet unless otherwise noted.

**LEGEND**

RELINQUISHMENT: Shaded area with diagonal lines.

RESERVATION PER RELINQUISHMENT: Shaded area with cross-hatch pattern.

FOR VESTEE BLOCK SEE R/W MAP RW000130-12

NO.	DATE	REVISIONS
1	11-11-11	INITIAL DESIGN FOR PERMITS
2	01-11-12	REVISED PER COMMENTS
3	03-15-12	REVISED PER COMMENTS
4	05-15-12	REVISED PER COMMENTS
5	07-15-12	REVISED PER COMMENTS
6	09-15-12	REVISED PER COMMENTS
7	11-15-12	REVISED PER COMMENTS
8	01-15-13	REVISED PER COMMENTS
9	03-15-13	REVISED PER COMMENTS
10	05-15-13	REVISED PER COMMENTS
11	07-15-13	REVISED PER COMMENTS
12	09-15-13	REVISED PER COMMENTS
13	11-15-13	REVISED PER COMMENTS
14	01-15-14	REVISED PER COMMENTS
15	03-15-14	REVISED PER COMMENTS
16	05-15-14	REVISED PER COMMENTS
17	07-15-14	REVISED PER COMMENTS
18	09-15-14	REVISED PER COMMENTS
19	11-15-14	REVISED PER COMMENTS
20	01-15-15	REVISED PER COMMENTS
21	03-15-15	REVISED PER COMMENTS
22	05-15-15	REVISED PER COMMENTS
23	07-15-15	REVISED PER COMMENTS
24	09-15-15	REVISED PER COMMENTS
25	11-15-15	REVISED PER COMMENTS





EXHIBIT A-1

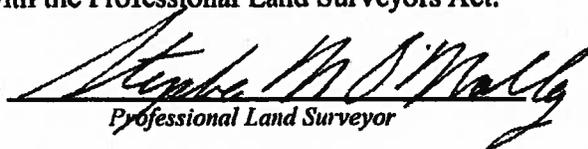
That portion of Lots 8 and 9, Block 64 of Rancho San Bernardino, in the city of Colton, county of San Bernardino, state of California as shown by map recorded in Book 7 of maps at page 2 thereof, in the Office of the County Recorder of said County, described as follows:

**BEGINNING** at the northeast corner of Parcel 5 of Parcel Map No. 7442 as shown by map on file in Book 122 of Parcel Maps at pages 62 through 65, inclusive thereof, in the Office of said County Recorder; thence along the northerly line of said Parcel 5, being also the southerly right-of-way of the Southern Pacific Transportation Company railroad, North 80°28'41" West, 31.65 feet to the easterly line of that certain "Parcel C" as described in an easement deed to the State of California recorded February 27, 1975 in Book 8624, page 795 of Official Records of said County; thence along said easterly line and its northerly prolongation, North 9°20'00" East, 157.58 feet to the northerly right-of-way of said railroad; thence along said northerly right-of-way, South 80°28'41" East, 65.77 feet to a point on the northerly prolongation of the westerly line of Parcel "D" of said easement deed, being a non-tangent curve concave westerly and having a radius of 14,984.00 feet, a radial line to said point bears South 80°38'42" East; thence southerly, along said prolongation and said westerly line, 157.58 feet through a central angle of 0°36'09" to the northerly line of Parcel 4 of said Parcel Map and said southerly right-of-way; thence along said lines, North 80°28'41" West, 33.24 feet to the **POINT OF BEGINNING**.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, Zone 5. Divide distances shown by 0.9999594 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature:

  
Professional Land Surveyor

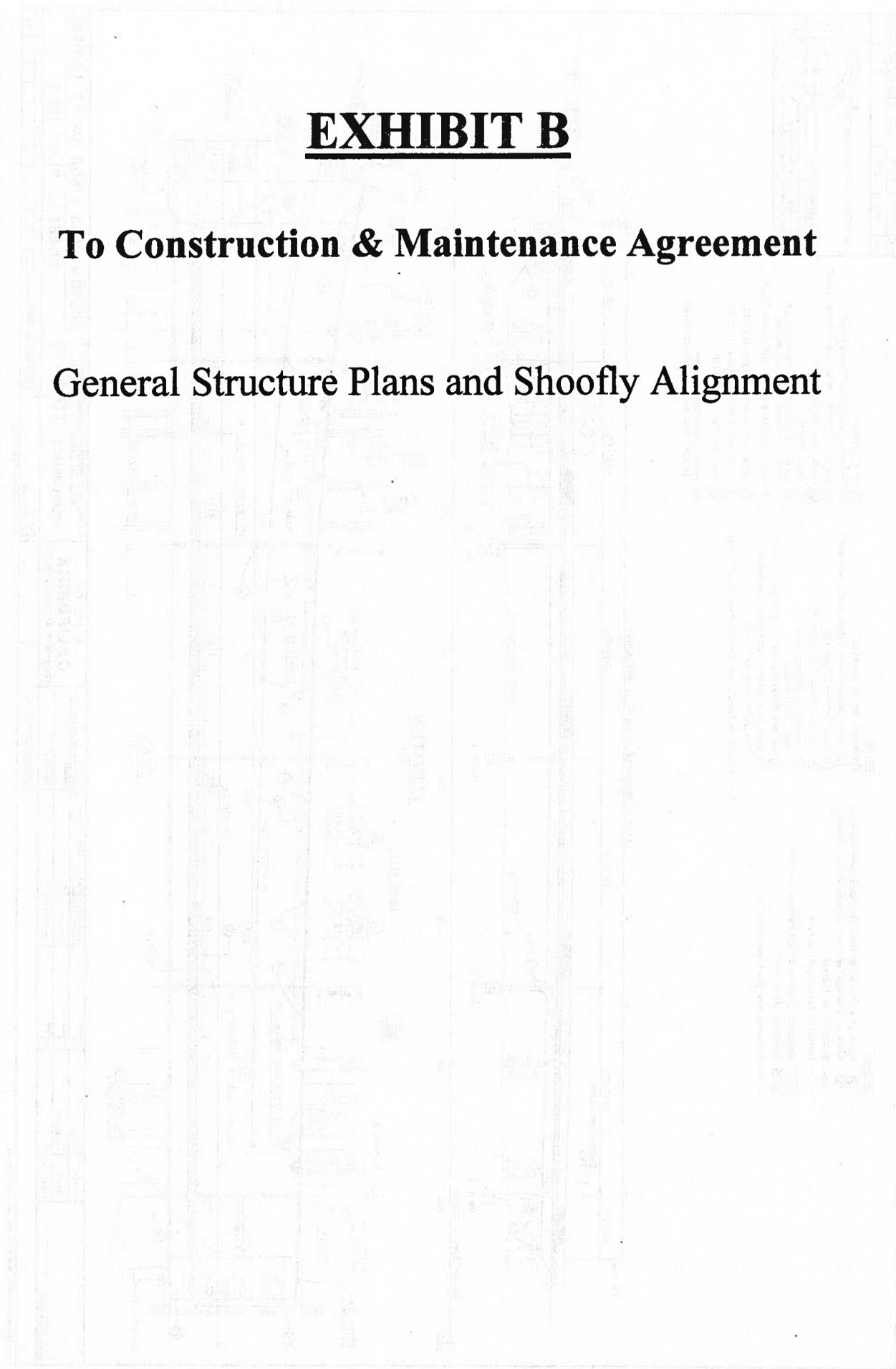
Date: September 29, 2011



# **EXHIBIT B**

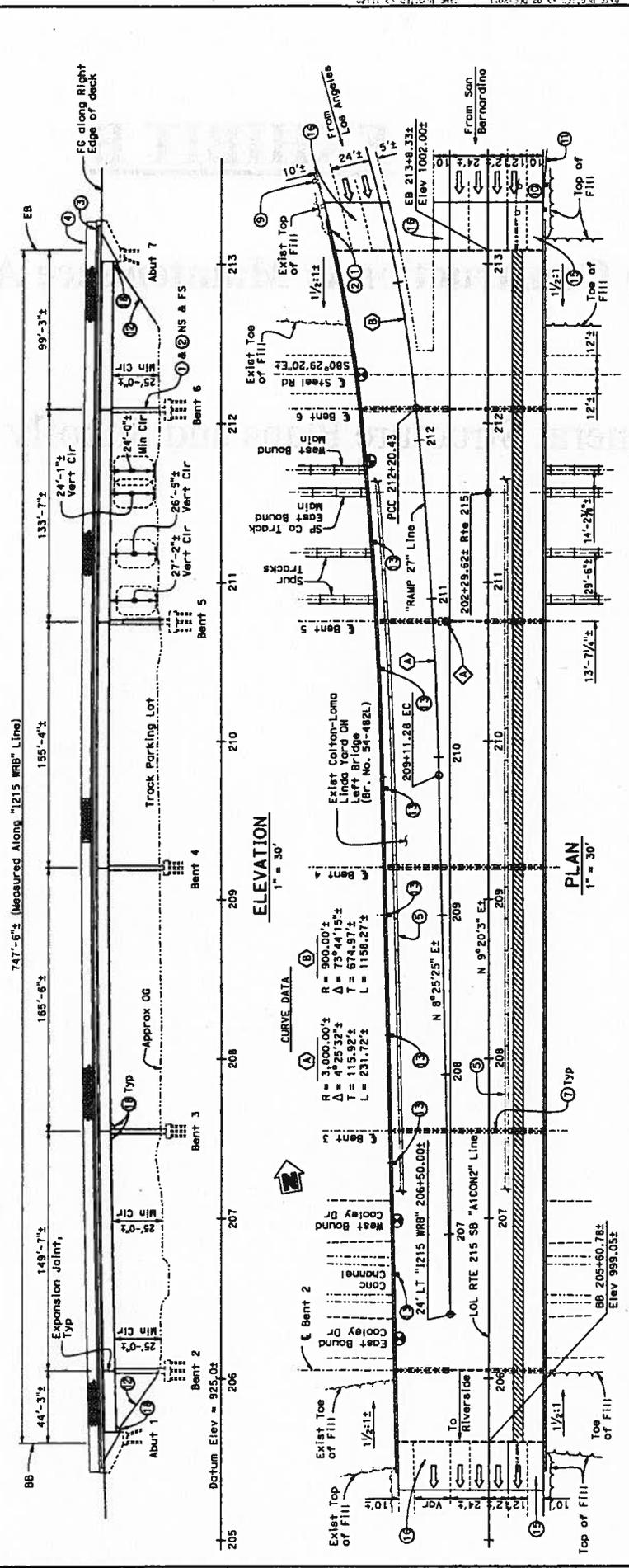
## **To Construction & Maintenance Agreement**

### **General Structure Plans and Shoofly Alignment**



POST MILES	SHEET TOTAL
ROUTE	NO.
08 SBD	215
REGISTERED CIVIL ENGINEER DATE	
PROJECT NO. 4-20-11	
DATE	
APPROVAL DATE	
BY	
CHECKED	
DESIGNED	
DRAWN	
SCALE	
PROJECT NO.	
SHEET NO.	
TOTAL SHEETS	

- LEGEND**
- ① Point of minimum vertical clearance over Railroad
  - ② Point of minimum vertical clearance over Roadway
  - Direction of Traffic
  - Indicates Existing Structure
  - ▨ Indicates Existing Bridge Removal (Portion)
  - Indicates Closure Pour
  - Indicates new joint seal location
- NOTES:**
- ① Point "Br. No. 54-482L"
  - ② Point "Colton-Loma Linda Yard Overhead"
  - ③ Conc Barrier, Type 732
  - ④ Chain Link Railing, Type 7
  - ⑤ Temporary Railing, Type K
  - ⑥ see "Road Plans"
  - ⑦ Remove Existing Type 9 Barrier Railing
  - ⑧ Remove Existing Joint Seal and place new joint seal full width
  - ⑨ For "Typical Sections", see "General Plan No. 2" sheet.
  - ⑩ 6"-6" Closure Pour
  - ⑪ Existing MGR, see "Road Plans"
  - ⑫ Remove Existing MGR, see "Road Plans"
  - ⑬ MGR, see "Road Plans"
  - ⑭ Slope Paving
  - ⑮ Type 5-3 Back Drain, reconstruct portion of berthing as needed
  - ⑯ Match Existing Grade and Cross Slope
  - ⑰ Structure Approach Type N (300)
  - ⑱ Structure Approach Type R (300)
  - ⑲ Conc Barrier, Type 732R
  - ⑳ Bumper Restrainers, see "Bumper Restrainer Details" sheet



**CURVE DATA**

R = 3,000.00'	R = 900.00'
Δ = 4°25'32"	Δ = 73°44'15"
T = 115.92'	T = 674.97'
L = 231.72'	L = 1156.27'

STATE OF CALIFORNIA		DESIGN BRANCH 10		COLTON-LOMA LINDA OH LT (WIDEN)	
DEPARTMENT OF TRANSPORTATION		DESIGN BRANCH 10		GENERAL PLAN NO. 1	
DIVISION OF TRANSPORTATION SERVICES		DESIGN BRANCH 10		DESIGN BRANCH 10	
DESIGNER		CHECKED		DATE	
DETAILS		QUANTITIES		SCALE	
DESIGN ENGINEER		CHECKED		DATE	
PROJECT NO.		SHEET NO.		TOTAL SHEETS	
4-20-11		1		11	
PROJECT NO.		SHEET NO.		TOTAL SHEETS	
4-20-11		1		11	

COUNTY	SBD	215
REGISTERED CIVIL ENGINEER	DATE	
PLANS APPROVAL DATE		
The design of this work is the work of the engineer or architect, and he is responsible for its safety and for the proper construction of it.		

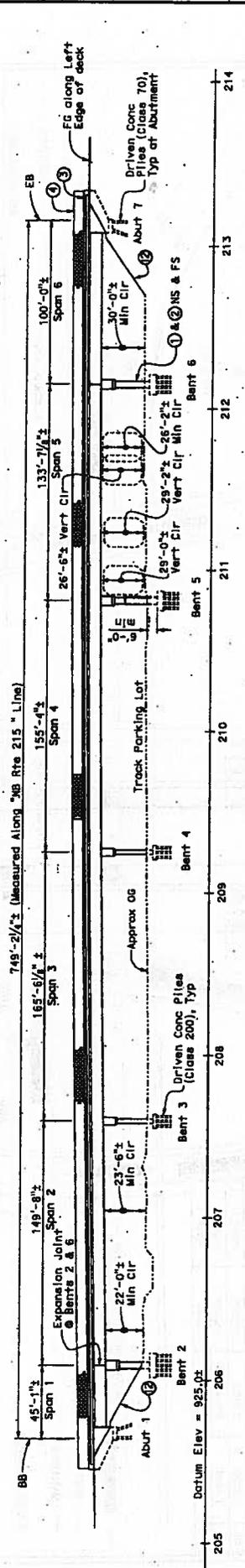
- NOTES:**
1. Point of minimum vertical clearance over Railroad
  2. Point of minimum vertical clearance over Roadway
  3. Direction of Traffic
  4. Indicates Existing Structure
  5. Indicates Existing Bridge Removal (Portion)
  6. Indicates Closure Pour
- LEGEND:**
1. Crash Wall
  2. Match existing grade and cross slope
  3. Remove existing concrete and expansion fingers, replace with joint seal construction
  4. Drainage Inlet (3 Top), Type D-2
  5. Drainage Inlet (1 Top), Type D-2
  6. Approach Slab, Type N (300)
  7. Approach Slab, Type R (300)
  8. New Bumper Blocks at widening
  9. Cable Restraints
  10. Concrete Bent Cap Retrofit

# CHECKED DETAILS

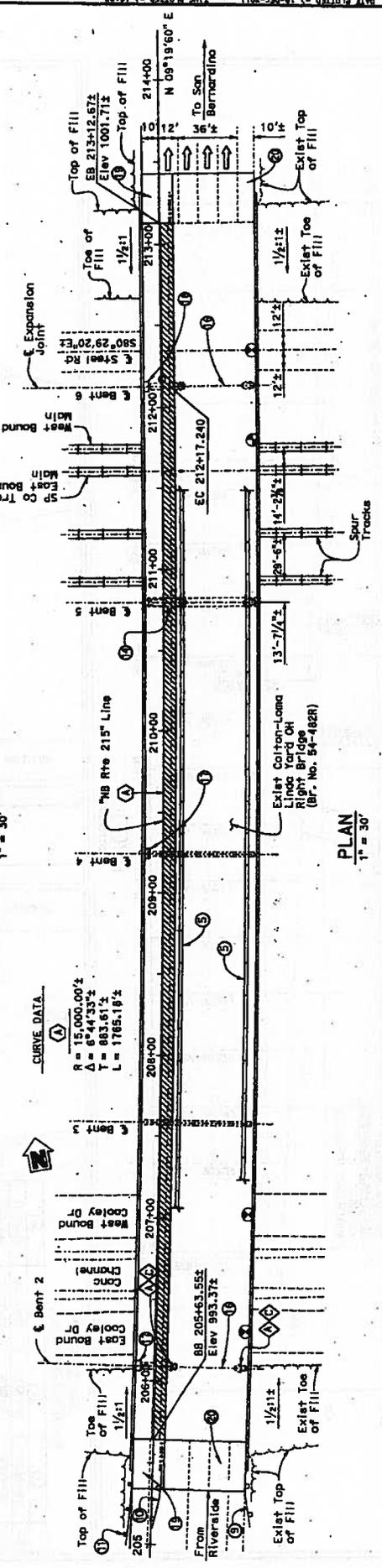
# RETROFIT CODE

- Column Steel Coating (Class P/F) Retrofit
- Footing Retrofit
- Column Top Steel Tie Plate Retrofit

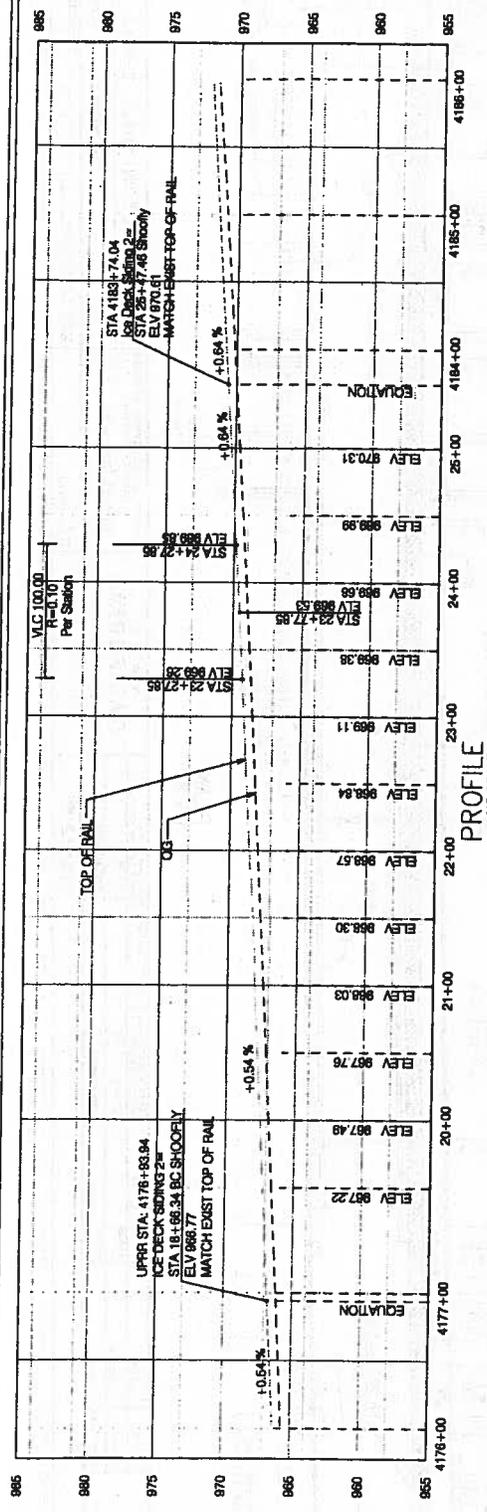
For "Typical Sections", see "General Plan No. 2" sheet.



# DEVELOPED MIRROR ELEVATION



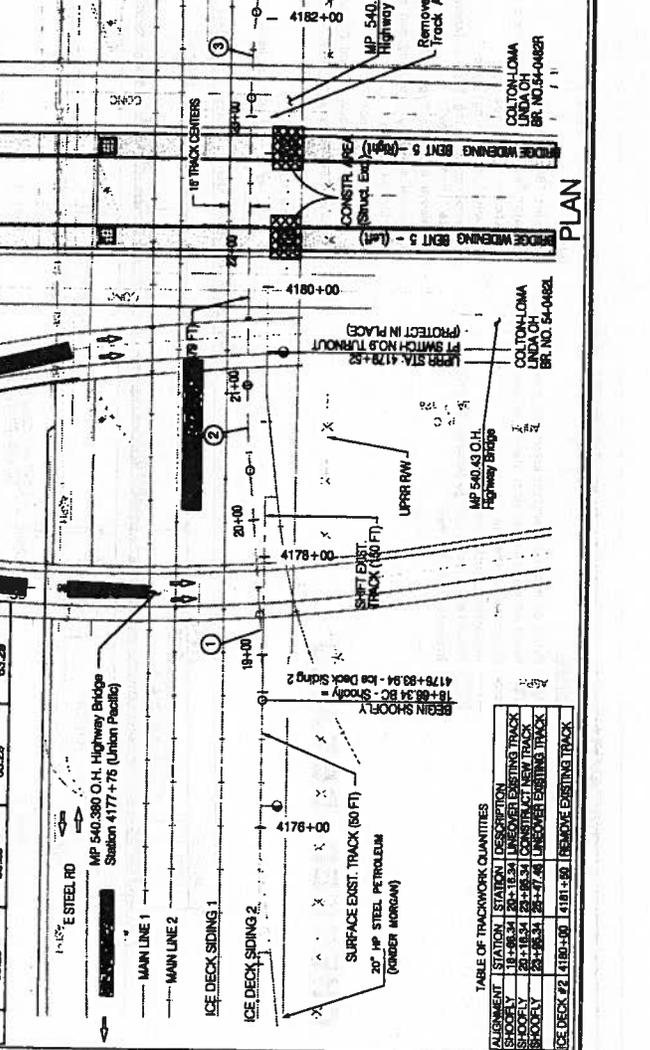
DESIGN ENGINEER		DATE PLOTTED: 15-DEC-2011		SHEET NO. 1	
PROJECT: COLTON-LOMA LINDA OH RT (WIDEN)		DIVISION OF HIGHWAYS		DESIGN BRANCH 10	
DESIGNER: R. S. JONES		CHECKER: R. S. JONES		APPROVED: R. S. JONES	
SCALE: 1" = 30'		PROJECT NO. 54-4828		SHEET NO. 1	
PROJECT LOCATION: COLTON-LOMA LINDA OH RT (WIDEN)		PROJECT NO. 54-4828		SHEET NO. 1	
PROJECT NO. 54-4828		PROJECT NO. 54-4828		SHEET NO. 1	
PROJECT NO. 54-4828		PROJECT NO. 54-4828		SHEET NO. 1	



PROFILE  
NO SCALE

UPRR SHOOFLY  
RAILROAD CURVE DATA

Station	Station	Station	Station
BC 18+86.34	20+36.58	23+13.82	24+84.17
EC 19+28.82	20+86.87	23+77.21	25+47.46
R 763.94	763.94	763.94	763.94
Dc 7°30'00"	7°30'00"	7°30'00"	7°30'00"
Δ 4°44'48"	4°44'48"	4°44'48"	4°44'48"
L 63.29'	63.29'	63.29'	63.29'



PLAN  
NO SCALE

TABLE OF TRACKWORK QUANTITIES

ALIGNMENT	STATION	DESCRIPTION
SHOOFLY	18+86.34 - 20+36.58	ICE DECK EXISTING TRACK
SHOOFLY	20+36.58 - 23+13.82	ICE DECK EXISTING TRACK
SHOOFLY	23+13.82 - 25+47.46	ICE DECK EXISTING TRACK
ICE DECK #2	4181+00 - 4191+00	REMOVE EXISTING TRACK

EA: OM940  
Union Pacific RR  
YUMA SUB  
SHOOFLY EXHIBIT  
April 2012

DATE	COUNTY	ROUTE	POST MILES	SHEET TOTAL	PROJECT SHEETS

REGISTERED CIVIL ENGINEER DATE

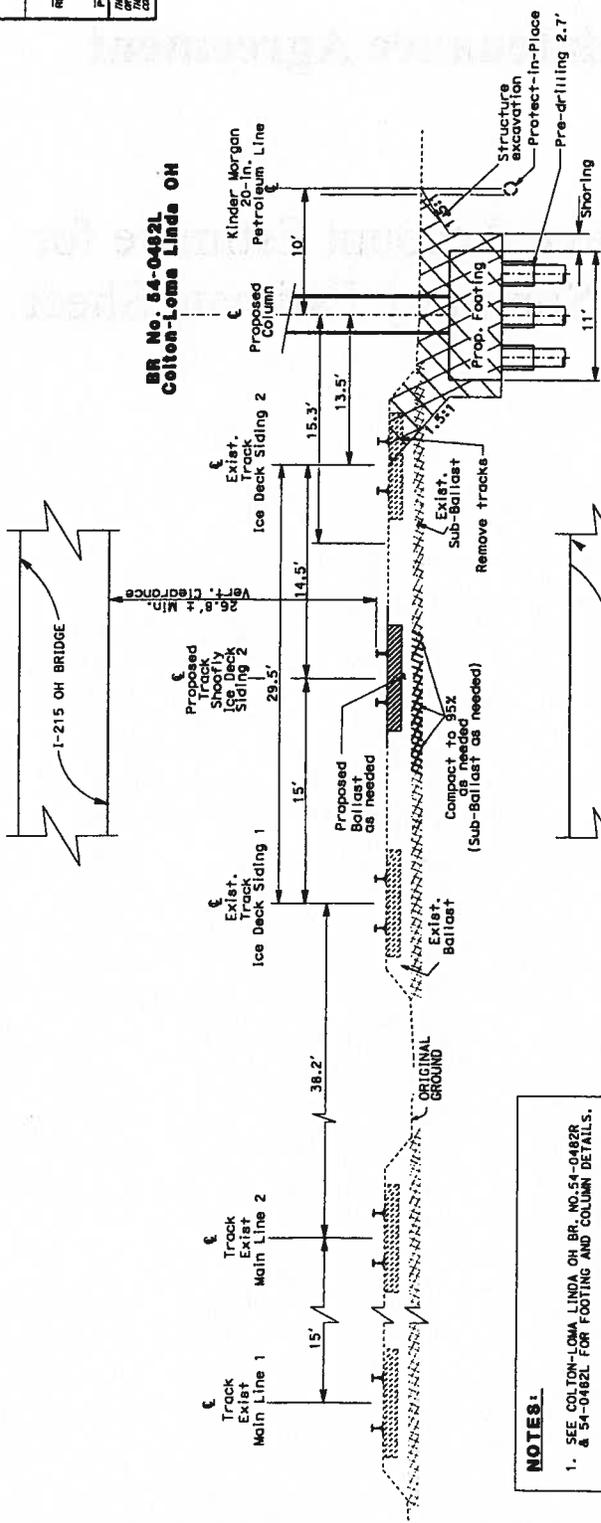
PLANS APPROVAL DATE

PROFESSIONAL ENGINEER LICENSE NO. 10153

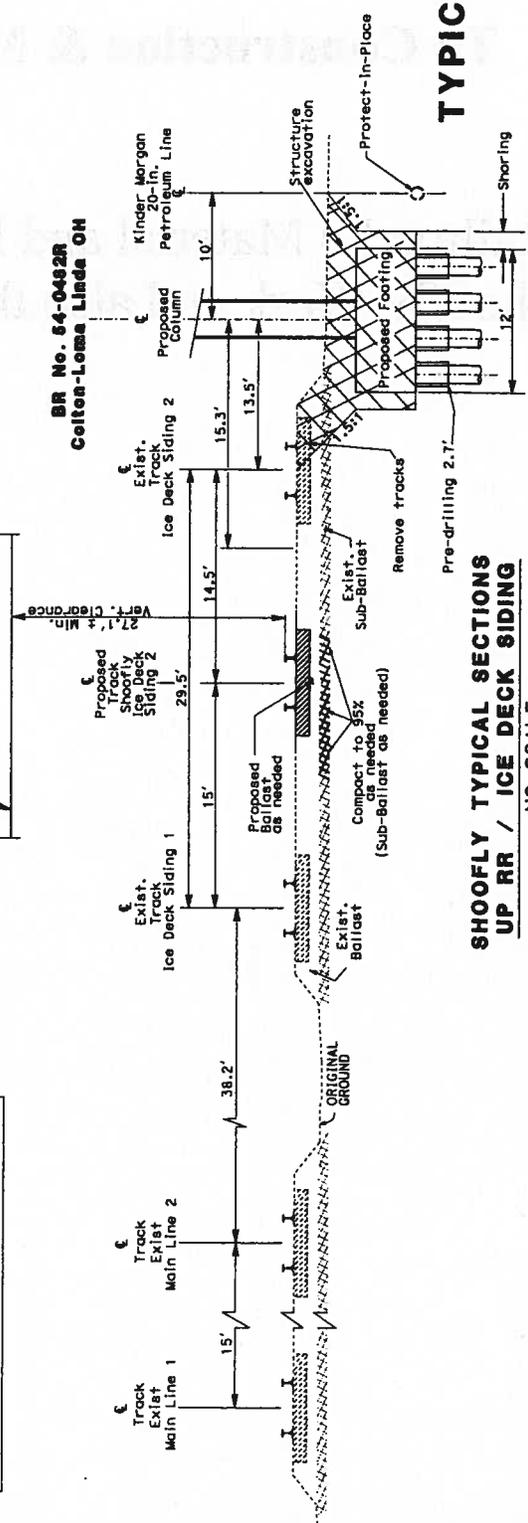
DATE PLOTTED 01-MAY-2012

TIME PLOTTED 09:10:53

BR No. 54-0492L  
Colton-Loma Linda OH



BR No. 54-0492R  
Colton-Loma Linda OH



**NOTES:**

- SEE COLTON-LOMA LINDA OH BR. NO. 54-0482R & 54-0482L FOR FOOTING AND COLUMN DETAILS.
- 1 MONTH ESTIMATED TIME FOR CONSTRUCTION OF FOOTINGS AND STRUCTURE EXCAVATION.

**TYPICAL X-SECTION X-1**

**SHOOFLY TYPICAL SECTIONS UP RR / ICE DECK SIDING**

NO SCALE

# EXHIBIT C

## **To Construction & Maintenance Agreement**

**Railroad's Material and Force Account Estimate for  
Shoofly Work and also the Summary Estimate Sheet**

**EXHIBIT C**

**UNION PACIFIC RAILROAD COMPANY  
SUMMARY ESTIMATE SHEET**

**Location:** Colton-Loma Linda Overhead, San Bernardino County, California  
PUC No. 001B-540.50-A, 001B-540.54-A (DOT # 747166V & 747167C)  
Railroad Milepost 540.50 & 540.54, Yuma Subdivision

**Project:** The project consists of the widening of State Route 215 existing Colton-Loma Linda Overhead structures, which consist of two separate parallel structures over the railroad facility.

**Estimate:**

Description	Amount
Flagging (\$1,200/day at 100 days)	\$120,000.00
Trackwork (Shoofly Trackwork)	\$267,500.00
Engineering Review & Inspection	\$ 60,000.00
<i>15% Contingency</i>	<i>\$ 67,125.00</i>
<b>Estimate Total</b>	<b>\$514,625.00</b>

**Note:** This is an estimate only. Railroad shall bill on an actual cost basis.

# Material And Force Account Estimate

## CalTrans

Estimate Number: 68523    Version: 1

Standard Rates:      Labor Additive = 204.59%      WT Labor Additive = 168.94%  
Estimate Good for 6 Months Until 01/31/13

Location: YUMA SUB, CONN, 542-561

Description of Work: Track construction required for shoofly required for reconstruction & widening of the existing I-215 overpass Yuma Sub MP 540.46

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	
<b>TRACK ITEMS</b>									
		SURFACE AND LINING	0.3	TM	15,000.00	3,000	1,500	4,500	
<b>Sub-Total =</b>						<b>3,000</b>	<b>1,500</b>	<b>4,500</b>	
<b>ENGINEERING</b>									
		ENGINEERING	1	LS	50,000.00	50,000	0	50,000	
		CONTRACT ENGINEERING	1	LS	10,000.00	0	10,000	10,000	
		FLAGGING	100	MD	1,100.00	110,000	0	110,000	
<b>Sub-Total =</b>						<b>160,000</b>	<b>10,000</b>	<b>170,000</b>	
<b>TRACK CONSTRUCTION - COMPANY</b>									
		MOBILIZATION: COMPANY	2	DA	11,450.00	22,900	0	22,900	
shoofly	TRACK	136# CWRSS3 20-8' PPHWD UP-14NEW	379	TF	201.28	50,899	25,378	76,277	
shift/shift back	TRACK	SHIFT TRACK: M.L. 50% TIES	604	TF	63.59	22,113	16,299	38,411	
shoofly to final	TRACK	RELOCATE TRACK: YARD 50% WOOD TIES,	273	TF	108.10	13,210	15,755	28,966	
<b>Sub-Total =</b>						<b>109,122</b>	<b>57,432</b>	<b>166,554</b>	
<b>TRACK REMOVAL - COMPANY</b>									
273 existing/108 shoofly	TRACK	REMOVE TRACK	379	TF	10.29	3,899	0	3,899	
<b>Sub-Total =</b>						<b>3,899</b>	<b>0</b>	<b>3,899</b>	
<b>SITE WORK - CONTRACT</b>									
		AGGREGATE - SUBBALLAST - FURNISH, PLACE	85	CY	60.00	0	5,100	5,100	
<b>Sub-Total =</b>						<b>0</b>	<b>5,100</b>	<b>5,100</b>	
<b>EQUIPMENT RENTAL</b>									
		EQUIPMENT RENTAL	1	LS	75,000.00	0	75,000	75,000	
<b>Sub-Total =</b>						<b>0</b>	<b>75,000</b>	<b>75,000</b>	
<b>HOMELINE FREIGHT</b>									
		HOMELINE FREIGHT	1427	Per Ton	8.75	0	12,489	12,489	
<b>Sub-Total =</b>						<b>0</b>	<b>12,489</b>	<b>12,489</b>	
<b>PROJECT LEVEL COST</b>									
	CONTINGENCIES	CONTINGENCY	15	%	4,375.42	41,403	24,228	65,631	
<b>Sub-Total =</b>						<b>41,403</b>	<b>24,228</b>	<b>65,631</b>	
<b>Total Wgt. in Tons = 1,427</b>						<b>Totals =</b>	<b>317,425</b>	<b>185,748</b>	<b>503,173</b>

**Grand Total = \$503,173**

This is a "Shotgun" estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. This estimate is not to be used for budget authority. This estimate is based on a conceptual design, without detailed engineering or site investigation. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

# EXHIBIT D

## To Construction & Maintenance Agreement

### Railroad Relations and Insurance Requirements

**EXHIBIT D**

**TO CONSTRUCTION AND MAINTENANCE AGREEMENT**

*Information Handout Document:*

**"RAILROAD RELATIONS AND INSURANCE REQUIREMENTS"**

**1.01 GENERAL**

The term "Railroad" shall mean the Union Pacific Railroad Company.

It is expected that the Railroad will cooperate with the Contractor to the end that the work may be handled in an efficient manner. However, except for the additional compensation provided for hereinafter for delays in completion of specific unit of work to be performed by the Railroad, and except as provided in Public Contracts Code Section 7102, the Contractor shall have no claim for damages, extension of time, or extra compensation in the event his work is held up by railroad train operations or other work performed by the Railroad.

The Contractor must understand the Contractor's right to enter the Railroad's property is subject to the absolute right of the Railroad to cause the Contractor's work on the Railroad's property to cease if, in the opinion of the Railroad, the Contractor's activities create a hazard to the Railroad's property, employees, and operations.

The Contractor acknowledges its receipt from the State of a copy of the Contractor's Right of Entry Agreement that has been executed by the Railroad and the State. The Contractor agrees to execute and deliver to the Railroad the Contractor's Endorsement that is attached hereto as **Appendix 1** and to provide to the State and/or the Railroad all insurance policies, binders, certificates or endorsements that are set forth in **Exhibits B and C** of the Caltrans Right of Entry Agreement.

**1.02 RAILROAD REQUIREMENTS**

The Contractor shall provide to Kenneth Tom, Railroad's Manager, Industry and Public Projects, 2015 South Willow Avenue, Bloomington, California 92316, and the Engineer, in writing, the advance notice requirements set forth in Section 1 of **Exhibit B** of the Caltrans Right of Entry Agreement before performing any work on, or adjacent to the property or tracks of the Railroad.

The Contractor shall cooperate with the Railroad where work is over or under the tracks, or within the limits of the Railroad property to expedite the work and avoid interference with the operation of railroad equipment.

The Contractor shall comply with the rules and regulations of the Railroad or the instructions of its representatives in relation to protecting the tracks and property of the Railroad and the traffic moving on such tracks, as well as the wires, signals and other property of the Railroad, its tenants or licensees, at and in the vicinity of the work during the period of construction. The

responsibility of the Contractor for safe conduct and adequate policing and supervision of its work at the job site shall not be lessened or otherwise affected by the presence at the work site of the Railroad representatives, or by the Contractor's compliance with any requests or recommendations made by the Railroad representatives.

The Contractor shall perform work so as not to endanger or interfere with the safe operation of the tracks and property of the Railroad and traffic moving on such tracks, as well as wires, signals and other property of the Railroad, its tenants or licensees, at or in the vicinity of the work.

The Contractor shall take protective measures to keep the Railroad facilities, including track ballast, free of sand or debris resulting from his operations. Damage to the Railroad facilities resulting from the Contractor's operations will be repaired or replaced by the Railroad and the cost of such repairs or replacement shall be deducted from the Contractor's progress and final pay estimates.

The Contractor shall contact the Railroad's "Call Before You Dig" at least forty-eight (48) hours prior to commencing work, at 1-800-336-9193 during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays – also a 24-hour, 7-day number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near the Railroad property, the Contractor will coordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property.

The Contractor shall not pile or store any materials nor park any equipment closer than 25'-0" to the centerline of the nearest track, unless directed by the Railroad's representative.

The Contractor shall also abide by the following temporary clearances during the course of construction:

- 3.66 meter (12'-0") horizontally from centerline of track
- 6.40 meter (21'-0") vertically above top of rail

The temporary vertical construction clearance above provided will not be permitted until authorized by the Public Utilities Commission. It is anticipated that authorization will be received not later than fifteen (15) days after the approval of the contract. In the event authorization is not received by the time specified, and, if in the opinion of the Engineer, the Contractor's operations are delayed or interfered with by reason of authorization not being received by the said time, the Licensee will compensate the Contractor for such delay to the extent provided in Section 8-1.07, "Delays," of the 2010 Standard Specifications and not otherwise.

Walkways with railing shall be constructed by the Contractor over open excavation areas when in close proximity of tracks, and railings shall not be closer than 2.60-meter (8'-6") horizontally from centerline of the nearest track, if tangent, or 2.90-meter (9'-6") if curved.

Infringement on the above temporary construction clearances by the Contractor's operations shall be submitted to the Railroad by the Engineer, and shall not be undertaken until approved by

the Railroad, and until the Engineer has obtained any necessary authorization from any governmental body or bodies having jurisdiction thereover. No extension of time or extra compensation will be allowed in the event the Contractor's work is delayed pending Railroad approval and governmental authorization.

When the temporary vertical clearance is less than 6.86-meter (22'-6") above top of rail, the Railroad shall have the option of installing tell-tales or other protective devices the Railroad deems necessary for protection of the Railroad trainmen or rail traffic.

Four (4) sets of plans, in 279mm x 432mm (11" x 17") format, and two (2) sets of calculations showing details of construction affecting the Railroad's tracks and property not included in the contract plans, including but not limited to shoring and falsework, shall be submitted to the Engineer for review prior to submittal to the Railroad for final approval. Falsework shall comply with the Railroad guidelines. Demolition of existing structures shall comply with the Railroad guidelines. Shoring shall be designed in accordance with the Railroad's shoring requirement of Drawing No. 106613 and guidelines for shoring and falsework, latest edition, issued by the Railroad's Office of Chief Engineer. Shoring and falsework plans and calculations shall be prepared and signed by a professional engineer registered in California. This work shall not be undertaken until such time as the Railroad has given such approval, review by the Railroad may take up to six (6) weeks after receipt of necessary information.

The Contractor shall notify the Engineer in writing, at least twenty-five (25) calendar days but not more than forty (40) days in advance of the starting date of installing temporary work with less than permanent clearance at each structure site. The Contractor shall not be permitted to proceed with work across railroad tracks until this requirement has been met. No extension of time or extra compensation will be allowed if the Contractor's work is delayed due to failure to comply with the requirements in this paragraph.

Blasting will be permitted only when approved by the Railroad.

The Contractor shall, upon completion of the work covered by this Contract to be performed by the Contractor upon the premises or over or beneath the tracks of the Railroad, promptly remove from the premises of the Railroad, the Contractor's tools, implements and other materials, whether brought upon said premises and cause said premises to be left in a clean and presentable condition.

Under track pipeline installations shall be constructed in accordance with the Railroad's current standards which may be obtained from the Railroad. The general guidelines are as follows:

Edges of jacking or boring pit excavations shall be a minimum of 6.10-meter (20 feet) from the centerline of the nearest track.

If the pipe to be installed under the track is 100mm (4 inches) in diameter or less, the top of the pipe shall be at least 42 inches below base of rail.

If the pipe diameter is greater than 100-meter (4 inches) in diameter, it shall be encased and the top of the steel pipe casing shall be at least 1.60-meter (66 inches) below base of rail.

Installation of pipe or conduit under the Railroad's tracks shall be done by dry bore and jack method.

Hydraulic jacking or boring will not be permitted.

Safety of personnel, property, rail operations and the public is of paramount importance. As reinforcement and in furtherance of overall safety measures to be observed by the Contractor (and not by way of limitation), the following special safety rules shall be followed:

- (a) The Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Contractor shall have a non-delegable duty to control its employees while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.
- (b) The employees of the Contractor shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment:
  - (1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with the Contractor's or the subcontractor's company logo or name.
  - (2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
  - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.
- (c) All heavy equipment provided or leased by the Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of the Contractor's or the subcontractor's equipment is unsafe for use on the Railroad's right-of-

way, the Contractor, at the request of the Railroad representative, shall remove such equipment from the Railroad's right-of-way.

### **1.03 PROTECTION OF RAILROAD FACILITIES**

Upon the advance notification provided to the Railroad as set forth in Section 1 of **Exhibit B** of the Contractor's Right of Entry Agreement, the Railroad representatives, conductors, flagmen or watchmen will be provided by the Railroad to protect its facilities, property and movements of its trains or engines. Notice shall be made to the Railroad's Manager of Track Maintenance at *[(909) 685-2469]*. At the time of notification, the Contractor shall provide the Railroad with a schedule of dates that flagging services will be needed, as well as times, if outside normal working hours. Subsequent deviation from the schedule shall require ten (10) working days' advance notice from the first affected date. The Railroad will furnish such personnel or other protective devices:

- (a) When equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.
- (b) For any excavation below elevation of track subgrade if, in the opinion of the Railroad's representative, track or other Railroad facilities may be subject to settlement or movement.
- (c) During any clearing, grubbing, grading or blasting in proximity to the Railroad which, in the opinion of the Railroad's representative, may endanger the Railroad facilities or operations.
- (d) During any of the Contractor's operations when, in the opinion of the Railroad's representatives, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.

The cost of flagging and inspection provided by the Railroad during the period of constructing that portion of the project located on or near the Railroad property, as deemed necessary for the protection of the Railroad's facilities and trains, will be borne by the State. The Railroad has indicated that its estimated flagging rate will be around One Thousand One Hundred Dollars (\$1,100.00) per day and that the State has estimated a total of one hundred (100) days of flagging. The State shall pay the Railroad for all actual flagging costs incurred by the Railroad under this Project.

### **1.04 WORK BY RAILROAD**

The following work by the Railroad will be performed by Railroad forces and is not a part of the work under this Contract.

- (a) The Railroad will perform preliminary engineering and inspection (if any) and flagging as specified in Section 1.03 "Protection of Railroad Facilities," of these special provisions.

- (b) Temporary crossings at grade over tracks of Railroad for the purpose of hauling earth, rock, paving or other materials will not be permitted. If the Contractor, for the purpose of constructing highway-railway grade separation structures, including construction ramps thereto, desires to move equipment or materials across Railroad's tracks, the Contractor shall first obtain permission from Railroad via the State Engineer. Should Railroad approve the temporary crossing, State shall execute a Service Contract with Railroad for Railroad to construct the temporary crossing. Under the Service Contract, the Contractor shall bear the cost of the crossing surface, warning devices and other components that might be required. Notwithstanding State's Service Contract with Railroad, the Contractor is required to execute Railroad's form of Contractor's Haul Road Crossing Agreement. Railroad, at State's expense, shall provide flagmen to control movements of vehicles across the temporary crossing. State and its Contractor shall prevent the use of such temporary crossing by unauthorized persons and vehicles.

#### **1.05 DELAYS DUE TO WORK BY RAILROAD.**

If delays due to work by the Railroad occur, and the Contractor sustains loss which, in the opinion of the Engineer, could not have been avoided by the judicious handling of forces, equipment and plant, the amount of said loss shall be determined as provided in Section 8-1.07, "Delays," of the 2010 Standard Specifications.

If a delay due to work by the Railroad occurs, an extension of time determined pursuant to the provisions in Section 8-1.10, "Liquidated Damages," of the 2010 Standard Specifications will be granted.

#### **1.06 LEGAL RELATIONS**

The provisions of Section 1, "Relations with Railroad Company," and the provisions of Section 2, "Railroad Protective Insurance," of these special provisions shall inure directly to the benefit of the Railroad.

#### **2.0 RAILROAD PROTECTIVE INSURANCE**

In addition to any other form of insurance or bonds required under the terms of the contract and specifications, the Contractor will be required to carry insurance of the kinds and in the amounts hereinafter specified.

Such insurance shall be approved by the Railroad before any work is performed on the Railroad's property and shall be carried until all work required to be performed on or adjacent to the Railroad's property under the terms of the contract is satisfactorily completed as determined by the Engineer, and thereafter until all tools, equipment and materials have been removed from the Railroad's property and such property is left in a clean and presentable condition.

Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the contract, and no additional allowance will be made

thereof or for additional premiums which may be required by extensions of the policies of insurance.

The following insurance coverage will be required:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the State of California.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.
- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### **Other Requirements**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of California.

- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**APPENDIX 1**

**CONTRACTOR'S ENDORSEMENT**

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A. As a condition to entering upon the Railroad's right-of-way to perform Work pursuant to this agreement, State's contractor, \_\_\_\_\_  
(Name of Contractor)  
whose address is \_\_\_\_\_,  
(Contractor's Mailing Address)

(hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of the attached Caltrans Right of Entry Agreement that was signed by Union Pacific Railroad Company ("Railroad") and the State of California, Department of Transportation ("State") relating to the Work to be performed and the insurance requirements set forth in Exhibits B and C of the Right of Entry Agreement. The Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of Exhibit B to the Right of Entry Agreement does not apply to the Contractor and in no way limits the indemnities set forth in those provisions, to which the Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in Section 2 of the Contract Information Handout Provisions, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage and endorsements required pursuant to Section 2 of the Contract Information Handout, "Railroad Relations and Insurance Requirements", document.

C. All insurance correspondence, binders or originals shall be directed to:

Union Pacific Railroad Company  
Attn: Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
Attn.: Senior Manager - Contracts  
Folder No. 2702-64

D. Please note that fiber optic cable may be buried on the Railroad's property. Prior to commencing any work, the Contractor agrees to contact the Railroad's Telecommunications Operation Center as provided in Section 5 of Exhibit B of the Right of Entry Agreement to determine if any fiber optic cable is located on the Railroad's property on or near the location where the work is to be performed. If there is, the Contractor must comply with the terms and conditions of Section 5 of Exhibit B before commencing any work on the Railroad's property.

E. The Contractor agrees to also provide to the Railroad's Manager-Track Maintenance at (909) 685-2612, the advance notice required in Section 1 of Exhibit B of the Right of Entry Agreement prior to working on the Railroad's property in order for the Railroad to coordinate the Contractor's work with the Railroad's operations and to make arrangements for flagging protection (if applicable).

This endorsement shall be completed and sent to the person named in Paragraph C above.

\_\_\_\_\_  
(Name of Contractor)  
By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT E

## To Construction & Maintenance Agreement

### Railroad Minimum Requirements

**EXHIBIT E**  
**TO CONSTRUCTION AND MAINTENANCE AGREEMENT**

**UNION PACIFIC RAILROAD**  
**MINIMUM REQUIREMENTS**

**PART 1 - GENERAL**

**1.01 DESCRIPTION**

This project includes construction work within the Right-of-Way and/or properties of the Union Pacific Railroad Company "UPRR" and adjacent to tracks, wire lines and other facilities. This section describes the special requirements for coordination with UPRR when work by the Contractor will be performed upon, over or under the UPRR Right-of-Way or may impact current or future UPRR operations. The Contractor will coordinate with UPRR while performing the work outlined in this Contract, and shall afford the same cooperation with UPRR as it does with the Agency. All submittals and work shall be completed in accordance with UPRR Guidelines and AREMA recommendations as modified by these minimum special requirements or as directed in writing by the UPRR Designated Representative.

For purposes of this project, the UPRR Designated Representative shall be the person or persons designated by the UPRR Manager of Industry and Public Projects to handle specific tasks related to the project.

**1.02 DEFINITION OF AGENCY AND CONTRACTOR**

As used in these UPRR requirements, the term "Agency" shall mean the State of California, by and through its Department of Transportation.

As used in these UPRR requirements, the term "Contractor" shall mean the contractor or contractors hired by the Agency to perform any project work on any portion of UPRR's property. The Contractor shall be responsible for the Contractor's subcontractors and the Contractor's and subcontractor's respective officers, agents and employees, and others acting under its or their authority. Nothing in this section is intended to create rights in third parties or third party beneficiaries.

### **1.03 UPRR CONTACTS**

The primary UPRR point of contact for this project is:

***Kenneth Tom  
Manager, Industry and Public Projects  
Union Pacific Railroad Company  
2015 South Willow Avenue  
Bloomington, California 92316  
Phone: (909) 685-2288  
Fax: (909) 685-2289  
E-mail: ktom@up.com***

For UPRR flagging services and track work, contact:

***Frank Beard  
Manager of Track Maintenance  
Union Pacific Railroad Company  
19100 Slover Avenue.  
Bloomington, CA 92316  
Phone: (909) 685-2612***

### **1.04 REQUEST FOR INFORMATION / CLARIFICATION**

All Requests for Information ("RFI") involving work within any UPRR Right-Of-Way shall be in accordance with the procedures listed elsewhere in these bid documents. All RFI's shall be submitted to the Engineer of Record. The Engineer of Record will submit the RFI to the UPRR Designated Representative for review and approval for corresponding to work within the UPRR Right-Of-Way. The Contractor shall allow four (4) weeks for the review and approval process by UPRR.

### **1.05 PLANS / SPECIFICATIONS**

The plans and specifications for this project, affecting the UPRR, are subject to the written approval by the UPRR and changes in the plans may be required after award of the Contract. Such changes are subject to the approval of the Agency and the UPRR.

### **2.01 UTILITIES AND FIBER OPTIC**

All installations shall be constructed in accordance with current AREMA recommendations and UPRR specifications and requirements. UPRR general guidelines and the required application forms for utility installations can be found on the UPRR website at [www.uprr.com](http://www.uprr.com).

### **3.01 GENERAL**

- A. Contractor shall perform all work in compliance with all applicable UPRR and FRA rules and regulations. Contractor shall arrange and conduct all work in such manner

and at such times as shall not endanger or interfere with the safe operation of the tracks and property of UPRR and the traffic moving on such tracks, or the wires, signals and other property of UPRR, its tenants or licensees, at or in the vicinity of the work. UPRR shall be reimbursed by Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from Contractor's construction work or other activities.

- B. Construction activities will be permitted within 12 feet of the centerline of operational tracks only if absolutely necessary and UPRR's Designated Representative grants approval. Construction activities within 12 feet of the operational track(s) must allow the tracks to stay operational.
- C. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail.
- D. The Contractor is also advised that new railroad facilities within the project may be built by UPRR and that certain Contractor's activities cannot proceed until that work is completed. The Contractor shall be aware of the limits of responsibilities and allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the UPRR.

### **3.02 RAILROAD OPERATIONS**

- A. The Contractor shall be advised that trains and/or equipment are expected on any track, at any time, in either direction. Contractor shall become familiar with the train schedules in this location and structure its bid assuming intermittent track windows in this period, as defined in Paragraph B below.
- B. All railroad tracks within and adjacent to the Contract Site are active, and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations will occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with railroad operations.
- C. Work windows for this Contract shall be coordinated with the Agency's and the UPRR's Designated Representatives. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:
  - I. Conditional Work Window: A Conditional Work Window is a period of time that railroad operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track, a UPRR flag person will be required. At the direction of the UPRR flag person, upon approach of a train, and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment,

materials or personnel within 25 feet, or as directed by the UPRR Designated Representative, from the tracks). Conditional Work Windows are available for the Project.

2. **Absolute Work Window:** An Absolute Work Window is a period of time that construction activities are given priority over railroad operations. During this time frame the designated railroad track(s) will be inactive for train movements and may be fouled by the Contractor. At the end of an Absolute Work Window the railroad tracks and/or signals must be completely operational for train operations and all UPRR, Public Utilities Commission (PUC) and Federal Railroad Administration (FRA) requirements, codes and regulations for operational tracks must be complied with. In the situation where the operating tracks and/or signals have been affected, the UPRR will perform inspections of the work prior to placing that track back into service. UPRR flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will not generally be granted. Any request will require a detailed explanation for UPRR review.**

### **3.03 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES**

- A. Prior to beginning any work on or over the property of, or affecting the facilities of, the UPRR, the Contractor shall execute the Contractor's Endorsement that is a part of the Right of Entry Agreement to be signed by UPRR and Agency. There is a fee for processing of the agreement. This cost shall be borne by the Contractor. Contractor shall submit a copy of the executed agreement and the insurance policies, binders, certificates and endorsements set forth therein to the Agency prior to commencing work on UPRR property. The right of entry agreement shall specify working time frames, flagging and inspection requirements, and any other items specified by the UPRR.
- B. The Contractor shall give the advance notice to the UPRR as required in the Right of Entry Agreement before commencing work in connection with construction upon or over UPRR's Right-of-Way and shall observe UPRR's rules and regulations with respect thereto.
- C. All work upon UPRR's Right-of-Way shall be done at such times and in such manner so as not to interfere with or endanger the operations of UPRR. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to UPRR's Designated Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging and/or inspection service, shall be deferred until the flagging protection required by UPRR is available at the job site. See Section 3.18 for railroad flagging requirements.
- D. The Contractor shall make requests in writing for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:

1. Exactly what the work entails.
2. The days and hours that work will be performed.
3. The exact location of work, and proximity to the tracks.
4. The type of window requested and the amount of time requested.
5. The designated contact person.

The Contractor shall provide a written confirmation notice to the UPRR at least 48 hours before commencing work in connection with approved work windows when work will be performed within **25 feet of any track center line**. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of UPRR, the Contractor shall make such provisions. If in the judgment of UPRR's Designated Representative such provisions are insufficient, the UPRR's Designated Representative may require or provide such provisions as deemed necessary. In any event, such provisions shall be at the Contractor's expense and without cost to the UPRR. UPRR or the Agency shall have the right to order Contractor to temporarily cease operations in the event of an emergency or, if in the opinion of the UPRR's Designated Representative, the Contractor's operations could endanger UPRR's operations. In the event such an order is given, Contractor shall immediately notify the Agency of the order.

### **3.04 INSURANCE**

Contractor shall not begin work upon or over UPRR's Right-of-Way until UPRR has been furnished the insurance policies, binders, certificates and endorsements required by the Right-of-Entry Agreement and UPRR's Designated Representative has advised the Agency that such insurance is in accordance with the Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until Contractor removes all tools, equipment, and material from UPRR's property and cleans the premises in a manner reasonably satisfactory to UPRR.

### **3.05 RAILROAD SAFETY ORIENTATION**

All personnel employed by the Contractor and all subcontractors must complete the UPRR course "Orientation for Contractor's Safety", and be registered prior to working on UPRR property. This orientation is available at [www.contractororientation.com](http://www.contractororientation.com). This course is required to be completed annually.

### **3.06 COOPERATION**

UPRR will cooperate with Contractor so that work may be conducted in an efficient manner, and will cooperate with Contractor in enabling use of UPRR's right-of-way in performing the work.

**3.07 MINIMUM CONSTRUCTION CLEARANCES FOR FALSEWORK AND OTHER TEMPORARY STRUCTURES**

The Contractor shall abide by the following minimum temporary clearances during the course of construction:

- 12' – 0" horizontal from centerline of track
- 21' – 0" vertically above top of rail.

For construction clearance less than listed above, local Operating Unit review and approval is required.

**3.08 APPROVAL OF REDUCED CLEARANCES**

- A. The minimum track clearances to be maintained by the Contractor during construction are specified in Section 3.07 herein.
- B. Any proposed infringement on the specified minimum clearances due to the Contractor's operations shall be submitted to UPRR's Designated Representative through the Agency at least 30 days in advance of the work and shall not be undertaken until approved in writing by the UPRR's Designated Representative.
- C. No work shall commence until the Contractor receives in writing assurance from UPRR's Designated Representative that arrangements have been made for flagging service, as may be necessary and receives permission from UPRR's Designated Representative to proceed with the work.

**3.09 CONSTRUCTION AND AS-BUILT SUBMITTALS**

- A. Submittals are required for construction materials and procedures as outlined below. The submittals shall include all review comments from the Agency and the Engineer of Record. All design submittals shall be stamped and signed by a Professional Engineer registered in the State of California.
- B. The tables below provide UPRR's minimum submittal requirements for the construction items noted. Submittal requirements are in addition to those specified elsewhere in these bid documents. The minimum review times indicated below represent UPRR's requirements only. The Contractor shall allow additional time for the Agency's review time as stated elsewhere in these bid documents.
- C. Submittals shall be made by the Agency to the UPRR Manager of Industry and Public Projects unless otherwise directed by the Railroad. Items in Table 1 shall be submitted for both railroad overpass and underpass projects, as applicable. Items in Table 2 shall be submitted for railroad underpass projects only.

TABLE 1

<i>ITEM</i>	DESCRIPTION	SETS REQD.	UPRR's Minimum Review Time
1	Shoring design and details	4	4 weeks
2	<b>Falsework design and details</b>	4	4 weeks
3	Drainage design provisions	4	4 weeks
4	Erection diagrams and sequence	4	4 weeks
5	Demolition diagram and sequence	4	4 weeks

**Prior to or during construction of railroad underpass structures, the UPRR requires the review of drawings, reports, test data and material data sheets to determine compliance with the specifications. Product information for items noted in Table 2 be submitted to UPRR's Designated Representative through the Agency for their own review and approval of the material. The signed submittal and the Agency's review comments will be reviewed by UPRR or their consultant. If a consultant performs the reviews, the consultant may reply directly to the Agency or its Designated Representative after consultation with UPRR. Review of the submittals will not be conducted until after review by the Agency or its Designated Representative. Review of the submittal items will require a minimum of four (4) weeks after receipt from the Agency.**

TABLE 2

ITEM	DESCRIPTION	SETS REQD.	NOTES
1	Shop drawings	4	Steel and Concrete members
2	<b>Bearings</b>	4	For entire structures
3	Concrete Mix Designs	4	For entire structures
4	Rebar & Strand certifications	4	For superstructure only
5	28 day concrete strength	4	For superstructure only
6	Waterproofing material certifications and installation procedure	4	Waterproofing & protective boards
7	Structural steel certifications	4	All fracture critical members & other members requiring improved notch toughness
8	Fabrication and Test reports	4	All fracture critical members & other members requiring improved notch toughness
9	Welding Procedures and Welder Certification	4	AWS requirements
10	Foundation Construction Reports	4	Pile driving, drilled shaft construction, bearing pressure test reports for spread footings
11	Compaction testing reports for backfill at abutments	4	Must meet 95% maximum dry density, Modified Proctor ASTM D1557

- D. As-Built Records shall be submitted to the UPRR within 60 days of completion of the structures. These records shall consist of the following items:

#### Overpass Projects

1. Electronic files of all structure design drawings with as-constructed modifications shown, in Microstation J or Acrobat .PDF format.
2. Hard copies of all structure design drawings with as-constructed modifications shown.

#### Underpass Projects

1. Electronic files of all structure design drawings with as-constructed modifications shown, in Microstation J or Acrobat .PDF format.
2. Hard copies of all structure design drawings with as-constructed modifications shown.
3. Final approved copies of shop drawings for concrete and steel members.
4. Foundation Construction Reports
5. Compaction testing reports for backfill at abutments

### **3.10 APPROVAL OF DETAILS**

The details of the construction affecting the UPRR tracks and property not already included in the Contract Plans shall be submitted to UPRR's Designated Representative through the Agency for UPRR's review and written approval before such work is undertaken. Review and approval of these submittals will require a minimum of four (4) weeks in addition to the Agency's review time as stated elsewhere in these bid documents.

### **3.11 MAINTENANCE OF RAILROAD FACILITIES**

- A. The Contractor shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from Contractor's operations; to promptly repair eroded areas within UPRR's right of way and to repair any other damage to the property of UPRR, or its tenants.
- B. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.
- C. The Contractor must submit a proposed method of erosion control and have the method reviewed by the UPRR prior to beginning any grading on the Project Site. Erosion control methods must comply with all applicable local, state and federal regulations.

### **3.12 SITE INSPECTIONS BY UPRR's DESIGNATED REPRESENTATIVE**

- A. In addition to the office reviews of construction submittals, site inspections may be performed by UPRR's Designated Representative at significant points during construction, including but not limited to the following:
  1. Preconstruction meetings.

2. Pile driving, drilling of caissons or drilled shafts.
  3. Reinforcement and concrete placement for railroad bridge substructure and/or superstructure.
  4. Erection of precast concrete or steel bridge superstructure.
  5. Placement of waterproofing (prior to placing ballast on bridge deck).
  6. Completion of the bridge structure.
- B. Site inspection is not limited to the milestone events listed above. Site visits to check progress of the work may be performed at any time throughout the construction as deemed necessary by UPRR.
- C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided to the Agency for submittal to UPRR's Designated Representative for review prior to commencement of work. This schedule shall also include the anticipated dates when the above listed events will occur. This schedule shall be updated for the above listed events as necessary, but at least monthly so that site visits may be scheduled.

### **3.13 UPRR REPRESENTATIVES**

- A. UPRR representatives, conductors, flag person or watch person will be provided by UPRR at expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect UPRR facilities, property and movements of its trains or engines. In general, UPRR will furnish such personnel or other protective services as follows:
1. When any part of any equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any object is off the ground and any dimension thereof could extend inside the 25 foot limit, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.
  2. For any excavation below elevation of track subgrade if, in the opinion of UPRR's Designated Representative, track or other UPRR facilities may be subject to settlement or movement.
  3. During any clearing, grubbing, excavation or grading in proximity to UPRR facilities, which, in the opinion of UPRR's Designated Representative, may endanger UPRR facilities or operations.

4. During any contractor's operations when, in the opinion of UPRR's Designated Representative, UPRR facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
5. The Contractor shall arrange with the UPRR Designated Representative to provide the adequate number of flag persons to accomplish the work.

### **3.14 WALKWAYS REQUIRED**

Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than twelve feet (12') from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while UPRR's flagman service is provided shall be removed before the close of each work day. Walkways with railings shall be constructed by Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 8' - 6" horizontally from center line of tangent track or 9' - 6" horizontally from centerline of curved track.

### **3.15 COMMUNICATIONS AND SIGNAL LINES**

If required, UPRR will rearrange its communications and signal lines, its grade crossing warning devices, train signals and tracks, and facilities that are in use and maintained by UPRR's forces in connection with its operation at expense of the Agency. This work by UPRR will be done by its own forces and it is not a part of the Work under this Contract.

### **3.16 TRAFFIC CONTROL**

Contractor's operations that control traffic across or around UPRR facilities shall be coordinated with and approved by the UPRR's Designated Representative.

### **3.17 CONSTRUCTION EXCAVATIONS**

- A. The Contractor shall be required to take special precaution and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and UPRR "Guidelines for Temporary Shoring".
- B. The Contractor shall contact UPRR's "Call Before Your Dig" at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. central time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near UPRR property, the Contractor will co-ordinate with UPRR and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near UPRR property.

### **3.18 RAILROAD FLAGGING**

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, may require railroad flagging services or other protective measures. Contractor shall give the advance notice to the UPRR as required in the "Caltrans Right of Entry Agreement" before commencing any such work, so that the UPRR may determine the need for flagging or other protective measures to ensure the safety of the railroad's operations. Contractor shall comply with all other requirements regarding flagging services covered by the "Caltrans Right of Entry Agreement". Any costs associated with failure to abide by these requirements will be borne by the Contractor.

### **3.19 CLEANING OF RIGHT-OF-WAY**

Contractor shall, upon completion of the work to be performed by Contractor upon the premises, over or beneath the tracks of UPRR, promptly remove from the Right-of-Way of UPRR all of Contractor's tools, implements, and other materials whether brought upon the Right-of-Way by Contractor or any subcontractors, employee or agent of Contractor or of any subcontractor, and leave the Right-of-Way in a clean and presentable condition to satisfaction of UPRR.

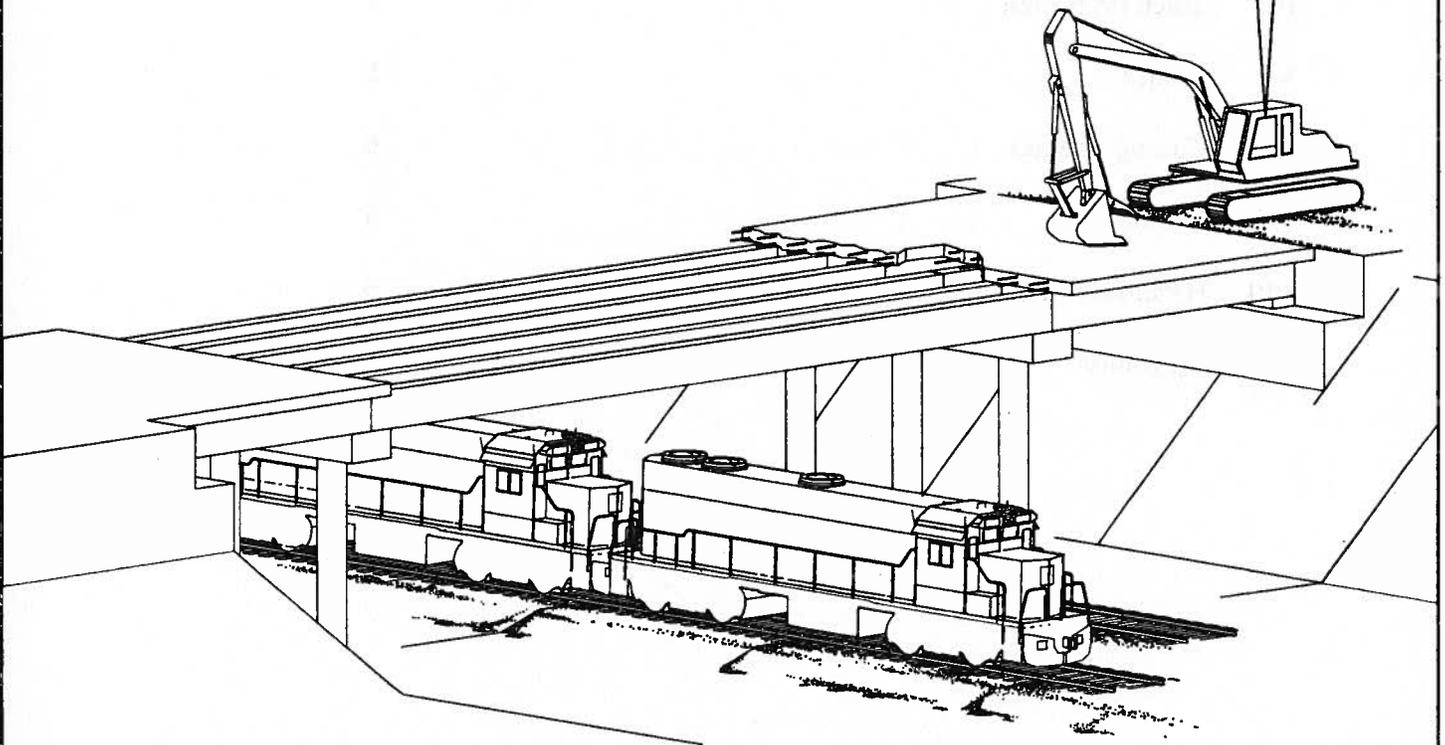
# **EXHIBIT F**

## **To Construction & Maintenance Agreement**

### **Cover Sheet for Railroad's Demolition Guidelines for Overpass Structures**

# GUIDELINES FOR PREPARATION OF A BRIDGE DEMOLITION AND REMOVAL PLAN FOR STRUCTURES OVER RAILROAD

**STOP** ALL WORK  
DURING RAIL OPERATIONS



# UNION PACIFIC RAILROAD

OFFICE OF CHIEF ENGINEER DESIGN  
1416 DODGE ST.  
OMAHA, NE 68179

## INDEX

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## **I. GENERAL**

- A. The Contractor's work shall in no way impede the train operations of the Union Pacific Railroad.
- B. The Contractor shall develop a work plan assuming that minimal track windows will be available.
- C. The Contractor shall be responsible for planning and executing all procedures necessary to remove the overhead bridge in a safe and controlled manner.
- D. The Railroad's tracks and property shall be protected at all times.
- E. The contractor shall ensure the area immediately adjacent to operational tracks shall remain free from stumble or like hazards to the ground Railroad personnel to prevent injuries. Open excavations shall be in accordance with current CE Drawing 106613 and shall be protected by appropriate fencing.
- F. The words "demolition" and "removal" will be used interchangeably.
- G. All removed materials shall be disposed of outside the Railroad right-of-way at no expense to the Railroad.
- H. No work is allowed within 50 feet of the nearest rail when trains pass the work site.
- I. Staged demolition of the portions of structure immediately adjacent to operational tracks will not jeopardize the integrity of the structure over said tracks until actual removal of the portion of the structure over the tracks is being done.
- J. A flagman is required when any work is performed within 25 feet of the nearest rail.
- K. No blasting will be permitted on Railroad's right-of-way.

## **II. BRIDGE REMOVAL PLAN**

- A. The Contractor shall submit a complete Bridge Removal Plan to the Railroad. The Bridge Removal Plan shall include details, procedures and the sequence of staged removal of the bridge, including all steps necessary to remove the bridge in a safe and controlled manner.

- B. The Contractor shall submit to the Railroad; three (3) complete sets of the Bridge Removal Plan for review and comments. The Plan shall be sealed by a Civil or Structural Engineer registered in the state where the proposed demolition will take place. A minimum of three (3) weeks shall be allowed for the Railroad's review after the complete submittal is received. No removal operations will be permitted over the Railroad right of way until the submitted material has been reviewed and comments provided.
- C. Review and comment of the Removal Plan by the Railroad will not relieve the Contractor of the ultimate responsibility and liability for the demolition of the structure.
- D. The Removal Plan shall include the following:
- 1) Plan, elevation and location of the bridge, and the locations of any access roads needed for movement of the equipment. The as-built drawings may be used for the submittal provided the removal steps are clearly marked and legible.
  - 2) Indicate the position of all railroad tracks below the bridge and identify each track as mainline, siding, spur, etc.
  - 3) Bridge removal sequence and procedures for entire bridge including the staging for the removal of the superstructure and substructure.
  - 4) List type and number of equipment required and their locations during demolition operations.
  - 5) Locations and types of temporary supports, shoring or bracing required. These members shall be designed to meet Union Pacific Railroad current standard drawing 106613 "General Shoring Requirements", "Guidelines for Design and Construction of Falsework for Structures Over Union Pacific Railroad", "Guidelines for Design and Construction of Shoring Adjacent to Active Railroad Tracks", and the appropriate local and national building and design code requirements.
  - 6) The proposed vertical and horizontal clearance from all tracks to the temporary and permanent supports. The minimum vertical and horizontal clearances shall be as per attached frame protection details.
  - 7) If any temporary supports interfere with the natural drainage along the Railroad right-of-way, a temporary drainage plan shall be submitted for review and comment prior to constructing temporary supports. The proposed drainage plan shall route all drainage away from the railroad tracks.

- 8) Details, limits, and locations of protective covers or other measures proposed to be used to protect the tracks. This includes any shields or other measures that will protect the tracks from falling debris during removal of the overhead bridge and from any debris rolling down the side slopes or otherwise coming into the area around the tracks which could affect train operations. Design loads, including impact loads, shall be noted. In addition equipment should be on site capable of removing debris and track shield from operational tracks.
- 9) All procedures necessary to remove the bridge in a safe and controlled manner. The estimated time for complete removal over the tracks shall be noted.
- 10) All overhead and underground utilities in the area affected by removal of the bridge shall be located on the drawings, including any fiber optic, railroad signal, and communication lines.
- 11) The location and details of track crossings required for moving of the equipment across the railroad tracks.
- 12) Limits of demolition of substructures.
- 13) Details of on-site fire suppression.

### **III. PROCEDURE**

- A. During removal operations the remaining structure shall be stable during all stages of the removal operations.
- B. Prior to proceeding with bridge removal the sealing Civil or Structural Engineer, or his authorized representative working for the Contractor, shall inspect the temporary support shoring, including temporary bracing and protective coverings, for conformity with the working drawings. The Engineer shall certify in writing to the Railroad that the work is in conformance with the drawings and that the materials and workmanship are satisfactory. A copy of this certification shall be available at the site of work at all times.
- C. Coordinate the removal schedule with the Railroad. All the removal work within the track area shall be performed during the time windows when the trains are not passing the work site.
- D. All substructures shall be removed to at least 3 feet below the final finished grade or at least 2 feet below base of rail whichever is lower, unless otherwise specified by the Railroad.

- E. All debris and refuse resulting from the work shall be removed from the right of way by the contractor and the premises left in a neat and presentable condition.
- F. The work progress shall be reviewed and logged by the Contractor's Engineer. Should an unplanned event occur, the Contractor shall inform the Railroad and submit procedure to correct or remedy the occurrence.
- G. Preferably all demolition and beam removal shall be from above. In the case that the beams require removal from below, the beams may temporarily straddle the tracks. The following steps shall be taken:
  - 1) The work shall be scheduled with the Railroad's Service Unit Superintendent subject to the Railroad's operational requirements for continuous train operations. The beams removed in sufficient time for train passage.
  - 2) The tracks shall be protected and no equipment placed on the tracks.
  - 3) The beams shall be blocked and not come in contact with the tracks. Blocking shall not be placed on the tracks.
  - 4) The beams and all equipment will be moved a minimum of 15 feet from the nearest rail of the tracks when a train is passing.

#### **IV. TRACK PROTECTION**

- A. The track protective cover shall be constructed before beginning bridge removal work and may be supported by falsework or members of the existing structure. See the attached Track Shield Detail and Frame Protection Detail for additional requirements. Types of protective covers that may be acceptable methods for protecting the tracks are:
  - 1) A decking supported by the bridge or a suspended cover from the bridge above the track clearance envelope.
  - 2) A track shield cover over the tracks per the attached detail.
  - 3) A framed cover outside the track clearance envelope.
  - 4) A catcher box or loader bucket under decking and parapets overhanging the exterior girders.
- B. Construction equipment shall not be placed on the tracks unless tracks are protected.

- C. Temporary haul road crossings shall be either Section Timbers or Precast Concrete Panels. The type of crossing shall be determined by the Manager of Industry and Public Projects. Solid timbers or ballast with timber headers shall be used between multiple tracks. If temporary crossing is accessible to public crossing shall be protected with barricades or locked gates when contractor is not actively working at the site or weekends.
- D. Track protection is required for all equipment including rubber tired equipment operating within 25 ft. or over the tracks.

## V. CRANES

- A. When cranes are operated near the tracks the following is required:
  - 1) Only cranes with the capacity to handle the loads may be used. Front end loaders and backhoes cannot be used to lift over the tracks.
  - 2) The Contractor shall verify that the foundations under the crane can support the loads.
  - 3) The size and material type of crane mats shall be submitted to the Railroad for review and comment. No mat substitution will be allowed. The mats shall be rigid and of sufficient capacity to distribute the crane loads and prevent tipping of the crane.
  - 4) Installation of temporary track crossings for equipment shall be scheduled with the Manager of Industry and Public Projects .
  - 5) Additional track protection is required when crossing with a crane. The protection methods shall be submitted to the Railroad for review and comment.
  - 6) Equipment shall not place outriggers on the tracks or ballast.
  - 7) Cranes shall not be placed within the track clearance envelope without flagman protection.

## **VI. CUTTING TORCHES**

A. When a cutting torch is used near the tracks or any timber, the following steps shall be taken:

- 1) Fire suppression equipment is required on-site.
- 2) Do not use a torch over, between, or adjacent to the tracks unless a steel plate protective cover is used. Care shall be taken to make certain the use of a steel plate does not come in contact with the rails. See "Track Shield Details" for other requirements. Details of the shield shall be submitted to the Railroad for approval.
- 3) Wet the ties and other timber below the cutting area.
- 4) Monitor the work site for at least three hours after cutting for a smoldering fire.

B. Extensive overhead cutting will not be performed over the track area without the proper fire suppression equipment on-site and proper protection.

## **VII. UTILITIES**

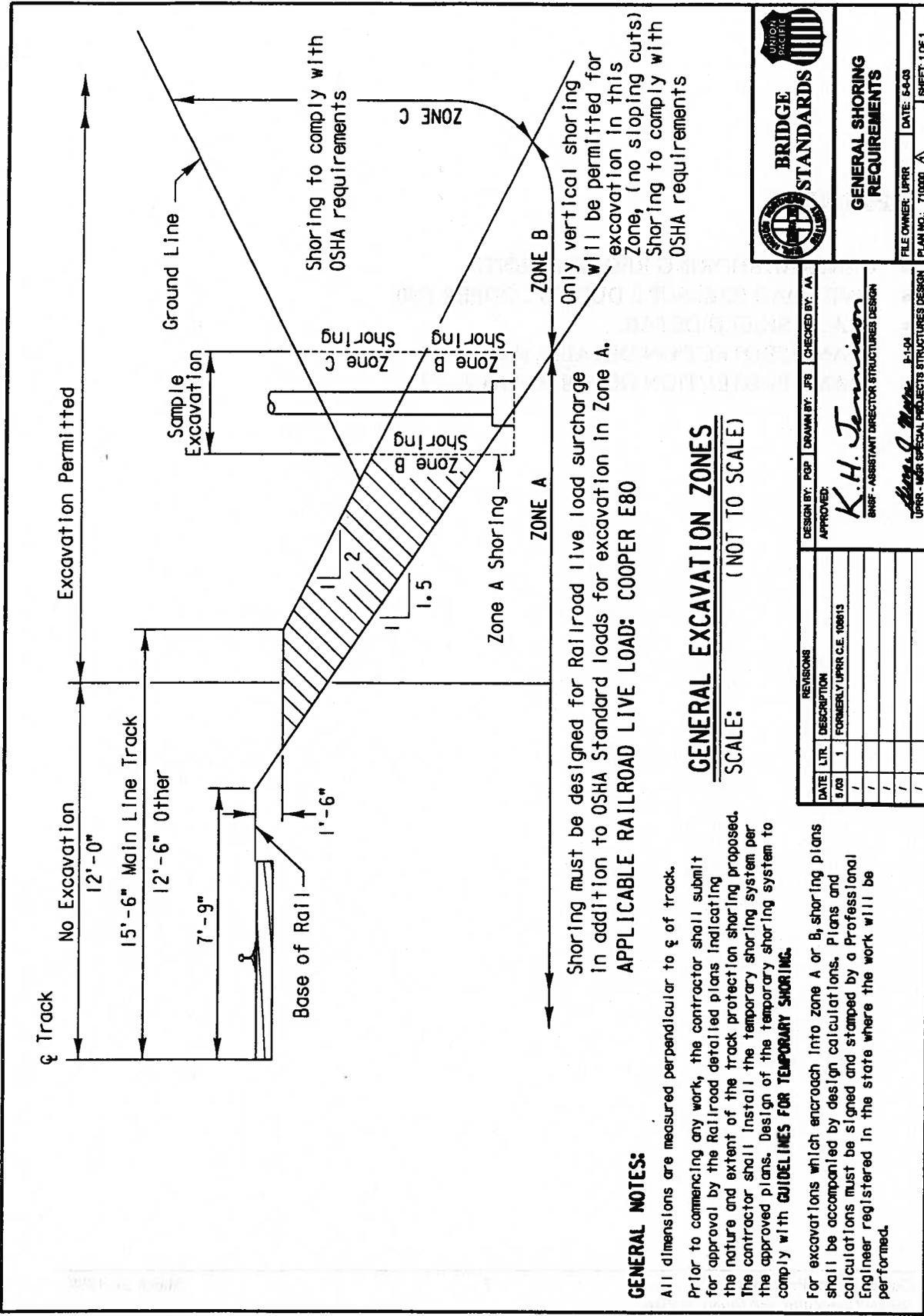
A. The demolition operations shall be planned such that the utility lines are operating safely at all times. The utility lines shall be protected if affected by demolition operations. All the work associated with utility lines should be coordinated by the contractor with the respective utility companies.

## **VIII. HAZARDOUS MATERIAL**

A. If any hazardous materials are found, provide material protection as specified in local hazardous material codes and immediately contact the Railroad.

## APPENDIX

- GENERAL SHORING REQUIREMENTS
- LIVE LOAD PRESSURE DUE TO COOPER E80
- TRACK SHIELD DETAIL
- FRAME PROTECTION DETAILS, sheet 1 of 2
- FRAME PROTECTION DETAILS, sheet 2 of 2



**GENERAL NOTES:**

All dimensions are measured perpendicular to  $\epsilon$  of track. Prior to commencing any work, the contractor shall submit for approval by the Railroad detailed plans indicating the nature and extent of the track protection shoring proposed. The contractor shall install the temporary shoring system per the approved plans. Design of the temporary shoring system to comply with **GUIDELINES FOR TEMPORARY SHORING**. For excavations which encroach into zone A or B, shoring plans shall be accompanied by design calculations. Plans and calculations must be signed and stamped by a Professional Engineer registered in the state where the work will be performed.

**GENERAL EXCAVATION ZONES**  
SCALE: (NOT TO SCALE)

Shoring must be designed for Railroad live load surcharge in addition to OSHA Standard loads for excavation in Zone A.  
**APPLICABLE RAILROAD LIVE LOAD: COOPER E80**

**ZONE A** Shoring  
Only vertical shoring will be permitted for excavation in this Zone, (no sloping cuts)  
Shoring to comply with OSHA requirements

**ZONE B**  
Shoring to comply with OSHA requirements

**ZONE C**  
Shoring to comply with OSHA requirements

**BRIDGE STANDARDS**

**GENERAL SHORING REQUIREMENTS**

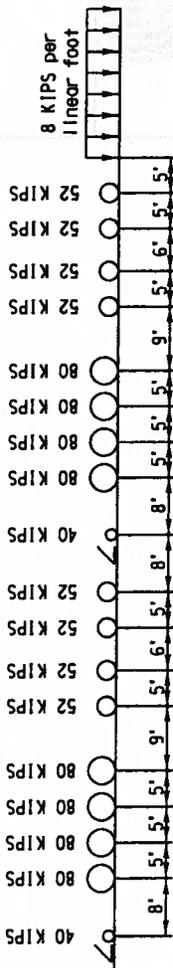
FILE OWNER: UPRR    DATE: 6-03  
 PLAN NO.: 71000    SHEET: 1 OF 1  
 NUMBER: 78801888    TITLE

DATE	DESCRIPTION	DESIGN BY	POF	DRAWN BY	JFB	CHECKED BY	AA
9/03	1 FORMERLY UPRR C.E. 10813						
/	/						
/	/						
/	/						
/	/						

APPROVED: *K.H. Jenkinson*  
 BNSF - ASSISTANT DIRECTOR STRUCTURES DESIGN  
 UPRR - MGR SPECIAL PROJECTS STRUCTURES DESIGN

*Shirley J. Mays*    B-124  
 UPRR - MGR SPECIAL PROJECTS STRUCTURES DESIGN

**Figure 1**



**COOPER E80 LOAD**  
SCALE: (NOT TO SCALE)

Vertical pressure  $q$  shall be based on a distribution width  $L_d$ .  
 $L_d$  is the length of tie plus  $H_1$ .  
 $H_1$  is the height from the bottom of tie to the top of shoring.  
 $H_2$  is the depth of point being evaluated with the Boussinesq equation.  
 $S$  is a distance perpendicular from centerline of track to the face of shoring.  
 $D$  is from top of shoring to one foot below dredge line.  
 $Z_p$  is the minimum embedment depth.  
Length of tie is 9 feet  
 $q$  is the intensity of strip load due to E80 Railroad live load and shall be calculated as follows:

For  $H_1 = 0$   $L_d =$  length of tie; therefore,  $q = \frac{80,000 \text{ lb}}{(5 \text{ feet})(9 \text{ feet})} = 1,778 \text{ psf}$

For  $H_1 > 0$   $L_d =$  length of tie +  $H_1$ ; therefore,  $q = \frac{80,000 \text{ lb}}{(5 \text{ feet})(L_d)}$

CASE 1: Lateral live load pressure  $P_s$ , due to E80 loading for track parallel to shoring system is calculated using the Boussinesq Strip Load Equation.

$$P_s = \frac{2q}{\pi} (\beta + \sin \beta \sin^2 \alpha - \sin \beta \cos^2 \alpha)$$

The above equation can be simplified into the following equivalent forms

$$P_s = \frac{2q}{\pi} [\beta - \sin \beta \cos (2\alpha)]$$

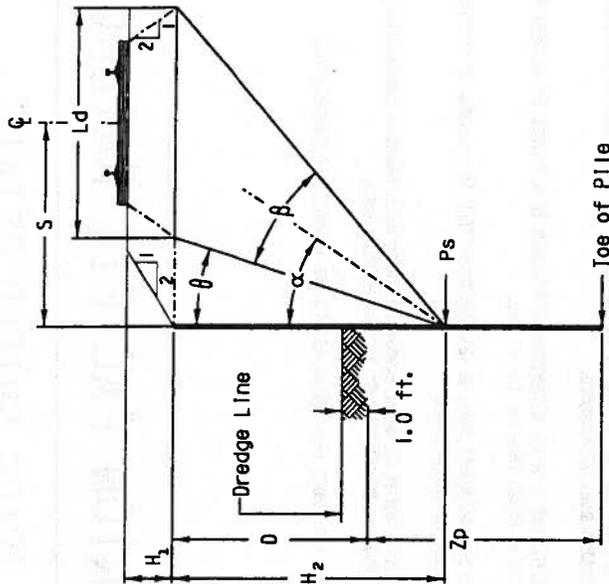
$\alpha$  and  $\beta$  are angles measured in radians,  $\alpha = \theta + \frac{\beta}{2}$

CASE 2: Live load pressure due to E80 loading for track at a right angle to the shoring system can be calculated using the following equation.

$$P_s = K_a q$$

where  $K_a = \tan^2(45 - \frac{\phi}{2})$

$\phi$  is the angle of internal friction in degrees



**PLAN**  
SCALE: (NOT TO SCALE)

**BRIDGE SHORING STANDARDS**

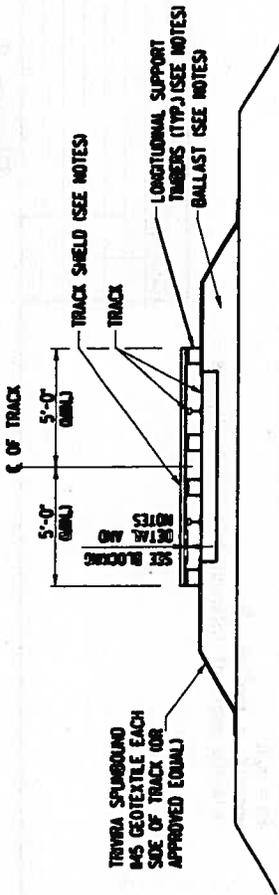
**LIVE LOAD PRESSURE DUE TO COOPER E80**

FILE OWNER: UPRR DATE: \_\_\_\_\_ SHEET: 1 OF 1  
 PLAN NO.: 710001 ROUTE: BRIDGES

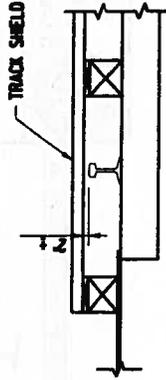
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DESIGN BY: POP DRAWN BY: JFS CHECKED BY: AA  
 APPROVED: *K.H. Jenkinson*  
 BNSF - ASSISTANT DIRECTOR STRUCTURES DESIGN  
*Myra D. Mott* 5-1-04  
 UPRR - MAJOR SPECIAL PROJECTS STRUCTURES DESIGN

**Figure 2**



**TRACK SHIELD DETAIL  
FOR DEBRIS FALLING FROM BRIDGE DECK REMOVAL  
(WHEN TRACK TIME WINDOW IS AVAILABLE)**



**BLOCKING DETAIL**

**NOTES:**

1. A FLAGMAN IS REQUIRED AT ALL TIMES DURING THE USE OF A TRACK SHIELD.
2. THE TRACK SHIELD SHALL BE DESIGNED BY THE CONTRACTOR AND SHALL BE OF SUFFICIENT STRENGTH TO SUPPORT THE ANTICIPATED LOADS, INCLUDING IMPACT. THE SHIELD SHALL PREVENT ANY MATERIALS, EQUIPMENT OR DEBRIS FROM FALLING ONTO THE RAILROAD TRACK. ADDITIONAL LAYERS OF MATERIALS SHALL BE FURNISHED AS NECESSARY TO PREVENT FINE MATERIALS OR DEBRIS FROM SETTING DOWN UPON THE TRACK.
3. THE SHIELD SHOULD PREFERABLY BE PREFABRICATED AND FURNISHED WITH LIFTING HOOKS TO FACILITATE REMOVAL.
4. THE SHIELD SHALL BE OF SUFFICIENT STRENGTH TO SPAN BETWEEN ITS SUPPORTS WITHOUT BEARING UPON THE RAILS AND TO WITHSTAND DROPPING RUBBLE.
5. BEFORE REMOVAL, THE SHIELD SHALL BE CLEANED OF ALL DEBRIS AND FINE MATERIAL.
6. THE TRACK SHIELD SHALL EXTEND AT LEAST 20 FEET BEYOND THE LIMITS OF DEMOLITION TRANSVERSE TO THE EDGE OF THE BRIDGE.

7. LONGITUDINAL SUPPORT TIMBERS FOR THE SHIELD SHALL NOT EXTEND ABOVE THE TOP OF RAIL WHEN THE SHIELD IS REMOVED. BLOCKING FROM THE TOP OF RAIL TO THE BOTTOM OF THE SHIELD MAY BE ATTACHED TO THE SHIELD. REMAINING TIMBERS SHALL BE ANCHORED.
8. FOR TRAIN PASSAGE, THE RUBBLE SHALL BE REMOVED TO A MINIMUM OF 8' 6" FROM THE NEAREST RAIL AND TO AN ELEVATION NO HIGHER THAN THE TOP OF RAIL.
9. AT THE END OF THE DAY, THE RUBBLE SHALL BE REMOVED COMPLETELY TO A MINIMUM OF 10' FROM THE NEAREST RAIL AND DOWN TO ORIGINAL GRADE.
10. CARE SHALL BE TAKEN TO NOT PLACE METAL ACROSS THE TRACK RAILS. RAILROAD COMMUNICATIONS ARE SENT THROUGH THE RAILS AND WILL BE DISRUPTED BY A SHORT BETWEEN RAILS.
11. DETAILS SHOWN APPLY FOR TIMBER TIES. SPECIAL DETAILS ARE REQUIRED FOR CONCRETE TIES.



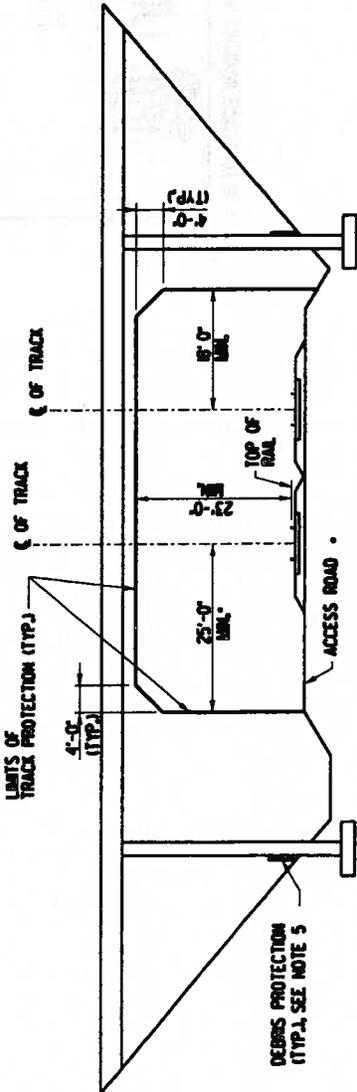
**UNION PACIFIC RAILROAD**

**TRACK SHIELD DETAIL**

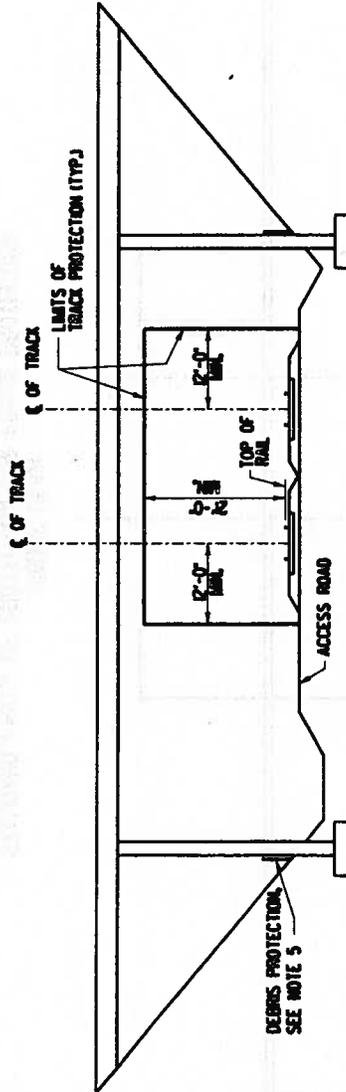
**OFFICE OF CHIEF ENGINEER DESIGN**

DATE: 3-31-98

SHEET 1 OF 1



**BRIDGE ELEVATION  
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION**



**BRIDGE ELEVATION  
MINIMUM LIMITS OF PROTECTION FOR FRAME PROTECTION  
(SPECIAL PERMISSION REQUIRED, SEE NOTE D)**

**NOTES:**

1. THE STANDARD LIMITS OF PROTECTION NOTED ARE THE MIN. CLEARANCES ALLOWED WITHOUT SPECIAL PERMISSION FROM THE RAILROAD. THE REDUCED CLEARANCES NOTED MAY BE ALLOWED BY THE RAILROAD. SPECIAL PERMISSION FOR THE REDUCED CLEARANCES IS REQUIRED FROM THE RAILROAD SERVICE UNIT SUPERINTENDENT.
2. THE PROTECTION FRAME SHALL AS A MINIMUM MATCH THE DEMOLITION LIMITS SHOWN AND EXTEND PAST THE BRIDGE WIDTH AS SHOWN ON THE ATTACHED DEMOLITION PLAN SHEET.
3. FOR ADDITIONAL CLEARANCE AND PROTECTION INFORMATION, SEE UNION PACIFIC RAILROAD STANDARD DRAWING NO. 0035
4. THE PROTECTION FRAME SHALL PREVENT DEMOLITION DEBRIS, DUST AND FINE MATERIAL FROM FALLING ONTO THE RAILROAD TRACKS, ACCESS ROAD OR TRAMS. THE FRAME SHALL BE DESIGNED BY THE CONTRACTOR TO SUPPORT THE ANTICIPATED DEMOLITION LOADS, AND IN ACCORDANCE WITH UNION PACIFIC GUIDELINES FOR DESIGN OF FALSEWORK FOR STRUCTURES OVER THE RAILROAD.
5. DEBRIS PROTECTION IS REQUIRED NEAR THE BASE OF THE SIDE SLOPES AND ADJACENT TO ROADS USED BY DEMOLITION EQUIPMENT TO PREVENT DEBRIS FROM ROLLING ONTO THE TRACK, ACCESS ROAD OR DITCH. USE TIMBERS AS REQUIRED TO STOP LARGE PIECES OF ROLLING DEBRIS.
6. ANY ACTIVITY WITHIN 25 FEET OF THE NEAREST RAIL OF A TRACK REQUIRES A FLAGMAN.

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE OF DETAIL.



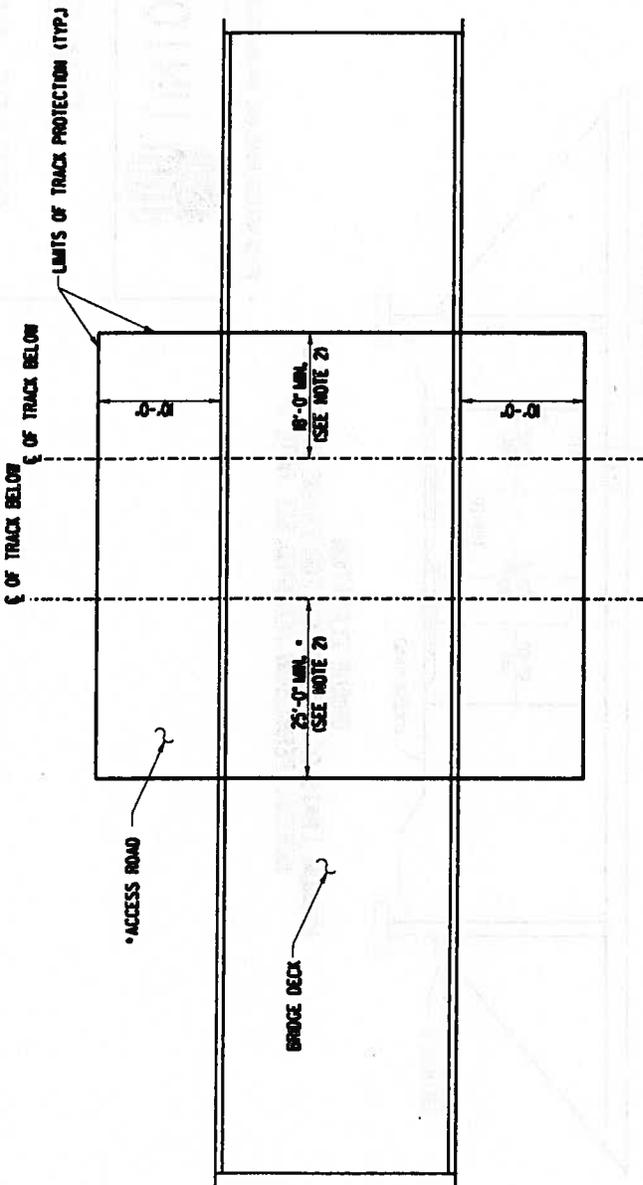
**UNION PACIFIC RAILROAD**

**FRAME PROTECTION DETAILS**

**OFFICE OF CHIEF ENGINEER DESIGN**

DATE: 3-31-98

SHEET 1 OF 2

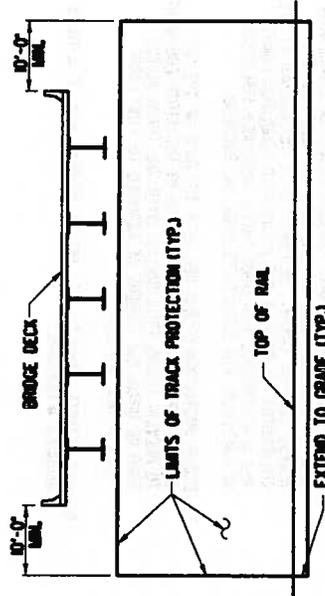


**BRIDGE PLAN  
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION**

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE

**NOTES:**

1. SEE GENERAL NOTES ON BRIDGE ELEVATION SHEET
2. STANDARD LIMITS OF PROTECTION ARE SHOWN FOR MIN. LIMITS OF PROTECTION DIMENSIONS. SEE BRIDGE ELEVATION MINIMUM LIMITS OF PROTECTION.



**BRIDGE DECK CROSS SECTION  
STANDARD LIMITS OF PROTECTION**

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE



**UNION PACIFIC RAILROAD**

**FRAME PROTECTION DETAILS**

**OFFICE OF CHIEF ENGINEER DESIGN**

DATE: 3-31-98

SHEET 2 OF 2

# EXHIBIT G

## To Construction & Maintenance Agreement

### Cover Sheet for Form of Right of Entry Agreement

**EXHIBIT G**

**STATE'S  
RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, 20\_\_ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter "Railroad") and STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (hereinafter "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

**ARTICLE 1 - DEFINITION OF LICENSEE**

For purposes of this Agreement, all references in this Agreement to Licensee shall include Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE**

Railroad hereby grants to Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property located at or near Milepost 540.43 & 540.46, on Railroad's Yuma Subdivision located near Colton, San Bernardino County, California, for the purpose of performing work relating to the construction, reconstruction, use, maintenance, and repair of a freeway grade separation overpass for State Route 99 (the "Work"), in the general location shown on the print, marked **Exhibit A**, attached hereto and hereby made a part hereof. The right herein granted to Licensee is limited to those portions of Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C, D AND E**

The terms and conditions contained in **Exhibit B**, **Exhibit C**, **Exhibit D** and **Exhibit E**, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE  
BY LICENSEE; RAILROAD REPRESENTATIVE**

A. Licensee shall bear any and all costs and expenses associated with any work performed by Licensee, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Licensee shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

***Kenneth Tom  
Manager, Industry and Public Projects  
Union Pacific Railroad Company  
2015 South Willow Avenue  
Bloomington, California 92316  
Phone: (909) 685-2288  
Fax: (909) 685-2289  
E-mail: ktom@up.com***

C. Licensee, at its own expense, shall adequately police and supervise all Work to be performed by Licensee and shall ensure that such Work is performed in a safe manner as set forth in Section 7 of Exhibit B. The responsibility of Licensee for safe conduct and adequate policing and supervision of Licensee's work shall not be lessened or otherwise affected by Railroad's approval of the plans and specifications involving the Work, or by Railroad's collaboration in performance of any of the Work, or by the presence at the work site of a Railroad Representative, or by compliance by Licensee with any requests or recommendations made by the Railroad Representative.

#### **ARTICLE 5 - TERM; TERMINATION**

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and continue until March 18<sup>th</sup>, 2016 unless sooner terminated as herein provided, or at such time as Licensee has completed its Work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its Work on Railroad's property.

B. Railroad may terminate this Agreement if it reasonably determines in good faith that Licensee has failed to comply with any of the material terms and conditions of this Agreement and has not cured such failure within ten (10) days after receiving notice (oral or written) from Railroad describing such failure in reasonable detail.

#### **ARTICLE 6 - INSURANCE - CONTRACTOR ENDORSEMENT**

A. Licensee is self-insured. Licensee shall provide Railroad defense and indemnification at least equal to the defense, indemnification and insurance provisions (including the endorsements) contained in Exhibit C. Nothing herein shall be deemed to insure Railroad against its sole negligence or willful misconduct.

B. In the event any of the Work to be done upon the property of Railroad is to be done by a contractor or subcontractor of Licensee, said contractor or subcontractor may have the benefit of the license herein granted, while performing work for Licensee, provided such contractor or subcontractor agrees to be subject to and bound by the terms and conditions of this Agreement by: (1) executing an endorsement to this Agreement in the form set forth in Contractor's Endorsement marked Exhibit E, attached hereto, (2) providing to Railroad the insurance policies, certificates, binders, and/or endorsements described in Exhibit C, and (3) providing to Railroad the insurance endorsements required under Section 12 of Exhibit B of this Agreement.

C. All insurance correspondence, certificates, endorsements, binders or originals shall be sent to:

*Union Pacific Railroad Company  
Senior Manager Contracts  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
Folder No. 2702-64*

#### **ARTICLE 7 - CHOICE OF FORUM**

Unless otherwise preempted by applicable federal laws, rules or regulations, this Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the State of California only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

**ARTICLE 8 - REMOVAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE**

At the request of Railroad, Licensee shall remove from Railroad property any contractor, subcontractor, officer, agent and/or employee of Licensee who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Licensee shall be suspended until such removal has occurred. Licensee shall indemnify Railroad against any claims arising from the removal of any such contractor, subcontractor, officer, agent and/or employee from Railroad property.

**ARTICLE 9 - ADMINISTRATIVE FEE**

Upon the execution and delivery of this Agreement, Licensee shall pay to Railroad Five Hundred Dollars (\$500.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - SPECIAL PROVISIONS**

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Licensee without the prior written permission of Railroad.

B. Explosives or other highly flammable substances shall not be stored on Railroad property without the prior written approval of the Railroad Representative.

C. The parties agree that this agreement is not, and is not intended to be, a construction contract for purposes of Cal. Civ. Code § 2782(a). Accordingly, to the maximum extent permitted by law, the provisions of Cal. Civ. Code § 2782(a), as interpreted by the California courts in Southern Pacific Transportation Co. v. Sandyland Protective Association, 224 Cal.App.3d 1494, 274 Cal.Rptr. 626 (1990), and in other past and future cases, shall not apply to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

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

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

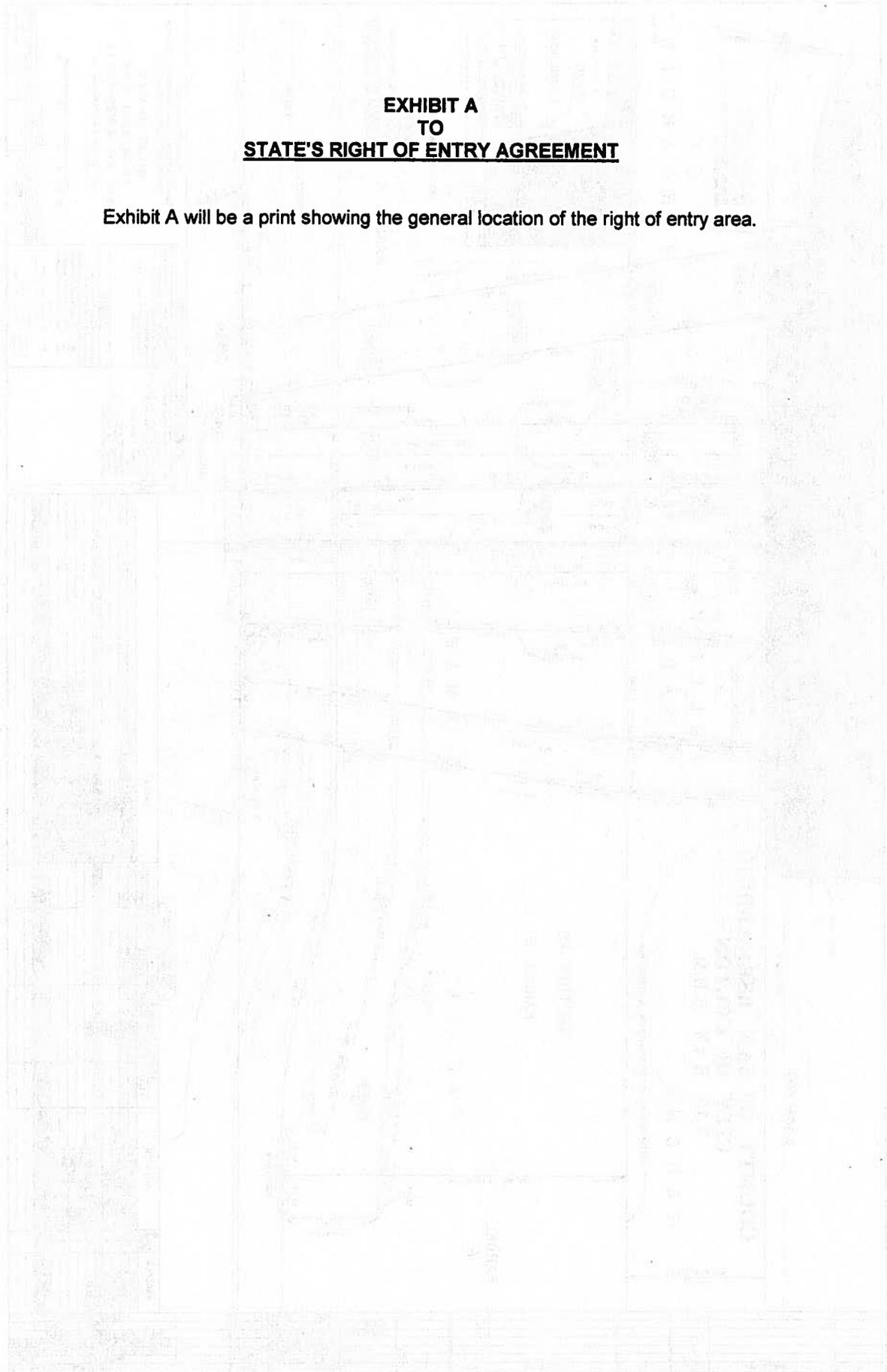
**STATE OF CALIFORNIA,  
DEPARTMENT OF TRANSPORTATION**

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

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

EXHIBIT A  
TO  
STATE'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the right of entry area.





**EXHIBIT B  
TO  
STATE'S RIGHT OF ENTRY AGREEMENT**

**Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

a. Licensee agrees to notify the Railroad Representative at least ten (10) working days in advance of Licensee commencing its Work and at least ten (10) working days in advance of proposed performance of any Work by Licensee in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No Work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 10-day notice, the Railroad Representative will determine and inform Licensee whether a flagman need be present and whether Licensee need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, such services will be provided at Licensee's expense with the understanding that if Railroad provides any flagging or other services, Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein. Licensee shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefor.

b. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight hour day for the class of persons used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the Work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Employee's Liability & Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee shall pay on the basis of the new rates and charges.

c. Reimbursement to Railroad will be required covering the full eight hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though the Licensee may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days-notice must then be given to Railroad if flagging services are needed again after such five (5) day cessation notice has been given to Railroad.

**Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of Railroad to use and maintain its entire property including the right and power of Railroad

to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be reasonably done at any time or times by Railroad without liability to Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATION OF RAILROAD AND ITS TENANTS**

a. Licensee shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including, without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Licensee at any time that would in any manner impair the safety of such operations. When not in use, Licensee's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

b. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Licensee caused by such railroad operations and work are expected by Licensee, and Licensee agrees that Railroad shall have no liability to Licensee, or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Licensee.

**Section 4. LIENS.**

Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Licensee shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

a. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and shall commence no work on the right of way until all such protection or relocation has been accomplished.

b. In addition to other indemnity provisions in this Agreement, Licensee shall, pursuant to Cal. Gov. Code §14662.5, indemnify and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Licensee, its contractor, agents and/or employees, that proximately causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees, on Railroad's property. Licensee shall not

have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work, including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

a. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee shall at a minimum comply with Railroad's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Railroad if Licensee determines that any of Railroad's safety standards are contrary to good safety practices. Licensee shall furnish copies of Exhibit D to each of its employees before they enter the job site.

b. Without limitation of the provisions of paragraph A above, Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

c. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Licensee shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

d. If and when requested by Railroad, Licensee shall deliver to Railroad a copy of Railroad's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

a. To the extent not prohibited by Cal. Gov. Code §14662.5, Licensee shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Licensee, or any employee of Licensee or of any Indemnified Party) arising out of or in any manner connected with (i) any Work performed by Licensee, or (ii) any act or omission of Licensee, its officers, agents or employees, or (iii) any breach of this agreement by Licensee.

b. To the extent not prohibited by Cal. Gov. Code §14662.5, the right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence or willful misconduct of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence or willful misconduct of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

c. To the extent not prohibited by Cal. Gov. Code §14662.5, Licensee expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Licensee's own employees. Licensee waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Licensee acknowledges that this waiver was mutually negotiated by the parties hereto.

d. To the extent not prohibited by Cal. Gov. Code §14662.5, no court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employer's Liability Act against a party to this Agreement may be relied upon or used by Licensee in any attempt to assert liability against Railroad.

e. The provisions of this Section 8 shall survive the completion of any Work performed by Licensee or the termination or expiration of this Agreement. To the extent not prohibited by Cal. Gov. Code §14662.5, in no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Licensee may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Licensee to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the Work to be performed by Licensee, then in that event Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Licensee shall remove all of Licensee's tools, equipment and materials from Railroad's property promptly upon completion of the Work, restoring Railroad's property to the same state and condition as when Licensee entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Licensee shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Licensee and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Licensee and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Licensee.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

**EXHIBIT C  
TO  
STATE'S  
RIGHT OF ENTRY AGREEMENT**

**INSURANCE PROVISIONS**

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the State of California.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).
- D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.
- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

### **Other Requirements**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of California.

- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**INSURANCE REQUIREMENTS**

The Contractor shall maintain in full force and effect the following minimum insurance coverages for the duration of the term of this Agreement:

- A. All business operations shall be covered by Commercial General Liability Insurance with a limit of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy shall include coverage for products and completed operations, contract completion operations, and personal and advertising injury. The policy shall also include coverage for contractual liability. The policy shall be written on a non-admitted basis through a licensed broker in the State of Illinois.
- B. Automobile Liability Insurance shall be maintained for all vehicles owned, leased, or operated by the Contractor. The policy shall include coverage for bodily injury and property damage. The policy shall be written on a non-admitted basis through a licensed broker in the State of Illinois.
- C. Workers' Compensation Insurance shall be maintained for all employees of the Contractor. The policy shall include coverage for medical benefits, disability benefits, and death benefits. The policy shall be written on a non-admitted basis through a licensed broker in the State of Illinois.
- D. Professional Liability Insurance shall be maintained for all professional services provided by the Contractor. The policy shall include coverage for errors and omissions. The policy shall be written on a non-admitted basis through a licensed broker in the State of Illinois.
- E. The Contractor shall maintain in full force and effect the following minimum insurance coverages for the duration of the term of this Agreement:
  - (i) Commercial General Liability Insurance with a limit of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.
  - (ii) Automobile Liability Insurance for all vehicles owned, leased, or operated by the Contractor.
  - (iii) Workers' Compensation Insurance for all employees of the Contractor.
  - (iv) Professional Liability Insurance for all professional services provided by the Contractor.

**EXHIBIT D  
TO  
STATE'S RIGHT OF ENTRY AGREEMENT**

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Licensee as well as all employees of any subcontractor or agent of Licensee.

**I. Clothing**

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
  - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
  -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### **III. On Track Safety**

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49 CFR 214, Subpart C and Railroad's On-Track Safety Rules. Under 49 CFR 214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

### **IV. Equipment**

A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from the Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49 CFR 213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

**EXHIBIT E**  
**TO**  
**STATE'S RIGHT OF ENTRY AGREEMENT**

**CONTRACTOR'S ENDORSEMENT**

---

A. As a condition to entering upon the Railroad's right-of-way to perform Work pursuant to this agreement, State's contractor, \_\_\_\_\_

\_\_\_\_\_  
*(Name of Contractor)*

whose address is \_\_\_\_\_  
*(Contractor's Mailing Address)*

(hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of the attached Caltrans Right of Entry Agreement that was signed by Union Pacific Railroad Company ("Railroad") and the State of California, Department of Transportation ("State") relating to the Work to be performed in connection with State's Project No. 0800000506 (EA OM940) covering work in San Bernardino County, California and the insurance requirements set forth in **Exhibit C** of the Right of Entry Agreement. The Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of **Exhibit B** to the Right of Entry Agreement does not apply to the Contractor and in no way limits the indemnities set forth in those provisions, to which the Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in Section 2 of the Contract Information Handout Provisions, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage and endorsements required pursuant to Section 2 of the Contract Information Handout, "Railroad Relations and Insurance Requirements", document.

C. All insurance correspondence, binders or originals shall be directed to:

*Union Pacific Railroad Company  
Senior Manager Contracts  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
Folder No. 2702-64*

D. Please note that fiber optic cable may be buried on the Railroad's property. Prior to commencing any work, the Contractor agrees to contact the Railroad's Telecommunications Operation Center as provided in Section 5 of Exhibit B of the Right of Entry Agreement to determine if any fiber optic cable is located on the Railroad's property on or near the location where the work is to be performed. If there is, the Contractor must comply with the terms and conditions of Section 5 of Exhibit B before commencing any work on the Railroad's property.

E. The Contractor agrees to also provide to the Railroad's Manager-Track Maintenance at **[insert phone number]** the advance notice required in Section 1 of Exhibit B of the Right of Entry Agreement prior to working on the Railroad's property in order for the Railroad to coordinate the Contractor's work with the Railroad's operations and to make arrangements for flagging protection (if applicable).

State's Right Of Entry Agreement  
Exhibit E-1

This endorsement shall be completed and sent to the person named in Paragraph C above.

\_\_\_\_\_  
(Name of Contractor)

By \_\_\_\_\_

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

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

# EXHIBIT H

## To Construction & Maintenance Agreement

### Form of Easement Deed

**EASEMENT  
DEED**

District	County	Route	Post mile	Number
08	SBd	215	3.9	22064

hereinafter RAILROAD, grants to the STATE OF CALIFORNIA, Department of Transportation, a public agency, its successors and assigns, hereinafter STATE, a non-exclusive easement for the purpose of constructing, reconstructing, upgrading, replacing, removing, inspecting, maintaining, repairing and operating an overhead bridge and highway for use as a public crossing, along with all necessary supporting columns, footings and appurtenances thereto (collectively, Structure), together with all abutter's rights of access to and from RAILROAD's remaining property to the Structure, being upon, under, over and across that certain real property in the City of Colton, County of San Bernardino, State of California, described as follows:

**See Exhibit A, attached.**

Said public crossing being considered a compatible public use, within the meaning of California Code of Civil Procedure section 1240.510, which shall not unreasonably interfere with RAILROAD's Interstate Transportation obligations, as regulated by the Surface Transportation Board or by any successor agency.

RAILROAD further grants to STATE the non-exclusive right of ingress to and egress from the easement over and across RAILROAD's remaining property, subject to advance notification and coordination with RAILROAD to ensure safety and the compatibility of the RAILROAD's remaining property for such ingress and egress (which coordination by RAILROAD shall not be unreasonably withheld).

RESERVING unto RAILROAD, its successors and assigns, all rights in and to the airspace at an elevation higher than a plane parallel with and 30 feet above the roadway surface of said Structure as originally constructed, provided, that the use of such space shall not interfere with the enjoyment, safety and compatibility of said easement.

ALSO RESERVING unto RAILROAD, its successors and assigns, the general right to use and enjoy the area of land under said Structure hereinabove described. The general right to use and enjoy said land by RAILROAD, its successors and assigns, shall however, be subject to the following limitations and conditions:

1. No use may be made of the area of land within the easement hereinbefore described which would impair the full use and safety of said Structure, or would otherwise interfere with the free flow of traffic thereon or would unreasonably impair the maintenance thereof.
2. No use may be made of the area of land within the easement hereinbefore described for the manufacture or storage of flammable, volatile, explosive or corrosive substances, and such substances shall not be brought onto said land except in such quantities as are normally required for the maintenance operations of occupants of said land and except as may be transported by rail or pipelines. Installation of any pipelines carrying volatile substances shall have the written approval of the STATE as to the safety and compatibility with said easement and such discretion shall not be exercised in a capricious or arbitrary manner. The use of any such substances shall be in conformance with all applicable code requirements.
3. No hazardous or unreasonably objectionable smoke, fumes, vapors, dust or odors shall be permitted, which would adversely affect the use or maintenance of said Structure or the traveling public thereon.
4. No building of combustible construction shall hereafter be constructed on the area of land within the easement hereinbefore described. The STATE shall be given the opportunity to review and approve plans for any construction within said easement area 60 days prior to said construction. No buildings, no permanent structures, and no advertising displays, may be constructed within 8 feet of the undersides nor within 15 feet (measured horizontally) of the sides of said Structure without the express written approval of the STATE. The STATE shall have the discretion to determine whether

Exhibit H-1

such proposed construction will be inimical to or incompatible with the full enjoyment of the public rights in the easement or against the public interest, but such discretion shall not be exercised in a capricious or arbitrary manner.

- No drilling, mining, or exploring for any oil, mineral, natural gas, or other hydrocarbons by whatsoever name known that may be within the area of land through the surface or the upper 100 feet of the subsurface of the area of land within the easement hereinbefore described or otherwise in such manner as to endanger the safety of the Structure.

The RAILROAD, for itself, its successors and assigns, hereby waives any claim for any and all damages to the value of RAILROAD's remaining property contiguous to the easement hereby conveyed by reason of the location, construction or maintenance of said public crossing.

In WITNESS WHEREOF, the RAILROAD has caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
 By \_\_\_\_\_  
 President

By \_\_\_\_\_  
 Secretary

**THIS IS TO CERTIFY, That the State of California, acting by and through the Department of Transportation (pursuant to Government Code Section 27281), hereby accepts for public purposes the real property described in the within deed and consents to the recordation thereof.**  
**IN WITNESS WHEREOF, I have hereunto set my hand**  
 this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
 Director of Transportation

By \_\_\_\_\_  
 Attorney in Fact

State of California }  
 County of \_\_\_\_\_ } ss

**ACKNOWLEDGMENT**

On \_\_\_\_\_ (Date) before me, \_\_\_\_\_ (Name of Notary Public, Title)

personally appeared \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

Above area for official notary seal





**EXHIBIT "A"**

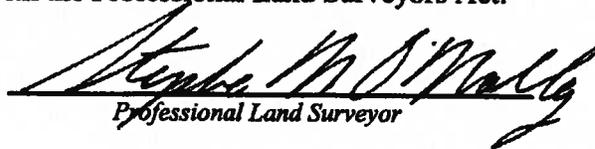
That portion of Lots 8 and 9, Block 64 of Rancho San Bernardino, in the city of Colton, county of San Bernardino, state of California as shown by map recorded in Book 7 of maps at page 2 thereof, in the Office of the County Recorder of said County, described as follows:

**BEGINNING** at the northeast corner of Parcel 5 of Parcel Map No. 7442 as shown by map on file in Book 122 of Parcel Maps at pages 62 through 65, inclusive thereof, in the Office of said County Recorder; thence along the northerly line of said Parcel 5, being also the southerly right-of-way of the Southern Pacific Transportation Company railroad, North 80°28'41" West, 31.65 feet to the easterly line of that certain "Parcel C" as described in an easement deed to the State of California recorded February 27, 1975 in Book 8624, page 795 of Official Records of said County; thence along said easterly line and its northerly prolongation, North 9°20'00" East, 157.58 feet to the northerly right-of-way of said railroad; thence along said northerly right-of-way, South 80°28'41" East, 65.77 feet to a point on the northerly prolongation of the westerly line of Parcel "D" of said easement deed, being a non-tangent curve concave westerly and having a radius of 14,984.00 feet, a radial line to said point bears South 80°38'42" East; thence southerly, along said prolongation and said westerly line, 157.58 feet through a central angle of 0°36'09" to the northerly line of Parcel 4 of said Parcel Map and said southerly right-of-way; thence along said lines, North 80°28'41" West, 33.24 feet to the **POINT OF BEGINNING**.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, Zone 5. Divide distances shown by 0.9999594 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature:

  
Professional Land Surveyor

Date: September 29, 2011



08-SBd-215-PM 3.9-22064 (22064-1)

**Exhibit B**

**Provisions of Prior Rights**

STATE shall be responsible to GRANTOR and to SFPP, L.P., and/or its successors and assigns as the lawful holder of Prior Rights (as defined hereinbefore) for (1) damages caused by any interference with an existing facility maintained pursuant to such Prior Rights and, (2) when conducting excavation, installation or construction activities within ten (10) feet of such an existing facility, for the reasonable cost of any reasonably necessary protection measures taken by SFPP, L.P., and/or its successors and assigns, as a result of or arising out of STATE's use of the easement granted herein (including, without limitation, inspection and monitoring of STATE's activities).

Notwithstanding anything to the contrary in the foregoing, STATE shall not be responsible to SFPP, L.P., and/or its successors and assigns relating to initially locating its facility(ies). In addition, STATE shall not be responsible to SFPP, L.P., and/or its successors and assigns for costs otherwise relating to locating or potholing the holder's facility, or for the cost of protection measures (including, without limitation, inspection and monitoring of STATE's activities), except where STATE is conducting excavation, installation or construction activities within ten (10) feet of a facility owned by SFPP, L.P., and/or its successors and assigns. SFPP, L.P., and/or its successors or assigns, shall be an express third-party beneficiary of this provision in any location where SFPP, L.P., and/or its successors or assigns, owns or operates pipeline facilities pursuant to Prior Rights that are subject to this provision and, accordingly, may enforce this provision directly against STATE.



This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist SANBAG Board Members and partners as they participate in deliberations at SANBAG Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. SANBAG staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
S RTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
TMC	Transportation Management Center
T MEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

# ***San Bernardino Associated Governments***



## **MISSION STATEMENT**

To enhance the quality of life for all residents, San Bernardino Associated Governments (SANBAG) will:

- Improve cooperative regional planning
- Develop an accessible, efficient, multi-modal transportation system
- Strengthen economic development efforts
- Exert leadership in creative problem solving

To successfully accomplish this mission, SANBAG will foster enhanced relationships among all of its stakeholders while adding to the value of local governments.

Approved June 2, 1993  
Reaffirmed March 6, 1996