

•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 Meeting**  
**January 9, 2013**

**\*\*\*\*\*Start Time: 10:00 a.m. (CLOSED SESSION)\*\*\*\*\***  
**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor (The Super Chief)**

**\*\*\*\*\*Convene Regular Meeting at 10:30 a.m.\*\*\*\*\***  
**1<sup>st</sup> Floor Lobby**

**LOCATION**

**San Bernardino Associated Governments**  
**Santa Fe Depot - SANBAG Lobby 1st Floor**  
**1170 W. 3rd Street, San Bernardino, CA**

**Board of Directors**

**President**

Janice Rutherford, Supervisor  
*County of San Bernardino*

**Vice-President**

Mike Leonard, Council Member  
*City of Hesperia*

Cari Thomas, Mayor  
*City of Adelanto*

Curt Emick, Mayor  
*Town of Apple Valley*

Julie McIntyre, Mayor  
*City of Barstow*

Bill Jahn, Mayor  
*City of Big Bear Lake*

Dennis Yates, Mayor  
*City of Chino*

Ed Graham, Vice Mayor  
*City of Chino Hills*

Sarah Zamora, Mayor  
*City of Colton*

Michael Tahan, Council Member  
*City of Fontana*

Walt Stanckiewitz, Mayor  
*City of Grand Terrace*

Larry McCallon, Mayor  
*City of Highland*

Rhodes "Dusty" Rigsby, Mayor  
*City of Loma Linda*

Paul Eaton, Mayor  
*City of Montclair*

Edward Paget, Mayor  
*City of Needles*

Alan Wapner, Council Member  
*City of Ontario*

L. Dennis Michael, Mayor  
*City of Rancho Cucamonga*

Pete Aguilar, Mayor  
*City of Redlands*

*Not Determined*  
*City of Rialto*

Patrick Morris, Mayor  
*City of San Bernardino*

Jim Harris, Council Member  
*City of Twentynine Palms*

Ray Musser, Mayor  
*City of Upland*

Ryan McEachron, Mayor  
*City of Victorville*

Dick Riddell, Mayor  
*City of Yucaipa*

George Huntington, Council Member  
*Town of Yucca Valley*

Robert A. Lovingood, Supervisor  
*County of San Bernardino*

James Ramos, Supervisor  
*County of San Bernardino*

Gary Ovitt, Supervisor  
*County of San Bernardino*

Josie Gonzales, Supervisor  
*County of San Bernardino*

Basem Muallem, Caltrans  
*Ex-Officio Member*

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  
County Congestion Management Agency  
Service Authority for Freeway Emergencies**

**AGENDA**

**Board of Directors  
January 9, 2013**

**\*\*\*10:00 a.m. (CLOSED SESSION)\*\*\*  
1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor (The Super Chief)  
San Bernardino, CA**

**CLOSED SESSION**

**1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Existing litigation pursuant to Government Code Section 54956.9, subdivision (a), with respect to the following matter:

San Bernardino County Flood Control District, and the County of San Bernardino v. San Bernardino Associated Governments, San Bernardino County Transportation Authority, City of Upland, et al., San Diego Superior Court Case No. 37-2008-00079230-CU-CO-CTL.

**2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Existing litigation pursuant to Government Code Section 54956.9, subdivision (a), with respect to the following matters:

<b>SANBAG sbX Parcel #</b>	<b>Case Name and Number</b>
B-239	<u>SANBAG v. Orange Show Road Properties, LLC, et al., San Bernardino County Superior Court Case No. CIVDS 1104962</u>
B-243	<u>SANBAG v. World Oil Marketing Company, San Bernardino County Superior Court Case No. CIVDS 1104963</u>
B-245	<u>SANBAG v. F &amp; C Jara Properties Fourth Limited Partnership, et al., San Bernardino County Superior Court Case No. CIVDS 1104964</u>
C-18/20/22	<u>SANBAG v. Hospitality LLC, et al., San Bernardino County Superior Court Case No. CIVDS 1103202</u>
C-71	<u>SANBAG v. Costco Wholesale Corporation, et al., San Bernardino County Superior Court Case No. CIVDS 1103192</u>

### 3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Agency Negotiators: Mitch Alderman, SANBAG; Karen Starr, Epic Land Solutions; and Rick Rayl & Bradford Kuhn, Nossaman LLP; pursuant to Government Code Section 54956.8.

Properties:

<b>SANBAG DPR Parcel #</b>	<b>APN Number</b>	<b>Property Address</b>	<b>Property Owner</b>
1	0138-231-02, 04, 05, 09 & 10	932-936 West 3rd St., and 308-340 North I St., San Bernardino, CA	HARRAKA, ROBERT & JUDITH ANN FAM TRUST
3/55/56	0138-273-01, 02, & 36	971 W. 3rd St., San Bernardino, CA	HEFFTNER, BRUCE W.
4/7	0138-273-03, & 04	981 W. 3rd St., San Bernardino, CA	HEFFTNER, BRUCE W.
10/11/13/14	0138-273-09 through 13, 16, & 33	254-260 North I St., San Bernardino, CA	BIG Z AUTOWORKS INC./SANBAG
15	0138-273-24	950 West 2nd St., San Bernardino, CA	OTT JAMES E 2010 & BARBARA J
16	0138-273-25	968 West 2nd St., San Bernardino, CA	OTT JAMES E 2010 & BARBARA J
17	0138-273-26, & 27	982 West 2nd St., San Bernardino, CA	KRISTIN NEVILLE, TRUSTEE
18	0138-273-20, 21, & 40	N/A (no situs address)	RIVERSIDE CEMENT COMPANY
20	0138-312-15	961 West 2nd St., San Bernardino, CA	MC HENRY, JAMES; MC HENRY, KATHRYN
23	0138-312-53	939 West 2nd St., San Bernardino, CA	HOAK BROS PLATING
24	0138-312-14	963 West 2nd St., San Bernardino, CA	YANG, TIGER; YANG, SALLY
25	0138-312-55	975-995 West 2nd St., San Bernardino, CA	ASHADI INVESTMENT LLC
26/27	0138-312-16, & 57	958 West Rialto Ave., San Bernardino, CA	LE, TUE; NGUYEN, NIKIE
30	0138-312-39	N/A (no situs address)	SAMPANIS, DAVID; ABBEY, STEPHEN
31	0138-312-51	N/A (no situs address)	MI CASA PROPERTY, LLC
32	0138-312-37	106 North I St., San Bernardino, CA	SEIFERT JAMES W
33	0134-331-23, & 24	101 South I St., San Bernardino, CA	KLR PROPERTY LLC
34/35	0137-043-26	907-921 West Rialto Ave., San Bernardino, CA	VARP INC
36	0136-011-04	111 S. I St., San Bernardino, CA	READ ARTHUR R
37/38	0136-011-03, & 38, 0136-081-08 through 12	131 S. I Street, San Bernardino, CA	DE GORTER, JENNIFER REVOC TR (6-6-01)

<b>SANBAG DPR Parcel #</b>	<b>APN Number</b>	<b>Property Address</b>	<b>Property Owner</b>
39/44	0136-011-31, & 41, 0136- 091-11, & 12	144-164 S. G St., San Bernardino, CA	BYUN, JONG UK; BYUN, BOK SOON
40/41/42/43	0136-011-22, 26, 27, & 28	114-124 S. G St., San Bernardino, CA	FLETCHER TRUST
45/46/47	0136-021-16	123 S. G St., San Bernardino, CA	MANTZOROS, GEORGE V; MANTZOROS, GLORIA
48	0136-021-28	655 W. Rialto Ave., San Bernardino, CA	AFFAITATI LLC
51	0136-101-14	N/A (no situs address)	SOUTHERN CALIFORNIA GAS COMPANY
54	0136-111-01	134 S. E Street, San Bernardino, CA	GONZALEZ, RAMON & IRMA TRUST (11/4/0)
57/58/68	0136-111-23, 24, 25 & 28	N/A (no situs address)	San Bernardino Economic Development Corporation
60/61/62	0138-271-15, 16, & 17	203-229 North K St., & 1056-1068 West 2nd St., San Bernardino, CA	MARTINEZ ANTONIO
63	0138-271-18	N/A (no situs address)	VASQUEZ ANCIRIA
64	0138-271-19	261-265 North K St., San Bernardino, CA	MELVON INVESTMENTS LLC
65	0138-271-20	N/A (no situs address)	MICELI SYLIVA FAMILY
66	0138-271-21	271 North K St., San Bernardino, CA	HOLLY EDWARD L
67	0138-271-01, 02, & 03	1065-1073 West 3rd St., San Bernardino, CA	HERNANDEZ LEONARDO & ELIZABETH
69	0136-171-42	N/A (no situs address)	ARROWHEAD CENTRAL CREDIT UNION

**\*\*CONVENE REGULAR MEETING at 10:30 a.m.\*\***  
**1170 W. 3rd Street, 1<sup>st</sup> Floor Lobby, San Bernardino**

To obtain additional information on any items, please contact the staff person listed under each item. You are encouraged to obtain any clarifying information prior to the meeting to allow the Board to move expeditiously in its deliberations. Additional meeting procedures and agenda explanations are attached to the end of this agenda.

Call to Order 10:30 a.m. by Supervisor Janice Rutherford

- I. Pledge of Allegiance
- II. Attendance
- III. Announcements:
  - Calendar of Events (Pg. 14)
- IV. Agenda Notices/Modifications – Vicki Watson

**1. Possible Conflict of Interest Issues for the Board Meeting of Pg. 15  
January 9, 2013**

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

**Notes/Actions:**

## **Consent Calendar**

Items listed on the Consent Calendar are expected to be routine and non-controversial. These items have been discussed at SANBAG Policy Committee meetings and made available for public review as noted in the agenda. The Consent Calendar will be acted upon as a single motion. Items on the Consent Calendar may be removed for discussion by Board Member Request. Items pulled from the consent calendar will be brought up under Agenda Item 17.

### **Administrative**

2. **Board of Directors Attendance Roster** Pg. 19
3. **November 2012 Procurement Report** Pg. 23  
Receive November 2012 Procurement Report  
**William Stawarski**  
**This item was received by the General Policy Committee on December 12, 2012.**
4. **Final Encumbrances for Fiscal Year 2012/2013** Pg. 25  
Approve final encumbrances in the amount of \$21,934,358, listed in Table 1, to be formally incorporated into San Bernardino Associated Government's 2012/2013 Budget. **William Stawarski**  
**This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.**
5. **SANBAG 2013/2014 Budget Schedule** Pg. 27  
Approve the 2013/2014 Budget Schedule **William Stawarski**  
**This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.**

### **Air Quality/Traveler Services**

6. **Amendment No. 1 to Freeway Service Patrol (FSP) Contract C11213 with Pepe's Towing Services, Inc., for additional work** Pg. 29  
Approve Amendment No. 1 to Contract No. C11213 with Pepe's Towing Services, Inc., for additional work to cover FSP Beat 3 from January 11, 2013 to April 30, 2013. This action will increase the contract amount by \$63,529.00 for a revised not-to-exceed amount of \$623,781.00. This action shall not revise the original scope of work for Beat 6 or contract end date which is December 31, 2014.  
**Duane Baker**  
**This item was reviewed and recommended for approval (7-0-2; Abstained: Ramos and Rutherford) by the General Policy Committee on December 12, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and the amendment.**

**Consent Calendar Continued....**

**Air Quality/Traveler Services (Cont.)**

7. **Amendment No. 8 to Agreement No. 05006 with CASE Systems, Inc., for the extension of Call Box Maintenance Services** Pg. 35

Approve Amendment No. 8 to Agreement No. 05006, between the SAFE and CASE Systems, Inc., for call box maintenance services throughout San Bernardino County, extending the contract term with CASE Systems, Inc., for five months through June 30, 2013, and increasing the contract amount by \$70,000 for a new not-to-exceed amount of \$8,741,250. **Duane Baker**

**This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and the Amendment.**

8. **Budget Amendment for Department of Energy (DOE) Natural Gas Fuel Project** Pg. 41

Approve budget amendment to increase Task No. 102, Air Quality Implementation, in the amount of \$178,110 funded by Measure I 1990-2010 Transportation Management and Environmental Enhancement (TMEE) funds for a new task total of \$3,635,811.00. **Duane Baker**

**This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.**

**Regional/Subregional Planning**

9. **Deferral of local jurisdiction development impact fee adjustments through 2013** Pg. 44

Approve the option of local jurisdiction deferral of increases to their Development Impact Fee (DIF) programs for transportation projects in the SANBAG Development Mitigation Nexus Study through 2013. **Timothy Byrne**

**This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.**

**Project Delivery**

10. **Interstate 215 Segments 1 and 2 in the City of San Bernardino** Pg. 46

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**

**This item was reviewed and recommended for approval (14-0-0) without a quorum of the Board present at the Board of Directors Metro Valley Study Session on December 13, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the contract amendment.**

**Consent Calendar Continued....**

**Project Delivery (Cont.)**

**11. Interstate 10 (I-10)/Tippecanoe Avenue Interchange Construction Project Pg. 51**

1. Approve Amendment No. 3 to Contract No. C09092 with Transystems, Inc. for the project approval and environmental document (PA&ED) phase of work in the amount of \$1,174,879, for a total contract value of \$7,277,590.

2. Approve additional Contingency amount of \$117,488 for a total contingency value of \$676,741, 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 Measure I Valley Freeway Interchange Funds for Task No. 0842 – Interstate 10 Tippecanoe Interchange by \$450,000 for right-of-way. **Garry Cohoe**

**This item was reviewed and recommended for approval (14-0-0) without a quorum of the Board present at the Board Metro Valley Study Session on December 13, 2012. General Counsel and Contracts Manager have approved this item as to form.**

**12. 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. 69**

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**

**This item was reviewed and recommended for approval (15-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on December 13, 2012. SANBAG General Counsel has reviewed this item and the draft agreements.**

**Consent Calendar Continued....**

**Project Delivery (Cont.)**

**13. Right-of-Way Appraisals and Acquisitions for the Interstate 15/Interstate 215(I-15/I-215) Devore Interchange Reconstruction Project** Pg. 218

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**

**This item was reviewed and recommended for approval (15-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on December 13, 2012. This item was also reviewed and recommended for approval at the Mountain/Desert Committee on December 14, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the standard contract.**

**14. Interstate 15 (I-15) La Mesa/Nisqualli Interchange Project** Pg. 223

1. Approve Amendment No. 1 to Contract C11198 with Arcadis-US for Construction Management Services on the I-15 La Mesa/Nisqualli Interchange Project for a \$2,000,000.00 reduction in contract value, excluding contingency, for a new revised not to exceed contract total of \$5,295,000.00 and to reduce the retention from ten (10) percent to \$100,000.00; and

2. Approve Amendment No. 1 to Construction Cooperative Agreement No. C11200 with the City of Victorville for the La Mesa/Nisqualli Interchange to revise the funding plan; and

3. Approve Amendment to the Fiscal Year 2012/2013 budget for Task No. 0888, I-15 La Mesa/Nisqualli Interchange Project, to increase budget for Local Funds provided by the City of Victorville by \$12,398,574.00 and increase Victor Valley Major Local Highway Bond funds by \$251,695.00. **Garry Cohoe**

**This item was reviewed and recommended for approval by the Mountain/Desert Committee on December 14, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and amendments.**

**Consent Calendar Continued....**

**Project Delivery (Cont.)**

**15. Interstate 15 Ranchero Road Interchange Project** Pg. 254

1. Approve Amendment No. 1 to Construction Cooperative Agreement No. C12219 with the City of Hesperia for the Interstate 15 (I-15) Ranchero Road Interchange Project.

2. Authorize the Executive Director or his designee to approve a Purchase Order to pay Southern California Edison (SCE) in the amount invoiced by SCE for Project utility relocation in an amount estimated not to exceed \$2,000,000. **Garry Cohoe**

**This item was reviewed and recommended for approval by the Mountain/Desert Committee on December 14, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and amendment.**

**Transportation Fund Administration**

**16. Surface Transportation Program Rural Apportionment Funds for the County of San Bernardino** Pg. 260

Approve an exception to SANBAG Policy 40001/VS-30: Cost Buy-down for Projects with a Development Share Contribution, and allow the use of \$4.2M Surface Transportation Program funds allocated to the County of San Bernardino for use at their discretion to be regarded as an internal loan of development share funds for the I-10 Cedar Interchange project. **Andrea Zureick**

**This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.**

**Consent Calendar Items Pulled for Discussion**

17. Items pulled from the consent calendar shall be taken under this item in the order they were presented on the calendar.

**DISCUSSION ITEMS**

**Council of Governments**

**18. Proposal for a Countywide Regional Planning Effort** Pg. 262

Receive presentation by Greg Devereaux, San Bernardino County Chief Executive Officer introducing the concept of a Countywide regional planning effort.

**This item was reviewed by the Planning and Development Technical Forum on December 19, 2012.**

Discussion Items Continued.....

Project Delivery

**19. Hearings to Consider Resolutions of Necessity for Parcels for the Laurel Street Grade Separation Project in the City of Colton** Pg. 263

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 0160-242-17) and Reider Enterprises LLC (APN 0160-242-23). **Dennis Saylor**

**This item was reviewed and recommended for approval (15-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on December 13, 2013. SANBAG General Counsel and SANBAG's Right-of-Way Counsel, Woodruf, Spradlin & Smart, have approved this item as to form.**

Administrative Matters

**20. Notice of Appointment to and Vacancies on SANBAG Policy Committees, SCAG Committees and External Agencies** Pg. 291

1) Note Presidential appointment of County Supervisor James Ramos to the SANBAG Commuter Rail and Transit Committee.

2) Note the following vacancies and request Board Members to express their interest in serving to the Board President for the following:

- Metro Gold Line Foothill Extension Construction Authority – Alternate Member
- Metro Gold Line Phase II JPA – Alternate Member
- SCAG Community, Economic and Human Development Committee
- SCAG Energy and Environment Committee
- SCAG Transportation Committee

**Duane Baker**

**This item has not received prior policy or technical advisory committee review.**

**21. Insurance Premium Update** Pg. 301

Receive Insurance Premium Update Report. **William Stawarski**

**This item was received by the General Policy Committee on December 12, 2012.**

Discussion Items Continued....

Administrative Matters (Cont.)

22. Lease of Unit No. 175 at the San Bernardino Santa Fe Depot Pg. 304

That the Board acting as the San Bernardino County Transportation Commission approve Lease Agreement C13088 with Iron Horse Café Inc. in the amount of \$20,980 for Unit No. 175, approximately 714 square feet adjacent to the Main Lobby of the San Bernardino Santa Fe Depot. **Duane Baker**

**This item has no prior policy committee review. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract.**

Transit/Commuter Rail

23. Right-of-Entry Permit to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Doty Brothers Equipment Company (dba) Doty Brothers Construction Company, which allows for construction of improvements authorized in Board approved license agreements C12235 and C12236 with Southern California Edison (SCE). Pg. 324

That the Board acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission:

1) Approve Contract No. R13090 with Doty Brothers Equipment Company doing business as Doty Brothers Construction Company granting a Right-of-Entry onto Redlands Subdivision Mile Post 5.16.

2) Authorize the Executive Director or his designee to execute this right-of-entry permit and any other necessary or convenient documents which are approved as to form by General Counsel and which implement the terms of any current existing railroad right-of-way license agreements. **Mitch Alderman**

**This item has not been reviewed by any other Policy or Technical Advisory Committee. SANBAG General Counsel and Contract Administrator have reviewed and approved this item and right-of-entry permit as to form.**

Project Delivery

24. Interstate 10 (I-10) Riverside Avenue Interchange Landscape Project Pg. 347

Authorize the Executive Director to complete negotiations and execute Contract C13093 "Takeover Agreement" with Financial Pacific Insurance Company upon approval by General Counsel. **Garry Cohoe**

**This item is not scheduled for review by any Policy Committee or Technical Advisory Committee. SANBAG General Counsel has reviewed this item.**

**Comments from Board Members**

Brief Comments from Board of Directors

**Executive Director's Comments**

Brief Comments from the Executive Director

**Public Comment**

Brief Comments by the General Public

**ADJOURNMENT**

**Additional Information**

**Agency Reports/Committee Memberships**

South Coast Air Quality Management Report Pg. 359

Mayor Dennis Yates

Mobile Source Air Pollution Reduction Review Committee

Mayor Larry McCallon (*No Report This Month*)

**SCAG Committees**

Pg. 360

SCAG Regional Council

SCAG Policy Committees

Community, Economic and Human Development

Energy and Environment

Transportation and Communications

**SANBAG Policy Committees**

Pg. 361

**Acronym List**

Pg. 366

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. 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.

**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 SANBAG Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for *each* item when 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. The time limits established in "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.

# Important Dates to Remember...

## January 2013

### SANBAG Meetings – Cancelled:

None

### SANBAG Meetings – Scheduled:

General Policy Committee	Jan. 16	9:00 am	The Super Chief
Board Metro Valley Study Session	Jan. 17	9:00 am	The Super Chief
Commuter Rail & Transit Committee	Jan. 24	10:00 am	The Super Chief
Mountain/Desert Committee	Jan. 25	9:30 am	Town of Apple Valley

### Other Meetings/Events:

I-15/Ranchero Road Interchange Groundbreaking	Jan. 11	10:00 am	Hesperia, intersection of Ranchero & Mariposa, adjacent to I-15 Fwy
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### NOTICE:

**SANBAG Offices will be CLOSED Dec. 26-28, between the Christmas and New Year Holidays. Overall, SANBAG will be closed Sat., Dec. 22 – Tues., Jan. 1. Offices will reopen Wed., Jan. 2.**

**SANBAG Board Meeting will be held one week later than usual, on Wednesday, January 9, 2013:**

- **10:00 am CLOSED SESSION**
- **10:30 am General Public Session**

For additional information, please call SANBAG at (909) 884-8276



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

***Minute Action***

**REVISED AGENDA ITEM 1**

**Date:** January 9, 2013

**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:

**Closed Session #1 – Conference With Legal Counsel – Existing Litigation**

	San Bernardino County Flood Control District, County of San Bernardino, City of Upland, State of California Department of Transportation, Jeff Burum, Colonies Partners, LLC.
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**Closed Session #2 – Conference With Legal Counsel – Existing Litigation**

<u>PARCEL</u>	<u>POTENTIAL CONFLICTS OF INTEREST</u>
B-239	Orange Show Road Properties, LLC. SB Oil, Inc.
B-243	World Oil Marketing Company; (Officers/Directors: Bernard B. Roth, Toshiko G. Chan, Robert S. Roth, Florence Roth, Richard N. Roth, Steven F. Roth)

*Approved  
Board of Directors*

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

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

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

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

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X
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B-245	F & C Jara Properties Fourth Limited Partnership,; The Jara Mexican Food, Inc.,dba Pancho Villa's Restaurant Mexican Grill (Officers/Directors: Francisco J. Jara, Carmen Y. Jara)
C18/20/22	Hospitality LLC; El Torito Restaurants, Inc. (Officers/Directors: Richard Edwin Rivera, Madelaine Louise Morrow, Richard Paul Dutkiewicz)
C-71	Costco Wholesale Corporation (Officers/Directors: Walter Craig Jelinek, Joel Benoliel, Richard A. Galanti)

**Closed Session #3 – Conference With Real Property Negotiators**

<b><u>APN #</u></b>	<b><u>POTENTIAL CONFLICTS OF INTEREST</u></b>
0138-231-02 0138-231-04 0138-231-05 0138-231-09 0138-231-10	Robert & Judith Ann Harraka, Fam Trust
0138-273-01 0138-273-02 0138-273-03 0138-273-04 0138-273-36	Bruce W, Hefftner
0138-273-09 0138-273-10 0138-273-11 0138-273-12 0138-273-13 0138-273-16 0138-273-33	Big Z Autoworks, Inc.
0138-273-24 0138-273-25	James E. Ott & Barbara J. Ott
0138-273-26 0138-273-27	Kristin Neville
0138-273-20 0138-273-21 0138-273-40	Riverside Cement Company
0138-312-15	James McHenry & Kathryn McHenry
0138-312-53	Hoak Bros. Plating
0138-312-14	Tiger Yang & Sally Yang
0138-312-55	Ashadi Investment, LLC
0138-312-16 0138-312-57	Tue Le & Nikie Nguyen
0138-312-39	David Sampanis & Stephen Abbey

0138-312-51	Mi Casa Property, LLC
0138-312-37	James W. Seifert
0134-331-23 0134-331-24	KLR Property, LLC
0137-043-26	Varp, Inc.
0136-011-04	Arthur R. Read
0136-011-03 0136-011-38 0136-081-08 0136-081-09 0136-081-10 0136-081-11 0136-081-12	Jennifer de Gorter
0136-011-31 0136-011-41 0136-091-11 0136-091-12	Jong Uk Byun & Bok Soon Byun
0136-011-22 0136-011-26 0136-011-27 0136-011-28	Fletcher Trust
0136-021-16	George V. Mantzoros & Gloria Mantzoros
0136-021-28	Affaitati, LLC
0136-101-14	Southern California Gas Co.
0136-111-01	Ramon Gonzalez and Irma Gonzalez
0138-271-15 0138-271-16 0138-271-17	Antonio Martinez
0138-271-18	Anciria Vasquez
0138-271-19	Melvon Investments, LLC
0138-271-20	Sylvia Miceli
0138-271-21	Edward L. Holly
0138-271-01 0138-271-02 0138-271-03	Leonardo & Elizabeth Hernandez
0136-171-42	Arrowhead Central Credit Union

**Consent/Discussion Calendar Items**

Item No.	Contract No.	Principals & Agents	Subcontractors
6	C11213-01	Pepe's Towing Inc. <i>Lorenzo Navarro</i>	N/A
7	C05006-08	Case Systems, Inc. <i>Sebastian Gutierrez</i>	N/A
10	C06044-02	Ninyo & Moore <i>Kurt Yoshii</i> <i>Jala Vakili</i>	None
11	C09092-03	Transystems, Inc. <i>Jamal Salman</i>	Stantec David Evans Associates AECOM LDP Design Group LSA
12	C13082	Union Pacific Railroad Company (UPPR) <i>James P. Gade</i>	None
12	C13081	Union Pacific Railroad Company (UPPR) <i>James P. Gade</i>	None
13	<u>APN No:</u> 0348-132-17 0349-174-07	<u>Property Owners:</u> Ronald Kenaston Atchison, Topeka and Santa Fe Railroad	None
14	C11198-01	Arcadis-US, Inc. Craig Halvorson	Southstar Engineering & Consulting, Inc. Simon Wong Engineering BetKon, Inc. Twining, Inc. Mayer Surveying, Inc. Lynn Capouya, Inc. Meadows Consulting
19	<u>APN No:</u> 0160-242-17 0160-242-23	<u>Property Owners:</u> Burchco LLC Reider Enterprises LLC	None
22	C13088	Iron Horse Café, Inc. <i>Lori Renee Reid-Denham</i> <i>Barbara Collins</i> <i>Shelly Maloney</i>	N/A
23	R13090	Doty Bros. Equipment Co. <i>Chris Christ, President</i>	

**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.

**BOARD OF DIRECTORS ATTENDANCE RECORD - 2012**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Gary Ovit</b> Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	
<b>Brad Mitzelfelt</b> Board of Supervisors	X	X		X	X		X	X			X	
<b>James Ramos</b> Board of Supervisors												X
<b>Janice Rutherford</b> Board of Supervisors	X	X	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		X
<b>Neil Derry</b> Board of Supervisors	Self-Suspension as of 5/3/2011	X	X	X	X		X					
<b>Robert A. Lovingood</b> Board of Supervisors												X
<b>Cari Thomas</b> City of Adelanto	X	X	X	X	X	X	X	X	X	X	X	X
<b>Rick Roelle</b> Town of Apple Valley	*	X	X	X	X		X	X	X	X	*	*
<b>Julie McIntyre</b> City of Barstow	X	X	X		X		X	X	X	X	X	X
<b>Bill Jahn</b> City of Big Bear Lake	X	X	X	X	X			X		X		X
<b>Dennis Yates</b> City of Chino	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	X	X
<b>Sarah Zamora</b> City of Colton	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	X
<b>Walt Stanckiewicz</b> City of Grand Terrace	X	X	X	X	X	X			X	X	X	X
<b>Mike Leonard</b> City of Hesperia	X	X	X	X	X	X	X	X		X	X	X

X = member attended meeting. \* = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.



**BOARD OF DIRECTORS ATTENDANCE RECORD - 2011**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Special Nov 10 Mtg.	Special Nov 16 Mtg.	Dec
<b>Gary Ovitt</b> Board of Supervisors	X		X	X		X	X	X	X					X
<b>Brad Mitzelfelt</b> Board of Supervisors	X	X	X	X	X	X	X	X		X	X		X	X
<b>Janice Rutherford</b> Board of Supervisors	X	X	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	X		X
<b>Neil Derry</b> Board of Supervisors	X	X	X	X	Self-Suspension as of 5/3/2011									
<b>Cari Thomas</b> City of Adelanto	X	X	X	X	X	X		X	X	X	X			X
<b>Rick Roelle</b> Town of Apple Valley	X	X	X	X	X	X	X	X	X	*	X		X	X
<b>Julie McIntyre</b> City of Barstow	X	X	X			X		X	X		X		X	X
<b>Bill Jahn</b> City of Big Bear Lake	X	X	X	X	X	X	X		X	X	X		X	X
<b>Dennis Yates</b> City of Chino	X	X	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	X	X	
<b>David Zamora</b> City of Colton	X	X	X	X	X	X	X	*	X	X	X	X	X	X
<b>Sarah Zamora</b> City of Colton	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>John Roberts</b> City of Fontana	X	X	X	X	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		*	X
<b>Walt Stanckiewicz</b> City of Grand Terrace	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Mike Leonard</b> City of Hesperia	X		X	X	X	X	X	X	*	*	X	X	X	
<b>Larry McCallon</b> City of Highland	X	X	X	X	X	X	X	X	X	X	X	X	X	X

X = member attended meeting. \* = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.  
brdatt11

**BOARD OF DIRECTORS ATTENDANCE RECORD - 2011**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Special Nov 10 Mtg.	Special Nov 16 Mtg.	Dec
<b>Rhodes 'Dusty' Rigby</b> City of Loma Linda	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Paul Eaton</b> City of Montclair	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Edward Paget</b> City of Needles	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Alan Wapner</b> City of Ontario	X	X	X	X	X	X	X	X	*	X	X	*	X	X
<b>Diane Williams</b> City of Rancho Cucamonga	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>L. Dennis Michael</b> City of Rancho Cucamonga	X	X	X	*	X	X	X	X	X	X	X	X	X	X
<b>Jon Harrison</b> City of Redlands	X	*	X	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	X	X	X	X
<b>Ed Scott</b> City of Rialto	X	X	*	X	X	X	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	X	X	X
<b>Jim Harris</b> City of Twentynine Palms	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>John Pomierski</b> City of Upland	X	X	X	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	X	X	*	X	X
<b>Ryan McEachron</b> City of Victorville	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Dick Riddell</b> City of Yucaipa	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>George Huntington</b> Town of Yuca Valley	X	X	X	X	X	*	X	X	X	X	X	X	X	X
<b>Ray Wolfe</b> Ex-Official Member	X	X	Basem Muallem	Basem Muallem	X	X	X	Basem Muallem	X	Basem Muallem	X	X	X	Basem Muallem

X = member attended meeting. \* = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.  
brdatt11 Page 2 of 2



- 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:** January 9, 2013

**Subject:** November 2012 Procurement Report

**Recommendation:**\* Receive November 2012 Procurement Report.

**Background:** The Board of Directors adopted the Contracting and Procurement Policy (Policy No. 11000) on January 3, 1997, and approved the last revision on November 7, 2012. The Executive Director, or designee, is authorized to approve Purchase Orders up to an amount of \$50,000. All procurements for supplies and services approved by the Executive Director, or designee, in excess of \$5,000 shall be routinely reported to the General Policy Committee and to the Board of Directors.

Attached are the purchase orders in excess of \$5,000 to be reported to the General Policy Committee for the month of November 2012.

**Financial Impact:** This item imposes no impact on the fiscal year 2012/2013 budget. Presentation of the monthly procurement report will demonstrate compliance with the Contracting and Procurement Policy (Policy No. 11000).

**Reviewed By:** This item was received by the General Policy Committee on December 12, 2012.

**Responsible Staff:** William Stawarski, Chief Financial Officer

\*

*Approved  
Board of Directors*

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

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

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

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

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X
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Check all that apply.  
BRD1301d-ws

### November 2012 Report of Purchase Orders

PO No.	PO Issue Date	Vendor	Purpose	Amount
4000922	10/09/12	Xerox	Rental cost for copier WC7775P.	\$5,302.08
4000923	10/09/12	Xerox	Rental cost for copier D110CP.	\$20,321.40
4000935	11/06/12	County of San Bernardino, Information Services	San Bernardino County is creator of the street centerline data, and grants access to the rest of the SANBAG jurisdictions in the County. For the past five (5) years, the County has provided SANBAG with yearly aerial photo imagery updates at a fraction of the cost of outside vendors. Also, the County created the street centerline data.	\$18,015.00
4000938	11/21/12	Lewis Brisbois Bisgaard & Smith.	Lewis Brisbois Bisgaard & Smith was selected from SANBAG's insurance carrier list of outside counsel. It was the only local firm and has a reputation be a good, experienced defense law firm. SANBAG is limited to the insurance carrier's list since the carrier selects the defense cost over attorney's fees.	\$30,950.00
4000936	11/21/12	Environmental Systems Research (ESRI)	ESRI remains the only real solution for GIS software for government and continues to provide solid support and maintenance for GIS software. SANBAG's entire GIS system is based on ESRI software for nearly 20 years. Currently, no other qualified firm exists for a new GIS system meeting SANBAG requirements.	\$12,276.00
4000891	11/29/12	Vavrinek, Trine, & Day (VTD) & Co, CPAs	Due to extra hour's required and additional amount of work to resolve various auditing/accounting issues, the purchase order is revised from \$35,000 to \$50,000.	\$50,000.00
			<b>*Note: Sole Source justification is noted in the Purpose statement, if applicable.</b>	
			<b>Total</b>	<b>\$136,864.48</b>



- 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:** January 9, 2013

**Subject:** Final Encumbrances for Fiscal Year 2012/2013

**Recommendation:\*** Approve final encumbrances in the amount of \$21,934,358, listed in Table 1, to be formally incorporated into San Bernardino Associated Government's 2012/2013 Budget.

**Background:** San Bernardino Associated Governments (SANBAG's) Budget for Fiscal Year (FY) 2012/2013 for new activity was adopted by the Board of Directors on June 6, 2012. The encumbrances (funding related to outstanding encumbrances for goods or services from the previous Fiscal Years) are presented for approval to be formally incorporated into SANBAG's FY 2012/ 2013 Budget.

The following attachment provides a summary of task activities, by fund that will have an encumbrance carried over and added to the previously approved budget.

**Financial Impact:** Encumbrances totaling \$21,934,358 (Table 1) will be formally incorporated into SANBAG's FY 2012/2013 Budget.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.

**Responsible Staff:** William Stawarski, Chief Financial Office

\*

*Approved*  
 Board of Directors

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

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

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

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

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

TABLE 1

Fund	Task	Amount	Fund Total
1020 MSI Valley Administration	0373 Fed/State Fund Administration	34,160.00	34,160.00
1035 Local Transportation Fund-Planning	0309 General Transit	1,436.73	
	0352 General Commuter Rail	187.24	1,623.97
1040 Local Transportation Fund-Rail	0377 Commuter Rail Operation Expenses	18,312.29	18,312.29
1080 Rail Assets	0379 Commuter Rail Capital Expenses	13,306.00	13,306.00
2520 Regional Improvement Program	0882 North Milliken Avenue Grade Separation	5,036,560.11	5,036,560.11
4110 MSI Valley Fund-Freeway Projects	0815 Measure I Program Management	2,682.11	2,682.11
4120 MSI Valley Fund-Freeway Interchange	0815 Measure I Program Management	6,554.08	6,554.08
4130 MSI Valley Fund-Major Streets	0815 Measure I Program Management	28,012.40	
	0874 Palm Avenue Grade Separation	5,000.00	
	0515 Measure I Apportionment & Allocation	4,779,610.85	
	0610 Measure I Project Management	655,517.15	5,468,140.40
4710 MSI Cajon Pass	0880 I-15/I-215 Devore Interchange	14,084.76	14,084.76
4901 MSI 1990-Major Projects	0815 Measure I Program Management	25,000.00	
	0817 SR-60 Sound Wall	16,321.06	
	0839 I-215 Bi-County HOV Gap Closure Project	1,387.55	
	0609 Strategic Planning/Delivery Planning	7,760.00	
	0615 Measure I Local Stimulus	8,110,653.00	8,161,121.61
4904 MSI 1990-Commuter Rail	0379 Commuter Rail Capital Expenses	43,940.54	43,940.54
4907 MSI 1990-TMEE	0406 Rideshare Management	6,443.07	6,443.07
6010 Local Capital Projects	0309 General Transit	5,896.42	
	0882 North Milliken Avenue Grade Separation	2,974,553.00	
	0888 I-15 La Mesa/Nisqualli Interchange	25,000.00	3,005,449.42
6310 Victor Valley Major Local Highway	0888 I-15 La Mesa/Nisqualli Interchange	25,000.00	25,000.00
7110 Indirect Cost Allocation	0105 Indirect Project Management	34,625.25	96,979.74
	0120 Indirect General	578.54	
	0130 Indirect Management Services	61,775.95	
<b>Total</b>		<b>21,934,358.10</b>	<b>21,934,358.10</b>



- 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:** January 9, 2013

**Subject:** SANBAG 2013/2014 Budget Schedule

**Recommendation:**\* Approve the 2013/2014 Budget Schedule

**Background:** The preparation of the Fiscal Year 2013/2014 budget requires a schedule for development, consideration and adoption of the final budget appropriations.

The General Policy Committee is primarily responsible for policy input for the development and review of the budget. Other policy committees are also scheduled to consider proposed tasks under their review.

A full Board of Directors Budget Workshop will be scheduled in conjunction with the May 2013 General Policy Committee meeting for consideration of the proposed budget. Final budget adoption for Fiscal Year 2013/2014 is scheduled for the June Board of Directors meeting.

**Financial Impact:** This item has no immediate budgetary impact.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.

**Responsible Staff:** William Stawarski, Chief Financial Officer

\*

Approved  
 Board of Directors

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

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

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

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

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X
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Check all that apply.  
 BRD1301b-ws

## **SANBAG Fiscal Year 2013/2014 Budget Schedule**

<b><u>DATE</u></b>	<b><u>ACTIVITY</u></b>
December 12, 2012	General Policy Committee Review and Discussion of 2013/2014 Budget Schedule
January 9, 2013	Board Approval of 2013/2014 Budget Schedule
March 13, 2013	General Policy Committee Review of Tasks
March 14, 2013	Metro Valley Study Session Review of Tasks
March 14, 2013	Commuter Rail & Transit Committee Review of Tasks
March 15, 2013	Mountain/Desert Committee Review of Tasks
April 10, 2013	General Policy Committee Program Review
April 11, 2013	Metro Valley Study Session Further Review of Tasks if Required
April 18, 2013	Commuter Rail & Transit Committee Further Review of Tasks if Required
April 19, 2013	Mountain/Desert Committee Further Review of Tasks if Required
May 1, 2013	Board of Directors Presentation of the Proposed Budget
May 8, 2013	Board of Directors Budget Workshop in Conjunction with General Policy Committee Meeting
June 5, 2013	Board of Directors Adoption of the SANBAG Fiscal Year 2013/2014 Budget



- 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:** January 9, 2013

**Subject:** Amendment No. 1 to Freeway Service Patrol (FSP) Contract C11213 with Pepe's Towing Services, Inc., for additional work.

**Recommendation:** Approve Amendment No. 1 to Contract No. C11213 with Pepe's Towing Services, Inc., for additional work to cover FSP Beat 3 from January 11, 2013 to April 30, 2013. This action will increase the contract amount by \$63,529.00 for a revised not-to-exceed amount of \$623,781.00. This action shall not revise the original scope of work for Beat 6 or contract end date which is December 31, 2014.

**Background:** In September 2012, it was determined that the Contractor for Beat #3 would not have the ability to continue services per their contract which was to end on April 30, 2013. The determination was made that the Contractor with the Beat closest to Beat 3 would be offered the work. Pepe's Towing has the closest Beat and were offered the work. An emergency purchase order was developed and signed by Pepe's Towing at the end of October to provide emergency coverage for Beat 3 until a contract amendment could be prepared and to avoid FSP service interruption. In addition, Pepe's Towing has agreed to provide the FSP services at the same hourly rate as the previous Contractor which is \$50.50 per hour. Pepe's Towing has agreed to continue to provide Beat 3 FSP coverage at this rate until the contract expires on April 30, 2013, at which time a new contractor will have been selected after a competitive RFP selection process.

\*

Approved  
Board of Directors

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

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

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

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

COG		CTC	X	CTA		SAFE	X	CMA	X
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BRD1301a-jh

[http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C11213\\_01.doc](http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C11213_01.doc)

Pepe's Towing has provided excellent service to the FSP Program throughout the past six years as they have assisted stranded motorists quickly, professionally and safely. In addition to their excellent service, they are performing well within their contract budgets.

Staff recommends that the Board approve Amendment No. 1 to Contract C11213 with Pepe's Towing Services, Inc., for additional work to cover Beat 3 until April 30, 2013. The original contract C11213 was created to cover Pepe's services for FSP Beat 6. Staff is recommending that this contract be amended to include this short period of extra work to cover Beat 3. The original contract end date will remain at December 31, 2014.

**Financial Impact:** This item is consistent with the adopted Fiscal Year (FY) 2012/2013 budget, totaling \$63,529.00. This action will increase the contract amount by \$63,529.00 for a revised not-to-exceed amount of \$623,781.00. The source of funds is a combination of State FSP funds and Department of Motor Vehicles funds – Task Number 704.

**Reviewed By:** This item was reviewed and recommended for approval (7-0-2; Abstained: Ramos and Rutherford) by the General Policy Committee on December 12, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and the amendment.

**Responsible Staff:** Duane A. Baker, Director of Management Services

# CONTRACT SUMMARY SHEET

Contract No. C 11213 Amendment No. 1

By and Between

Pepe's Towing Services, Inc. and San Bernardino Associated Governments

Contract Description Freeway Service Patrol Services along Beat 6 and additional temporary work coverage for Beat 3.

**Board of Director's Meeting Date:** 1/9/2013  
**Overview of BOD Action:** Approve amendment 1 for C11213 with Pepe's Towing Services, Inc. to provide additional work to cover FSP Beat 3.

Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW					
Original Contract Amount	\$	560,252	Original Contingency Amount	\$	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	560,252	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$	63,529	Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$	623,781	TOTAL CONTINGENCY VALUE	\$	
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>				\$	623,781

Contract Start Date 1/2/2012	Current Contract Expiration Date 12/31/2014	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

**FINANCIAL INFORMATION**

Budget authority for this contract currently exists in Task No. 704.  
 A Budget Amendment is required.

How are we funding current FY? 80% State Freeway Service Patrol funds 20% Department of motor vehicle funds.

Federal Funds  State Funds  Local Funds  TDA Funds  Measure I Funds

Provide Brief Overview of the **Overall Funding** for the duration of the Contract:  
 80% will be funded by State FSP funds and 20% will be matched by local funds.

Payable  Receivable

**CONTRACT MANAGEMENT INFORMATION**

Check all applicable boxes:

Retention? If yes, indicate % \_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_ %

JENNY HERRERA  
Project Manager (Print Name)

DUANE A. SARER  
Task Manager (Print Name)

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

Jeffery Hill  
Contract Administrator (Print Name)

W. S. W. M. S. K. I.  
Chief Financial Officer (Print Name)

[Signature] 12/5/12  
Signature Date

[Signature] 12-5-12  
Signature Date

[Signature] 12/5/12  
Signature Date

[Signature] 12/5/12  
Signature Date

**Amendment No. 1 to Contract No. C11213**

**By and Between**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**And**

**PEPE'S TOWING SERVICES, INC.**

**For**

**FREEWAY SERVICE PATROL FOR BEAT #3  
WITHIN SAN BERNARDINO COUNTY**

This Amendment No. 1 ("Amendment") to Contract for Freeway Service Patrol for Beat #3 is made and entered into on the Effective Date by and between San Bernardino Associated Governments ("SANBAG") and Pepe's Towing Service's, Inc. ("Contractor").

A. SANBAG and CONTRACTOR are parties to Contract No. C11213 effective October 5, 2011 (the "Contract"), wherein SANBAG engaged CONTRACTOR to provide freeway service patrol services along Beat #6 within San Bernardino County ("SERVICES"); and

B. SANBAG and CONTRACTOR desire to amend the Contract to reflect SANBAG's exercise its option to include additional work from the term January 11, 2013 through April 30, 2013. The service will be provided along Beat #3 which goes from Sierra Avenue to Waterman Avenue. This will increase the Contract amount by \$63,529 to compensate CONTRACTOR for performing the additional Services, as allowed for in Section 4.10 of the CONTRACT.

4.10 At any time during the term of this Contract, COMMISSION may request CONTRACTOR to perform Extra Work. "Extra Work" shall mean any work which is determined by COMMISSION to be necessary for proper completion of the Services, but which the parties did not reasonable anticipate would be necessary at the time of the execution of this Contract and was not included in the Scope of Work. Extra Work shall be reimbursed at the same hourly rate as identified in Exhibit "A". Contractor shall not perform, nor be compensated for Extra Work without obtaining authorization in the form of a written Extra Work Order issued by COMMISSION'S representative. For instance, Construction FSP services as it relates to construction activity and projects can be considered Extra Work. In the event an Extra Work Order is not issued and signed by COMMISSION'S representative, CONTRACTOR shall not provide such Extra Work. However, no compensation or reimbursement for Extra Work shall be paid if it is not authorized by COMMISSION and if the cumulative total of such Extra Work under the Contract exceeds \$25,000. All Extra Work in a cumulative total in excess of \$25,000 must be approved in advance by amendment to this contract.

NOW THEREFORE, SANBAG and CONTRACTOR agree to amend the Contract as follows:

1. SECTION 3.2 Price. The first sentence of this paragraph is amended to read as follows: The total Not-To-Exceed or (Firm Fixed) amount is Six Hundred Twenty-Three Thousand, Seven Hundred and Eighty One Dollars and no cents. (\$623,781). CONTRACTOR'S fee for services is included in the total contract cost and shall be a specific rate of compensation contract, as agreed upon, and noted in Attachment "B", Compensation and Payment, Price Summary Sheet, and the Detailed Itemized Beat Cost Schedule. Services to be provided under this Contract are to be performed as set forth in Attachment "A", which includes Scope of Services which is incorporated herein by this reference.
2. Attachment B-1 is added to the Contract to show compensation and payment for Beat #3 for the period needed. Which is attached to this Amendment and incorporated herein by this reference.
4. All other provisions of the Contract shall remain in full force and effect and are incorporated herein by this reference.
5. The Recitals above are true and correct and are incorporated into and made a part of this Amendment.
6. The Effective Date of this Amendment No. 1 is the date this Amendment is executed by SANBAG.

**PEPE'S TOWING SERVICES, INC.**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

By: \_\_\_\_\_  
Manuel Acosta  
President

By: \_\_\_\_\_  
Janice Rutherford  
SANBAG President

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

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

APPROVED AS TO FORM:

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

CONCURRENCE:

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

**Attachment "B-1"**

**Compensation and Payment**

**Overview Contract No. 11213 with Pepe's Towing Services, Inc. for Beat 3**

**Term 1/11/2013-4/30/2013**

<b>Hourly Costs (per truck)</b>	<b>No. of Hours</b>	<b>7% More Hours</b>	<b>Total Hours</b>	<b>Cost Per Truck</b>	<b>Total Costs</b>
Beat 6 – 3 year contract total (1/2/12-12/31/14)	5,236	366.52	5,602.52	\$280,126.00	\$560,252.00
Hourly rate remains at \$50.00/hour for Beat 6					
<b>Add on Beat 3 below:</b>					
FY 2012/2013 (1/11/2013-4/30/2013)	588	41	629	\$31,764.50	\$63,529.00
<b>Contract Total:</b>	<b>5824</b>	<b>407.52</b>	<b>6,231.52</b>	<b>\$311,890.50</b>	<b>\$623,781.00</b>

Average Hours Per Truck Per Beat                      588  
**Hourly Rate for Contract Term (Amendment 1)**  
**Beat #3**

**\$50.50**

Overtime Rate (In 1 minute increments): \$0.84

Non- Penalized Down time rate  
(in 1 minute increments): \$0.84

Penalized Down time rate  
(in 1 minute increments): \$2.52

Note: Two primary FSP Trucks are required



- 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:** January 9, 2013

**Subject:** Amendment No. 8 to Agreement No. 05006 with CASE Systems, Inc., for the extension of Call Box Maintenance Services

**Recommendation:** Approve Amendment No. 8 to Agreement No. 05006, between the SAFE and CASE Systems, Inc., for call box maintenance services throughout San Bernardino County, extending the contract term with CASE Systems, Inc., for five months through June 30, 2013, and increasing the contract amount by \$70,000 for a new not-to-exceed amount of \$8,741,250.

**Background:** The San Bernardino County Service Authority for Freeway Emergencies (SAFE) operates approximately 1,200 call boxes on freeways and highways throughout the County. Each call box is a battery-powered, solar-charged roadside terminal with a microprocessor and a built-in digital cellular telephone. The network has assisted more than 1.4 million callers since inception.

The last procurement process for a maintenance provider was conducted in the summer of 2004. A Request for Proposal (RFP) was released to upgrade the system from an analog to a digital cellular signal, to provide improvements anticipated to bring the system into compliance with the Americans with Disabilities Act, and to provide routine corrective and preventative maintenance.

As a result of this RFP process, in November of 2004, Comarco Wireless Technologies (CWT) was selected as the call box maintenance provider and

*Approved*  
*Board of Directors*

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

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

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

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

COG	<input type="checkbox"/>	CTC	<input type="checkbox"/>	CTA	<input type="checkbox"/>	SAFE	<input checked="" type="checkbox"/>	CMA	<input type="checkbox"/>
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Check all that apply.

BRD1301a-nm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C05006-08.docx>

awarded Agreement No. 05-006 through June 30, 2010. In July 2008, the SAFE Board approved CWT's assignment to CASE Systems, Incorporated (CASE), and CASE's assumption of CWT's rights and obligations under Agreement No. 05-006. In May 2010, the SAFE Board approved a twelve-month extension of the CASE agreement term to June 30, 2011, and in June 2011, approved a six-month extension of the CASE agreement term to December 31, 2011. Subsequently, an additional three-month extension was approved on November 2, 2011, taking the term through March 31, 2012. On April 4, 2012, the Board approved another extension to January 31, 2013. As staff continues to review, research and resolve a number of State related items, and in order to have our agreement with CASE end on the same date as Riverside County Transportation Commission's (RCTC) contract for similar services with CASE, staff is requesting an additional five months extension of the agreement to June 30, 2013.

In order to maximize resources, RCTC and the SAFE decided to issue a joint RFP for call box maintenance services, with RCTC taking the lead. The procurement for call box maintenance will be conducted by RCTC. RCTC plans to release a competitive-based call box maintenance RFP during the first or second month of the upcoming year for RCTC and SANBAG. SANBAG will be part of the Evaluation Team. While RCTC and SANBAG continue to work out the final details of the outstanding issues with the State, RCTC has extended their contract with CASE through the end of the fiscal year, June 30, 2013. Once all of the issues have been resolved, a joint RFP for call box maintenance services is planned to be released with RCTC taking the lead. Subsequently, staff will return to the SAFE Board for approval of a contract with a call box maintenance vendor.

Though there are several one-year options available to SANBAG, under the current Agreement, staff is requesting only an additional five-month extension to the current CASE Agreement No. 05006, which will provide staff the required time needed to release a competitive based Request for Proposal (RFP) for Call Box Maintenance Services. This also will allow for continued on-going maintenance of the San Bernardino County Call Box Program.

**Financial Impact:** This item is consistent with the 2012/2013 adopted budget under Task 0702.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and the Amendment.

**Responsible Staff:** Duane A. Baker, Director of Management Services



## CONTRACT SUMMARY SHEET

Contract No. C 05006 Amendment No. 08

By and Between

CASE Systems, Inc. and SANBAG

Contract Description Extension of Agreement for call box maintenance services

**Board of Director's Meeting Date:** 1/9/13  
**Overview of BOD Action:** Approve Amendment No. 8 to Agreement No. 05006 for call box maintenance services to extend the expiration date of the contract to 6/30/13 and increase the contract amount by \$70,000.  
**Is this a Sole-Source procurement?**  Yes  No

CONTRACT OVERVIEW			
Original Contract Amount	\$	5,785,129	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	8,671,250	Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$	70,000	Contingency Amendment
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>8,741,250</b>	<b>TOTAL CONTINGENCY VALUE</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ 8,741,250</b>

Contract Start Date 11/3/04	Current Contract Expiration Date 1/31/13	Revised Contract Expiration Date 6/30/13
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Has the contract term been amended?  No  Yes - please explain.  
 Extension for services while RFP is drafted and sent out.

Budget authority for this contract currently exists in Task No. 0702.  
 A Budget Amendment is required.  
 How are we funding current FY? Through the California DMV \$1 per vehicle annual fee.

<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
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*Provide Brief Overview of the Overall Funding for the duration of the Contract:*  
 The California Department of Motor Vehicles collects the annual \$1 vehicle registration fee from vehicles registered in San Bernardino County for use in maintaining and operating the Call Box program.  
 Payable  Receivable

**CONTRACT MANAGEMENT INFORMATION**

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

Nikki Miller  
Project Manager (Print Name)

LUANE A. BAKER  
Task Manager (Print Name)

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

Jeffery Hill  
Contract Administrator (Print Name)

W. S. [Signature]  
Chief Financial Officer (Print Name)

Nikki Miller 12/4/12  
Signature Date

Debra G. Baker 12-7-12  
Signature Date

Andrea Zureick 12/4/12  
Signature Date

[Signature] 12/4/12  
Signature Date

[Signature] 12/5/12  
Signature Date

**AMENDMENT NO. 8 TO  
AGREEMENT NO. 05-006**

**BY AND BETWEEN**

**SAN BERNARDINO COUNTY SERVICE AUTHORITY FOR FREEWAY  
EMERGENCIES**

**AND**

**CASE SYSTEMS, INC.**

**FOR**

**CALL BOX MAINTENANCE SERVICES**

THIS AMENDMENT NO. 8 is effective on the "Effective Date" defined herein, by and between the San Bernardino County Service Authority For Freeway Emergencies ("SAFE") and Case Systems, Inc. ("CONTRACTOR").

**RECITALS:**

WHEREAS, SAFE and CONTRACTOR's predecessor-in-interest, entered into a Agreement No. C05-006 effective November 3, 2004, to install, repair and maintain the motorist aid call box system on freeways and state highways within the boundaries of San Bernardino County and upgrade the system to a digital cellular signal, which agreement is hereinafter referred to as the "Agreement";

WHEREAS, SAFE consented to the assignment to and assumption by CONTRACTOR of all of CONTRACTOR's predecessor-in-interest's rights and obligations under the Agreement on July 2, 2008;

WHEREAS, the Agreement has been amended by seven amendments, including the most recent amendment number 7 extending the Agreement term to January 31, 2013; and

WHEREAS, SAFE and CONTRACTOR desire to extend the Agreement term to June 30, 2013.

NOW THEREFORE, SAFE and CONTRACTOR agree to amend the Agreement as follows:

1. Delete the first sentence of Section I, Scope of Services, Paragraph 2 and replace it with the following:  
  
"2. Term. Upon SAFE Board approval and unless earlier terminated as provided herein, the term of this Contract shall be from November 3, 2004 through June 30, 2013, unless earlier terminated as provided herein."
2. Delete the first sentence of Section III, Fee and Payments, Paragraph 1 and replace it with the following:  
  
"1. Payment For Services. The total amount of this contract shall not exceed eight million, seven hundred forty-one thousand, two hundred fifty and no cents (\$8,741,250.00) and consists of the following:"
3. Delete the first sentence of Section III, Fee and Payments, Paragraph 1, Subparagraph B and replace it with the following:  
  
"B. The total compensation payable monthly for the provision of preventative, corrective and general maintenance of the call box system, during the term of the contract as outlined in Section I, shall not exceed three million, four hundred three thousand, eight hundred eight-four dollars and no cents (\$3,403,884.00) and will be based on a flat rate fee as outlined in Attachment "C"."
4. The Recitals to this Amendment are true and correct and are incorporated into this Amendment.
5. All other terms and conditions of the Agreement, which are not altered by this Amendment No. 8, shall remain in full force and effect and are incorporated herein by this reference.
6. The "Effective Date" is defined as the date SAFE executes this Amendment.

-----SIGNATURES ON THE FOLLOWING PAGE-----

**IN WITNESS WHEREOF**, the authorized parties have executed below this Amendment No. 8 to the Agreement.

**SAN BERNARDINO COUNTY SAFE**

**CASE SYSTEMS, INC.**

By: \_\_\_\_\_  
Janice Rutherford, Board President

By: \_\_\_\_\_  
Sebastian Gutierrez, Chief Executive Officer

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

**APPROVED AS TO FORM FOR SAFE:**

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: 8

**Date:** January 9, 2013

**Subject:** Budget Amendment for Department of Energy (DOE) Natural Gas Fuel Project

**Recommendation:**\* Approve budget amendment to increase Task No. 102, Air Quality Implementation, in the amount of \$178,110 funded by Measure I 1990-2010 Transportation Management and Environmental Enhancement (TMEE) funds for a new task total of \$3,635,811.00

**Background:** On August 26, 2009, Vice President Biden, along with DOE Secretary Chu, announced that SANBAG was successful in receiving funding from the Clean Cities' Fiscal Year (FY) 09 Petroleum Reduction Technologies Projects for the Transportation Sector. The following week, the California Energy Commission (CEC) announced that SANBAG was a recipient of an Assembly Bill 118 grant award, created and designed specifically to provide match funding to the DOE Clean Cities grant. These two grants totaling \$19.2 million would be used for the transition of more than 200 tractor/trailer vehicles to natural gas, as well as the construction of two natural gas fueling stations (open to the public), improvements to maintenance facilities and training.

Project partners who are sub recipients to the grant funding include Ryder Systems, Inc., the fleet partner who has contributed approximately \$17 Million dollars toward the project and the Southern California Association of Governments (acting as the Southern California Clean Cities Coalition) and

*Approved*  
*Board of Directors*

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

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

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

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

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

Gladstein and Associates, which provided outreach and marketing, as well as a Natural Gas Systems specialist required for the project.

At the January 6, 2010 Board meeting, SANBAG approved the execution of an agreement with the DOE and as a result, the DOE funds have been obligated by the federal government.

Since that time, the project has been progressing well with all 202 trucks purchased. More than 170 of the 202 LNG/CNG trucks have been leased to customers and have replaced thousands of gallons of annual diesel use with domestically produced low-carbon Natural Gas Fuel. The trucks have also reduced thousands of pounds of greenhouse gas (GHG) emissions per year and eliminated hundreds of tons of diesel particulate emissions. The Orange fueling station is in its final stages of completion and the Fontana fuel station is slated to begin construction in January 2013.

The amount requested in this budget amendment will provide the additional funds necessary to complete the Department of Energy project. The funds are needed primarily due to a number of unexpected permit delays that took place while working with the City of Orange, the location of the first of two natural gas fueling stations. Even though the Mayor of Orange is a strong supporter of the natural gas fueling station, the City had not approved/permitted a natural gas fueling station before, therefore, their Planning Department took a very cautious approach and as a result the construction of the natural gas fueling was delayed for almost a year. The City of Orange natural gas fueling station is just about completed, but unfortunately the numerous delays due to the various permits and changes the City required impacted the budget for the overall project.

The additional funds being requested will provide continued American Recovery Reinvestment Act (ARRA) and federal reporting support from Parsons, as well as from GCAP Services that specialize in ARRA and federal labor compliance rules and regulations, both required by the Grant. In addition, some of the funds will enable a Natural Gas Systems Specialists to continue on the project under Gladstein and Associates as well.

The funds being requested will allow for the expertise required by the Grant through the completion of the project which must be done by December of 2013.

At this time, Staff requests that the Board approve the additional funds requested to avoid delay in the project and to secure a successful project that is in compliance with all rules and regulations requested by the CEC and DOE grants.

Board of Directors Agenda Item

January 9, 2013

Page 3

***Financial Impact:*** The budget increase for Task No. 102 in the amount of \$178,110 is to be funded from Measure I 1990-2010 Transportation Management and Environmental Enhancement (TMEE) funds.

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.

***Responsible Staff:*** Duane A. Baker, Director of Management Services



- 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: 9

**Date:** January 9, 2013

**Subject:** Deferral of local jurisdiction development impact fee adjustments through 2013

**Recommendation:\*** Approve the option of local jurisdiction deferral of increases to their Development Impact Fee (DIF) programs for transportation projects in the SANBAG Development Mitigation Nexus Study through 2013.

**Background:** The SANBAG Board approved the 2011 Update to the Development Mitigation Nexus Study (Appendix K of the Congestion Management Program) on November 2, 2011. Also approved at that time was an option for Valley and Victor Valley jurisdictions in the January fee update cycle to adjust their fee programs to be consistent with the Nexus Study by as late as January 2013.

Appendix J of the Congestion Management Program (CMP) provides that Valley and Victor Valley jurisdiction DIF fees be adjusted on an annual basis based on the approved CMP cost escalation methodology, as amended by the Board of Directors on May 6, 2009. The methodology uses the Caltrans Construction Items Index as the basis for estimating cost escalation.

SANBAG staff has examined the latest data from the Caltrans Construction Items Index and has seen that costs have generally decreased since 2007. The cost escalation factors presented in Table 1 are derived from the Caltrans report "Price Index for Selected Highway Construction Items." Since the complete 2012 data are not yet available, the most recent 12 month period which includes the fourth

*Approved*  
*General Policy Committee*

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

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

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

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

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X
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Check all that apply.  
 BRD1301e-tb

quarter of 2011 through the third quarter of 2012 have been reported in Table 1. The most recent 12 month period reflects a decrease of 5.6% from 2011.

**Table 1. Escalation Factors from Caltrans Index**

Year	Caltrans Index	Annual Percent Change
2000	53.5	1.13%
2001	58.7	9.72%
2002	53.1	-9.54%
2003	56.6	6.59%
2004	79.1	39.75%
2005	98.1	24.02%
2006	104.1	6.12%
2007	100.0	-3.94%
2008	95.0	-5.00%
2009	78.4	-17.47%
2010	76.8	-2.04%
2011	84.0	9.38%
2011 4 <sup>th</sup> Quarter through 2012 3 <sup>rd</sup> Quarter	79.3	-5.60%

Although some of the Valley and Victor Valley fee programs may need to be adjusted further based on changes in the cost estimates for freeway interchanges in the 2011 Nexus Study, staff recommends that these adjustments be deferred for another year as well, given the direction of the Board on December 5, 2012 for staff to proceed with the Interchange Phasing Study. This analysis of interchange phasing opportunities plus continuing adjustments to costs of the top 10 interchanges in the Valley will be reflected in the 2013 update to the Nexus Study. It would seem prudent to defer making adjustments for the interchange portion of the Nexus Study until these additional efforts are complete. Jurisdictions would need to contact SANBAG only if they choose to modify their DIF fees.

**Financial Impact:** This item imposes no impact on the fiscal year 2012/2013 budget.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.

**Responsible Staff:** Timothy Byrne, Chief of Planning



- 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: 10

**Date:** January 9, 2013

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

**Recommendation:**\* 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 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

*Approved*  
*Board of Directors*

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

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

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

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

COG		CTC	x	CTA		SAFE		CMA	
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Check all that apply.

BRD1301a-tk:

Attachment: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C06044-02.docx>

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 was reviewed and recommended for approval (14-0-0) without a quorum of the Board present at the Board of Directors Metro Valley Study Session on December 13, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and 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.

<b>Board of Director's Meeting Date:</b> January 9, 2013	
<b>Overview of BOD Action:</b> 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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	425,000.00	Original Contingency Amount
			\$ 42,500.00
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	3,984,166.56	Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$ 366,000.00
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>\$ 446,000.00</b> ✓
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ 4,910,166.56</b>

Contract Start Date 11/06/2006	Current Contract Expiration Date 01/15/2014	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No   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		11/29/12
Project Manager (Mike Barnum)	Signature	Date
Garry Cohoe		11-30-12
Task Manager (Garry Cohoe)	Signature	Date
Andrea Zureick		12-6-12
Dir. of Fund Admin. & Programming (Andrea Zureick)	Signature	Date
Jeffery Hill		12-6-12
Contract Administrator (Jeffery Hill)	Signature	Date
W. STAWRSKI		12/7/12
Chief Financial Officer (William Stawarski)	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: 11

**Date:** January 9, 2013

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

- Recommendation:**\*
1. Approve Amendment No. 3 to Contract No. C09092 with Transystems, Inc. for the project approval and environmental document (PA&ED) phase of work in the amount of \$1,174,879, for a total contract value of \$7,277,590.
  2. Approve additional Contingency amount of \$117,488 for a total contingency value of \$676,741, 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 Measure I Valley Freeway Interchange Funds for Task No. 0842 – Interstate 10 Tippecanoe Interchange by \$450,000 for right-of-way.

**Background:** This is an amendment to an existing contract. In November 2008 the SANBAG Board of Directors approved contract C09092 for preliminary engineering and environmental services with an option for design services with RMC, Inc. for \$1,198,484 and a contract term through 10/5/10. In October 2009 the Board of Directors approved the first amendment to this contract for design services for \$3,947,981 and a new termination date of 10/5/12. A second amendment was approved in August 2011 in the amount of \$1,065,199 to address additional design services and design support services for construction needed to

*Approved*  
 Board of Directors

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

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

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

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

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

BRD1301b-bf

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

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

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

break the project into two phases and move Phase 1 into construction. With amendment 2, the contracted consultant became Transystems, Inc., successor-in-interest to all rights and obligations of RMC, Inc., as it purchased all of the assets and liabilities of RMC, Inc. Additionally, the termination date was extended to 6/30/14. The project split positioned the project for nomination of Corridor Mobility Improvement Fund savings, which were successfully secured. Since this time, the design of Phase 1, which includes improvement to the eastbound I-10 mainline and off-ramp at Tippecanoe Avenue, was completed and construction began in August, 2012.

In the meantime, the remainder of the project which includes improvements to the westbound I-10 mainline with a new westbound on and off-ramp, improvements to the local streets, has progressed substantially through design and right of way.

Through the acquisition process one particular property has required extensive efforts. These efforts began during the environmental phase when contamination was identified on this parcel which previously was the site of an operating gas station. During design, a required detailed site investigation was performed to determine the nature and extent of the petroleum hydrocarbons in the soil and groundwater on the site. Results were revealed in a report and provided to the California Regional Water Quality Control Board (RWQCB) who recommended a soil vapor extraction (SVE) testing on three wells. At the end of the operation, total petroleum hydrocarbons were reduced significantly, although not enough to satisfy RWQCB's closure requirements because the RWQCB was concerned about the extent of the contamination within the plume. As a result and in an effort to seek Low Threat Closure for underground storage tanks, Caltrans evaluated the extent of the plume to the west of the site via ground water sampling and testing. No petroleum products were detected. Therefore it was determined that the petroleum fuel releases were contained onsite. This information was communicated to the RWQCB but is not sufficient to allow for closure of this case. According to the RWQCB concentrations of hydrocarbons at the site exceed the threshold levels and must be reduced in order to qualify for closure under the Low Threat Closure Policy. As a result, on site remediation is required on this property which is necessary for the project.

Upon further discussion with the RWQCB, Stantec Consulting, a subconsultant for Transystems, Inc., has prepared a remediation plan which involves installation of six dual phase extraction wells on the site. The wells and extraction equipment will be located near the source of contamination on the site. The proposal presented assumes an extraction operation of up to twelve months with quarterly monitoring during extraction and up to twelve months after extraction for a total of eight quarters. Remediation is expected to be complete by the start of construction but the site will be available for continued remediation up to twelve months after the start of construction based on the proposed construction staging. 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. The remediation and monitoring effort by Stantec, through Transystems, is estimated to cost \$626,920.

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 to the environmental, appraisal and acquisition staff for condemnation proceedings and contaminant remediation. In addition, to avoid costs associated with a landscape maintenance period that could extend to 15 years based on a level of planting that exceeded the plant material today, a new landscaping concept and plan has been developed to reduce the period in accordance with the new Caltrans maintenance policy. The new plan is consistent with the SR210 maintenance – 1 year of plan establishment and 4 years of maintenance. 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 additional PS&E support effort is estimated to cost \$547,959.

An Amendment No. 3 in the amount of \$1,174,879 is requested. A contingency budget in the amount of \$117,488 is requested. These costs are in line with an independent cost estimate prepared for this scope change. 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 C09092. There are sufficient funds available within the approved right of way and construction cooperative agreement R10200 to account for the addition of these funds.

**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 was reviewed and recommended for approval (14-0-0) without a quorum of the Board present at the Board Metro Valley Study Session on December 13, 2012. General Counsel and Contracts Manager have approved this item as to form.

**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 9, 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>	\$	6,102,711	Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$ 559,253
Current Amendment Amount	\$	\$1,174,879	Contingency Amendment
			\$ \$117,488
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>\$7,277,590</b>	<b>TOTAL CONTINGENCY VALUE</b>
			<b>\$ 676,741</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ \$7,954,331</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 type="checkbox"/> Budget authority for this contract currently exists in Task No.0842.				
<input checked="" type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? Measure 1				
<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 1 Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract:				
\$7,327,411 MSI 1990 Valley Fund for PSE/ \$626,920 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)

*Garry Cohen*

Task Manager (Print Name)

*Andrea Zureick*

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

*NATHAN PEREZ*

Contract Administrator (Print Name)

*Julie Plores for William Stawski*

Chief Financial Officer (Print Name)

*Barbara Fortman* 12.12.12

*Garry Cohen* 12.12.12

*Andrea Zureick* 12-12-12

*Nathan Perez* 12/12/12

*Julie Plores for William Stawski* 12/12/12

**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 Transystems, Inc. (formerly RMC, Inc. and hereafter called CONSULTANT):

**RECITALS**

A. 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

B. 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

C. AUTHORITY, under Contract Amendment No. 2 to Contract No. C09092, has engaged the services of CONSULTANT separate the Plans, Specifications and Estimates (PS&E) phase of project development for the I-10/Tippecanoe Avenue Interchange Project, into two construction phases that AUTHORITY will advertise, award and administer individually, , and

D. The parties 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 to amend Contract No. C09092 as follows:

1. Amend the Contract scope of services to include additional out of scope of work as described in Attachment "A", Scope of Service, and Attachment "B", Cost Proposal, to this Amendment No. 3 which attachment 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 it with \$7,954,331 as the new Not-To-Exceed Amount.

3. Transystems, Inc. hereby acknowledges, represents and warrants to AUTHORITY that it is the successor-in-interest to all rights and obligations of RMC, Inc. with respect to Contract No. C09092, as amended, and that it purchased all of the assets and liabilities of RMC, Inc. on or about August 7, 2010. Effective as of that August 7, 2010, Transystems, Inc. expressly assumed all of the obligations, liabilities and responsibilities of RMC, Inc. under Contract No. C09092, as amended.
4. The Effective Date of this Amendment No. 3 is the date that the AUTHORITY executes this Amendment No. 3.
5. Except as amended by this Amendment No. 3, all other provisions of Contract No. C09092, as previously amended, shall remain in full force and effect.
6. Contract No. C09092, as previously amended by Amendment No. 1 and No. 2 is hereby incorporated into this Amendment No. 3.
7. The expiration date of this Contract No. C09092, Amendment No. 3 remains 6/30/2014.

IN WITNESS WHEREOF, the Parties' authorized representatives have executed this Amendment No. 3 below.

**Transystems, 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 Contract Administrator

## 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 and hazardous waste site remediation 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, Remediation, and Monitoring**

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 coordination with the RWQCB, SANBAG, and Caltrans to further evaluate case closure, develop remediation strategies and cost estimates, and remediate the soil and groundwater on the Site to acceptable standards.

This scope of work includes a remediation plan for up to one year of dual phase soil vapor extraction (SVE) followed by up to one year of groundwater monitoring. A work plan will be prepared and submitted to the RWQCB based on this scope of work for review and approval prior to beginning remediation. The following are the tasks and assumptions included in this scope of work for remediation:

#### **Task 1: Work Plan Preparation**

The TranSystems team will prepare an addendum to the original SVE test work plan for approval by the RWQCB for operation of a one year dual phase SVE system. This work plan will provide the necessary detail for the installation of dual phase extraction wells,

along with installation, operation, and maintenance of a dual phase SVE test for up to twelve months.

In addition to the work plan, the TranSystems team will revise the existing site specific health and safety to include remediation system installation and system operation.

Following RWQCB approval of the work plan and prior to initiating the scope of work, Caltrans will provide right-of-entry encroachment permits providing access to the Site for the duration of remediation.

**Task 2: Installation of Dual Phase Extraction Wells and Groundwater Monitoring Wells**

Dual phase extraction wells, consisting of up to six (6) dual purpose vapor/groundwater wells will be installed at the Site. In addition, up to three (3) groundwater monitoring wells will be installed to monitor groundwater near the source area. Each well will be installed by a C-57 licensed drilling subcontractor. In general, a truck-mounted, hollow-stem auger drill rig, or air rotary casing hammer (ARCH), will be utilized for the construction and installation of the wells at the Site. According to previous investigations conducted at and near the Site, groundwater would be anticipated at a depth of approximately 30 feet below the ground surface (bgs).

Assuming a groundwater depth of approximately 30 feet bgs, the dual purpose vapor/groundwater extraction well borings will be advanced to approximately 15 feet below groundwater to a depth of approximately 45 feet bgs. The dual purpose vapor/groundwater wells will be constructed by first placing approximately six inches of filter sand in the bottom of the boring and then lowering four-inch inside diameter Schedule 40 polyvinyl chloride (PVC) well casing, with approximately 30 feet of 0.02 inch machine slotted screen (approximately 15 feet below groundwater) and 15 feet of blank casing, through the annulus of the hollow stem auger. The well screens will be filter-packed with Monterey #3 sand pack tremmied through the annulus between the auger and well casing while the augers are slowly raised out of the borehole.

The groundwater monitoring well borings will be advanced to approximately 15 feet below groundwater to a depth of approximately 45 feet bgs. The groundwater monitoring wells will be constructed by first placing approximately six inches of filter sand in the bottom of the boring and then lowering four-inch inside diameter Schedule 40 polyvinyl chloride (PVC) well casing, with approximately 20 feet of 0.01 inch machine slotted screen (approximately 15 feet below groundwater) and 25 feet of blank casing, through the annulus of the hollow stem auger. The well screens will be filter-packed with Monterey #2/12 sand pack tremmied through the annulus between the auger and well casing while the augers are slowly raised out of the borehole.

A filter bridge of Monterey #2/12 sand will be used for the filter pack shall be placed above the screen and below the bentonite on all wells. The filter pack material will extend 18 to 24 inches above the screen, 3/8-inch bentonite pellets will be placed 3 to 5 feet above the filter pack, and cement or cement bentonite grout will be used to fill the annular space. Grout will consist of approximately 5% bentonite and 95% cement. The well surface completion will be concrete, which is integral with the concrete annular seal in the upper two (2) feet of the hole. The materials will be tremmied into the

annular space around the casing. The wells will be connected to the above ground piping of the dual phase SVE system.

Following installation, the newly installed dual purpose vapor/groundwater extraction wells will be developed by surging with a vented surge block, or equivalent technology, and pumped to remove sediments from the well. The wells will be surged and pumped as often as necessary to produce sediment-free water samples (goal: less than 10 Nephelometric Turbidity Units (NTU's)). The TranSystems team will measure the turbidity in NTU's throughout development. Well development logs will record the method, temperature, pH, conductivity, NTU's, and volume of water produced.

### **Task 3: Utility Installation Coordination**

The existing electrical service connections at the site are not currently up to the required electrical code standards for the city of San Bernardino building department or Southern California Edison Company (SCE). The TranSystems team will provide for the connection of electrical power to the temporary power pole in the northeast portion of the site. The temporary power pole will be installed by approved electrical contractor. The TranSystems team will contract with SCE to connect the proposed 230-volt, 200 amp, three-phase power to the temporary power pole.

Natural gas service is not available at the site, so the TranSystems team will contract with a local propane supplier to mobilize to the Site and supply a propane gas holding tank to operate the dual phase SVE unit. The TranSystems team will provide for the propane and connection to supply the required 5 psi service required for the SVE unit. Propane costs estimates are based on the current rate and are subject to change during the 12 month operation of the SVE unit.

### **Task 4: System Design Drawing Preparation**

The TranSystems team will prepare detailed system design drawings to be submitted to the city of San Bernardino's building department plan check division. The drawings will include standard dual phase SVE system designs, site layout and include the temporary installation of a chain-link fence around the entire site and a second enclosure on the property to house the dual SVE unit and associated equipment. The installation of the SVE piping is planned for above ground with only connections to the storm drain system being installed below grade at the property line. It is anticipated that the submittal of the drawing for this temporary system will allow the TranSystems team to obtain the required permit for the remediation compound and electrical service connection required to operate the dual phase SVE treatment system with only limited follow-up discussion with the city of San Bernardino's building department.

### **Task 5: Permitting Services**

A Various Location permit issued by South Coast Air Quality Management District (SCAQMD) will be used for the first 12 months of operation for the dual phase SVE system. Based on prior involvement with the SCAQMD, the system may require daily monitoring for a minimum of 1 to 2 weeks, and then additional sampling may be need in order to request weekly monitoring. Operation of the dual phase SVE system beyond the 12 month period will require a site-specific permit for the remediation system.

Submittal of a site-specific permit is not included in this proposal and will be discussed as needed toward the conclusion of the first 12 months of operation.

Liquid Phase Hydrocarbons (LPH) may be present at the Site. An oil/water separator may be required to separate LPH from the groundwater in the liquid pump and treat system. Once the LPH is removed, impacted groundwater will be treated and discharged to the closest storm drain system. The TranSystems team will obtain a National Pollutant Discharge Elimination System (NPDES) permit from the CRWQCB prior to discharging treated groundwater as part of the pump and treat remediation system.

#### **Task 6: Equipment Procurement and Installation**

##### **Equipment Procurement**

The TranSystems team will procure the dual phase SVE remediation system for the site. The remediation equipment will consist of one (1) 250 cubic feet per minute (CFM) SVE unit, a 7.5-hp air compressor with 80-gal receiving tank, electrical control panels, up to six pneumatic total fluid pumps, an oil/water separator, a groundwater holding tank, one (1) SVE manifold, one (1) pump and treat manifold, three (3) 2,000 lb carbon vessels filled with virgin coconut, transfer pumps, bag filters, and associated safety equipment.

The system will be equipped with all necessary monitoring devices and automatic shutoff systems to comply with South Coast Air Quality Management District (SCAQMD) and local Fire Department requirements. It is assumed that the system will be permitted for various locations by the SCAQMD for operation up to 12 months. The fees do not include application development and fees for a site specific permit.

##### **Equipment Installation**

A bid package for the 250 CFM SVE unit, pneumatic pumps, oil/water separator, air compressor with receiving tank, groundwater forwarding tank, and carbon vessels will be submitted to local remediation system vendors. The TranSystems team will provide for the construction oversight of the dual phase SVE system and temporary power pole and as detailed in the design drawings. The attached fees include plan check fee, contractor installation fees, including the installation of temporary fencing, secondary containment of vessels, and connection to utilities. The fees do not include additional fees for an equipment compound above and beyond chain link fencing and temporary containment, such as a block wall enclosure or concrete bermed equipment area. Also, this scope of work assumes that all piping from the treatment compound to the wells will be above ground and trenching to the dual phase extraction wells will not be required.

#### **Task 7: SVE System Start-Up**

##### **Initial Operation and Maintenance of SVE system (One Month)**

The TranSystems team will start-up the system and perform the required monitoring during the first several weeks of system operation. During the SVE start-up monitoring period, vacuum, flow rate, influent vapor concentration, and other system parameters will be recorded every day during the normal business hours for the first week of operation, weekly for the first month and monthly thereafter. Volatile organic vapor concentrations will be monitored with a Photo Ionization Detector (PID) meter as a

semi-quantitative measurement of vapor concentrations from each extraction well and the SVE system. The PID meter will be calibrated on a daily basis. Individual extraction well, the main source (upstream of the dilution air valve) header, and the process (down stream of the dilution air valve) flow rate and vapor concentrations will be recorded during each O&M visit.

The TranSystems team will submit collected air samples to a laboratory for chemical analysis. For costing purposes, four (4) undiluted air samples, four (4) diluted air samples, and two (2) outlet air samples will be collected from the SVE unit during the first month of operation. The samples will be analyzed for total petroleum hydrocarbons (TPH) and volatile organic compounds (VOC's) using EPA Test Method 8015 and 8260B respectively. Any additional chemical testing required by either the SCAQMD would be billed in accordance with the attached fee schedule.

#### **Initial Operation and Maintenance of Groundwater Treatment System**

The TranSystems team will seek authorization to discharge treated groundwater to the site storm drain. At this point authorization and permitting have not been procured and the requirements for discharge are uncertain. However, Thrifty discharged treated groundwater to the same storm drain on the northwest corner of the Site. If discharge to the storm drain is prohibited, water may have to be trucked offsite. Offsite groundwater trucking disposal costs are not included in this proposal.

If LPH is present at the Site an oil water separator is required as part of the pump and treat system. The pump and treat system consist of six (6) pneumatic pumps, a holding tank, and three (3) 2,000 pound carbon vessels. The oil water separator will remove LPH from the extracted groundwater system before the groundwater enters the existing treatment system.

The TranSystems team will submit untreated and treated groundwater samples to a laboratory for chemical analysis as required by NPDES permit. During the start-up of the pump and treat system numerous analytical samples are required, including but not limited to, Perchlorate, Total Phenol, Total Dissolved Solid (TDS), Total Inorganic Nitrogen, Suspended Solids, Sulfide, Total Recoverable Lead, Priority Pollutants, Toxicity Testing, Total Petroleum Hydrocarbons (TPH) and Volatile Organic Compounds (VOC's). For costing purposes, a summary of the treated (effluent) and untreated (influent) groundwater samples required during the first year of operation are listed in Table 1. Any additional chemical testing required by the CRWQCB will be billed in accordance with the attached fee schedule.

#### **Task 8: SVE System Operation and Maintenance**

##### **Long Term Operation and Maintenance of SVE system (11 Months)**

The TranSystems team has estimated that staff will visit the site 48 times during the proposed 11 months of long term remedial actions. During the ensuing 11 months of operation of the dual phase SVE system, the TranSystems team will conduct weekly site visits to obtain system operating parameters and obtain representative air and water samples for chemical analysis in accordance with SCAQMD and NPDES requirements, respectively. Field measurements from the wells being utilized as vapor extraction wells and adjacent wells will be obtained as applicable.

The TranSystems team will submit collected water samples to a laboratory for chemical analysis. For costing purposes, one (1) undiluted, one (1) diluted, and one (1) outlet air samples will be collected on a monthly basis (for a total of 33 samples). The TranSystems team will submit collected water effluent samples on a weekly basis (for a total of 48 samples). Influent groundwater samples will be collected on a monthly basis (for a total of 11 samples).

Most water and air samples will be analyzed for TPH and VOC's using EPA Test Method 8015 and 8260B respectively. Any additional chemical testing required by either the SCAQMD or the CRWQCB, Santa Ana Region would be billed in accordance with the attached fee schedule.

During the operation of the proposed SVE system, the TranSystems team will provide for the payment of electrical and propane usage of the equipment.

The TranSystems team will supervise the removal and replacement of the activated carbon in one of the three (3) 2,000-pound vessels that comprise the treatment portion of the pump and treat system approximately every three months for a total of 3 changeouts, including final disposal. Replaced carbon will be virgin, coconut shell carbon. Spent carbon will be sent to a licensed facility for recycling. The TranSystems team will prepare manifests and arranged for disposal. However, TranSystems will not be the waste generator. Consequently, waste manifests must be signed by client or the owner as the waste generator. This scope of work and cost estimate include costs for disposal of up to 200 gallons of LPH and spent carbon as a non-hazardous waste.

#### **Task 9: Quarterly Reporting (8 Quarters – 4 during remediation/4 post remediation)**

##### **Progress Reports**

The TranSystems team will develop monthly status reports, for the months without a quarterly report submittal, for submittal to the RWQCB. These reports will bullet remediation progress and describe findings and next steps. The reports will be used to monitor progress and to provide the basis for decision making with respect to terminating remedial actions.

##### **Groundwater Reports**

At the completion of each proposed quarterly monitoring event, the TranSystems team will prepare a groundwater and remediation report for the CRWQCB, Santa Ana Region. The four (4) quarterly groundwater reports during the remediation operations and four (4) post remediation reports will include the following requirements of the RWQCB for this project.

- The reports will include a summary of groundwater monitoring and analytical results.
- Tabulated current and historical groundwater well elevations and analyte concentrations.
- Figures showing the groundwater elevation and gradient and the distribution of chemical analytes in project wells.
- Graphs showing concentrations of VOC, TPH, and Groundwater Elevations versus Time.

- Supporting field data summary forms.
- Laboratory analytical reports and chain-of-custody forms.
- Submit final groundwater and WDR reports to Geotracker website.

The reports will include a summary of all field and laboratory analytical data generated during each sampling event and previous sampling event on the property.

**Remediation System Reports**

On a quarterly basis, the TranSystems team will prepare a written report detailing the results of dual phase SVE remediation system operation. The reports will contain a compilation of all obtained field and laboratory analytical data and the conclusions drawn there from. The SVE report will be submitted as an appendix to the quarterly groundwater report. Obtained data from the groundwater and SVE reports will also be provided to the SWRCB electronically using GeoTracker to comply with California AB 2886.

**Task 10: System Decommissioning and Well Abandonment**

The TranSystems team will provide for the decommissioning of the dual phase SVE system and temporary power pole. Three (3) vapor extraction, six (6) dual phase SVE extraction, and three (3) monitoring wells will be properly abandoned at the conclusion of the remediation system operations.

**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.

# ATTACHMENT 'B'

TranSystems

## San Bernardino Associated Governments (SANBAG)

### Amendment 3

#### Phase 2 PS&E Additional Services and Site Remediation

December 6, 2012

#### I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Manager	\$112.99	708	\$79,996.92
Roadway Engineer	\$60.44	196	\$11,846.24
Senior Engineer	\$63.20	236	\$14,915.20
Project Engineer	\$69.29	1,002	\$69,428.58
Junior Engineer	\$32.32	320	\$10,342.40

<b>Subtotal Hours &amp; Direct Labor Costs</b>	2,462	<u>\$186,529.34</u>	
<b>Anticipated Salary Increases</b>		<u>\$0.00</u>	
<b>Total Direct Labor Costs</b>		<u>\$186,529.34</u>	(1)

#### II. INDIRECT COSTS

<b>INDIRECT RATE</b>	150.00 % x	\$ 186,529.34	=	Subtotal	<u>\$279,794.01</u>	(2)
		Subtotal (1)				

#### III. FEE (PROFIT)

10 % x	\$ 466,323.35	=	Subtotal	<u>\$46,632.34</u>	(3)
	Total (1) + (2)				

#### IV. OTHER DIRECT COSTS

Item	Amount
Stantec (M&M Site Remediation & Monitoring)	\$621,116.15
Mileage	\$3,439.70
Travel to CTC Hearing for R/W Condemn. Review (3 Parcels)	\$2,364.00

Subtotal \$ \$626,919.85 (4)

#### V. SUBCONSULTANTS COST

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

Subtotal \$ \$35,003.07 (5)

#### VI. TOTAL AMOUNT

\$1,174,879 (Total 1-5)



- 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: 12

**Date:** January 9, 2013

**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:**\*
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.

**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

*Approved*  
 Board of Directors

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

Moved: Second:

In Favor: Opposed: Abstained:

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

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

BRD1301c-pm

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

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

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:** This item was reviewed and recommended for approval (15-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on

Board Agenda Item  
January 9, 2013  
Page 3

December 13, 2013. SANBAG General Counsel has reviewed this item and the agreements.

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



## 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

**Board of Director's Meeting Date:** January 9, 2013  
**Overview of BOD Action:** 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?  Yes  No

CONTRACT OVERVIEW			
Original Contract Amount	\$	810,625.00	Original Contingency Amount
			\$ 0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	0	Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$ 0
Current Amendment Amount	\$	0	Contingency Amendment
			\$ 0
<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>

Contract Start Date January 9, 2013	Current Contract Expiration Date January 4, 2016	Revised Contract Expiration Date
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Has the contract term been amended?  No  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? <span style="float: right;">MSI - Valley Fund Freeway</span> 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 <span style="float: right;">MSI - Valley</span> Fund Freeway Project	
<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 ____ % <input type="checkbox"/> Underutilized DBE (UDBE) Goal ____ %	

PAUL MEADOWSON  
 Task Manager (Print Name)  
Carry Colton  
 Project Manager (Print Name)  
Andrea Turack  
 Contracts Administrator (Print Name)  
Jeffery Hill  
 Chief Financial Officer (Print Name) *Contract Admin*  
Hilda Puroso *William Steward*  
 CFO

[Signature] 12/5/12  
 Signature Date  
[Signature] 12/6/12  
 Signature Date  
[Signature] 12-11-12  
 Signature Date  
[Signature] 12/14/12  
 Signature Date  
[Signature] 12/18/12  
 Signature Date

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Director of Fund Administration & Programming

Signature

Date

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)**

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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**

# **EXHIBIT A-1**

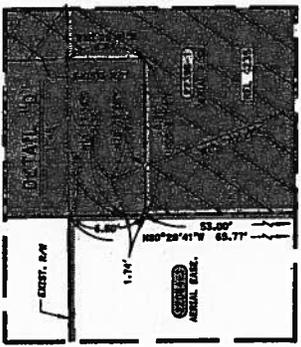
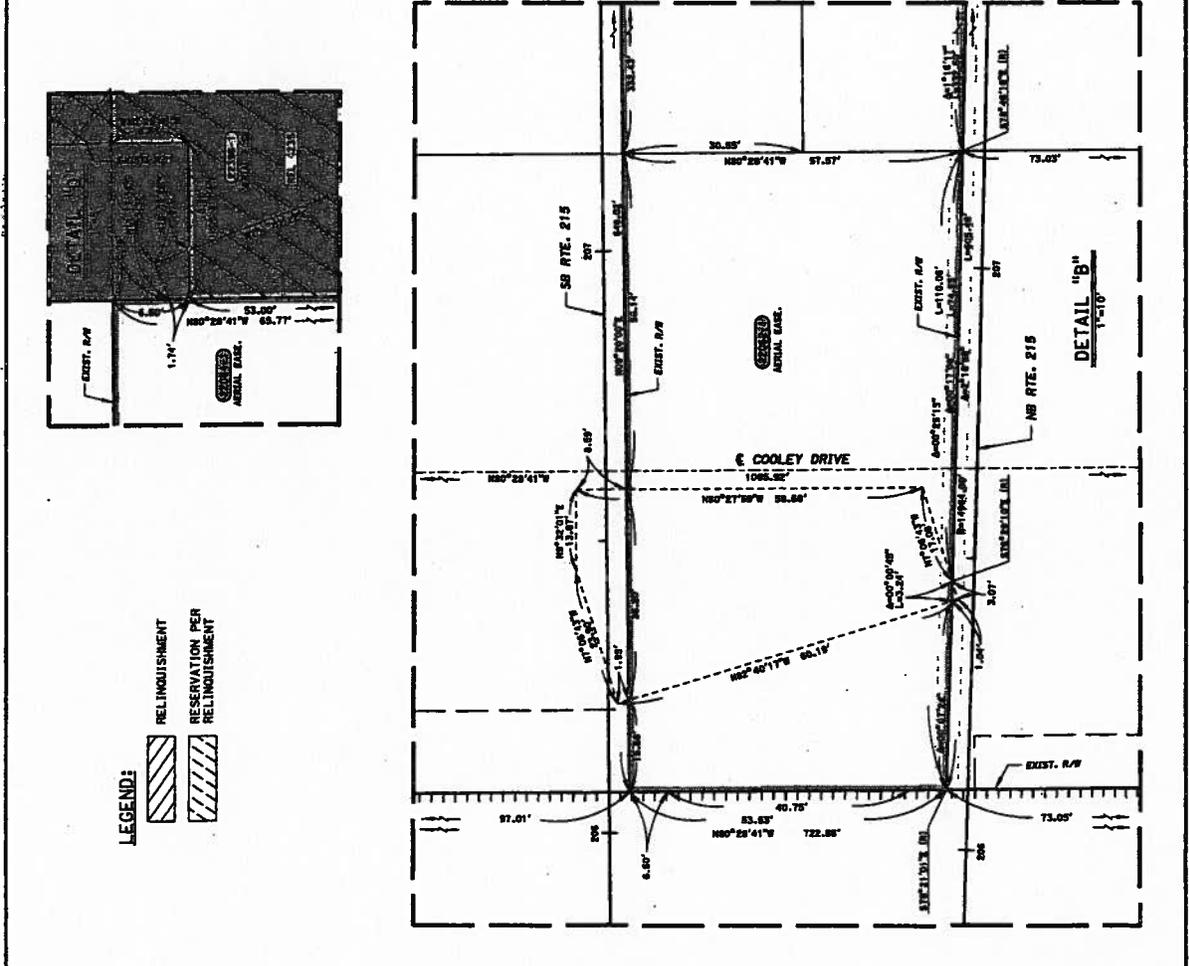
## **To Construction & Maintenance Agreement**

**Prints Showing the Easement Area  
(3 pages)**

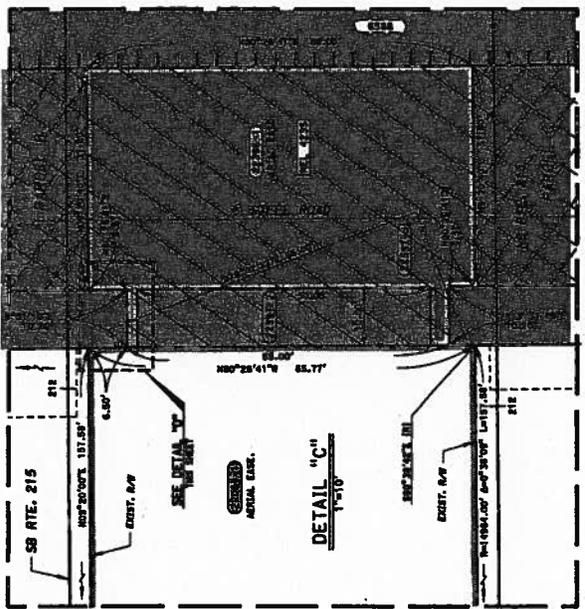




NO.	DATE	REVISIONS
1	11-16-11	ISSUED FOR PERMITS
2	08-28-11	REVISED TO REFLECT CHANGES
3	08-28-11	REVISED TO REFLECT CHANGES
4	08-28-11	REVISED TO REFLECT CHANGES
5	08-28-11	REVISED TO REFLECT CHANGES
6	08-28-11	REVISED TO REFLECT CHANGES
7	08-28-11	REVISED TO REFLECT CHANGES
8	08-28-11	REVISED TO REFLECT CHANGES
9	08-28-11	REVISED TO REFLECT CHANGES
10	08-28-11	REVISED TO REFLECT CHANGES
11	08-28-11	REVISED TO REFLECT CHANGES
12	08-28-11	REVISED TO REFLECT CHANGES
13	08-28-11	REVISED TO REFLECT CHANGES
14	08-28-11	REVISED TO REFLECT CHANGES
15	08-28-11	REVISED TO REFLECT CHANGES
16	08-28-11	REVISED TO REFLECT CHANGES
17	08-28-11	REVISED TO REFLECT CHANGES
18	08-28-11	REVISED TO REFLECT CHANGES
19	08-28-11	REVISED TO REFLECT CHANGES
20	08-28-11	REVISED TO REFLECT CHANGES



NOTE: The sheets of California or its officers or agents are hereby acknowledged for the accuracy or compliance or defined scope of this map.



STATE OF CALIFORNIA  
 BUSINESS TRANSPORTATION AGENCY  
 DEPARTMENT OF TRANSPORTATION

**RIGHT OF WAY  
 APPRAISAL MAP**  
 MAP NO. RW000130-14

FOR  
 (PROJECT) (BY) (REPRESENTATIVE)

SCALE: 1" = 100'

TO RECORD	DATE	BY
11-16-11	08-28-11	08-28-11

TO RECORD	DATE	BY
11-16-11	08-28-11	08-28-11

LEGEND:  
 RELINQUISHMENT  
 RESERVATION PER RELINQUISHMENT

# **EXHIBIT A-2**

## **To Construction & Maintenance Agreement**

### **Legal Description of Easement Area**

EXHIBIT A-1

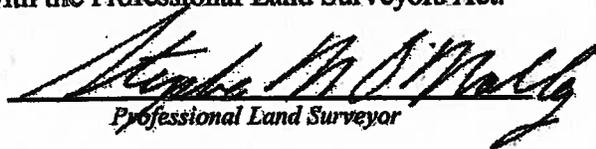
That portion of Lots 8 and 9, Block 64 of Rancho San Bernardino, in the city of Colton, county of San Bernardino, state of California as shown by map recorded in Book 7 of maps at page 2 thereof, in the Office of the County Recorder of said County, described as follows:

**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  $80^{\circ}28'41''$  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  $9^{\circ}20'00''$  East, 157.58 feet to the northerly right-of-way of said railroad; thence along said northerly right-of-way, South  $80^{\circ}28'41''$  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  $80^{\circ}38'42''$  East; thence southerly, along said prolongation and said westerly line, 157.58 feet through a central angle of  $0^{\circ}36'09''$  to the northerly line of Parcel 4 of said Parcel Map and said southerly right-of-way; thence along said lines, North  $80^{\circ}28'41''$  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**

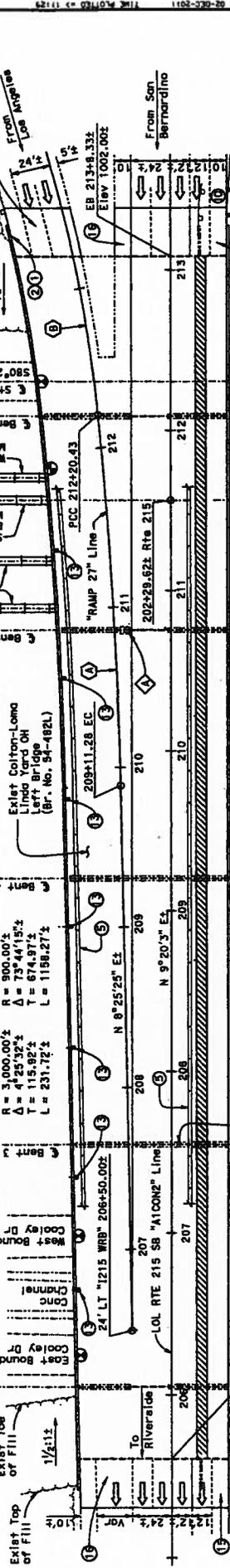
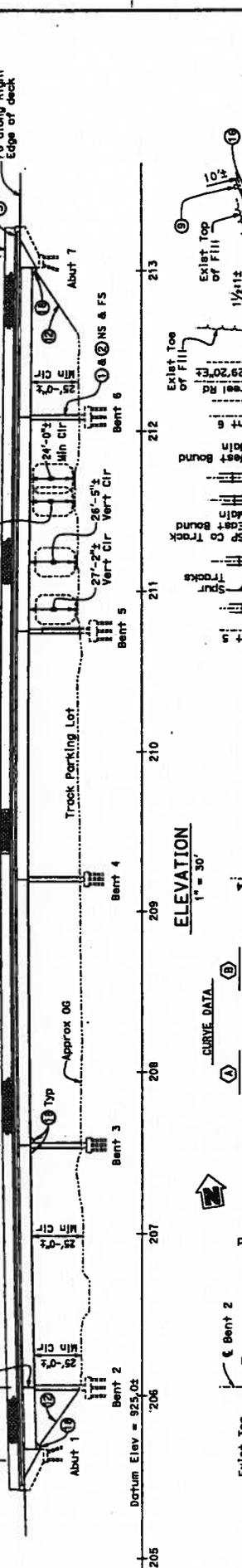
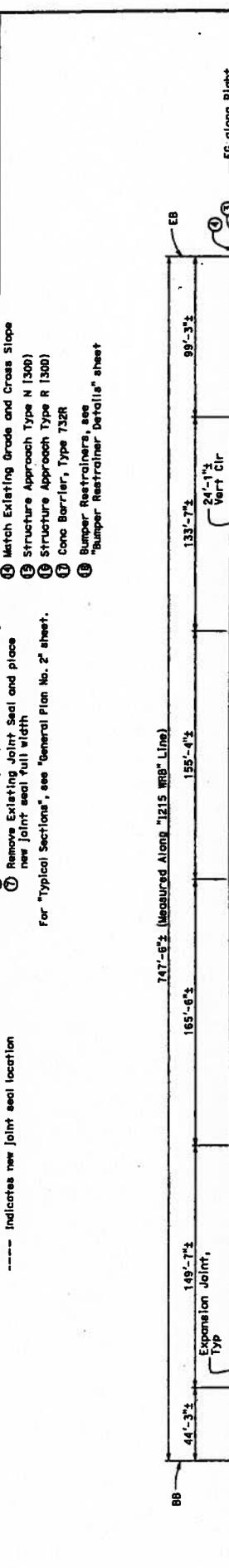
DATE	COUNTY	ROUTE	PROJECT	DATE	PROJECT NO.	PROJECT SHEET
08	SB	215				

REGISTERED CIVIL ENGINEER DATE  
 LIGHT IN  
 CIVIL  
 DATE

PLUS APPROVAL DATE  
 IN THE OFFICE OF THE DIVISION OF ENGINEERING SERVICES  
 DATE FOR THE CONSTRUCTION OF THIS PLAN SHEET

6'-6" Closure Pour  
 Existing MBOR, see "Road Plans"  
 Remove Existing MBOR, see "Road Plans"  
 MBOR, see "Road Plans"  
 Slope Paving  
 Type D-3 Deck Drain, reconstruct portion of overhang as needed  
 Match Existing Grade and Cross Slope  
 Structure Approach Type N (300)  
 Structure Approach Type R (300)  
 Conc Barrier, Type 732R  
 Bumper Restrainers, see "Bumper Restrainer Details" sheet

Point "B" No 54-482L  
 Point "Colton-Loma Linda Yard Overhead"  
 Conc Barrier, Type 732  
 Chain Link Railing, Type 7  
 Temporary Railing, Type K  
 see "Road Plans"  
 Remove Existing Type 9 Barrier Rolling  
 Remove Existing Joint Seal and place new joint seal full width  
 For "Typical Sections", see "General Plan No. 2" sheet.



STATE OF CALIFORNIA		DIVISION OF ENGINEERING SERVICES		PROJECT NO.	
DEPARTMENT OF TRANSPORTATION		54-0482L		1	
DESIGN BRANCH 10		SHEET NO.		1	
PROJECT NO.		DATE		PROJECT SHEET	
54-0482L		08-20-11		1	
PROJECT NO.		DATE		PROJECT SHEET	
54-0482L		08-20-11		1	

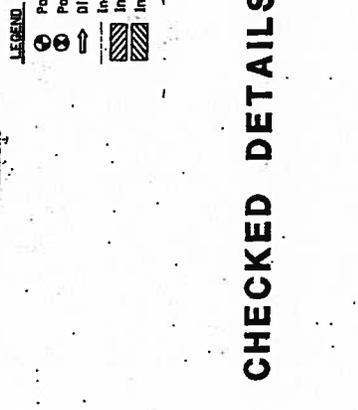
COLTON-LOMA LINDA OH LT (WIDEN)  
 GENERAL PLAN NO. 1

PLATE NO. 215  
 COUNTY SBD  
 REGISTERED CIVIL ENGINEER DATE  
 APPROVAL DATE  
 LICENSE NO. 21711  
 REGISTERED CIVIL ENGINEER DATE

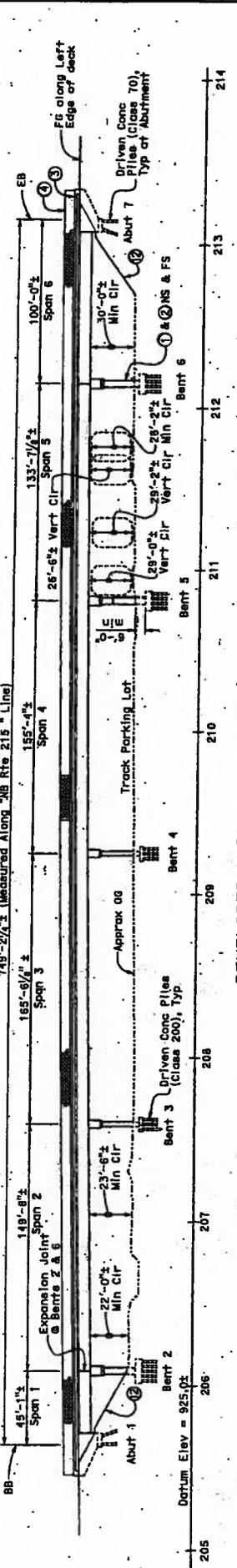
- NOTES:**
1. Point of minimum vertical clearance over Railroad
  2. Point of minimum vertical clearance over Roadway
  3. Direction of Traffic
  4. Indicates Existing Structure
  5. Indicates Existing Bridge Removal (portion)
  6. Indicates Closure Pour
- LEGEND**
- Point of minimum vertical clearance over Railroad
  - Point of minimum vertical clearance over Roadway
  - Direction of Traffic
  - ▨ Indicates Existing Structure
  - ▨ Indicates Existing Bridge Removal (portion)
  - ▨ Indicates Closure Pour

- NOTES:**
1. Paint "Br. No. 54-482R"
  2. Paint "Colton-Loma Linda Yard Overhead"
  3. Cap Barrier, Type 732
  4. Chain Link Railing, Type 7
  5. Temporary Railing, Type K (Anchored), see "Road Plans"
  6. Remove existing Type 9 Barrier Railing drainage inlets
  7. 7'-6" Closure Pour
  8. Existing MGR, see "Road Plans"
  9. Remove existing MGR, see "Road Plans"
  10. MGR, see "Road Plans"
  11. Slope Paving
  12. Shear Key of Left EAB not included for Bent 4
- For "Typical Sections", see "General Plan No. 2" sheet.

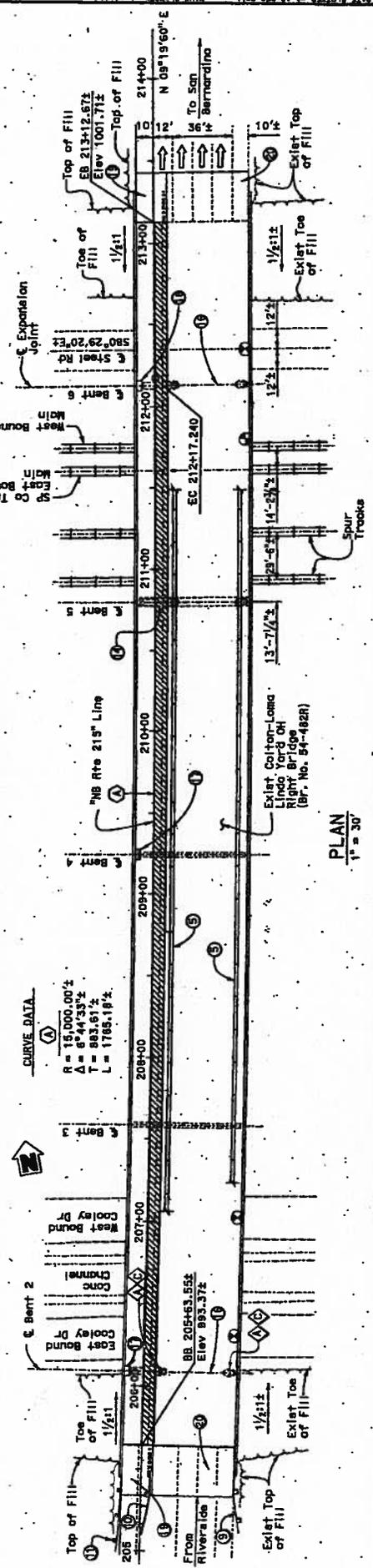
- RETROFIT CODE**
- ◆ Column Steel Coating (Class P/F) Retrofit
  - ◆ Footing Retrofit
  - ◆ Column Top Steel Tie Plate Retrofit



**CHECKED DETAILS**

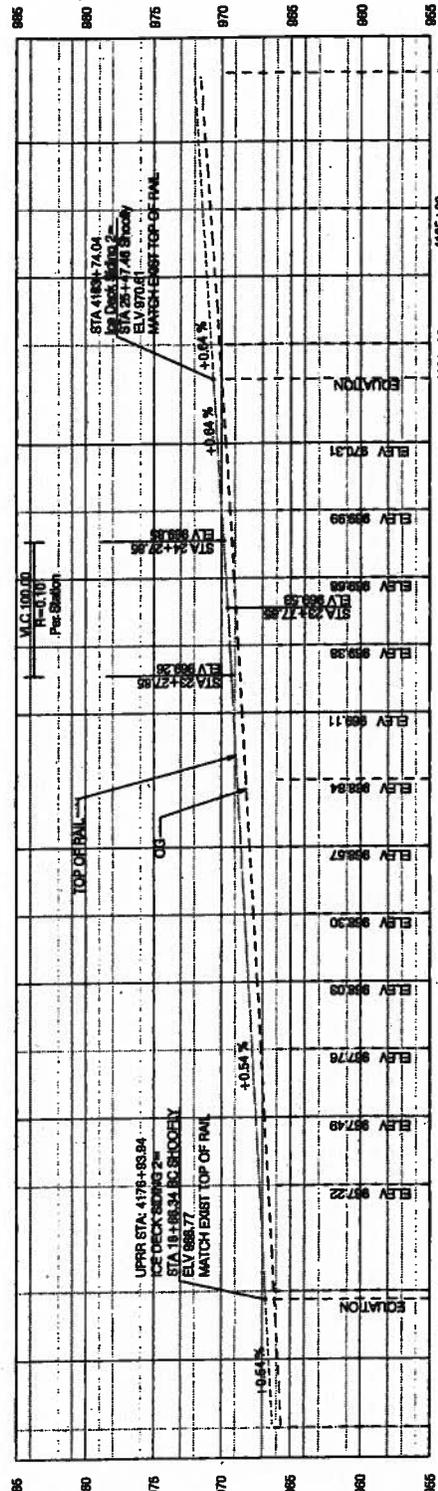


**DEVELOPED MIRROR ELEVATION**  
 1" = 30'



**PLAN**  
 1" = 30'

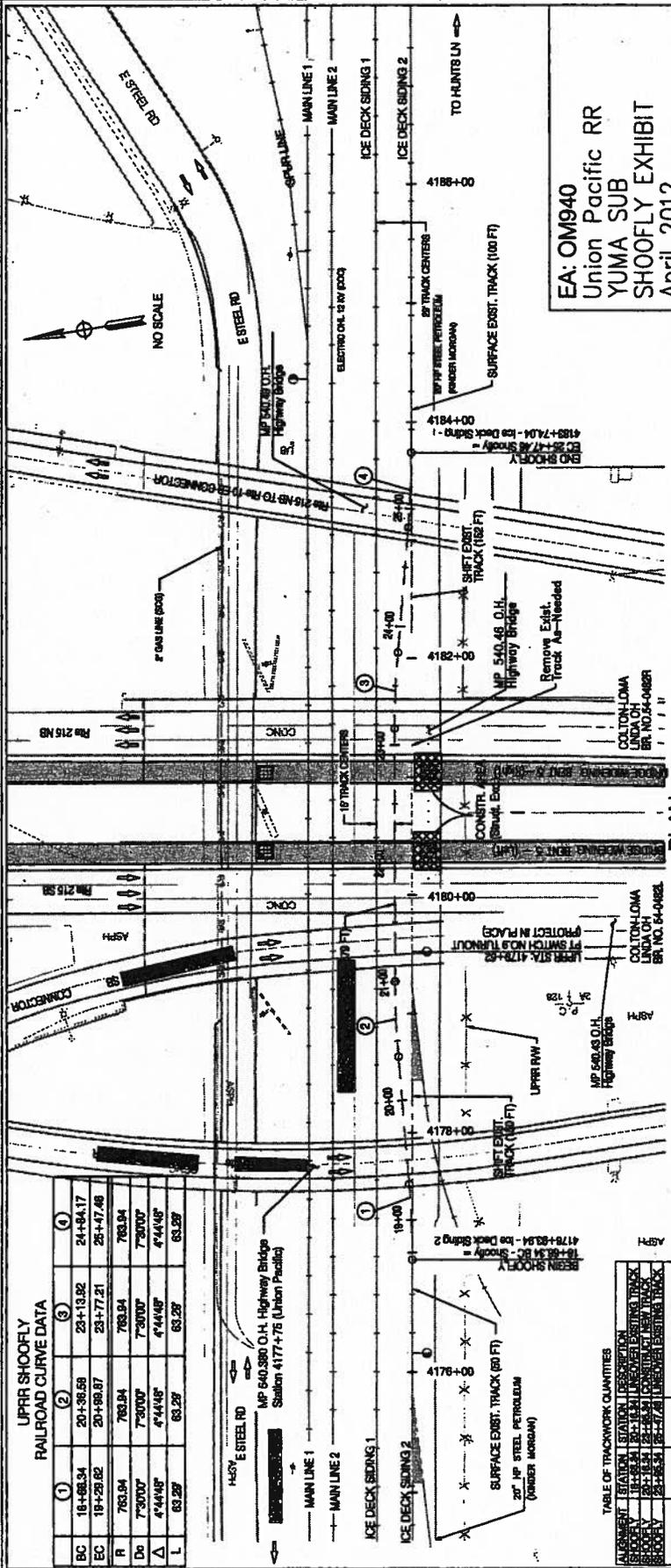
DIVISION OF ENGINEERING SERVICES STRUCTURES SECTION <b>DESIGN BRANCH 10</b>		PROJECT NO. 54-0482R SHEET NO. 10	
STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION		COLTON-LOMA LINDA OH RT (WIDEN) <b>GENERAL PLAN NO. 1</b>	
DESIGNER: J. S. BROWN CHECKER: J. S. BROWN QUANTITY: J. S. BROWN		DIVISION OF ENGINEERING SERVICES STRUCTURES SECTION PROJECT NO. 54-0482R SHEET NO. 10	
DRAWN: J. S. BROWN CHECKED: J. S. BROWN QUANTITY: J. S. BROWN		DIVISION OF ENGINEERING SERVICES STRUCTURES SECTION PROJECT NO. 54-0482R SHEET NO. 10	



PROFILE  
NO SCALE

UPRR SHOOFLY  
RAILROAD CURVE DATA

①	②	③	④
BC	18+68.34	20+36.59	24+84.17
EC	18+28.82	20+98.87	25+47.46
R	763.94	763.94	763.94
Do	7'30"00"	7'30"00"	7'30"00"
Δ	4°44'48"	4°44'48"	4°44'48"
L	63.29'	63.29'	63.29'



PLAN

TABLE OF TRACKWORK QUANTITIES

ALIGNMENT	STATION	DESCRIPTION	QUANTITY
ICE DECK	4177+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4178+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4179+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4180+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4181+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4182+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4183+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4184+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4185+00	ICE DECK EXISTING TRACK	1.00
ICE DECK	4186+00	ICE DECK EXISTING TRACK	1.00

EA: OM940  
 Union Pacific RR  
 YUMA SUB  
 SHOOFLY EXHIBIT  
 April 2012

Sheet	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET TOTAL SHEETS

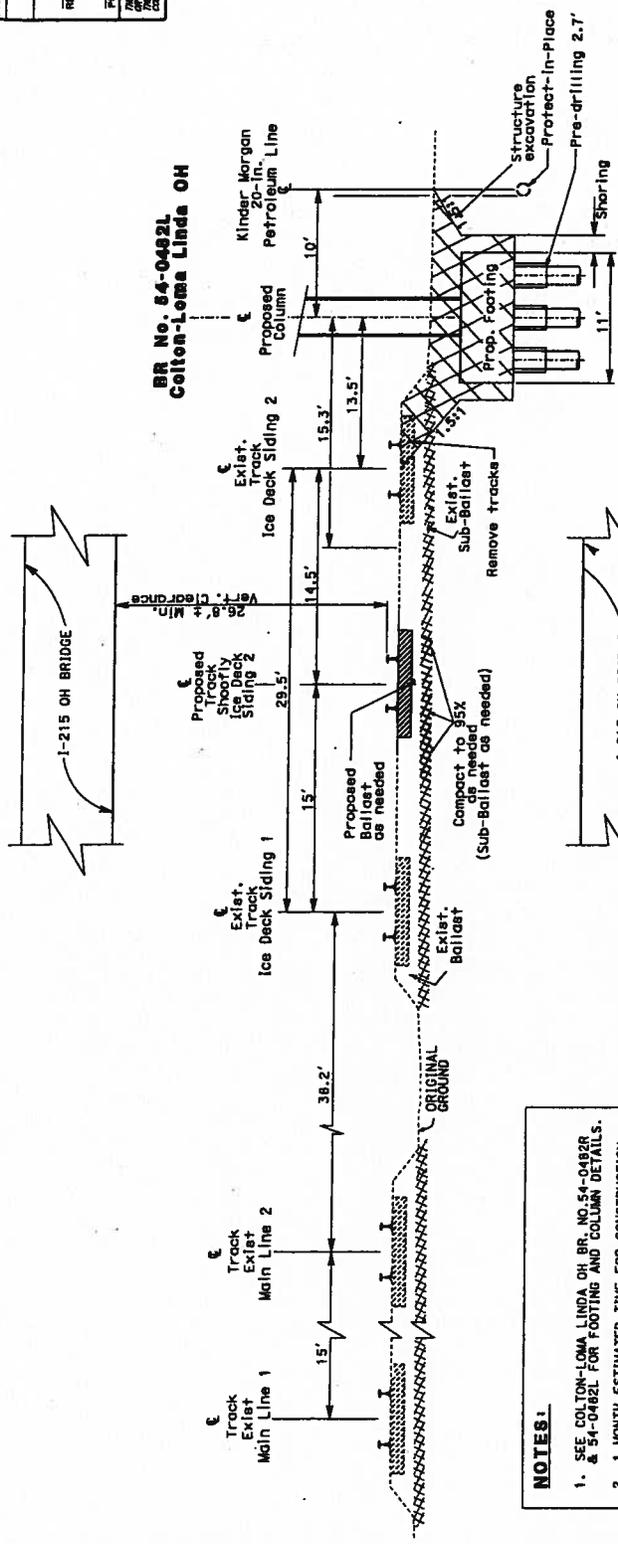
  

REGISTERED CIVIL ENGINEER	DATE
PLANS APPROVAL DATE	

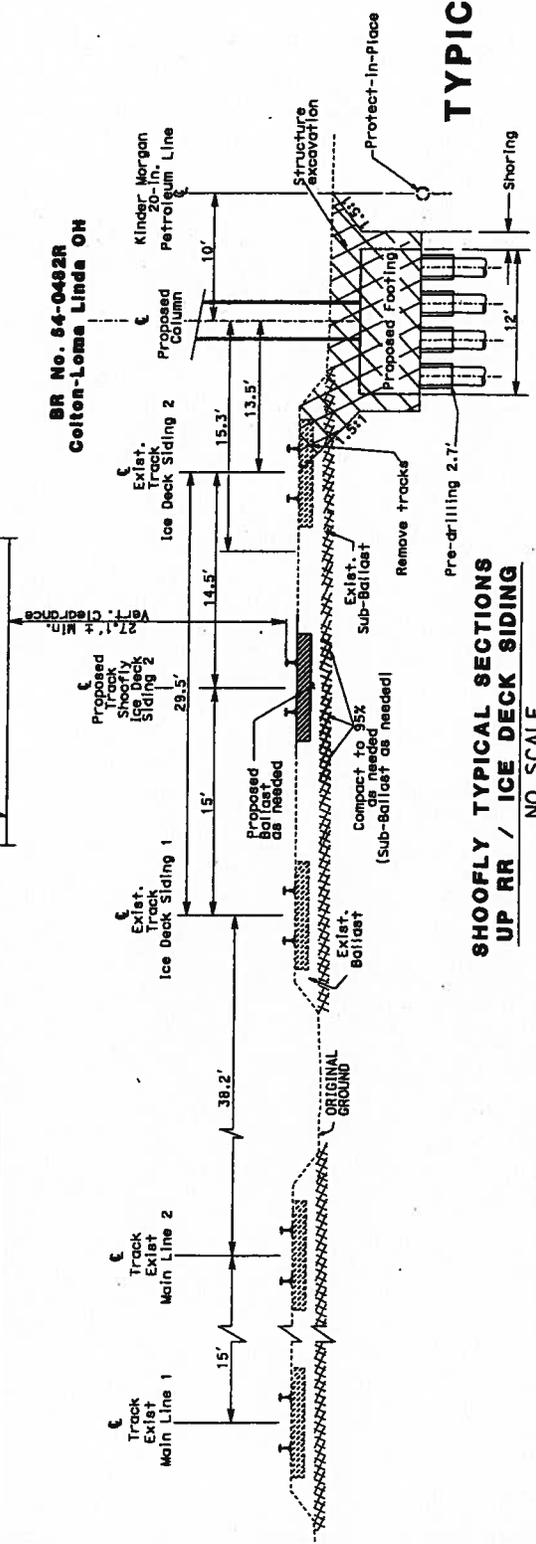
  

THE STATE OF CALIFORNIA OR ITS OFFICERS  
 THE CONTRACTOR TO COMPLETE THE WORK  
 SHOWN ON THESE PLANS SHALL BE RESPONSIBLE  
 FOR THE PROTECTION OF ALL UTILITIES  
 LOCATED UNDER OR ADJACENT TO THE  
 PROJECT.

**BR No. 54-0482L  
 Colton-Loma Linda OH**



**BR No. 54-0482R  
 Colton-Loma Linda OH**



**NOTES:**  
 1. SEE COLTON-LOMA LINDA OH BR. NO. 54-0482R & 54-0482L FOR FOOTING AND COLUMN DETAILS.  
 2. 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	201.26	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	106.10	13,210	15,755	28,965
<b>Sub-Total =</b>						<b>109,122</b>	<b>57,432</b>	<b>166,554</b>
<b>TRACK REMOVAL - COMPANY</b>								
273 existing/106 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>Totals =</b>						<b>317,425</b>	<b>185,748</b>	<b>503,173</b>

Total Wgt. in Tons = 1,427

**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**

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:
  - 1. 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.

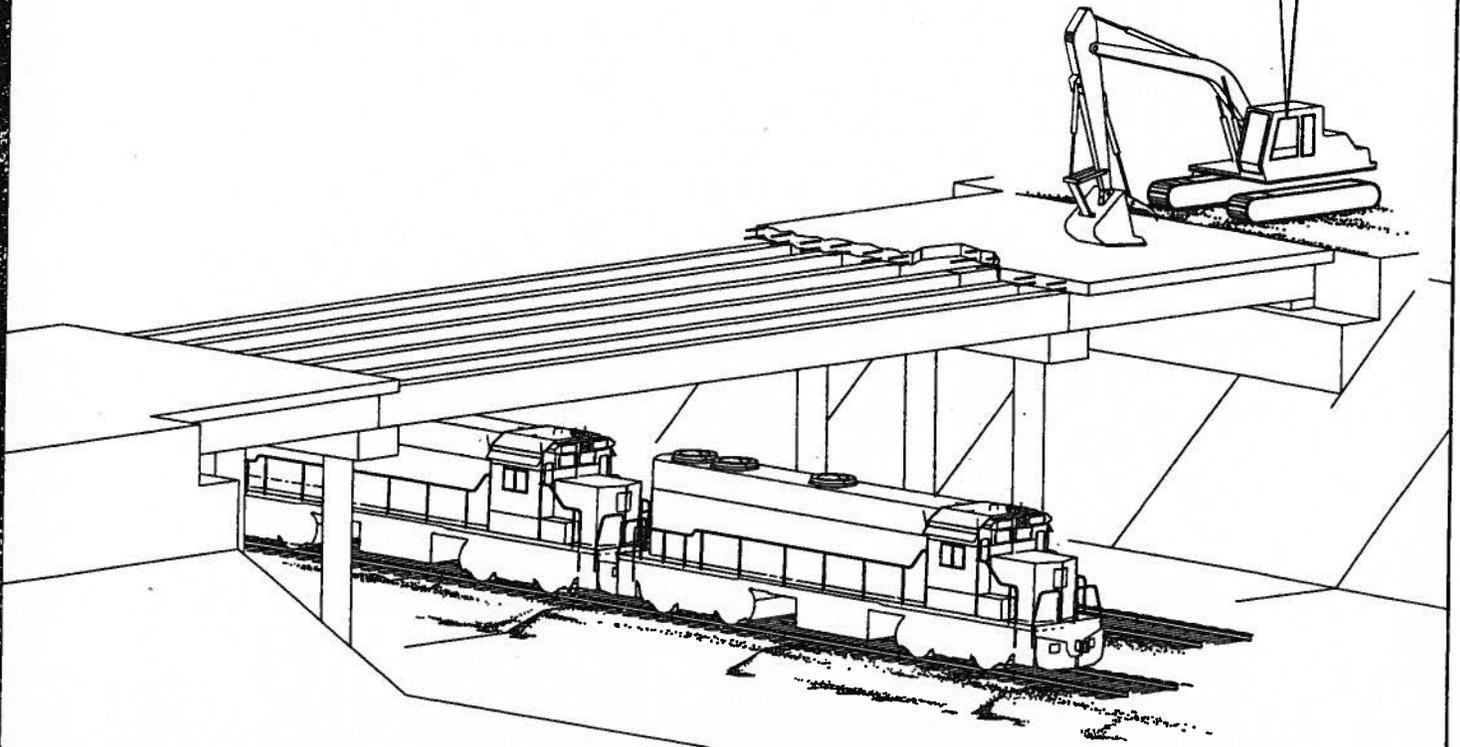
# **EXHIBIT F**

**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

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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**

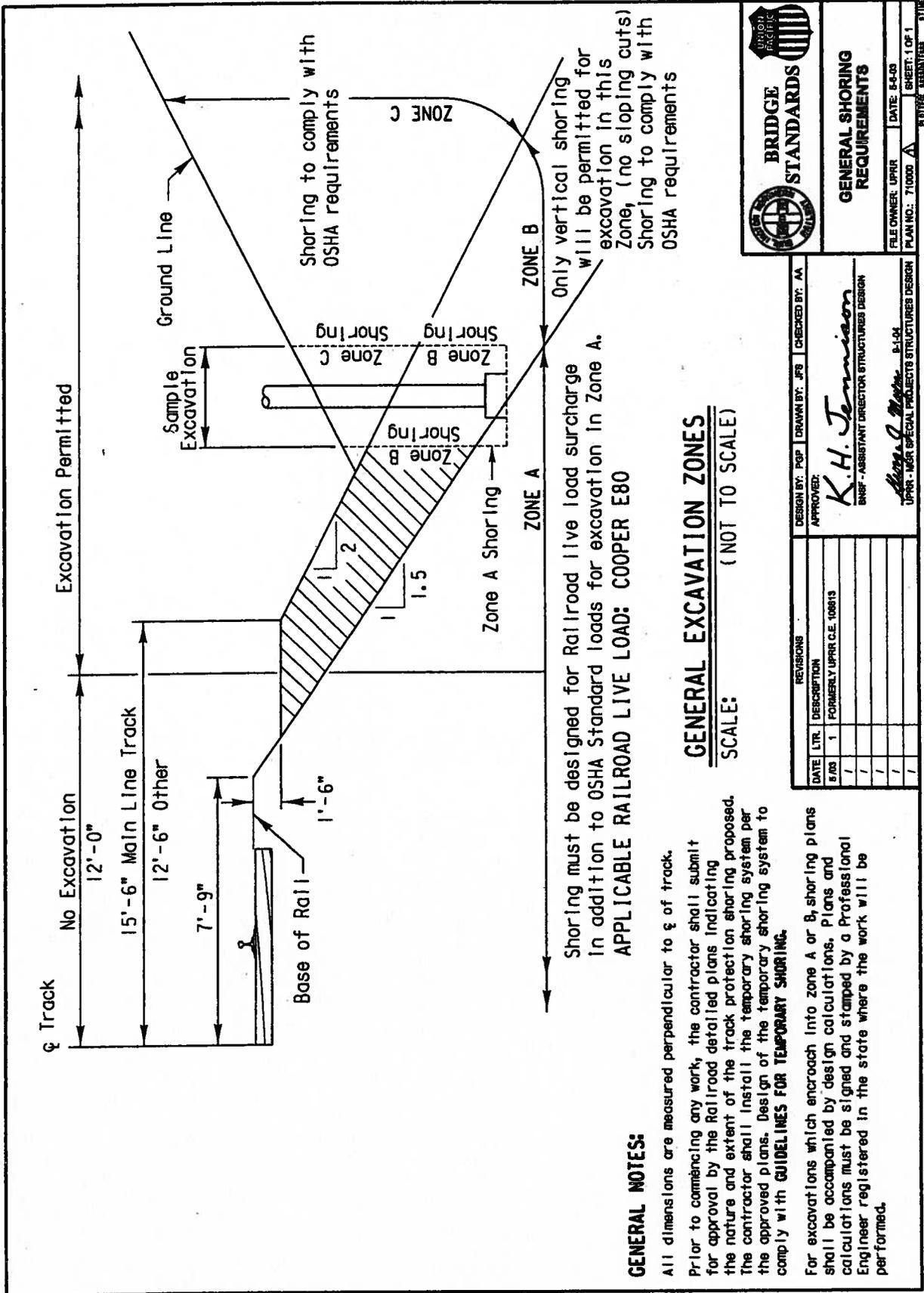
A. The demolition operations shall be planned such that the utility lines are operating safely at all times. The utility lines shall be protected if affected by demolition operations. All the work associated with utility lines should be coordinated by the contractor with the respective utility companies.

## **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  $\xi$  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**

Only vertical shoring will be permitted for excavation in this Zone, (no sloping cuts) Shoring to comply with OSHA requirements

Shoring to comply with OSHA requirements

**BRIDGE STANDARDS**

**GENERAL SHORING REQUIREMENTS**

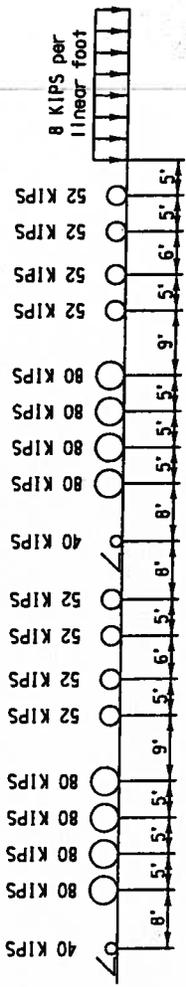
FILE OWNER: UPRR | DATE: 8-03  
 PLAN NO.: 71000 | SHEET: 1 OF 1  
 UPRR - NOR SPECIAL PROJECTS STRUCTURES DESIGN

DATE	LTR.	DESCRIPTION	DESIGN BY: POP	DRAWN BY: JPB	CHECKED BY: AA
8/03	1	FORMERLY UPRR G.E. 10813			
/	/	/			
/	/	/			
/	/	/			

APPROVER: *K.H. Jenkinson*  
 BRSP - ASSISTANT DIRECTOR STRUCTURES DESIGN

*Steve J. Meyer* B-104  
 UPRR - NOR SPECIAL PROJECTS STRUCTURES DESIGN

**Figure 1**



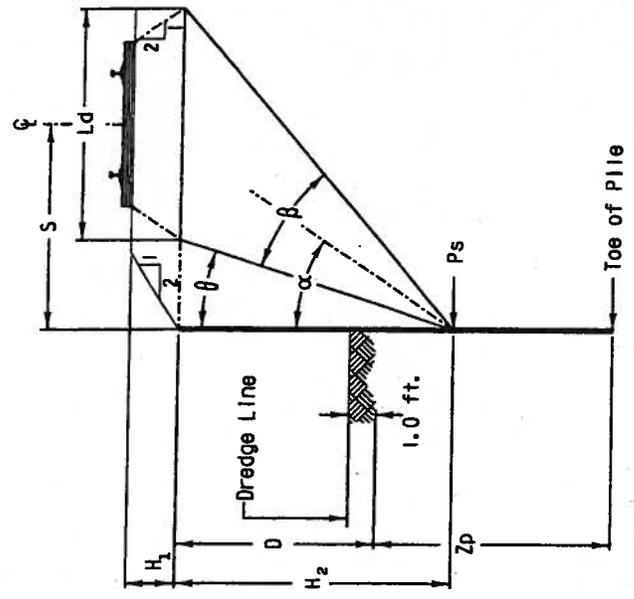
**COOPER E80 LOAD**  
SCALE: (NOT TO SCALE)

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**

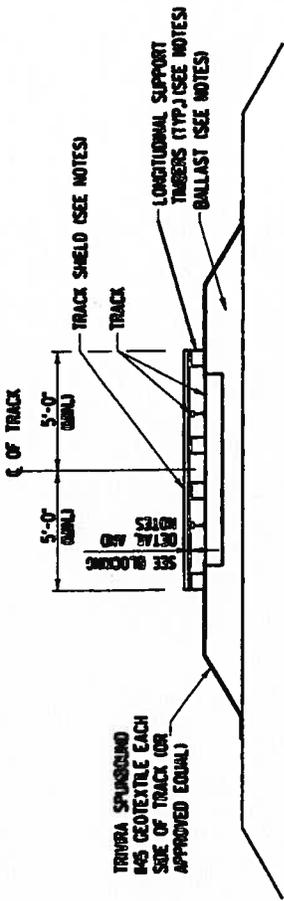
**LIVE LOAD PRESSURE DUE TO COOPER E80**

FILE OWNER: UPRR DATE: \_\_\_\_\_  
 PLAN NO.: 710001 SHEET: 1 OF 1

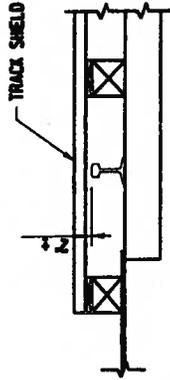
DATE	REVISIONS	LTR.	DESCRIPTION

DESIGN BY: POP DRAWN BY: JFS CHECKED BY: AA  
 APPROVED: *K.H. Jernison*  
 BRNSF - ASSISTANT DIRECTOR STRUCTURES DESIGN  
*James J. ...* E-104  
 UPRR - NGR 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 SIMPLY 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 6' 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.



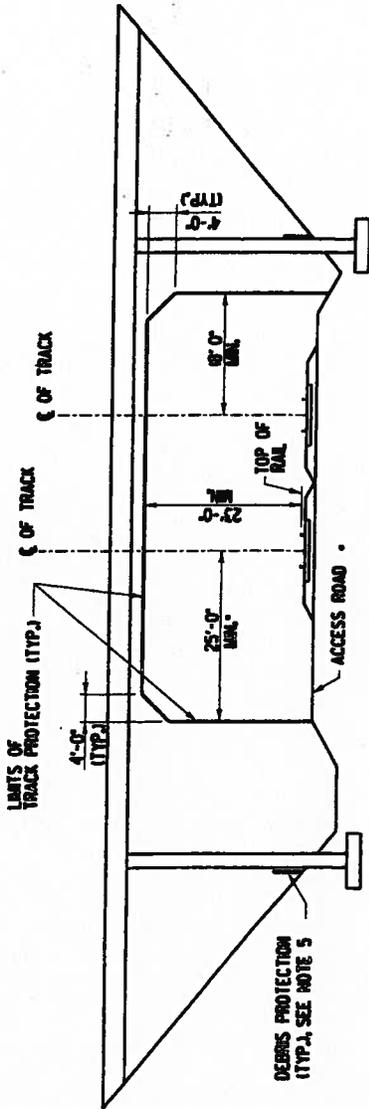
**UNION PACIFIC RAILROAD**

**TRACK SHIELD DETAIL**

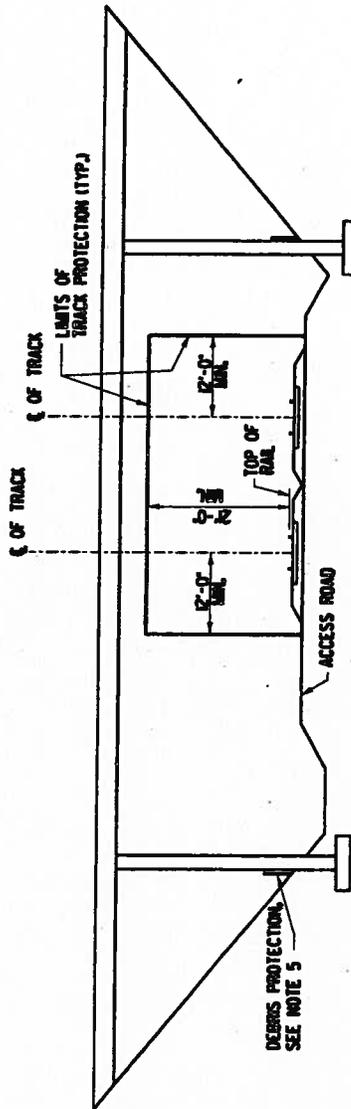
**OFFICE OF CHIEF ENGINEER DESIGN**

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 TRAINS. 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**

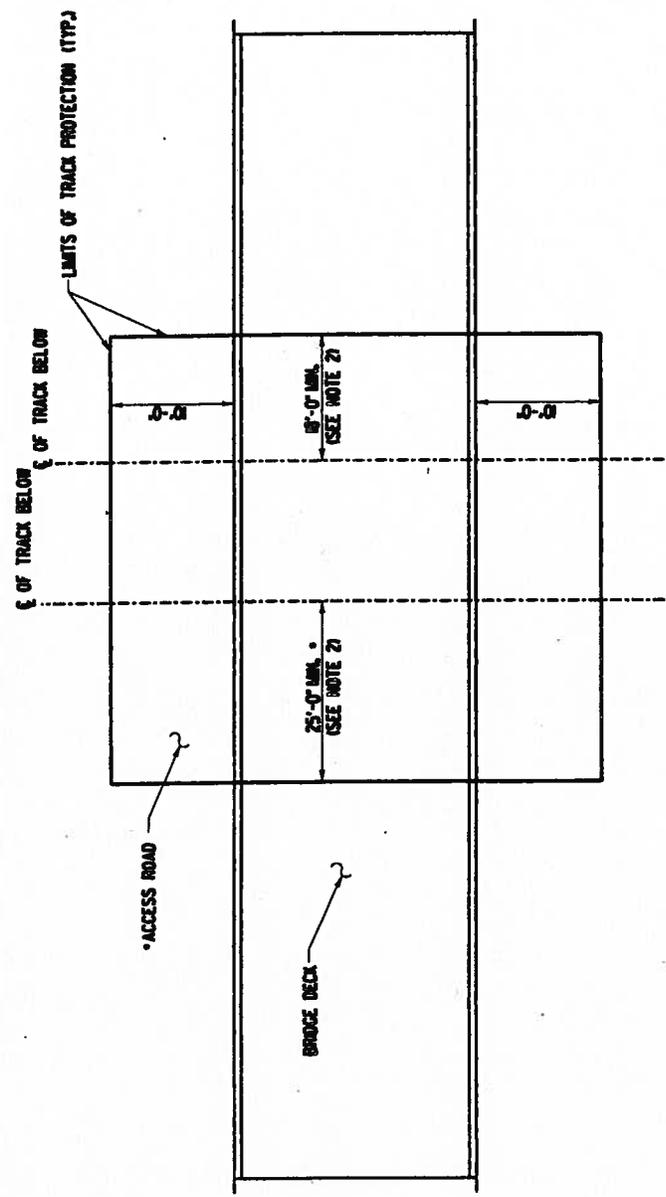
**OFFICE OF CHIEF ENGINEER DESIGN**

DATE: 3-31-98

SHEET 1 OF 2

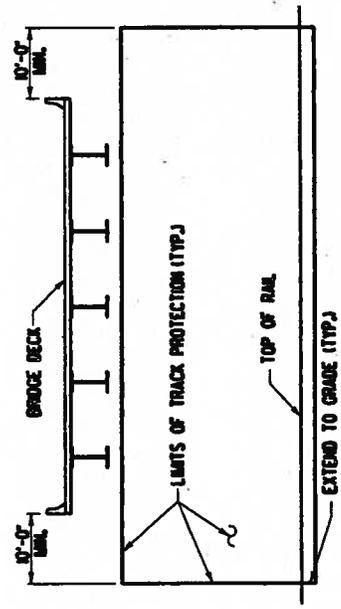
**NOTES:**

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 PLAN  
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION**

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE



**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.

**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. 080000506 (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 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Number
22064-1

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**

**Property Description**

**EXHIBIT "A"**

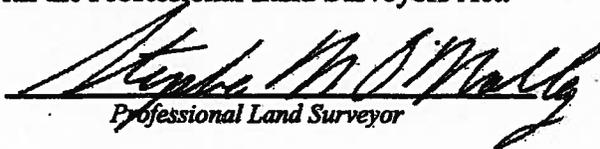
That portion of Lots 8 and 9, Block 64 of Rancho San Bernardino, in the city of Colton, county of San Bernardino, state of California as shown by map recorded in Book 7 of maps at page 2 thereof, in the Office of the County Recorder of said County, described as follows:

**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.



## 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>	\$	0	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$	0	Contingency Amendment	\$	0
<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>

Contract Start Date 1/09/13	Current Contract Expiration Date 1/04/16	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0839.  
 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

Payable  Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

PAUL MELOTON  
 Project Manager (Print Name)

Garry Cohe  
 Task Manager (Print Name)

Andrea Turick  
 Dir. of Fund Admin. & Programming (Print Name)

Jeffery Hill  
 Contract Administrator (Print Name)

Debra Clouffe William Sturrock  
 CFO

[Signature] 12/5/12  
 Signature Date

[Signature] 12-6-12  
 Signature Date

[Signature] 12-11-12  
 Signature Date

[Signature] 12/14/12  
 Signature Date

[Signature] 12/18/12  
 Signature Date

---

Chief Financial Officer (Print Name)

Signature

Date

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: \_\_\_\_\_

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[Signatures continued on next page]

[Signatures continued from previous page]

**SAN BERNARDINO ASSOCIATED  
GOVERNMENTS**

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

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

**EXHIBIT A**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

Railroad's Location Print

**CALTRANS TEMPLATE —  
(THIS PAGE INTENTIONALLY LEFT BLANK)**

**EXHIBIT B**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

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



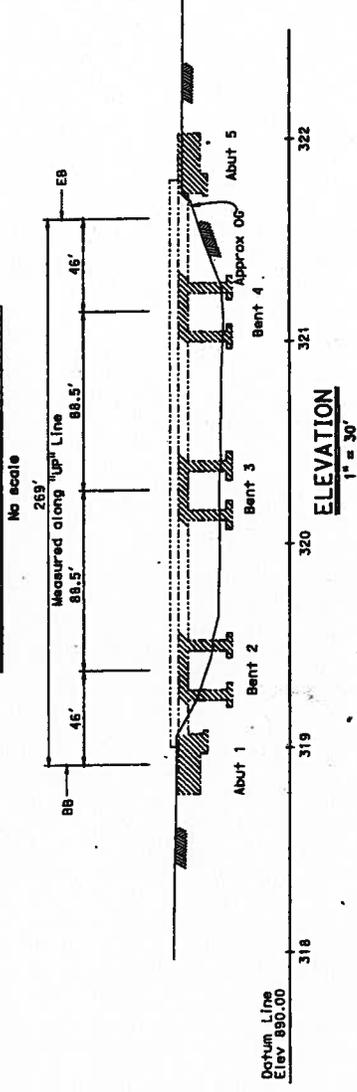
DATE	COUNTY	ROUTE	TOTAL PROJECT	SHEET TOTAL
08	SBD, Riv	91,215	Var	Var

REGISTERED CIVIL ENGINEER DATE

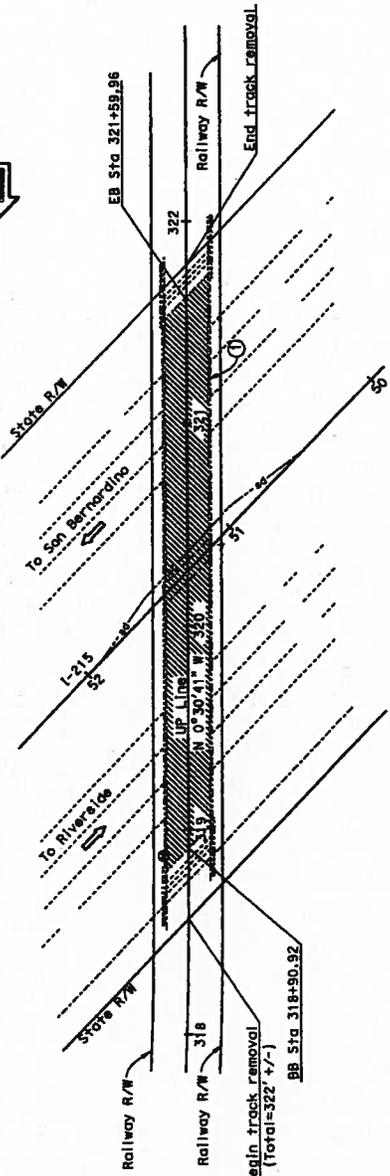
PLANS APPROVAL DATE

THE STATE OF CALIFORNIA ON ITS OFFICERS THE AUTHORITY OF THE ENGINEERS OF CALIFORNIA CONFERS UPON THIS PLAN SHEET.

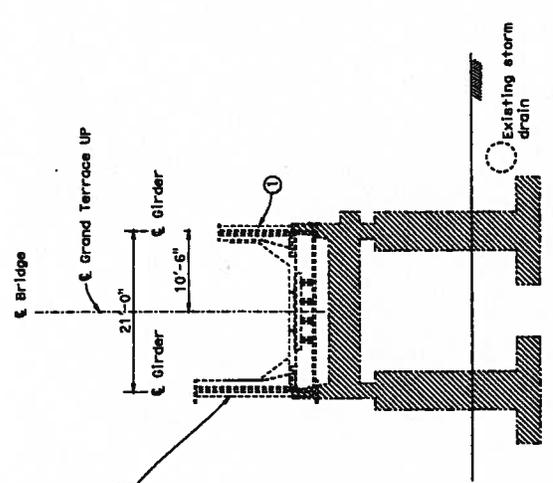
**EXISTING STRUCTURE PROFILE**



- LEGEND:**
- ▨ Limits of Bridge Salvage/Removal
  - ⊙ Point of minimum vertical clearance
  - ① Steel Through girder
- ABBREVIATIONS:**
- UP Union Pacific Railway (Bridge Owner)



**SALVAGE STRUCTURE**



**GRAND TERRACE UNDERPASS (SALVAGE/REMOVE)**

Br. No. 64-0810

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION	DESIGN	BEN AMIRI	CHECKED BY	ALEX SANCHEZ	DATE REVISION	DATE REVISION
FUNCTIONAL SUPERVISOR	DESIGNED BY	ALEX SANCHEZ	REVISOR	DATE REVISION	DATE REVISION	DATE REVISION

BORDER LAST REVISED 7/2/2010

USDSHAME → 411340

DOM FILE → GRAND TERRACE (Salvage).CP.ALT.1.dgn

UNIT 2241

PROJECT NUMBER & PHASE

08000005061

RELATIVE BORDER SCALE

1" = 12" IN INCHES

DATE PLOTTED → 18-MAY-2012

10-01-10



**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

**EXHIBIT D**

**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.**

**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

State's Right Of Entry Agreement, Exhibit D – 1

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- 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

State's Right Of Entry Agreement, Exhibit D – 2

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.

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

By \_\_\_\_\_

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

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

**EXHIBIT E**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

Form of Temporary Construction 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: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF NEBRASKA ) ss  
COUNTY OF DOUGLAS)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who are the \_\_\_\_\_ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Notary Seal)

**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

**Exhibit A**

**Property Description**

**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°30'16" East, 59.92 feet; thence South 41°21'43" West, 97.79 feet to the West line of said Section 5; thence along said West line, North 00°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°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°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°11'45" West; thence Southerly along said Easterly line, 278.59 feet through a central angle of 08°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°52'03" East; thence continuing Southerly along said right of way, 168.07 feet through a central angle of 00°33'05"; thence continuing along said right of way, South 00°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°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: \_\_\_\_\_

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

*[Handwritten Signature]*  
Professional Land Surveyor  
9/1/11



## 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.

**EXHIBIT F**

**TO UNDERPASS BRIDGE REMOVAL AGREEMENT**

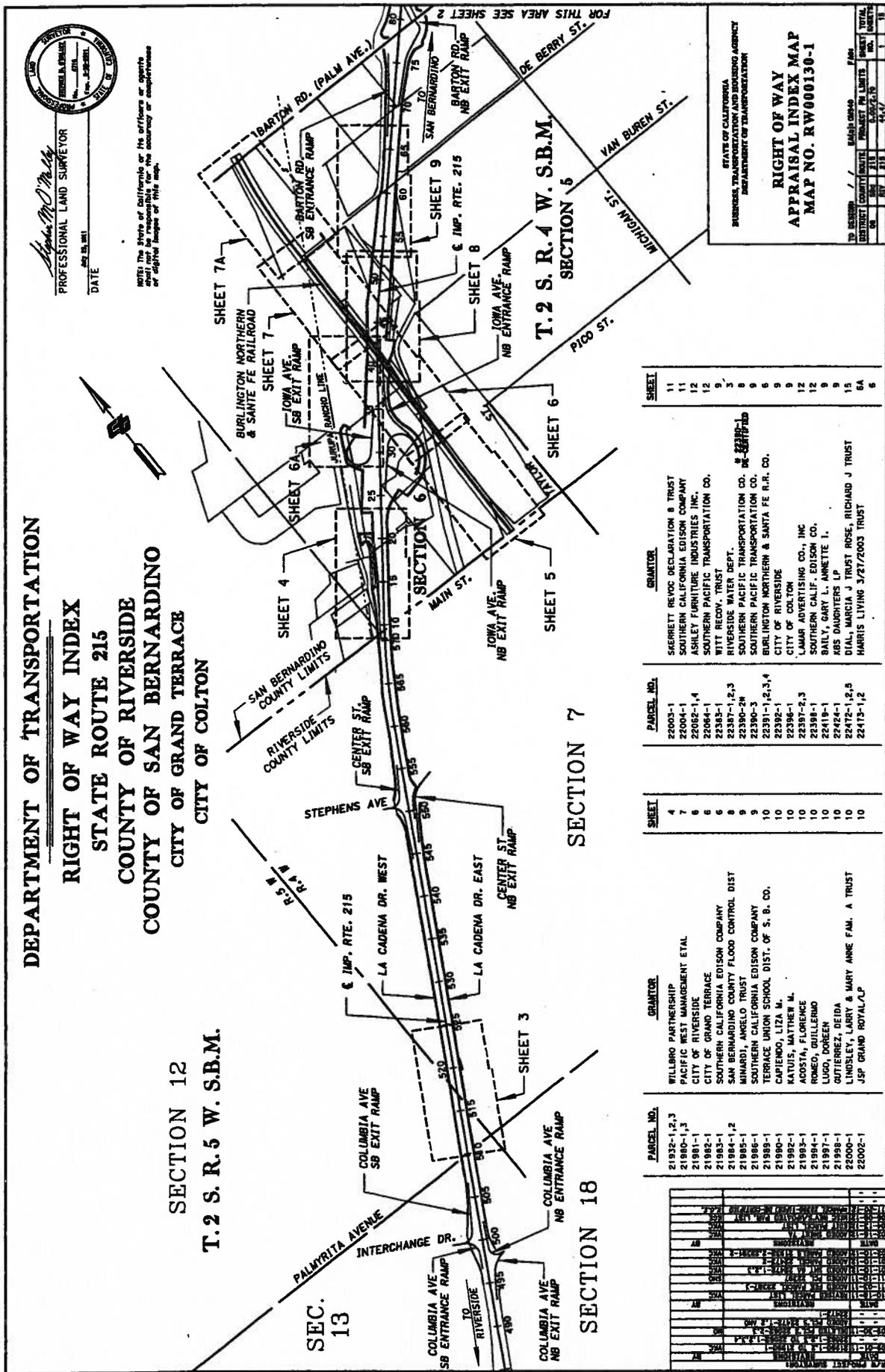
State's Right of Way Appraisal Map  
Showing Parcels 22390-2 and 22390-3



*Stephen M. Mc Coy*  
 PROFESSIONAL LAND SURVEYOR  
 DATE: MAY 25, 2011

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.

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



STATE OF CALIFORNIA  
 DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY**  
**APPRAISAL INDEX MAP**  
**MAP NO. RW000130-1**

SHEET	GRANTOR
11	SHERRETT REVOC DECLARATION & TRUST
11	SOUTHERN CALIFORNIA EDISON COMPANY
12	ASHLEY FURNITURE INDUSTRIES INC.
12	SOUTHERN PACIFIC TRANSPORTATION CO.
9	WITT RECOV. TRUST
3	RIVERSIDE WATER DEPT.
8	SOUTHERN PACIFIC TRANSPORTATION CO.
8	SOUTHERN PACIFIC TRANSPORTATION CO.
9	BURLINGTON NORTHERN & SANTA FE R.R. CO.
9	CITY OF COLTON
9	LAMAR ADVERTISING CO., INC
12	SOUTHERN CALIF. EDISON CO.
12	BAILY, GARY L. ANNETTE I.
9	ABS DAUGHTERS LP
9	DIAL, MARCIA J TRUST ROSE, RICHARD J TRUST
15	HARRIS LIVING 3/27/2003 TRUST
6A	
6	

PARCEL NO.	GRANTOR
22003-1	WILLBRO PARTNERSHIP
22004-1	PACIFIC WEST MANAGEMENT ETAL
22062-1,4	CITY OF RIVERSIDE
22064-1	CITY OF GRAND TERRACE
22383-1	SOUTHERN CALIFORNIA EDISON COMPANY
22387-1,2,3	SAN BERNARDINO COUNTY FLOOD CONTROL DIST
22390-2&4	MINARDI, ANGELO TRUST
22390-3	SOUTHERN CALIFORNIA EDISON COMPANY
22391-1,2,3,4	TERRACE UNION SCHOOL DIST. OF S. B. CO.
22392-1	CAPITENO, LIZA M.
22398-1	KATUIS, MATTHEW M.
10	AOSTA, FLORENCE
10	ROMEO, GUILLERMO
10	LUGO, DORREEN
10	GUTIERREZ, DEIDA
10	LINDSLEY, LARRY & MARY ANNE F.A.M. A TRUST
10	JSP GRAND ROYAL/LP

SHEET	GRANTOR
4	WILLBRO PARTNERSHIP
7	PACIFIC WEST MANAGEMENT ETAL
6	CITY OF RIVERSIDE
6	CITY OF GRAND TERRACE
6	SOUTHERN CALIFORNIA EDISON COMPANY
8	SAN BERNARDINO COUNTY FLOOD CONTROL DIST
8	MINARDI, ANGELO TRUST
9	SOUTHERN CALIFORNIA EDISON COMPANY
10	TERRACE UNION SCHOOL DIST. OF S. B. CO.
10	CAPITENO, LIZA M.
10	KATUIS, MATTHEW M.
10	AOSTA, FLORENCE
10	ROMEO, GUILLERMO
10	LUGO, DORREEN
10	GUTIERREZ, DEIDA
10	LINDSLEY, LARRY & MARY ANNE F.A.M. A TRUST
10	JSP GRAND ROYAL/LP

PARCEL NO.	GRANTOR
21932-1,2,3	WILLBRO PARTNERSHIP
21980-1,3	PACIFIC WEST MANAGEMENT ETAL
21981-1	CITY OF RIVERSIDE
21982-1	CITY OF GRAND TERRACE
21983-1	SOUTHERN CALIFORNIA EDISON COMPANY
21984-1,2	SAN BERNARDINO COUNTY FLOOD CONTROL DIST
21985-1	MINARDI, ANGELO TRUST
21986-1	SOUTHERN CALIFORNIA EDISON COMPANY
21989-1	TERRACE UNION SCHOOL DIST. OF S. B. CO.
21990-1	CAPITENO, LIZA M.
21992-1	KATUIS, MATTHEW M.
21993-1	AOSTA, FLORENCE
21994-1	ROMEO, GUILLERMO
21997-1	LUGO, DORREEN
22000-1	GUTIERREZ, DEIDA
22002-1	LINDSLEY, LARRY & MARY ANNE F.A.M. A TRUST

SECTION	SHEET	GRANTOR
13	3	WILLBRO PARTNERSHIP
13	4	PACIFIC WEST MANAGEMENT ETAL
13	5	CITY OF RIVERSIDE
13	6	CITY OF GRAND TERRACE
13	7	SOUTHERN CALIFORNIA EDISON COMPANY
13	8	SAN BERNARDINO COUNTY FLOOD CONTROL DIST
13	9	MINARDI, ANGELO TRUST
13	10	SOUTHERN CALIFORNIA EDISON COMPANY
13	11	TERRACE UNION SCHOOL DIST. OF S. B. CO.
13	12	CAPITENO, LIZA M.
13	13	KATUIS, MATTHEW M.
13	14	AOSTA, FLORENCE
13	15	ROMEO, GUILLERMO
13	16	LUGO, DORREEN
13	17	GUTIERREZ, DEIDA
13	18	LINDSLEY, LARRY & MARY ANNE F.A.M. A TRUST
13	19	JSP GRAND ROYAL/LP





- 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: 13

**Date:** January 9, 2013

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

- Recommendation:**\*
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.

**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

*Approved*  
*Board of Directors*

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

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

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

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

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.

BRD1301e-ds

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

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:** This item was reviewed and recommended for approval (15-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on December 13, 2013. This item was also reviewed and recommended for approval at the Mountain/Desert Committee on December 14, 2012. SANBAG General

Board Agenda Item  
January 9, 2013  
Page 4

Counsel and Contract Administrator have reviewed this item and a draft of the standard contract.

***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: 14

**Date:** January 9, 2013

**Subject:** Interstate 15 (I-15) La Mesa/Nisqualli Interchange Project

- Recommendation:**
1. Approve Amendment No. 1 to Contract C11198 with Arcadis-US for Construction Management Services on the I-15 La Mesa/Nisqualli Interchange Project for a \$2,000,000.00 reduction in contract value, excluding contingency, for a new revised not to exceed contract total of \$5,295,000.00 and to reduce the retention from ten (10) percent to \$100,000.00; and
  2. Approve Amendment No. 1 to Construction Cooperative Agreement No. C11200 with the City of Victorville for the La Mesa/Nisqualli Interchange to revise the funding plan; and
  3. Approve Amendment to the Fiscal Year 2012/2013 budget for Task No. 0888, I-15 La Mesa/Nisqualli Interchange Project, to increase budget for Local Funds provided by the City of Victorville by \$12,398,574.00 and increase Victor Valley Major Local Highway Bond funds by \$251,695.00.

**Background:** This item provides for a budget and two contract amendments. In May 2011, the Board approved the Construction Cooperative Agreement No. C11200 with the City of Victorville for the La Mesa/Nisqualli

*Recommended  
 Board of Directors*

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

Moved:                      Second:

In Favor:                  Opposed:                  Abstained:

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

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

BRD1301a-mb

Attachments: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C11198%20Arcadis%20US%20Revised%20Attachment%20B%20Amendment%20No.%201.pdf>  
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C11198-01.docx>  
<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C11200-01.docx>

Interchange Project in the amount of \$29,532,250.00. Per the terms of the Agreement and in accordance with the Strategic Plan, San Bernardino Associated Governments (SANBAG) as the "Authority" is responsible for 50% of the total eligible project construction work expenses of \$58,464,500.00 equating to an amount not to exceed \$28,932,250.00. SANBAG's share of the project funding is provided from Victor Valley Major Local Highway Bond funds and Corridor Mobility Improvement Account (CMIA) funds.

In June 2011, the Board approved award of Contract C11198 with Arcadis-US for Construction Management Services for the project in the amount of \$8,024,500.00 including contingency.

In December 2011, the Board approved award of contract C12010 with Riverside Construction, Inc. for construction of the project in the amount of \$36,239,527.20 including contingency.

In August 2011, the Board approved the I-15 CMIA Baseline Agreement C12032 with the California Transportation Commission (CTC) for I-15 La Mesa/Nisqualli Interchange project. On August 10, 2011, by Resolution CMIA-A-1112 the CTC allocated \$21,324,000.00 CMIA funds to the project based on a construction phase cost estimate of \$58.2 million.

In January 2012, based on savings in the award of construction contract C12010 to Riverside Construction, the CTC amended the allocation to \$16,206,000.00.

In April 2012, the Board approved Agreement C12225, a three party agreement with SANBAG, the City of Victorville and Arcadis-US for City-provided temporary employees working under the direction of Arcadis-US.

**Recommendation 1:**

The project construction is approximately 50% complete, on schedule, and several factors associated with the anticipated Construction Management (CM) cost of the project have changed since the contract was awarded to Arcadis-US, Inc. Based on Staff's analysis, it has been determined that Contract C11198, Attachment B, "Billing Rate Schedule", should be revised resulting in an \$2,000,000.00 overall reduction in the contract for a new not-to-exceed amount of \$5,295,000.00. Several efficiencies have contributed to the savings, including but not limited to:

- The consultant's constructability review reduced the overall project duration by four months.
- Staffing associated with the above noted three party agreement minimized the consultant's team members assigned to the project.

- Not exercising the option for the CM firm to provide an office.
- Reduction in the estimated cost for the subconsultants to complete their tasks.

In addition to the amendment to the contract budget, Arcadis-US, Inc. has also requested that the 10% retention held per Article 4.4 of the agreement be reduced to a total of \$100,000.00.

Staff is recommending approval of Amendment No. 1 to Contract C11198 with Arcadis-US for Construction Management Services for the I-15 La Mesa/Nisqualli Interchange Project. Staff is not recommending a reduction in the construction management contingency of \$729,500, which can only be released under authorization of the Executive Director or his designee.

**Recommendation 2**

In December 2011, the Board approved award of Agreement C12010 with Riverside Construction, Inc. for construction of the project in the amount of \$36,239,527.20 including contingency. At that time Staff indicated that the bid came in \$13.6 million dollars less than the engineer's estimate. Staff explained that the re-distribution of the unused funds had not yet been determined or realized. However, any re-allocation of project savings would come back to the Board for consideration. Staff is proposing the following reallocation of the project funding which includes the savings identified in Recommendation #1.

**I-15 La Mesa/Nisqualli Interchange – Revised Construction Funding**

Component	Original Cooperative Budget			Proposed Revised Budget based upon Contracts Awarded		
	Budgeted Cost	City Share (DIF Fees)	Authority Share (Measure 1(CMIA))	Awarded Cost	City Share (DIF Fees)	Authority Share (Measure 1(CMIA))
Construction Management	\$ 8,024,500	\$ 4,012,250	\$ 4,012,250	\$ 8,024,500	\$ 4,012,250	\$ 4,012,250
CM Amend # 1				\$ (2,000,000)	\$ (1,000,000)	\$ (1,000,000)
Construction Capital	\$49,840,000	\$ 4,920,000	\$24,920,000	\$ 36,239,527	\$ 18,119,763	\$ 18,119,764
Env. Permit Cost	\$ -	\$ -	\$ -	\$ 118,822	\$ 77,561	\$ 41,261
Source Inspection and HMA	\$ -	\$ -	\$ -	\$ 167,000	\$ 83,500	\$ 83,500
Post award Audit	\$ -	\$ -	\$ -	\$ 2,500	\$ 1,250	\$ 1,250
SANBAG	\$ 600,000	\$ 600,000	\$ -	\$ 600,000	\$ 600,000	\$ -
<b>Total</b>	<b>\$58,464,500</b>	<b>\$29,532,250</b>	<b>\$ 8,932,250</b>	<b>\$ 43,152,349</b>	<b>\$ 21,894,324</b>	<b>\$ 21,258,025</b>
			<b>Savings</b>	<b>\$ 15,312,151</b>	<b>\$ 7,637,926</b>	<b>\$ 7,674,226</b>

The \$7.6 million savings to the City of Victorville is a reduction in the City's overall obligation to the project. As noted above, in January 2012, the CTC reduced the CMIA allocation based on the award of the

construction contract to Riverside Construction, Inc. by \$5.1 million. The remaining \$2.6 million of SANBAG savings results in a reduction of Measure I Victor Valley Major Local Highways (VVMLH) Bond Fund obligations.

Staff recommends approval of Amendment No. 1 to the construction cooperative agreement with the City of Victorville.

**Recommendation 3:**

The City of Victorville's share was inadvertently left out of the current fiscal year budget. Due to this error and due to the construction proceeding faster than anticipated when the budget was developed, the budget needs to be amended as follows:

- VVMLH Bond funds increase by \$251,695 for a new total of \$3,529,134.
- City of Victorville funds increase by \$12,398,574 for a new total of \$14,506,006.

Staff recommends the approval of the budget amendment.

***Financial Impact:*** This item is not consistent with the 2012/2013 Fiscal Year Budget for Task No. 0888, I-15 La Mesa/Nisqualli Interchange Project. There is a revision to funding sources and a net increase of \$12,650,269.00 to FY 2012/2013 Task No. 0888 as indicated in Recommendation 3.

***Reviewed By:*** This item was reviewed and recommended for approval by the Mountain/Desert Committee on December 14, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and amendments.

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



## CONTRACT SUMMARY SHEET

Contract No. C 11198 Amendment No. 01

By and Between

San Bernardino Associated Governments and Arcadis-US, Inc

Contract Description Construction Management Services on the I-15 La Mesa/Nisqualli Interchange

**Board of Director's Meeting Date: January 9, 2013**

**Overview of BOD Action:** In June 2011, the Board approved award of Contract C11198 with Arcadis-US for Construction Management in the amount of \$8,024,500.00 including contingency. This amendment reduces Contract amount to \$6,024,500.00 and sets retention to max \$100,000.

Is this a Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	7,295,000.00	Original Contingency Amount	\$	729,500.00
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	7,295,000.00	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	729,500.00
Current Amendment Amount	\$	-2,000,000.00	Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>5,295,000.00</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>729,500.00</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 6,024,500.00</b>

Contract Start Date 06/01/2011	Current Contract Expiration Date 12/31/2013	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0888.

A Budget Amendment is required. VV Major Local Hwy 6310

How are we funding current FY? Capital Bond Fund (6110) and City of Victorville (6010)

Federal Funds  
  State Funds  
  Local Funds  
  TDA Funds  
  Measure I Funds

*Provide Brief Overview of the Overall Funding for the duration of the Contract:*  
 City of Victorville shares 50.0% and SANBAG shares 50.0%.

Payable  
  Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % max \$100,000.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

[Signature]  
Project Manager (Mike Barnum)

[Signature]  
Task Manager (Garry Cohoe)

Andrew Turcick  
Dir. of Fund Admin. & Programming (Print Name)

Jeffrey Hill  
Contract Administrator (Print Name)

W. S. WARRSKI  
Chief Financial Officer (Print Name)

[Signature] 11/30/12  
Signature Date

[Signature] 11-30-12  
Signature Date

[Signature] 12/6/12  
Signature Date

[Signature] 12/6/12  
Signature Date

[Signature] 12/1/12  
Signature Date

AMENDMENT NO. 1 TO

CONTRACT NO. C11198

BY AND BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as the SAN  
BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

ARCADIS-US, INC.

This AMENDMENT No. 1 to CONTRACT No. C11198 is made by and between Arcadis-US, Inc. (hereafter called CONSULTANT) and the San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Authority (hereafter called AUTHORITY):

RECITALS:

WHEREAS, AUTHORITY, under Contract No. C11198 ("Contract"), has engaged the services of CONSULTANT to provide Construction Management Services for the I 15 La Mesa Nisqualli Interchange Project in the City of Victorville.

WHEREAS, the parties desire to amend the Contract terms and decrease 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. Article 3.2, is deleted in its entirety and replaced with the following:

"The total Not-To-Exceed amount is Five Million, Two Hundred Ninety-Five Thousand Dollars, (\$ 5,295,000.00). Services to be provided under this Contract are to be provided on an as needed basis and are to be performed as set forth in Attachment "A", Scope of Services, which is incorporated herein by reference. CONSULTANT'S fee for services is included in the total contract cost and shall be a specific rate of compensation, as noted in revised Attachment "B", Billing Rate Schedule, which by this reference is incorporated into this Contract, which is the AUTHORITY's approved CONSULTANT Cost Proposal."

2. Article 4.4, is deleted in its entirety and replaced with the following:

“As partial security against CONSULTANT’s failure to perform under this Contract, AUTHORITY shall withhold ten percent (10%) of the amount of each of the CONSULTANT’s invoices up to \$100,000. All retained funds shall be released by AUTHORITY within sixty (60) calendar days of payment of final invoice, unless AUTHORITY elects to audit CONSULTANT’s records in accordance with this Contract. If AUTHORITY elects to audit, retained funds shall be paid to CONSULTANT within thirty (30) calendar days of completion of audit in an amount reflecting any adjustments required by such audit.”

3. Article 15 “Key Personnel” is deleted in its entirety and replaced with the following:

“The personnel specified below are considered to be essential to Services being performed hereunder. Prior to diverting any of the specified individuals to other project, or reallocation of tasks and hours of Services, which are the responsibility of key personnel to other personnel, the CONSULTANT shall notify AUTHORITY reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall be subject to written approval by AUTHORITY. AUTHORITY also reserves the right to approve proposed substitutions for key personnel in accordance with Section 42, below. In the event that AUTHORITY and CONSULTANT cannot agree as to the substitute of key personnel, AUTHORITY shall be entitled to terminate this Contract. Key Personnel are:

Name	Function
Nabil Fraywat	Project Manager/Sr. Resident Engineer
Jose Cornoa	Structural Representative
Bryce Johnston	Asst. Resident Engineer

4. Except as amended by this Amendment, all other provisions of the Contract 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.

**ARCADIS-US, INC.**

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

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

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

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

Janice Rutherford, Chairperson

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

**APPROVED AS TO FORM:**

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

Eileen Monaghan Teichert  
General Counsel

**CONCURRENCE:**

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

Jeffery Hill  
Contract Administrator



**REVISED ATTACHMENT 'B' (12-5-12)**

SOUTHSTAR ENGINEERING, INC.

**San Bernardino Associated Governments (SANBAG)**

La Mesa Nisqualli Interchange Project  
Construction Management Services

**I. DIRECT LABOR COSTS**

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Structures Representative	\$88.42	1,099	\$97,173.58
Structures Representative TC	\$88.42	997	\$88,172.04

Subtotal Hours & Direct Labor	2,096	\$185,345.62	
Anticipated Salary Increases		\$3,995.52	
<b>Total Direct Labor Costs</b>		<b>\$189,341.14</b>	<b>(1)</b>

TC = Estimated to complete 10/21/12

**II. INDIRECT COSTS**

INDIRECT RATE 105.34 % x \$ 189,341.14 = Subtotal \$199,451.96 (2)  
Subtotal (1)

**III. FEE (PROFIT)**

9 % x \$ 388,793.10 = Subtotal \$34,991.39 (3)  
Total (1) + (2)

**IV. OTHER DIRECT COSTS**

Item	Amount
0	\$0.00

Subtotal \$ \$0.00 (4)

**V. SUBCONSULTANTS COST - Including Sub ODCs**

Subtotal \$ \$0.00 (5)

**VI. TOTAL AMOUNT**

\$423,784.49 (Total 1-5)

**SOUTHSTAR ENGINEERING, INC.**

**LABOR & OTHER DIRECT COST (ODC) SUMMARY**  
 La Mesa Nisquall Interchange Project  
 Construction Management Services  
 Revised 12-5-12

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	TOTAL LABOR FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		LOW	HIGH									
Structures Representative		\$88.42	\$93.80	1,098	\$88.42	\$97,173.58	\$0.00	\$97,173.58	\$102,362.65	\$17,858.26	\$217,484.48	\$197.90
Structures Representative TC		\$88.42	\$93.80	987	\$88.42	\$88,172.04	\$3,895.52	\$92,167.56	\$97,089.31	\$17,030.12	\$206,289.99	\$208.87
				<b>TOTAL =</b>	<b>2,096</b>	<b>\$185,345.62</b>	<b>\$3,995.52</b>	<b>\$189,341.14</b>	<b>\$199,451.96</b>	<b>\$34,991.38</b>	<b>\$423,784.48</b>	

FEE (PROFIT) 9.00%

**INDIRECT COST**

Overhead	105.34%
General & Admin	0.00%
<b>Total</b>	<b>105.34%</b>

OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
<b>TOTAL OTHER DIRECT COSTS</b>					\$0.00

**Escalation Per Year = 3.00%**

Year	# of Months	Esc.	Value
2009	0	1.000	0.000
2010	0	1.000	0.000
2011	12	1.000	12.000
2012	12	1.030	12.360
2013	4	1.061	4.244
2014	0	1.093	0.000
<b>TOTAL</b>	<b>28</b>		<b>28.604</b>

Escalation Factor for Contract 1.022

**TOTAL COSTS \$423,784.48**



**LABOR & OTHER DIRECT COST (ODC) SUMMARY**

Las Vegas, Nevada Interchange Project  
Construction Management Services  
Revised: 12-8-12

STAFF CLASSIFICATION	STRESS NAME	RANGE OF DIRECT HOURLY RATES		TOTAL HOURS	INITIAL BIDDING 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
		TRK	OT									
Structures Inspector		\$51.00	\$54.11	1,320	\$51.00	\$67,320.00	\$0.00	\$67,320.00	\$100,953.07	\$15,144.58	\$182,417.65	\$138.95
Structures Inspector TC		\$51.00	\$54.11	1,526	\$51.00	\$77,766.16	\$1,876.42	\$79,642.58	\$119,132.11	\$17,871.72	\$216,446.43	\$141.95
Structures Inspector OT		\$76.50	\$84.00	10	\$76.50	\$765.00	\$0.00	\$765.00	\$1,147.19	\$172.10	\$2,084.29	\$208.43
				<b>TOTAL =</b>	<b>2,855</b>	<b>\$145,851.16</b>	<b>\$1,876.42</b>	<b>\$147,727.59</b>	<b>\$221,232.38</b>	<b>\$33,188.40</b>	<b>\$401,948.37</b>	

INDIRECT COST	
Overhead	149.98%
General & Admin	0.00%
<b>Total</b>	<b>149.98%</b>

FEE (PROFIT)	
	9.00%

OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
<b>TOTAL OTHER DIRECT COSTS</b>					<b>\$0.00</b>

Year	Escalation Per Year =		1.00%
	# of Months	Esc.	
2008	0	1.000	Value
2010	0	1.000	0.000
2011	12	1.000	0.000
2012	12	1.030	12.000
2013	4	1.061	12.360
2014	0	1.093	4.244
<b>TOTAL</b>	<b>28</b>	<b>Escalation Factor for Contract</b>	<b>29.604</b>
			<b>1.022</b>

TOTAL COSTS	
	<b>\$401,948.30</b>



BETKON INC.

**LABOR & OTHER DIRECT COST (ODC) SUMMARY**  
 La Mesa Nisqualli Interchange Project  
 Construction Management Services  
 Revised 12-5-12

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									
Senior Resident Engineer		\$95.00	\$90.18	681	\$85.00	\$57,842.50	\$0.00	\$57,842.50	\$57,842.50	\$10,411.65	\$128,086.65	\$185.30
Senior Resident Engineer TC		\$85.00	\$80.18	222	\$85.00	\$18,827.50	\$405.87	\$19,233.37	\$19,233.37	\$3,462.01	\$41,928.74	\$189.29
Field Inspector		\$82.00	\$84.00	1,242	\$82.00	\$64,658.00	\$0.00	\$64,658.00	\$64,658.00	\$11,620.44	\$140,736.44	\$113.36
Field Inspector TC		\$82.00	\$85.00	838	\$82.00	\$49,620.00	\$1,046.11	\$48,573.89	\$48,573.89	\$8,940.26	\$108,276.46	\$116.80
Public Outreach		\$28.00	\$28.00	153	\$28.00	\$3,976.00	\$0.00	\$3,976.00	\$3,976.00	\$716.04	\$8,672.04	\$56.68
Public Outreach PM		\$35.00	\$37.00	33	\$35.00	\$1,155.00	\$0.00	\$1,155.00	\$1,155.00	\$207.90	\$2,517.90	\$76.30
Public Outreach TC		\$28.00	\$35.00	80	\$35.00	\$2,800.00	\$0.00	\$2,800.00	\$2,800.00	\$504.00	\$5,104.00	\$78.30
				<b>TOTAL =</b>	<b>3,345</b>	<b>\$197,781.00</b>	<b>\$1,453.98</b>	<b>\$199,234.98</b>	<b>\$199,234.98</b>	<b>\$35,862.30</b>	<b>\$434,332.26</b>	

INDIRECT COST	
Overhead	100.00%
General & Admin	0.00%
<b>Total</b>	<b>100.00%</b>

FEE (PROFIT)	9.00%
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OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Public Outreach ODC to date				\$5,800.00	
Public Outreach ODC Remaining				\$4,661.56	
<b>TOTAL OTHER DIRECT COSTS</b>				<b>\$10,661.56</b>	

Year	Escalation Per Year =		Value
	# of Months	Esc.	
2009	0	1.000	0.000
2010	0	1.000	0.000
2011	12	1.000	12.000
2012	12	1.030	12.360
2013	4	1.061	4.244
2014	0	1.093	0.000
<b>TOTAL</b>	<b>28</b>	<b>Escalation Factor for Contract</b>	<b>28.604</b>

<b>TOTAL COSTS</b>	<b>\$445,023.81</b>
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**REVISED ATTACHMENT 'B' (11-28-12)**

Twining

<b>San Bernardino Associated Governments (SANBAG)</b>			
La Mesa Nisqualli Interchange Project Construction Management Services			
<b>I. DIRECT LABOR COSTS</b>			
Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Engineer # 1	\$38.45	252	\$9,670.18
Project Engineer # 2	\$36.22	34	\$1,213.37
Staff Engineer	\$28.91	3	\$86.73
Technical Advisor	\$63.75	2	\$95.63
Field Inspector ST	\$38.39	748	\$28,696.53
Field Inspector OT	\$61.34	0	\$0.00
Field Inspector DT	\$81.78	0	\$0.00
Field Inspector Apprentice ST	\$24.90	1,448	\$36,055.20
Field Inspector Apprentice OT	\$40.70	0	\$0.00
Field Inspector Apprentice DT	\$53.20	0	\$0.00
Field Inspector Apprentice (NPW)	\$26.60	120	\$3,192.00
Field Inspector (NPW)	\$40.09	478	\$19,142.98
Field Inspector (Apprentice) TC	\$24.90	1,600	\$39,840.00
Project Engineer (s) TC	\$38.45	250	\$9,612.50
QA Manager TC	\$69.71	27	\$1,882.17
Field Inspector TC	\$38.39	1,250	\$47,987.50
Field Supervisor TC	\$44.09	300	\$13,227.00
<b>Subtotal Hours &amp; Direct Labor Costs</b>		<b>6,510</b>	<b>\$210,701.77</b>
<b>Anticipated Salary Increases</b>			<b>\$2,426.24</b>
<b>Total Direct Labor Costs</b>			<b>\$213,128.01</b> (1)
TC = Estimated to complete 10/21/12			
<b>II. INDIRECT COSTS</b>			
<b>INDIRECT RATE</b>	140.52 % x	\$ 213,128.01	= Subtotal \$299,487.48 (2)
		Subtotal (1)	
<b>III. FEE (PROFIT)</b>			
	9 % x	\$ 512,615.49	= Subtotal \$46,135.39 (3)
		Total (1) + (2)	
<b>IV. OTHER DIRECT COSTS</b>			
Item	Amount		
Car Mileage Samples Delivery Todate	\$6,335.60		
Car Mileage Samples Delivery Budget	\$6,371.52		
Laboratory Testing Todate	\$154,581.00		
Laboratory Testing Budget Per Rate Schedule	\$168,961.00		
<b>Subtotal \$</b>			<b>\$336,249.12</b> (4)
<b>V. TOTAL AMOUNT</b>			<b>\$895,000</b> (Total 1-4)

Twining

**LABOR & OTHER DIRECT COST (ODC) SUMMARY**  
 La Mesa Nisquall Interchange Project  
 Construction Management Services  
 Revised 11-28-12

STAFF CLASSIFICATION	STAFF NAME	RANGE OF DAILY HOURLY RATES		TOTAL HOURS	INITIAL DIRECT HOURLY RATE	SUB-TOTAL INDIRECT LABOR COST	ANTICIPATED SALARY INCREASES	TOTAL INDIRECT LABOR COST	TOTAL INDIRECT COST	FEE (PROFIT)	TOTAL LABOR COST	FULLY LOADED HOURLY RATE
		MINOR	MAJOR									
Project Engineer #1		\$38.45	\$39.20	252	\$38.45	\$9,670.18	\$0.00	\$9,670.18	\$13,588.53	\$2,063.28	\$25,351.99	\$100.80
Project Engineer #2		\$38.22	\$38.84	34	\$38.22	\$1,213.37	\$0.00	\$1,213.37	\$1,705.03	\$282.86	\$3,181.05	\$94.96
Staff Engineer		\$28.91	\$29.48	3	\$28.91	\$86.73	\$0.00	\$86.73	\$121.87	\$18.77	\$227.38	\$75.79
Technical Advisor		\$63.75	\$63.75	2	\$63.75	\$95.63	\$0.00	\$95.63	\$134.37	\$20.70	\$250.70	\$127.35
QA Manager		\$68.71	\$71.10	0	\$68.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Field Inspector ST		\$38.39	\$39.14	748	\$38.39	\$28,698.53	\$0.00	\$28,698.53	\$40,324.36	\$6,211.88	\$75,232.76	\$100.65
Field Inspector DT		\$57.59	\$61.34	0	\$57.59	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Field Inspector Apprentice ST		\$41.78	\$41.78	0	\$41.78	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Field Inspector Apprentice DT		\$24.90	\$25.39	1,448	\$24.90	\$35,855.20	\$0.00	\$35,855.20	\$50,684.77	\$7,804.80	\$94,524.76	\$65.28
Field Inspector Apprentice TC		\$40.70	\$40.70	0	\$40.70	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Field Supervisor		\$44.09	\$44.97	0	\$44.09	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Field Inspector Apprentice (NPW)		\$28.60	\$27.13	120	\$28.60	\$3,192.00	\$0.00	\$3,192.00	\$4,485.40	\$690.97	\$8,368.36	\$69.74
Field Inspector (NPW)		\$40.09	\$40.09	478	\$40.09	\$19,142.98	\$0.00	\$19,142.98	\$26,899.71	\$4,143.84	\$50,186.52	\$105.10
Project Engineer (s) TC		\$24.80	\$27.13	1,800	\$24.80	\$39,840.00	\$458.84	\$40,298.84	\$51,190.01	\$8,810.00	\$105,998.84	\$68.89
QA Manager-TC		\$38.45	\$39.20	250	\$38.45	\$9,612.50	\$207.22	\$9,819.72	\$13,796.67	\$2,125.65	\$25,744.04	\$102.88
Field Inspector TC		\$40.09	\$40.89	1,250	\$40.09	\$1,862.37	\$40.57	\$1,902.94	\$2,701.84	\$416.21	\$5,040.80	\$186.70
Field Supervisor TC		\$44.09	\$44.97	300	\$44.09	\$13,227.00	\$285.14	\$13,512.14	\$18,987.25	\$2,924.95	\$35,424.34	\$118.09
				<b>TOTAL =</b>		<b>\$210,701.77</b>		<b>\$213,128.01</b>	<b>\$289,487.48</b>	<b>\$46,135.39</b>	<b>\$568,750.88</b>	

<b>INDIRECT COST</b>	
Overhead	140.52%
General & Admin	0.00%
<b>Total</b>	<b>140.52%</b>

<b>FEE (PROFIT)</b>	<b>8.00%</b>
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OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
Car Mileage Samples Delivery Totals	\$0.58	Mile	10923	\$6,335.60	
Laboratory Testing Totals	\$164,581.00	Each	1	\$164,581.00	
Remaining Testing Budget - See Testing Rate Schedule	\$157,811.00	Each	-1	\$158,981.00	
Car Mileage Samples Delivery Budget	\$0.58	Mile	10984	\$6,371.52	
<b>TOTAL OTHER DIRECT COSTS</b>				<b>\$336,249.12</b>	

Year	# of Months	Escalation Per Year =	
		Esc.	Value
2009	0	1.000	0.000
2010	0	1.000	0.000
2011	12	1.000	12.000
2012	12	1.030	12.360
2013	4	1.061	4.244
2014	0	1.093	0.000
<b>TOTAL</b>	<b>28</b>	<b>Escalation Factor for Contract</b>	<b>28.604</b>

<b>TOTAL COSTS</b>		<b>\$895,000.00</b>
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\$323,542.00

Item No. 1 - Geotechnical - Improved Backfill, Embankment, Footings

Item Description	23	25	48	\$120.00	\$	2,760.00	\$	3,000.00	\$	5,760.00
Sieve Analysis, CT 202	23	25	48	\$120.00	\$	2,760.00	\$	3,000.00	\$	5,760.00
Expansion Index	2	5	7	\$200.00	\$	400.00	\$	1,000.00	\$	1,400.00
R-Value CT 301	1	3	4	\$275.00	\$	275.00	\$	825.00	\$	1,100.00
<b>Subtotal:</b>					<b>\$</b>	<b>3,435.00</b>	<b>\$</b>	<b>4,825.00</b>	<b>\$</b>	<b>8,260.00</b>

Item No. 2 - Geotechnical - Aggregate Base, Aggregate Subbase

Item Description	13	20	33	\$200.00	\$	2,600.00	\$	4,000.00	\$	6,600.00
Soil Sieve Analysis, CT 202	13	20	33	\$200.00	\$	2,600.00	\$	4,000.00	\$	6,600.00
Durability Index, CT 229	1	1	2	\$210.00	\$	210.00	\$	210.00	\$	420.00
Sand Equivalent	12	20	32	\$90.00	\$	1,800.00	\$	1,800.00	\$	2,880.00
Moisture Content, CT 226	15	20	35	\$25.00	\$	375.00	\$	500.00	\$	875.00
R-Value, CT 301	20	9	20	\$275.00	\$	500.00	\$	2,475.00	\$	7,975.00
<b>Subtotal:</b>					<b>\$</b>	<b>3,765.00</b>	<b>\$</b>	<b>8,985.00</b>	<b>\$</b>	<b>16,750.00</b>

Item No. 3 - Geotechnical - Structural Detail

Item Description	32	30	62	\$120.00	\$	3,640.00	\$	3,600.00	\$	7,440.00
Sieve Analysis, CT 202	32	30	62	\$120.00	\$	3,640.00	\$	3,600.00	\$	7,440.00
Sand Equivalent, CT 217	32	30	62	\$90.00	\$	2,880.00	\$	2,700.00	\$	5,580.00
<b>Subtotal:</b>					<b>\$</b>	<b>6,720.00</b>	<b>\$</b>	<b>6,300.00</b>	<b>\$</b>	<b>13,020.00</b>

Item No. 4 - Geotechnical - Laboratory - Strength, Settlement, Shrinkage, Swell, Shrinkage, Swell, Shrinkage, Swell

Item Description	275	300	576	\$38.00	\$	9,900.00	\$	10,800.00	\$	20,700.00
Compression Strength Testing, ASTM C172, CT 540	275	300	576	\$38.00	\$	9,900.00	\$	10,800.00	\$	20,700.00
Fine Aggregate Sand Equivalent, CT 217	125	125	250	\$90.00	\$	11,250.00	\$	11,250.00	\$	22,500.00
Sieve Analysis of Coarse Aggregate Portion, CT 202	45	60	105	\$120.00	\$	5,400.00	\$	7,200.00	\$	12,600.00
Moisture Content, CT 226	87	60	157	\$25.00	\$	2,425.00	\$	1,500.00	\$	3,925.00
Sieve Analysis of Fine Aggregate Portion, CT 202	45	60	105	\$215.00	\$	9,675.00	\$	12,900.00	\$	22,575.00



**REVISED ATTACHMENT 'B' (11-28-12)**

Mayer

<b>San Bernardino Associated Governments (SANBAG)</b>			
La Mesa Nisqualli Interchange Project Construction Management Services			
<b>I. DIRECT LABOR COSTS</b>			
<b>Staff Classification</b>	<b>Initial Direct Hourly Rate</b>	<b>Hours</b>	<b>Total</b>
Instrument Person	\$41.71	675	\$28,154.25
Rod Person	\$39.13	857	\$33,514.85
Project Surveyor	\$57.00	711	\$40,527.00
Crew Chief	\$44.20	182	\$8,044.40
Instrument Person	\$41.71	1,228	\$51,219.88
Rod Person	\$39.13	1,560	\$61,042.80
Project Surveyor	\$57.00	1,294	\$73,758.00
Crew Chief	\$44.20	331	\$14,630.20
<b>Subtotal Hours &amp; Direct Labor</b>		7,731	<b>\$310,891.38</b>
<b>Anticipated Salary Increases</b>			<b>\$0.00</b>
<b>Total Direct Labor Costs</b>			<b>\$310,891.38</b> (1)
TC = Estimated to complete 10/21/12			
<b>II. INDIRECT COSTS</b>			
<b>INDIRECT RATE</b>	73.00 %	$\times$ \$ <u>310,891.38</u>	= Subtotal <u>\$226,950.70</u> (2)
		Subtotal (1)	
<b>III. FEE (PROFIT)</b>			
	9 %	$\times$ \$ <u>537,842.08</u>	= Subtotal <u>\$48,405.79</u> (3)
		Total (1) + (2)	
<b>IV. OTHER DIRECT COSTS</b>			
<b>Item</b>		<b>Amount</b>	
Survey Truck To date		\$32,077.50	
Survey Truck (Budget)		\$60,165.50	
<b>Subtotal \$</b>		<b>\$92,243.00</b> (4)	
<b>V. SUBCONSULTANTS COST - Including Sub ODCs</b>			
<b>Subtotal \$</b>		<b>\$0.00</b> (5)	
<b>VI. TOTAL AMOUNT</b>			<b>\$678,491</b> (Total 1-5)



**REVISED ATTACHMENT 'B' (12-5-12)**

LYNN CAPUOYA

<b>San Bernardino Associated Governments (SANBAG)</b> La Mesa Nisqualli Interchange Project Construction Management Services			
<b>I. DIRECT LABOR COSTS</b>			
<b>Staff Classification</b>	<b>Initial Direct Hourly Rate</b>	<b>Hours</b>	<b>Total</b>
Landscape Architect	\$55.00	686	\$37,734.09
Subtotal Hours & Direct Labor		686	\$37,734.09
Anticipated Salary Increases			\$813.44
<b>Total Direct Labor Costs</b>			<b>\$38,547.53</b> (1)
TC = Estimated to complete 10/21/12			
<b>II. INDIRECT COSTS</b>			
INDIRECT RATE	138.00 %	$\times \$ \frac{38,547.53}{\text{Subtotal (1)}}$	= Subtotal \$53,195.59 (2)
<b>III. FEE (PROFIT)</b>			
	9 %	$\times \$ \frac{91,743.12}{\text{Total (1) + (2)}}$	= Subtotal \$8,256.88 (3)
<b>IV. OTHER DIRECT COSTS</b>			
<b>Item</b>		<b>Amount</b>	
0		\$0.00	
Subtotal \$		\$0.00 (4)	
<b>V. SUBCONSULTANTS COST - Including Sub ODCs</b>			
Subtotal \$		\$0.00 (5)	
<b>VI. TOTAL AMOUNT</b>			<b>\$100,000.00</b> (Total 1-5)

LYNN CAPUOYA

**LABOR & OTHER DIRECT COST (ODC) SUMMARY**  
 La Mesa Nisquall Interchange Project  
 Construction Management Services  
 Revised 12-5-12

ESTIMATE CLASSIFICATION	ESTIMATE NUMBER	PROPOSED DIRECT LABOR HOURS	PROPOSED DIRECT LABOR RATE	TOTAL INSURANCE	ACTUAL DIRECT LABOR 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
Landscape Architect		686	\$55.00	686	\$55.00	\$37,734.09	\$813.44	\$38,547.53	\$53,195.59	\$8,266.88	\$100,000.00	\$145.76
		<b>TOTAL =</b>		<b>686</b>		<b>\$37,734.09</b>	<b>\$813.44</b>	<b>\$38,547.53</b>	<b>\$53,195.59</b>	<b>\$8,266.88</b>	<b>\$100,000.00</b>	

FEE (PROFIT) 9.00%

INDIRECT COST	
Overhead	138.00%
General & Admin	0.00%
<b>Total</b>	<b>138.00%</b>

OTHER DIRECT COSTS (ODC's)	Price Per Unit	Unit	Quantity	Total	WBS
<b>TOTAL OTHER DIRECT COSTS</b>					<b>\$0.00</b>

Year	Escalation Per Year = 3.00%	
	# of Months	Esc. Value
2009	0	0.000
2010	0	0.000
2011	12	1.000
2012	12	1.030
2013	4	1.061
2014	0	1.093
<b>TOTAL</b>	<b>28</b>	<b>28.604</b>

Escalation Factor for Contract 1.022

**TOTAL COSTS \$100,000.00**

**REVISED ATTACHMENT 'B' (12-5-12)**

Meadows Consulting

<b>San Bernardino Associated Governments (SANBAG)</b> La Mesa Nisqualli Interchange Project Construction Management Services			
<b>I. DIRECT LABOR COSTS</b>			
<b>Staff Classification</b>	<b>Initial Direct Hourly Rate</b>	<b>Hours</b>	<b>Total</b>
Labor Compliance Officer	\$53.78	92	\$4,947.76
Labor Compliance TC	\$53.78	138	\$7,439.43
Subtotal Hours & Direct Labc		230	<u>\$12,387.19</u>
Anticipated Salary Increases			<u>\$267.03</u>
Total Direct Labor Costs			<u>\$12,654.22</u> (1)
<small>TC = Estimated to complete 10/21/12</small>			
<b>II. INDIRECT COSTS</b>			
<b>INDIRECT RATE</b>	45.00 % x \$	<u>12,654.22</u>	= Subtotal <u>\$5,694.40</u> (2)
		<small>Subtotal (1)</small>	
<b>III. FEE (PROFIT)</b>			
	9 % x \$	<u>18,348.62</u>	= Subtotal <u>\$1,651.38</u> (3)
		<small>Total (1) + (2)</small>	
<b>IV. OTHER DIRECT COSTS</b>			
<b>Item</b>	<b>Subtotal \$</b>	<b>Amount</b>	
		<u>\$0.00</u>	(4)
<b>V. SUBCONSULTANTS COST - Including Sub ODCs</b>			
	Subtotal \$	<u>\$0.00</u>	(5)
<b>VI. TOTAL AMOUNT</b>		<u>\$20,000.00</u>	(Total 1-5)



## CONTRACT SUMMARY SHEET

Contract No. C 11200 Amendment No. 01

By and Between

San Bernardino Associated Governments and City of Victorville

Contract Description Construction Cooperative Agreement

<b>Board of Director's Meeting Date:</b> January 9, 2013	
<b>Overview of BOD Action:</b> Approve a reduction in Cooperative Agreement amount based on the award of the construction contract and anticipated savings in construction management cost.	
<b>Is this a Sole-Source procurement?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

CONTRACT OVERVIEW					
Original Contract Amount	\$	29,532,250.00	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	29,532,250.00	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$	(7,637,926.00)	Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>21,894,324.00</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 21,894,324.00</b>

<b>Contract Start Date</b> 5/04/2011	<b>Current Contract Expiration Date</b> 12/31/2018	<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 type="checkbox"/> Budget authority for this contract currently exists in Task No. 0888.				
<input checked="" type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? City of Victorville and SANBAG Bond Fund				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input checked="" 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: City of Victorville shares 50.0% and SANBAG shares 50.0%				
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
Check all applicable boxes:	
<input type="checkbox"/> Retention? If yes, indicate % _____	<i>NO retention on Coop. Agreements</i>
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ %	<i>W/S</i>

<i>Mike Barnum</i>	<i>[Signature]</i>		12/4/12
Project Manager (Mike Barnum)	Signature		Date
<i>Garry Cohoe</i>	<i>[Signature]</i>		12-4-12
Task Manager (Garry Cohoe)	Signature		Date
<i>Andrea Zureick</i>	<i>[Signature]</i>		12/6/12
Dir. of Fund Admin. & Programming (Print Name)	Signature		Date
<i>Jeffery Hill</i>	<i>[Signature]</i>		12/7/12
Contract Administrator (Print Name)	Signature		Date
<i>W. STAWARSK</i>	<i>[Signature]</i>		12/12/12
Chief Financial Officer (Print Name)	Signature		Date

**AMENDMENT NO. 1 TO  
COOPERATIVE AGREEMENT NO. C11200**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY OF VICTORVILLE**

**FOR**

**INTERCHANGE CONSTRUCTION AT LA MESA/NISQUALLI ROAD IN THE  
CITY OF VICTORVILLE**

THIS AMENDMENT NO. 1 TO COOPERATIVE AGREEMENT No. C11200, is between the City of Victorville, referred to herein as "CITY", and the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public entity, referred to herein as "AUTHORITY." (AUTHORITY and CITY are each a "Party" and collectively "Parties).

**RECITALS**

- A. WHEREAS the Parties entered into COOPERATIVE AGREEMENT No. C11200 on the 4th day of May, 2011 to construct a new interchange on Interstate 15 at La Mesa/Nisqualli Road, in the City of Victorville ("PROJECT"); and
- B. WHEREAS, the PROJECT is identified in both the Measure I 2010-2040 Expenditure Plan and the SANBAG Nexus Study and the PROJECT will be carried out in accordance with the policies of the Measure I 2010-2040 Strategic Plan ("Strategic Plan"), including the use of Development Impact Fees by CITY to pay its share of PROJECT costs. The PROJECT CONSTRUCTION WORK costs were estimated to be \$58,464,500 as identified in Attachment A of the agreement; and
- C. WHEREAS, the agreement identifies the AUTHORITY as the lead agency for this PROJECT, to undertake and lead the advertisement, award, administration and construction management of PROJECT CONSTRUCTION WORK; and
- D. WHEREAS, in accordance with the Strategic Plan, the AUTHORITY is to be responsible for 50% of the total eligible PROJECT CONSTRUCTION WORK expenses, excluding SANBAG Management and Oversight expenses, incurred by AUTHORITY for an amount not to exceed \$28,932,250.00 as shown in Attachment A, of the agreement; and

- E. WHEREAS, in accordance with the Strategic Plan, the CITY is to be responsible for 100% of the SANBAG Management and Oversight costs in an amount not to exceed \$600,000 and a 50% share of the total eligible PROJECT CONSTRUCTION WORK expenses incurred in an amount not to exceed \$28,932,250.00 as shown as Construction Management and Construction Capital in Attachment A, of the agreement; and
- F. WHEREAS, the AUTHORITY has awarded contracts for construction management C11198, construction C12010 and other agreements noted in this Amendment No. 1 Attachment A totaling \$43,152,349.00; and.
- G. WHEREAS it was anticipated that a future amendment(s) to this Agreement will be necessary to reconcile any outstanding payments and each Party's overall contribution for all phases of work.
- H. NOW, THEREFORE, the Parties agree to reduce the overall project funding requirements from \$58,464,500.00 to \$43,152,349.00 as shown in this Amendment No. 1 Attachment A herein made part of this Amendment.

### AGREEMENT

In consideration of the mutual promises herein and the above Recitals that are incorporated into this Amendment No. I, the Parties agree as follows:

- 1. Cooperative Agreement No. C11200 is amended in the following particulars:
  - a. Paragraph 2 of Section I (AUTHORITY RESPONSIBILITIES) is deleted and replaced with the following:

"In accordance with the Strategic Plan, to be responsible for 50% of the total eligible PROJECT CONSTRUCTION WORK expenses, excluding SANBAG Management and Oversight expenses, incurred by AUTHORITY for an amount not to exceed \$21,258,024.00 as shown in Attachment A
  - b. Paragraph 1 of Section II (CITY RESPONSIBILITIES) is deleted and replaced with the following:

"In accordance with the Strategic Plan, to be responsible for 100% of the SANBAG Management and Oversight costs in an amount not to exceed \$600,000 and a 50% share of the total eligible PROJECT CONSTRUCTION WORK expenses incurred in an amount not to exceed \$21,894,325.00 as shown as Construction Management and Construction Capital in Attachment A."
  - c. The first sentence of Paragraph 3, Section II (CITY RESPONSIBILITIES) is deleted and replaced with the following:

“To continue to collect DIF funds for the purposes of meeting CITY’s share of the PROJECT in the remaining amount of \$11,894,325 and to deposit such collected DIF funds to the joint escrow account for the POROJECT.”

d. Paragraph 2 of Section III (IT IS MUTUALLY AGREED) is deleted and replaced with the following:

“The PROJECT CONSTRUCTION WORK costs have been determined to be \$43,152,349 as identified in Attachment A.”

e. The first sentence of Paragraph 6, Section III (IT IS MUTUALLY AGREED) is deleted and replaced with the following:

“CITY and AUTHORITY shall open an escrow (the “Escrow”) with an escrow holder for the deposit, handling and disbursement of CITY’s funds, including the initial deposit of \$10,000,000 and the balance of \$11,894,325 to fund the PROJECT CONSTRUCTION WORK contemplated by this Agreement.”

f. Attachment A to the Cooperative Agreement C11200 is deleted and replaced with Attachment A (Project Funding Table) that is attached to and incorporated into this Amendment No. 1.

2. All other terms and conditions of Cooperative Agreement C11200 shall remain in full force and effect.
3. This Amendment No. 1 is incorporated into and made a part of Cooperative Agreement C11200.

-----SIGNATURES ON THE FOLLOWING PAGE-----

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 that is effective as of the day and year executed by AUTHORITY.

PARTIES declare that:

1. Each Party is an authorized legal entity under California state law.
2. Each Party has the authority to enter into this Amendment No. 1.
3. The people signing this Amendment No. 1 have the authority to do so on behalf of their public agencies.

**CITY OF VICTORVILLE**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Ryan McEachron, Mayor  
City of Victorville

By: \_\_\_\_\_  
Janice Rutherford, Chairperson

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

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
City Attorney

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

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

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

**CONCURRENCE:**

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

**Attachment A**

**Project Funding Table**

**(Amendment No. 1 to Cooperative Agreement C11200)**

**I-15 La Mesa/Nisqualli Interchange Project**

Component	Original Cooperative Budget			Current Revised Budget based upon Contracts Awarded		
	Budgeted Cost	City Share (DIP Fees)	Authority Share (Measure 1/CMIA)	Awarded Cost	City Share (DIP Fees)	Authority Share (Measure 1/CMIA)
Construction Management (CM)	\$ 8,024,500	\$ 4,012,250	\$ 4,012,250	\$ 8,024,500	\$ 4,012,250	\$ 4,012,250
CM Amendment # 1				\$ (2,000,000)	\$ (1,000,000)	\$ (1,000,000)
Construction Capital	\$49,840,000	\$ 24,920,000	\$ 24,920,000	\$ 36,239,527	\$ 18,119,763	\$ 18,119,764
Environmentat Permit Cost Note 3	\$ -	\$ -	\$ -	\$ 118,822	\$ 77,561	\$ 41,261
Caltrans Cooperative C11220	\$ -	\$ -	\$ -	\$ 167,000	\$ 83,500	\$ 83,500
Post award Audit	\$ -	\$ -	\$ -	\$ 2,500	\$ 1,250	\$ 1,250
SANBAG Management	\$ 600,000	\$ 600,000	\$ -	\$ 600,000	\$ 600,000	\$ -
<b>Total</b>	<b>\$58,464,500</b>	<b>\$ 29,532,250</b>	<b>\$ 28,932,250</b>	<b>\$ 43,152,349</b>	<b>\$ 21,894,324</b>	<b>\$ 21,258,025</b>

**Notes:**

Note 1: 12-12-11. Construction cost based upon construction contract C12010 Awarded by SANBAG Board on December 7, 2011 to Riverside Construction plus approved construction Allowance/Contingencies

Note 2: 12-12-11: CMIA Funds Approved by Board July 2011 and CTC June 2011. Board approved Budget Amendment April 2012

Note 3: Per Payment of permit cost per City of Victorville See "Other Cost Items" Progress Payment Request Details

Note 4: Advance payment to Caltrans for Source Inspection per Cooperative Agreement C11220 payment made 6/7/12

Note 5: Post Award Audit of CM Overhead. PO to Miers & Miers PO 4000807 payment made 5/16/12



- 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: 15

**Date:** January 9, 2013

**Subject:** Interstate 15 Ranchero Road Interchange Project

- Recommendation:\***
1. Approve Amendment No. 1 to Construction Cooperative Agreement No. C12219 with the City of Hesperia for the Interstate 15 (I-15) Ranchero Road Interchange Project.
  2. Authorize the Executive Director or his designee to approve a Purchase Order to pay Southern California Edison (SCE) in the amount invoiced by SCE for Project utility relocation in an amount estimated not to exceed \$2,000,000.

**Background:** This is an amendment to an existing agreement. In April 2012, San Bernardino Associated Governments (SANBAG) Board approved the Construction Cooperative Agreement (C12219) between SANBAG and City of Hesperia (CITY). The Agreement defines the roles and responsibilities of the parties, including the funding sources for all phases of the I-15 Ranchero Road Interchange Project. The estimated total cost of the project is \$59,209,475. The subject amendment is required to clarify the responsibilities of the parties for three utility relocations necessary for this project.

The Project Funding Table, attached to the Cooperative Agreement as Attachment "A" included funds under SANBAG's share of project costs for right-of-way costs. The intent of these funds included SANBAG's payment for relocation of Southern California Edison (SCE) facilities that is to occur during the construction phase. While the funds were included in the Project Funding Table,

*Approved*  
 Board of Directors

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

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

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

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

COG		CTC		CTA	X	SAFE		CMA	
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Check all that apply.

BRD1301a-pb

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared Documents/C12219-01.docx>

Attachment "A", the body of the agreement did not describe how this is to occur. The amendment clarifies that the City shall continue to serve as the lead for utility relocation, including entering into utility agreements with SCE, with SANBAG making direct payment to SCE for the SCE utility relocation costs. SCE is still finalizing the cost estimate, with the current estimate being \$2,000,000.

Other utility clarifications include those pertaining to sewer and water lines. The construction contract includes the relocation of a sewer line, which is the financial responsibility of the City. The amendment clarifies that the City will reimburse SANBAG for the construction of the sewer line.

Also clarified is that SANBAG and CITY will share the costs for the removal and relocation of the San Bernardino County Special Districts' existing water line. Lastly, the amendment clarifies that the City will relocate the potable and reclaimed waterlines, which are also the responsibility of the City. The amendment clarifies that the City will relocate the lines at no expense to the project.

As the funds for the utility relocation work were included in the original Cooperative Agreement, the overall project cost does not need to be adjusted.

**Financial Impact:** This item is consistent with the adopted Fiscal Year 2012/2013 budget, using Measure I Victor Valley Major Local Highway Bond Fund.

**Reviewed By:** This item was reviewed and recommended for approval by the Mountain/Desert Committee on December 14, 2012. SANBAG General Counsel and Contract Administrator have reviewed this item and amendment.

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

## CONTRACT SUMMARY SHEET

Contract No. C 12219 Amendment No. 1

By and Between

City of Hesperia and San Bernardino Associated Gov'ts

Contract Description Construction Cooperative Agreement Amendment

**Board of Director's Meeting Date:** January 9, 2013  
**Overview of BOD Action:** This amendment clarifies responsibilities for utilities. There are no cost or funding changes.

Is this a Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	26,158,448	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	26,158,448	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$	0	Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>26,158,448</b>	<b>TOTAL CONTINGENCY VALUE</b>	<b>\$</b>	<b>0</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					<b>\$ 26,158,448</b>

Contract Start Date April 4, 2012	Current Contract Expiration Date Dec. 31, 2016	Revised Contract Expiration Date
--------------------------------------	---	----------------------------------

Has the contract term been amended?  No  Yes - please explain.

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0890.

A Budget Amendment is required.

How are we funding current FY? City of Hesperia.

Federal Funds  
  State Funds  
  Local Funds  
  TDA Funds  
  Measure I Funds

*Provide Brief Overview of the Overall Funding for the duration of the Contract:*

Agreement is between Hesperia and Authority – DIF share is 57.5% and Authority is 42.5% of total project cost that can come from Measure I/Local Highways program, CMIA funds, STIP, STP or SLPP. The payable to SCE will be handled with the PO approved as part of the same agenda item.

Payable  Receivable

### CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

Barbara Fortman  
Project Manager (Print Name)

Garry Cohee  
Task Manager (Print Name)

Andrea Turcotte  
Dir. of Fund Admin. & Programming (Print Name)

Jeffrey Hill  
Contract Administrator (Print Name)

W. STWARSKI  
Chief Financial Officer (Print Name)

Barbara Fortman 12.6.12  
Signature Date

Garry Cohee 12-6-12  
Signature Date

Andrea Turcotte 12-6-12  
Signature Date

Jeffrey Hill 12/12/12  
Signature Date

**AMENDMENT NO. 1 TO COOPERATIVE AGREEMENT NO. C12219**  
**BETWEEN**  
**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**  
**AND**  
**CITY OF HESPERIA**  
**FOR**  
**INTERCHANGE CONSTRUCTION AT RANCHERO ROAD**  
**IN THE CITY OF HESPERIA**

THIS AMENDMENT No. 1 (AMENDMENT), entered into by and between the San Bernardino County Transportation Authority (hereinafter referred to as "AUTHORITY") and the City of Hesperia (hereinafter referred to as "CITY"), (AUTHORITY and CITY are each a "Party" and collectively referred to as "Parties").

**RECITALS**

- A. Parties entered into Agreement C12219 (AGREEMENT) on April 3, 2012, defining the terms and conditions for the funding, contracting, construction and project administration necessary to manage and construct the Ranchero Road Interchange on Interstate 15 in the City of Hesperia, referred to as PROJECT.
- B. AGREEMENT established that AUTHORITY is the lead agency for the PROJECT construction work. The total PROJECT construction cost which includes Construction Management, Construction Capital, and San Bernardino Associated Governments' Management and Oversight totals \$44,820,142.
- C. Parties now wish to clarify the components of the Construction Capital as it relates to Southern California Edison utility relocations.
- D. Parties now wish to clarify the components of the Construction Capital to exclude the sewer installation.
- E. Parties now wish to clarify the responsibility for the potable and reclaimed waterline installation.

**IT IS THEREFORE MUTUALLY AGREED to amend the AGREEMENT as follows:**

- 1. Section I (Authority Responsibilities) is amended by adding these new paragraphs:

"14. AUTHORITY will make direct payment on behalf of the CITY to Southern California Edison for the cost of utility relocation within 30 days of receipt of the invoice.

15. AUTHORITY will install the sewer line in Mariposa and Caliente Roads. The PROJECT construction cost does not include a cost for the sewer line installation, estimated at \$600,000.

16. AUTHORITY will invoice CITY for the sewer line installation cost within 30 days of receipt of the construction contractor's invoice."

2. Section II (City Responsibilities) is amended by adding these new paragraphs:

"14. CITY will enter into an agreement with Southern California Edison for utility relocation. The PROJECT construction cost include a \$2,000,000 relocation cost.

15. CITY will receive an invoice from Southern California Edison for the utility relocation and forward it to AUTHORITY for payment within five business days.

16. CITY will repay AUTHORITY for 100% of the cost of the sewer line. This payment is an ineligible PROJECT cost and does not reduce the CITY's share of the total eligible PROJECT expenses.

17. CITY will pay for and cause to be installed, 100% of the CITY potable and reclaimed waterline installation that is outside of the scope of the PROJECT."

3. Section III (It is mutually agreed) is amended by adding these new paragraphs:

"30. AUTHORITY and CITY will share the costs 42.5%/57.5%, respectively, for the removal of the San Bernardino County Special Districts' existing waterline, as part of the PROJECT construction cost.

31. A separate amendment to the AGREEMENT is anticipated to be necessary between the Parties to reconcile the PROJECT finances for all phases of work based on actual costs following construction close-out of the PROJECT.

32. If actual costs for Southern California Edison utility relocation exceed the approved programming for the project then this AGREEMENT shall be amended by parties to address responsibility for the overage."

4. All other terms of the AGREEMENT shall remain in full force and effect.

5. This Amendment No. 1 to AGREEMENT is hereby deemed to be a part of AGREEMENT.

IN WITNESS WHEREOF, this Amendment No. 1 has been executed by the Parties and is effective on the date executed by Authority.

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**CITY OF HESPERIA**

**BY:** \_\_\_\_\_  
Janice Rutherford, Chairperson

**BY:** \_\_\_\_\_  
Bill Holland, Mayor

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

**BY:** \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

**BY:** \_\_\_\_\_  
Eric L. Dunn  
City Attorney

**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: 16

**Date:** January 9, 2013

**Subject:** Surface Transportation Program Rural Apportionment Funds for the County of San Bernardino

**Recommendation:** Approve an exception to SANBAG Policy 40001/VS-30: Cost Buy-down for Projects with a Development Share Contribution, and allow the use of \$4.2M Surface Transportation Program funds allocated to the County of San Bernardino for use at their discretion to be regarded as an internal loan of development share funds for the I-10 Cedar Interchange project.

**Background:** Every year SANBAG receives about \$20M of Surface Transportation Program (STP) funds to use throughout the county for a wide variety of transportation projects. Per federal law, STP is distributed between urban areas of the state with an urbanized area population over 200,000 and other areas of the state with population less than 200,000 based on the area's relative share of the state's population. SAFETEA-LU required that about \$2.2M of these "other area" funds be reserved for use in areas of the county with population less than 5,000 each year. The County of San Bernardino exchanges half of these federal funds for state funds for use on projects off the federal-aid system at their discretion. In December 2005, the SANBAG Board allocated the remaining \$6.5M that was expected over the six-year period of SAFETEA-LU to the County for use at their discretion on federally-eligible projects. The County programmed those funds on the following projects:

- Lenwood Rd Grade separation - \$4.2M
- Flamingo Heights Landers Rd Improvements - \$2M
- SR-247 and Chaparrel Rd - \$200,000

*Approved*  
 General Policy Committee

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

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

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

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

COG	CTC	X	CTA	X	SAFE	CMA
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Check all that apply.  
 BRD1301a-az

Since programming these funds on these projects in 2006, the funding plan for the Lenwood Road Grade Separation project has fully developed. SANBAG, the City of Barstow, and the County were successful in securing \$6.7M in State Proposition 1B Trade Corridors Improvement Fund (TCIF) program funds. Because of stringent schedule requirements related to the TCIF program, in January 2010, SANBAG assumed the management role for the project to reduce the risk of loss of those funds. Over the next year SANBAG allocated \$3.45M in STP funds toward the right of way phase of the project, and in June 2011, SANBAG, the city, and the County entered into a right of way and construction funding agreement that essentially capped the contribution from the city and County at approximately \$2.5M each with the balance of the \$31.5M project being funded from state and federal funds and North Desert Major Local Highway Program (MLH) funds. At the time it was projected that SANBAG would be required to bond for \$11M in MLH funds in the construction phase. Through development of the Measure I 2010-2040 Ten-Year Delivery Plan, SANBAG identified \$8.8M in STP funds that could be used for construction and negate the need to bond for this project.

Because the County has met its \$2.5M financial commitment to this project through funding of the project development phases, there is no longer a need for the \$4.2M STP funds they had programmed on the project. In addition, because SANBAG has committed \$12.3M STP to this project, the federal funding requirement for rural areas has been met. Therefore, the County has requested that, in this unique circumstance, they be permitted to use the \$4.2M STP allocated to them in 2005 as an internal loan toward their required local (development share) contribution on the I-10 Cedar Interchange Project, which is the highest priority interchange in the Valley, to be paid back with future development fee collections. The County expects environmental approval in December 2012, and allocation of these funds toward PS&E and right of way would allow the County to be in a position to support the advancement of these phases. Per SANBAG Policy 40001/VS-30, STP funds are considered public share funds; however because these funds were allocated to the County to use at their discretion, SANBAG staff recommends this exception. It is the intention of the County to direct the internal loan repayment to a future project in the rural area.

**Financial Impact:** This item has no financial impact on the approved Fiscal Year 2012-2013 budget because the subject funds are currently allocated to the County and are not included in the SANBAG Budget.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the General Policy Committee on December 12, 2012.

**Responsible Staff:** Andrea Zureick, Director of Fund Administration and Programming

**DISCUSSION  
ITEMS**



- 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: 18

**Date:** January 9, 2013

**Subject:** Proposal for a Countywide Regional Planning Effort

**Recommendation:\*** Receive presentation by Greg Devereaux, San Bernardino County Chief Executive Officer introducing the concept of a Countywide regional planning effort.

**Background:** When the Countywide Vision was adopted by SANBAG, the County and the cities, one of the basic assumptions was that there were issues that transcended boundaries. These issues affect all residents of San Bernardino County directly or indirectly.

In an effort to move the work of realizing the Countywide Vision forward, the concept of a Countywide regional plan is being brought forward for discussion. This Plan will document existing conditions and challenges and will map out a direction for selected elements of countywide significance in a collaborative effort among the County, cities, special districts, and other agencies.

Greg Devereaux, San Bernardino County Chief Executive Officer, will introduce this concept to the SANBAG Board of Directors. This is the first step in what is seen as a collaborative process that will involve every city and town and a number of other community stakeholders.

**Financial Impact:** This item is a discussion item and has no financial impact.

**Reviewed By:** This item was reviewed by the Planning and Development Technical Forum on December 19, 2012.

**Responsible Staff:** Duane A. Baker, Director of Management Services

Approved  
 Board of Directors

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

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

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

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

COG	X	CTC		CTA		SAFE		CMA	
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Check all that apply.  
 BRD1301C-DAB



- 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: 19

**Date:** January 9, 2013

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

- Recommendations:**\*
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 0160-242-17) 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 Construction Cooperative Agreement No. C12037 between SANBAG and the City of Colton.

*Approved*  
 Board of Directors

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

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

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

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

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.

BRD1301b-pm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/RES%2013-039.pdf>

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/RES%2013-040.pdf>

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 0160-242-17) 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 0160-242-17) 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:** This item was reviewed and recommended for approval (15-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on December 13, 2013. SANBAG General Counsel and SANBAG's Right-of-Way Counsel, Woodruff, Spradlin & Smart, have approved this items as to form.

**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 0160-242-17**

**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 13, 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:

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Janice Rutherford, Chairperson  
San Bernardino County Transportation Commission

ATTEST:

---

Vicki Watson,  
Clerk of the Commission

# **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

89-12  
Date



# **EXHIBIT "B"**

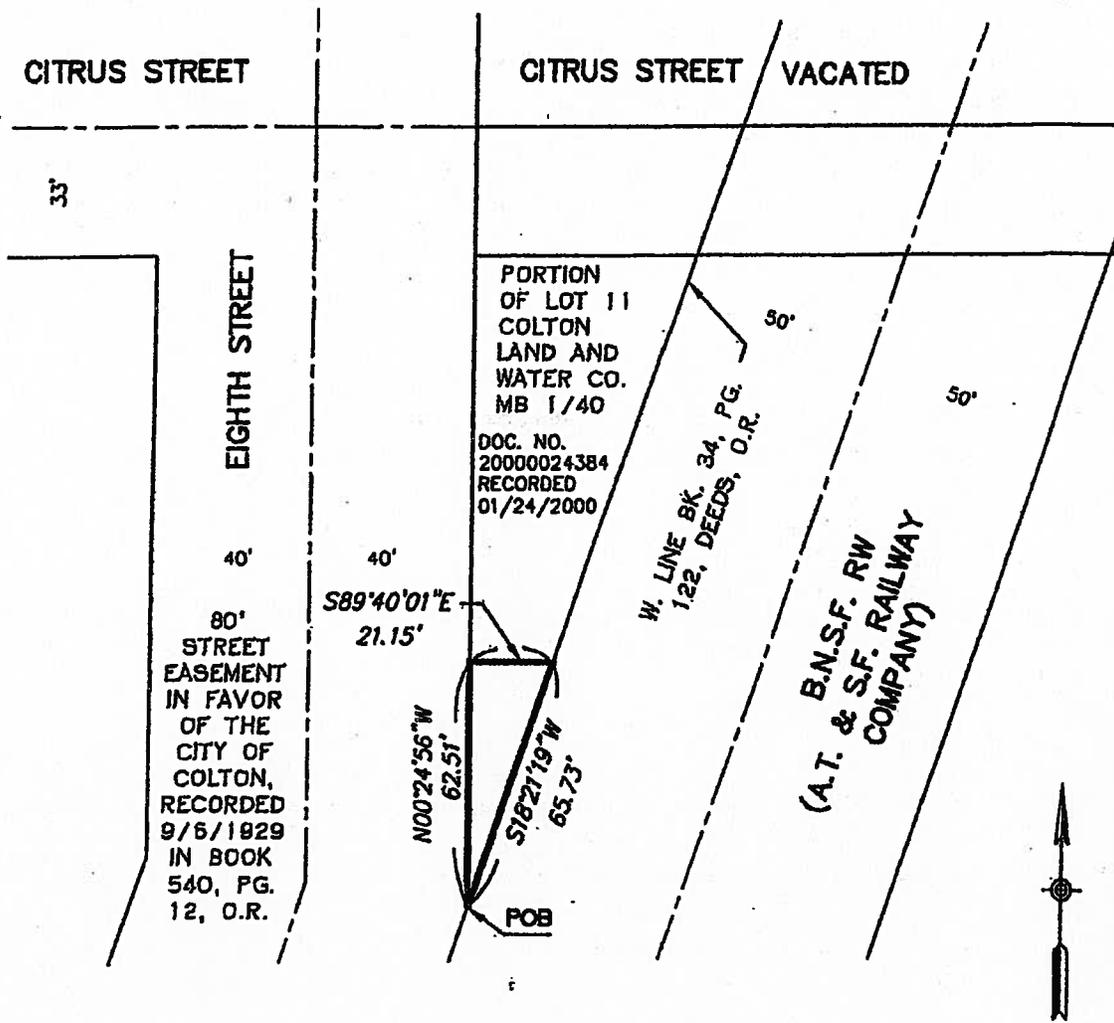
**LEGEND**

— 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: 908.481.5780</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 13, 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

# **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**.

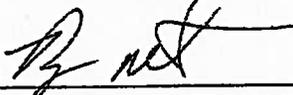
The sidelines of said strip shall be lengthened or shortened to terminate easterly in the West line of said Miller Drive and westerly in a line having a bearing of North 00°00'00" East passing through said point of terminus.

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

30'

30'

N00°15'42"W

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 91784  
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'

# **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**.

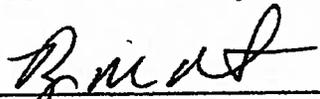
The sidelines of said strip shall be lengthened or shortened to terminate northeasterly in a line having a bearing of North 00°00'00" East passing through said true point of beginning and southeasterly in a line having a bearing of North 01°40'09" West passing through said point of terminus.

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

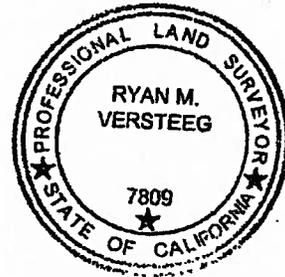
The bearings and distances shown in the above description are on the California Coordinate System of 1983 (2007.00), Zone 5. Divide distances shown in the above description by 0.99994626 to obtain ground distances.

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

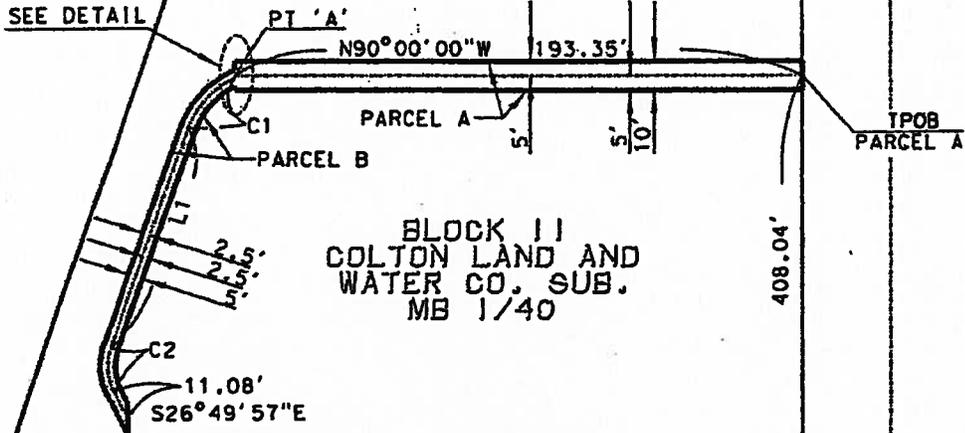
1-26-2012  
\_\_\_\_\_  
Date



# **EXHIBIT "D"**

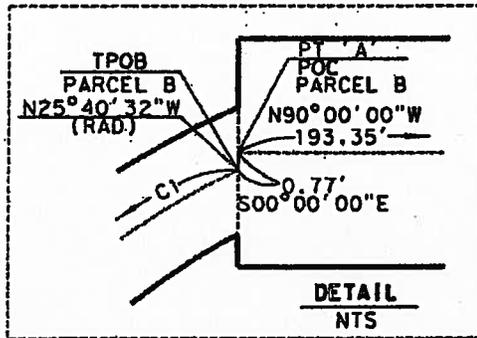
**EXHIBIT 'B'**

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



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 33'**



**DAVID EVANS  
AND ASSOCIATES INC.**  
4200 Concourse, Suite 200  
Ontario California 91764  
Phone: 909.481.5750

**EXHIBIT 'B'**

JOB NO.:  
TRAN000-0004

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: 20**

**Date:** January 9, 2013

**Subject:** Notice of Appointment to and Vacancies on SANBAG Policy Committees, SCAG Committees and External Agencies

- Recommendation:\***
- 1) Note Presidential appointment of County Supervisor James Ramos to the SANBAG Commuter Rail and Transit Committee.
  - 2) Note the following vacancies and request Board Members to express their interest in serving to the Board President for the following:
    - Metro Gold Line Foothill Extension Construction Authority – Alternate Member
    - Metro Gold Line Phase II JPA – Alternate Member
    - SCAG Community, Economic and Human Development Committee
    - SCAG Energy and Environment Committee
    - SCAG Transportation Committee

**Background: SANBAG Committee Appointments**

- 1) **Commuter Rail and Transit Committee** - In accordance with SANBAG Policy 10001, the SANBAG President is authorized to appoint members of the Board of Directors to the Commuter Rail and Transit Committee. All Presidential appointments are announced at the SANBAG Board of Directors meeting immediately following the appointments to advise the

*Approved  
Board of Directors*

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

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

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

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

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

BRD1301b-dab

<http://portal.sanbag.ca.gov/mgmt/Intranet/Shared%20Documents/SANBAG%20Policy%20Committee%20Membership.docx>

<http://portal.sanbag.ca.gov/mgmt/Intranet/Shared%20Documents/SANBAG%20Reps%20on%20SCAG.docx>

<http://portal.sanbag.ca.gov/mgmt/Intranet/Shared%20Documents/SANBAG%20Appointments%20to%20External%20Agencies.docx>

Board of Directors on the status of SANBAG committee membership. Board President Janice Rutherford has appointed County Supervisor James Ramos to the SANBAG Commuter Rail and Transit Committee with a term expiring December 31, 2014.

**Vacancies**

- 2) SANBAG has a number of vacancies available with outside agencies for interested Board Members. Board Members should make their interest known to the SANBAG Board President. The vacancies are with the following:
  - a. **Metro Gold Line Foothill Extension Construction Authority (Alternate Member)** - The passage of AB 1600 authorized the SANBAG Board President to appoint a primary and alternate member to the Metro Gold Line Foothill Extension Construction Authority. This Authority is responsible for the development of a light rail project from the City of Los Angeles into San Bernardino County.
  - b. **Metro Gold Line Phase II JPA (Alternate Member)** – This Authority was formed by the 13 cities along the Gold Line route, LA Metro and SANBAG. The Board of Directors makes this appointment. It is the forum for the review, development and recommendation of policies and plans for the extension of the Gold Line from Pasadena to Montclair.
  - c. **SCAG Community, Economic and Human Development Committee** – This committee provides policy recommendations to the SCAG Regional Council on subjects such as housing, land use, employment, economic and community development.
  - d. **SCAG Energy and Environment Committee** – This committee provides policy recommendations to the SCAG Regional Council on subjects such as natural resources conservation, air quality, water quality, energy conservation, and reviews the Environmental Impact Report of the Regional Comprehensive Plan.
  - e. **SCAG Transportation Committee** – This committee provides policy recommendations to the SCAG Regional Council on subjects such as goods movement, utility development plans, and transportation plans.

**Financial Impact:** This item is consistent with the adopted SANBAG budget.

**Reviewed By:** This item has not received prior policy or technical advisory committee review.

**Responsible Staff:** Duane A. Baker, Director of Management Services



December 12, 2012

### SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p><b>Mountain/Desert Committee</b>                      Membership consists of 11 SANBAG Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, Second, and Third Districts.</p>	<p>Provides ongoing policy level oversight related to the full array of SANBAG responsibilities as they pertain specifically to the Mountain/Desert subregion.                      The Committee also meets as the Mountain/Desert Measure I Committee as it carries out responsibilities for Measure I Mountain/Desert Expenditure Plan.</p>	<p>Julie McIntyre, Barstow (Chair)                      Edward Paget, Needles (Vice Chair)                      Jim Harris, Twentynine Palms                      George Huntington, Yucca Valley                      Bill Jahn, Big Bear Lake                      Mike Leonard, Hesperia                      Robert Lovingood, Supervisor                      Ryan McEachron, Victorville                      James Ramos, Supervisor                      Vacant, (Rick Roelle) Apple Valley                      Janice Rutherford, Supervisor                      Cari Thomas, Adelanto</p>	<p>Indeterminate (6/30/2013)                      Indeterminate (6/30/2013)                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate</p>

**Policy Committee Meeting Times**

- General Policy Committee: Second Wednesday, 9:00 a.m., SANBAG Office
- Commuter Rail & Transit Committee: Third Thursday, 12:00 noon, SANBAG Office
- Mountain/Desert Committee: Third Friday, 9:30 a.m., Apple Valley

NOTE: Policy Committee meetings will not be held in July of each year (effective 9/5/12).

### Board of Directors Study Sessions for Metro Valley Issues

STUDY SESSION	PURPOSE	MEMBERSHIP	TERMS
<p>Board of Directors Study Sessions for Metro Valley Issues                      Refer to SANBAG Policy 10007.</p>	<p>To review, discuss, and make recommendations for actions to be taken at regular meetings of the Board on issues relating to Measure I Projects in the Valley.</p>	<p>Board of Directors                      Dick Riddell, Yucapa (Chair)                      Michael Tahan, Fontana (Vice Chair)</p>	<p>6/30/2013                      6/30/2013</p>

Meeting Time: Second Thursday, 9:00 a.m., SANBAG Office

## SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
<p><b>Audit Subcommittee of the Administrative Committee</b>                      In November 2008, the Board approved the creation of an Audit Subcommittee of the Administrative Committee to strengthen the financial oversight function of the Board. Additional SANBAG Board Members may be appointed annually at the discretion of the Board President.</p>	<p>The responsibilities of the Audit Subcommittee shall be to:</p> <ul style="list-style-type: none"> <li>• Provide a direct contact between the independent auditor and the Board of Directors before, during and after the annual audit.</li> <li>• Work with the auditor and SANBAG staff on reviewing and implementing practices and controls identified in the annual audit.</li> </ul>	<p>Audit Subcommittee (for FY 2011-2012 Audit)                      - SANBAG President – Janice Rutherford, Supervisor                      - Vice President – Mike Leonard, Hesperia                      - Immediate Past President – Larry McCallon, Highland                      - Presidential Appointment – Walt Stanckiewicz, Grand Terrace</p>
<p><b>Ad Hoc Committee on Litigation with San Bernardino County Flood Control District</b>                      In January 2007, the SANBAG President was authorized to appoint an ad hoc review committee of SANBAG Board Members who do not represent local jurisdictions party to the San Bernardino County Flood Control District vs. SANBAG litigation relative to the Colonies Development. In April 2008, the role of this committee was expanded to include the Cactus Basin litigation.</p>	<p>Reviews and provides guidance on litigation with San Bernardino County Flood Control District regarding the Colonies Development and the Cactus Basin in Rialto.</p>	<p>Pat Morris, San Bernardino, Chair                      Richard Riddell, Yucaipa                      Larry McCallon, Highland</p>
<p><b>Contracting Process</b>                      In July 2012, the SANBAG Board President appointed this ad hoc committee to strengthen SANBAG's procurement policies and procedures.</p>	<p>Reviews SANBAG's contracting policies and procedures and makes recommendations to improve them.</p>	<p>Michael Tahian, Fontana - Chair                      Robert Lovingood, Supervisor                      Julie McIntyre, Barstow                      Walt Stanckiewicz, Grand Terrace                      Dennis Yates, Chino                      Alan Wapner, Ontario</p>
<p><b>Bylaws</b>                      In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's bylaws and recommend changes to strengthen SANBAG's corporate governance</p>	<p>Reviews SANBAG's bylaws and make recommendations to the Board on any necessary changes.</p>	<p>Rhodes "Dusty" Rigsby, Loma Linda - Chair                      Pat Morris, San Bernardino                      Mike Leonard, Hesperia                      Larry McCallon, Highland</p>
<p><b>Budget Process</b>                      In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's budget preparation process and final budget document and make recommendations to help improve communication and transparency of SANBAG's budget to elected officials and the general public.</p>	<p>Reviews SANBAG's budget adoption process and final budget document and make recommendations on changes to improve the process and the final budget document to make them more useful and informative to Board Members and the public.</p>	<p>Pete Aguilar, Redlands - Chair                      Kevin Ryan - Principal Transportation Planner, City of Fontana                      Sam Racadio – Council Member, City of Highland                      Mike Podegracz, P.E. – City Manager, City of Hesperia</p>

## SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
<p><b>Transportation Technical Advisory Committee (TTAC)</b>                      Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Administrative Officer.</p>	<p>SANBAG's Transportation Technical Advisory Committee was formed by SANBAG management to provide input to SANBAG staff on technical transportation-related matters and formulation of transportation-related policy recommendations to the SANBAG Board of Directors.                      The TTAC is not a Brown Act committee.</p>	<p>Generally meets on the first Monday of each month at 1:30 PM, at SANBAG.</p>
<p><b>City/County Manager's Technical Advisory Committee (CCM TAC)</b>                      The committee is made up of up to two representatives of the County Administrator's Office and the city manager or administrator from each city and town in the County.</p>	<p>SANBAG's City/County Manager's Technical Advisory Committee was established in the Joint Powers Authority that established SANBAG. The primary role of the committee is to provide a forum for the chief executives of SANBAG's member agencies to become informed about and discuss issues facing SANBAG. It also provides a forum for the discussion of items of mutual concern and a way to cooperate regionally in addressing those concerns.                      The CCM TAC is a Brown Act Committee.</p>	<p>Meets on the first Thursday of each month at 10:00 AM, at SANBAG.</p>
<p><b>Public and Specialized Transportation Advisory and Coordinating Council (PASTACC)</b>                      Membership consists of 13 members appointed by the SANBAG Board of Directors                      6 representing Public Transit Providers                      1 representing County Dept. of Public Works                      1 representing the Consolidated Transportation Services Agency                      5 representing Social Service Providers</p>	<p>Subject to the Transportation Development Act (TDA) Section 99238 – establishes PASTACC's statutory responsibilities:                      (1) Review and make recommendations to SANBAG on annual Unmet Transit Needs, Federal Transit Administration and Measure I Program applications and reports.                      (2) Assist SANBAG in developing public outreach approach on updating the Coordinated Public Transit/Human Services Transportation Plan and disseminate information in reference to State law and recommendations as they relate to transit and specialized transit.                      (3) Monitor and make recommendations on Federal regulatory processes as they relate to transit and specialized transit.                      (4) Address any special issues of PASTACC voting and non-voting members.                      The PASTACC is a Brown Act committee.</p>	<p>Meets the second Tuesday every other even month at 10:00 AM, at SANBAG.</p>
<p><b>Planning and Development Technical Forum (PDTF)</b>                      Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Chief Executive Officer.</p>	<p>The SANBAG Planning and Development Technical Forum was formed by SANBAG management to provide an opportunity for interaction among planning and development representatives of member agencies on planning issues of multijurisdictional importance.                      The PDTF is not a Brown Act Committee.</p>	<p>Meets the 4th Wednesday of each month at 2:00 p.m. at the Depot (in the SCAG Office).</p>

### SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
<p><b>Project Development Teams</b></p>	<p>Project Development Teams (PDTs) are assembled for all major project development activities by SANBAG staff.</p> <p>Teams are generally composed of technical representatives from SANBAG, member jurisdictions appropriate to the project, Caltrans, and other major stakeholder entities that have significant involvement in the project.</p> <p>PDTs make recommendations related to approaches to project development, evaluation of alternatives, and technical solutions.</p> <p>PDTs meet on a regular basis throughout the project phase to review progress and to provide technical input required for project development.</p> <p>The PDTs are not Brown Act Committees.</p>	<p>Varies with the PDT, at SANBAG.</p>

APPOINTING/ELECTING AUTHORITY	REGIONAL COUNCIL (12:00 noon)	POLICY COMMITTEES (Regional Council Members Serve on One Each) (Subregional Appointments) (County Commissions Appoint One to TC) (10:00 a.m.)		
		Community, Economic, and Human Development	Energy and Environment	Transportation
District 6 (Grand Terrace, Colton, Loma Linda, Redlands, Yucaipa)	J. Harrison	J. Harrison		
District 7 (San Bernardino, Highland)	L. McCallon	L. McCallon		
District 8 (Rialto, Fontana)	D. Robertson	D. Robertson		
District 9 (Rancho Cucamonga, Upland, Montclair)	P. Eaton	P. Eaton		P. Eaton
District 10 (Chino, Chino Hills, Ontario)	E. Graham	E. Graham	E. Graham	
District 11 (Barstow, Big Bear, Needles, Twentynine Palms, Yucca Valley)	B. Jahn	B. Jahn		
District 65 (Adelanto, Apple Valley, Hesperia, Victorville)	Vacant (G. Coleman)	Vacant (G. Coleman)		
San Bernardino County	G. Ovitt	G. Ovitt		G. Ovitt
SANBAG Acting as County Transportation Commission	A. Wapner	A. Wapner		A. Wapner
SANBAG Subregional Appointees*	Julie McIntyre	Julie McIntyre	Diane Williams	R. McEachron
*One appointee to each policy committee for a total of three appointees per subregion, plus one additional appointee for every SCAG District over three in the subregion. SANBAG has a total of seven subregional appointees to the policy committees.	Vacant (Mike Leonard)	Vacant (Mike Leonard)	Vacant (E. Scott)	Vacant (A. Wapner)

**Rules of Appointment**

1. SANBAG policy stipulates that all SANBAG appointees be SANBAG Board Members.
2. SCAG President appoints Regional Council members to Standing and Policy Committees.

**Terms of Appointment**

Terms of appointment are two years, commencing on adjournment of the annual General Assembly in May of each year. Even-numbered District representatives' terms expire in even-numbered years; odd-numbered District representatives expire in odd-numbered years.

**Stipend Summary**

SCAG Regional Council members receive a \$120 stipend for attendance and travel to SCAG sponsored meetings. Regional Council members may also receive reimbursement for public transit expenses or a mileage reimbursement. Parking is validated at SCAG's downtown Los Angeles office for RC members. RC members are eligible to receive up to six (6) per diem stipends per month. Both RC members and Subregional Appointees, if eligible, may receive reimbursement (\$150 + taxes) for lodging (please review SCAG rules before making expenditure). Subregional Appointees shall receive a \$120 stipend for up to four Policy or Task Force meetings per month.

**Meeting Information**

The regular meetings of SCAG Regional Council and Policy Committees are on the 1<sup>st</sup> Thursday of each month at the SCAG offices located at 818 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor in Los Angeles. Generally, the Policy Committee meetings start at 10 AM and Regional Council meetings start at 12:15 PM.

**Policy Committees**

**Community, Economic, and Human Development:** Provides policy recommendations to the Regional Council on subjects of housing, land use, resource, economic, community development, infrastructure, employment, and regional disaster preparedness issues. Reviews and recommends to the Planning Committee revisions to the Housing, Economy, Growth Management, Human Resources, and Finance Chapters of the Regional Comprehensive Plan and Guide.

**Energy and Environment:** Acts as the policy advisory committee to the Regional Council on environmental issues, including air and water, hazardous, solid waste management, natural resources conservation, and energy conservation. Reviews the Environmental Impact Report of the Regional Comprehensive Plan and Guide. Provides recommendations to the Planning Committee on state and federal legislative proposals and administrative guidelines affecting environmental quality, resource conservation.

**Transportation and Communications:** Acts as the policy advisory committee to the Regional Council on all regional matters pertaining to the movement of goods and people on land, water, and air. Reviews and recommends to the Regional Council all major utility development plans. Addresses the location, size, or capacity, timing, and impact of facilities.

## SANBAG Appointments to External Agencies

SANBAG works closely with not only the County and cities within the County of San Bernardino, but with a number of regional governments that relate to the multiple counties within the Southern California region. Members of the SANBAG Board of Directors frequently take active roles in representing the interests of San Bernardino County on these regional bodies. This participation provides assurance that the unique needs and characteristics of San Bernardino County are taken into consideration as policies are developed which impact this County and its individual local government units. Active participation in regional organizations further promotes the interests of San Bernardino County and secures its appropriate role in the Southern California region.

The following table lists some of the regional bodies upon which SANBAG representatives serve.

Committee	Appointee	Appointing Authority	Purpose	Term
Alameda Corridor-East Construction Authority	Paul Eaton, Montclair, Primary Ex-Officio Julie McIntyre, Barstow, Alternate Ex-Officio	SANBAG President	SANBAG representative serves as ex-officio member of the Authority that addresses issues related to the transportation corridor running from Los Angeles to San Bernardino County. This Authority meets on the fourth Monday of each month at Irwindale City Hall. Members receive a \$100 stipend from the Authority.	12/31/14 12/31/13
Inland Empire Economic Partnership (IEEP)	Mike Leonard, Hesperia *Position held by SANBAG Vice President.	SANBAG President	The IEEP is a partnership that includes business, government and academic leaders to develop and carry out initiatives to benefit the region.	*
The Sam and Alfreda L. Maloof Foundation for Arts and Crafts	Janice Rutherford, Supervisor	SANBAG Board of Directors	A non-profit corporation that participates in the preparation of the Conservation Plan and oversees the activities and assets of the Foundation. SANBAG has not authorized payment of stipend for participation.	12/31/13
Metro Gold Line Phase II Joint Powers Authority	Paul Eaton, Montclair, Primary Vacant. Alternate	SANBAG Board of Directors	The Gold Line Phase II Construction Authority is a joint powers agency formed by thirteen cities along the corridor, LACMTA and SANBAG. THE JPA serves as a forum for the review, consideration, study, development and recommendation of policies and plans for the extension of the Gold Line from Pasadena to Montclair. Members receive \$150 payment from Gold Line Authority for participation.	12/31/13 12/31/14
Metro Gold Line Foothill Extension Construction Authority	Alan Wapner, Ontario, Primary Vacant, Alternate	SANBAG President	The Authority is responsible for the development of a light rail project from the City of Los Angeles into San Bernardino County. The Authority board meets on the second and fourth Wednesday of the month at 7:00 p.m. at the Authority's office in Monrovia. Members receive \$150 for each day spent on Authority business, not to exceed \$600 per month.	12/31/16 12/31/16
Mobile Source Air Pollution Reduction Review Committee	Larry McCallon, Highland, Primary Ed Graham, Alternate	SANBAG Board of Directors	Develops and implements work programs which reduce mobile source emissions, funded by AB2766 (portion of the \$4 motor vehicle registration fee). County Commissions, SCAQMD, and ARB have one appointment with alternates. In April 2005, SANBAG authorized a stipend of \$100 per day. The MSRC meets once a month on Thursdays at 1:30 p.m. at South Coast Air Quality Management District in Diamond Bar.	12/31/14 12/31/14

**SANBAG Appointments to External Agencies**

Committee	Appointee	Appointing Authority	Purpose	Term
One Water One Watershed (OWOW) Steering Committee of the Santa Ana Watershed Project Authority	Patrick Morris, City of San Bernardino	SANBAG Board of Directors	Responsible for developing the integrated Regional Water Management Plan for the Santa Ana River. The term of the appointment is for four years for a city representative from San Bernardino County.	03/01/15
SCAG Policy Committees	See associated table.	The SANBAG Board has authorized the SANBAG President to make appointments to SCAG Policy Committees.	SANBAG, as the CTC, appoints one elected official to serve on SCAG's Transportation and Communications Committee. SANBAG, when acting as a subregional agency, also has authority to make six appointments to the three SCAG Policy Committees; i.e., Community Economic and Human Development, Energy and Environment, and Transportation and Communications. (The mayors of the six SCAG districts in SBCO elect members to the SCAG Regional Council. See attachment.) SCAG pays a fee for service to members for attendance at SCAG Policy Committee meetings.	See associated table.
Southern California Regional Rail Authority	Paul Eaton, Montclair, Primary Patrick Morris, San Bernardino, Primary Larry McCallon, Highland, Alternate Alan Wapner, Ontario, Alternate	SANBAG Board of Directors (Commuter Rail & Transit Committee makes a recommendation.)	SCRRA serves as the governing body for Metrolink, the regional commuter rail system serving the five Southern California Counties. Members receive payment of \$100 per day from SCRRA for participation.	Indefinite
SR 91 Advisory Committee	Ed Graham, City of Chino Hills, Ex-Officio Member	SANBAG Board of Directors	The Committee reviews issues and makes recommendations to OCTA regarding the transportation facilities acquired, including tolls imposed, operations, maintenance, use of toll revenues, and improvements in the area of SR 91 between I-15 and SR 55, including the identification and siting of alternate highways. SANBAG has not authorized payment of stipend for participation.	12/31/14



- 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: 21

**Date:** January 9, 2013

**Subject:** Insurance Premium Update

**Recommendation:**\* Receive Insurance Premium Update Report

**Background:** SANBAG's risk management program includes a number of insurance policies that are renewed annually each December. SANBAG's new broker, Keenan, provides consulting advice and recommendations to SANBAG on the appropriate insurance coverage. Keenan markets SANBAG's insurance requirements and negotiates with a number of carriers. The results include the following recommendations:

Carrier	Coverage	Cost
National Assurance Company	General Liability	\$82,099
Allied World National Assurance	Umbrella Liability	\$46,346
The Hartford Insurance Group	Automotive	\$1,439
National Union Fire Insurance	Public Officials	\$180,200
National Union Fire Insurance	Crime	\$3,635
Great American	Excess Crime	\$10,890
Affiliated FM	Property	\$43,589
Zenith	Workers Compensation	\$62,304
<b>TOTAL</b>		<b>\$430,502</b>

Approved  
 Board of Directors

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

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

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

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

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

BRD1301c-ws

Attachment: <http://portal.sanbag.ca.gov/mgmt/committee/admin/Admin2012/adm1212/AgendaItems/ADM1212c1-ws.xlsx>

The total premium cost (including taxes) of \$430,502 represents a \$73,942 increase from the previous year. The majority of the increase is attributed to the Public Officials Liability policy which increased by \$64,631. The premium increase for Public Officials Liability is due to increased revenues and exposure.

Exhibit A provides a four year comparison of premium costs of the insurance policies. The total cost without Public Officials Liability decreased from a high of \$263,825 in 2010 to a low of \$236,786 in 2011, \$240,991 in 2012, and \$250,302 in 2013. The total cost with Public Officials Liability increased from a high of \$334,856 in 2010 to a low of \$307,470 in 2011, \$356,560 in 2012, and increased to \$430,502 in 2013.

**Financial Impact:** This item is consistent with the approved 2012/2013 Budget, Task 0105, Indirect Project Management. There is sufficient budget balance to offset the increase in premium costs.

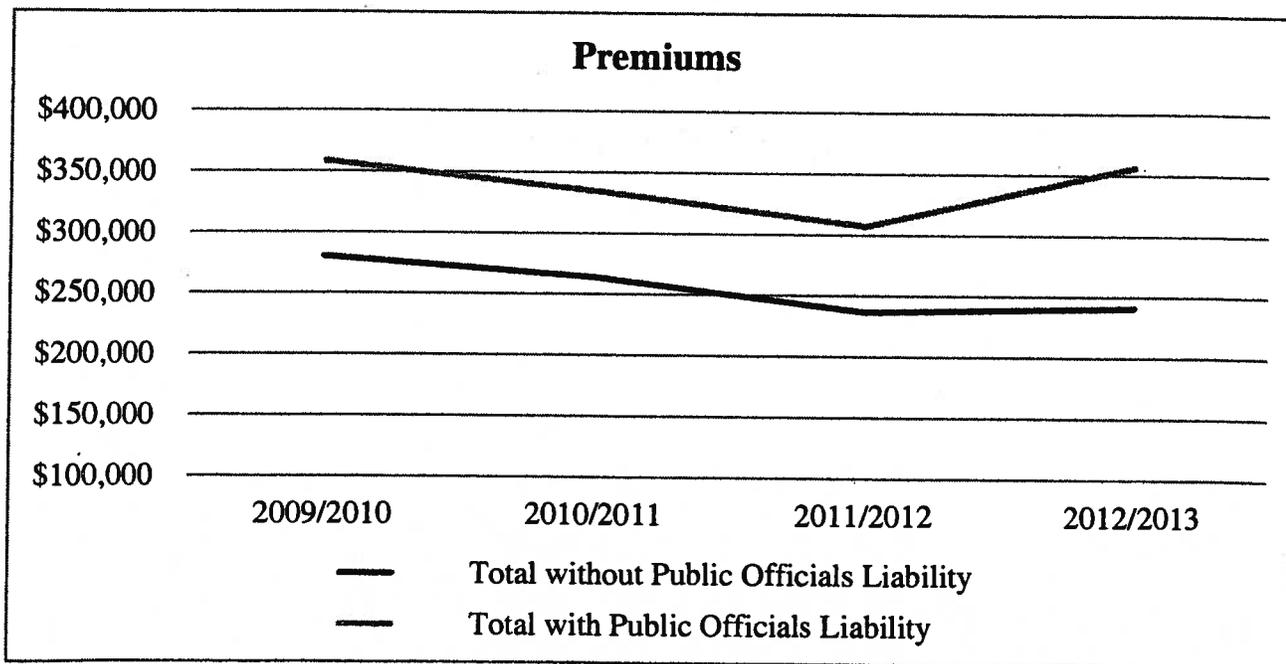
**Reviewed By:** This item was received by the General Policy Committee on December 12, 2012.

**Responsible Staff:** William Stawarski, Chief Financial Officer

**SANBAG  
Insurance Premiums  
Four Year Comparison**

**EXHIBIT A**

Premiums	12/01/2009- 12/01/2010	12/01/2010- 12/01/2011	12/01/2011- 12/01/2012	12/01/2012- 12/01/2013
<b>Policy</b>				
Automobile (\$1K deductible)	\$ 1,451	\$ 1,439	\$ 1,439	\$ 1,439
Crime	3,460	2,699	2,699	3,635
Excess Crime	8,500	9,000	9,900	10,890
General Liability	82,580	84,722	82,672	82,099
Property (\$10K deductible)	36,500	36,500	38,249	43,589
Umbrella Liability	62,201	47,182	46,721	46,346
Workers Compensation	69,133	55,244	59,311	62,304
Total without Public Officials Liability	263,825	236,786	240,991	250,302
Public Officials Liability (\$100K deductible)	71,031	70,684	115,569	180,200
Total with Public Officials Liability	<u>\$ 334,856</u>	<u>\$ 307,470</u>	<u>\$ 356,560</u>	<u>\$ 430,502</u>





- 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: 22

**Date:** January 9, 2013

**Subject:** Lease of Unit No. 175 at the San Bernardino Santa Fe Depot

**Recommendation:** \* That the Board acting as the San Bernardino County Transportation Commission approve Lease Agreement C13088 with Iron Horse Café Inc. in the amount of \$20,980 for Unit No. 175, approximately 714 square feet adjacent to the Main Lobby of the San Bernardino Santa Fe Depot.

**Background:** San Bernardino Associated Governments acting as the San Bernardino County Transportation Commission, (SANBAG) and the City of San Bernardino (CITY), as co-owners of the San Bernardino Santa Fe Depot (DEPOT) as Tenants-in-Common, share the responsibilities for the DEPOT as written in Cooperative Agreement A04040. Pursuant to the Agreement, the CITY has delegated to SANBAG all authority to enter into leases at the DEPOT.

Approximately 714 square feet of space, known as Unit No. 175, became available in the Main Lobby when the Whistle Stop Snack Shop tenant terminated its lease and vacated the space in October 2012. Since that time SANBAG's DEPOT property management firm, CityCom, has worked to find a new tenant and began negotiations with Iron Horse Café Inc. in late November, 2012.

The attached lease agreement with Iron Horse Café Inc. has been prepared by CityCom for the Board's approval. The terms of the lease are generally:

\*

*Approved*  
*Board of Directors*

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

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

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

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

COG	CTC	x	CTA	SAFE	CMA
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Check all that apply.

BRD1301a-dab

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13088.pdf>

1. Premises – Unit No. 175 (snack shop area), approx. 714 sf. Patrons may also use the lobby and restroom facilities. Tenant may operate a mobile food cart near the west end of the platform near the DEPOT building, but will be solely responsible to clean the area daily.
2. Term – two years
3. Base rent - \$550.00 per month for the first year; \$800.00 per month for the second year with a \$1,200 Security Deposit.
4. Common Area Maintenance (CAM) – Iron Horse Café Inc. will pay 1.6% of the total estimated common area expenses reconciled to actual expenses annually. CAM expenses include general maintenance, maintenance of landscaping and parking lot, utilities to the common area, and security. It is estimated that the CAM cost will be \$369.00 per month in the first year.
5. Rent Abatement – Base Rent and CAM to be abated for the first 4 months.
6. Parking - four reserved parking spaces.

**Financial Impact:** This item is consistent with the SANBAG Fiscal Year 2012/2013 budget. All revenue collected under this lease will be retained by CityCom who is responsible for the administration of all leases at the DEPOT. The lease revenue of \$13,600 will be deposited with other lease revenue received from leasing space at the DEPOT and used to offset expenses incurred related to the property management of the DEPOT. The estimated \$7,380 for CAM maintenance will be applied against the DEPOT common area expenses.

**Reviewed By:** This item has no prior policy committee review. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract.

**Responsible Staff:** Duane A. Baker, Director of Management Services



## CONTRACT SUMMARY SHEET

Contract No. C 13088 Amendment No. \_\_\_\_\_

By and Between

San Bernardino County Transportation Commission and Iron Horse Café Inc.

Contract Description Lease Agreement – Santa Fe Depot Unit No. 175

**Board of Director's Meeting Date:** January 9, 2013  
**Overview of BOD Action:** Approval of two year Lease Agreement

Is this a Sole-Source procurement?  Yes  No

### CONTRACT OVERVIEW

Original Contract Amount	\$	\$4,000 for 1 <sup>st</sup> year \$9,600 for 2 <sup>nd</sup> year plus 1.6% of CAM	Original Contingency Amount	\$	0
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	0	Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	0
Current Amendment Amount	\$	0	Contingency Amendment	\$	0
<b>TOTAL CONTRACT VALUE</b>	\$	20,980 estimated	<b>TOTAL CONTINGENCY VALUE</b>	\$	0
<b>TOTAL BUDGET AUTHORITY</b> <i>(contract value + contingency)</i>				\$	20,980 estimated

Contract Start Date 01/09/13	Current Contract Expiration Date 12/31/14	Revised Contract Expiration Date
---------------------------------	--	----------------------------------

Has the contract term been amended?  No  Yes - please explain.

### FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0805.

A Budget Amendment is required.

How are we funding current FY?

Federal Funds  
  State Funds  
  Local Funds  
  TDA Funds  
  Measure I Funds

*Provide Brief Overview of the Overall Funding for the duration of the Contract:*

All revenue collected under this lease will be administered by the depot property management firm hired by SANBAG. The combined lease and CAM revenue are estimated to be \$20,980 and will be used to offset expenses incurred related to the property management of the Depot and common area expenses.

Payable    Receivable

### CONTRACT MANAGEMENT INFORMATION

**Check all applicable boxes:**

Retention? If yes, indicate % \_\_\_\_\_.

Disadvantaged Business Enterprise (DBE) Goal \_\_\_\_\_ %

Colleen Franco  
Project Manager (Print Name)  
DUANE A. BAKER  
Task Manager (Print Name)  
Andrea Zureick  
Dir. of Fund Admin. & Programming (Print Name)  
Jessy Hill  
Contract Administrator (Print Name)  
Jill Flores for William Stawski  
Chief Financial Officer (Print Name)

Colleen Franco 12/10/12  
Signature Date  
Duane A. Baker 12-11-12  
Signature Date  
Andrea Zureick 12-17-12  
Signature Date  
Jessy Hill 12/17/12  
Signature Date  
Jill Flores 12/18/12  
Signature Date

**CONTRACT NO: C13088**

**BY AND BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**

**AND**

**IRON HORSE CAFÉ INC.**

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## 1. Summary of Lease Provisions

- 1.01 **Parties:** This Lease, dated, for reference purposes only, January 9, 2013, is made by and between San Bernardino County Transportation Commission (SANBAG) (herein called "Landlord") and Iron Horse Cafe Inc. (herein called "Tenant").
- 1.02 **Premises:** Unit Number(s) 175, consisting of approximately 714 rentable square feet, more or less, as defined in Section 2 (the "Premises").
- 1.03 **Building:** Commonly described as being located at 1170 West 3rd Street in the City of San Bernardino, County of San Bernardino, State of California.
- 1.04 **Term:** Commencing January 9, 2013 ("Commencement Date") and ending December 31, 2014, as defined in Section 5.
- 1.05 **Base Rent:** \$500.00 per month, payable on the first day of each month, per Section 6.
- 1.06 **Base Rent Increase:** On January 1, 2014, the monthly Base Rent payable under Section 1.05 shall be adjusted as provided in Section 7.
- 1.07 **Late Charges:** 6% if any installment of Base Rent, Operating Expense reimbursements, or any other sum due from Tenant shall not be received by Landlord within five days after the first day of each month.
- 1.08 **Security Deposit:** \$1,200.00.
- 1.09 **Tenant's Share of Common Area Operating Expenses:** 1.6% as defined in Section 6.
- 1.10 **Parking:** Four (4) maximum vehicle parking spaces, as provided for in Section 4.
- 1.11 **Use:** Snack shop.
- 1.12 **Utilities:** Utilities to Premises provided by: (check one)  Tenant  Landlord (subject to reimbursement as may be provided for in this Lease), as further defined and subject to the provisions in Section 11.
- 1.13 **Maintenance & Repairs:** Interior of Premises maintained by Tenant; Exterior of Building maintained by Landlord subject to and in accordance with Section 10.
- 1.14 **Insurance:** \$1,000,000 liability policy required to be carried by Tenant prior to Occupancy - see Section 13.
- 1.15 **Options to Extend:** Tenant has no Options to Extend the term of this Lease for a period of n/a years each, as provided for in Section 25.
- 1.16 **Tenant Improvements:** (check all that apply)  
 Tenant to accept Premises in as-is condition  
 Landlord to provide Tenant Improvements as provided for in Paragraph .  
 Tenant to provide Tenant Improvements as provided for in Paragraph .

### 1.17 Notices:

To Landlord:

San Bernardino County  
Transportation Commission (SANBAG)  
c/o City Commercial Management  
10722 Arrow Route - Suite 500  
Post Office Box 548  
Rancho Cucamonga, CA 91729-0548  
Telephone: (909) 948-1662  
FAX : (909) 948-1349

To Tenant (notice given to Premises address also sufficient):

Iron Horse Cafe Inc.  
[TBD]

## 2. Premises.

Landlord hereby leases to Tenant for the term, at the rental, and upon all of the conditions set forth herein, the Premises as defined in Section 1.02. The Premises, the Building(s), the Common Areas, and the land upon which the same are located, are collectively referred to as the "Depot" (as per the attached Site Plan). It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Landlord and Tenant agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises.

Tenant hereby accepts the Premises and the Depot in their condition existing as of the Lease Commencement Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that it has satisfied by its own independent investigation that the Premises are suitable for its intended use, and that neither Landlord nor Landlord's agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Areas, or Depot for the conduct of Tenant's business.

TENANT SHALL ALSO BE PERMITTED TO OPERATE A MOBILE FOOD CART NEAR THE WEST END OF THE DEPOT EXTERIOR TRAIN PLATFORM (as shown on the attached Exhibit C "Site Plan"), BUT SHALL STORE THE CART IN ITS LEASED PREMISES AT THE END OF EVERY BUSINESS DAY. TENANT SHALL ALSO BE RESPONSIBLE FOR ANY CLEANING OF THE AREA WHERE THE CART IS SET UP.

## 3. Common Areas.

"Common Areas" are defined as all areas outside the confines of the Premises, including but not limited to parking areas, loading and unloading zones, trash enclosures, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas, and that are within the Depot that are provided and designated for the general non-exclusive use of Landlord, Tenant, and all other Tenants of the Depot. Tenant, Tenant's employees, visitors, and invitees hereby agree to abide by and conform to all rules and regulations, which Landlord shall have the right in its sole reasonable discretion to modify from time to time. Landlord shall have the exclusive control and management of the Common Areas; however, Landlord shall not be responsible for

Initials: \_\_\_\_\_

the non-compliance of said rules and regulations by other tenants, employees, and invitees to the Depot. Landlord shall have the right in its sole discretion to (1) make changes to the Building exterior and/or Common Areas; (2) close temporarily any of the Common Areas for maintenance purposes so long as reasonable access remains available; and (3) to add additional improvements to the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

#### 4. Parking.

Tenant shall be entitled to use the vehicle parking spaces as provided for in Section 1.10 on those portions of the Common Areas designated by Landlord for parking. Tenant shall not use more spaces than said maximum number, and spaces shall be used only for vehicles no larger than full-sized passenger vehicles, pick-up trucks, or sport utility vehicles. Any vehicle loading or unloading shall only be permitted in areas and at times designated by Landlord for such activities. Landlord shall have the right, without notice, to tow any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors) that are in violation of any parking rules and regulations, the cost of which shall be the sole responsibility of Tenant.

#### 5. Term.

"Possession" of the Premises shall be deemed tendered to Tenant when (1) improvements, if any, are substantially completed, and (2) Tenant has been given reasonable access to the Premises. If for any reason Landlord cannot deliver possession of the Premises on the Commencement Date as provided for in Section 1.04, the Commencement Date and ending dates shall be correspondingly extended in relation to the Term of this Lease, and Landlord shall not be subject to any liability, nor shall such delay in commencement affect the validity of this Lease or the obligations of Tenant hereunder (except that Tenant shall not be obligated to pay rent until possession of the Premises has been delivered as provided for herein). However, there shall be no abatement of rent or adjustment of the Commencement Date if such delays are caused by actions of Tenant, Tenant's agents or contractors.

#### 6. Rent.

**Rent and Base Rent.** Any and all amounts from time to time payable to Landlord by Tenant hereunder shall be referred to herein as Rent, including, but not limited to, Base Rent, and shall be paid in full when due without right of offset, setoff or deduction. Tenant shall pay to Landlord the Base Rent for the Premises as provided for in Section 1.05. Base Rent for any period less than one month shall be prorated based upon the actual number of days in the calendar month involved. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to any such other persons or at any such other places as Landlord may designate in writing.

**Common Area Maintenance Expenses ("CAM").** Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, Tenant's Share as provided for in Section 1.09 ("Tenant's Share" is that percentage determined by dividing the approximate rentable square footage of the Premises by the total approximate square footage of the Depot) and hereinafter defined, of all Common Area Maintenance Expenses, as herein defined, during each calendar year, also referred to as "CAM Charges", in accordance with the following provisions:

(a) "Common Area Maintenance Expenses" are defined, for purposes of this Lease, as all costs incurred by Landlord, relating to the ownership and operation of the Depot, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, of the following:  
(aa) The Common Areas, including parking areas, loading and unloading areas, trash areas, public restrooms, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, escalators, and roof;

(bb) Exterior signs and any tenant directories.

(cc) Fire detection (including monitoring costs) and sprinkler systems.

(ii) The cost of water, gas, electricity, and telephone to service the Common Areas.

(iii) Trash disposal, property management, security services, association fees, and the costs of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas.

(v) Real Property Taxes (as defined in Section 14) for the Building and the Common Areas.

(vi) The cost of the premiums for the insurance policies maintained by Landlord under Section 13.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Any other services to be provided by Landlord that are stated elsewhere in this Lease to be a Common Area Maintenance Expense.

(ix) Any management fees incurred by Landlord in connection with the operation of the Depot.

(x) An administrative fee equal to 15% of CAM Charges.

(b) Any Common Area Maintenance Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Depot or to the operation, repair, and maintenance thereof, shall be allocated entirely to the building or to such other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair, and maintenance thereof, shall be equitably allocated by Landlord to all buildings in the Depot.

(c) The inclusion of the improvements, facilities, and services set forth in this Section shall not be deemed to impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless the Depot already has the same or Landlord already provides the services.

(d) Tenant's Share of Common Area Operating Expenses (CAM Charges) shall be payable by Tenant within ten (10) days after a reasonably detailed statement of actual expenses is presented to Tenant by Landlord's agent. At Landlord's option, however, an amount may be estimated by Landlord from time to time of Tenant's Share of annual CAM Charges and the same shall be payable monthly or quarterly, as Landlord shall designate, during each 12-month period of the Lease term, on the same day as the Base Rent is due hereunder. Landlord shall deliver to Tenant within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual CAM Charges incurred during the preceding year (the "Reconciliation"). If Tenant's payments during said preceding year exceed Tenant's Share as indicated on said Reconciliation, Tenant shall be credited the amount of such overpayment against Tenant's Share of CAM Charges next becoming due. If Tenant's payments during said preceding year were less than Tenant's Share as indicated on said Reconciliation, Tenant shall pay to Landlord the amount of the deficiency within ten (10) days after delivery by Landlord to Tenant of said Reconciliation.

#### 7. Rent Increase.

On each anniversary date of this Lease, the Base Rent shall be increased by  CPI Adjustment (see

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subsection "A" below) or  fixed rental adjustment (see subsection "B" below).

A. **CPI Rental Adjustment ("CPI"):** At the times set forth in paragraph 1.06 of the Basic Lease Provisions, the monthly Base Rent shall be adjusted by the increase, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers, (1982-84=100), "All Items", for the City nearest the location of the Building, herein referred to as "CPI", since the date of this Lease. The monthly Base Rent shall be calculated as follows: the Base Rent payable for the first month of the term of this Lease shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month during which the adjustment is to take effect, and the denominator of which shall be the CPI for the calendar month in which the original Lease term commences. The sum so calculated shall constitute the new monthly Base Rent hereunder, but, in no event, shall such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the date for the rent adjustment. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculations. Tenant shall continue to pay the rent at the rate previously in effect until the increase, if any, is determined. Within ten (10) days following the date on which the increase is determined, Tenant shall make such payment to Landlord as will bring the increased rental current. Thereafter the rental shall be paid at the increased rate.

B. **Fixed Rental Adjustment ("FRA"):** The Base Rent shall be adjusted in accordance with the following rental schedule:

Months	Monthly Base Rent
*5 - 12	\$500.00
13 - 24	\$800.00

\*NOTE: RENT AND CAM SHALL BE ABATED FOR THE MONTHS OF JANUARY, 2013 THROUGH APRIL, 2013

## 8. Security Deposit

Tenant shall deposit with Landlord upon execution hereof the Security Deposit set forth in paragraph 1.08 of the Basic Lease Provisions as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount then required of Tenant. If the monthly rent shall, from time to time, increase during the term of this Lease, Tenant shall, at the time of such increase, at Landlord's option, deposit with Landlord additional money as a security deposit so that the total amount of the security deposit held by Landlord shall at all times bear the same proportion to the then current Base Rent as the initial security deposit bears to the initial Base Rent. If Tenant performs all of Tenant's obligations hereunder, said deposit, or so much thereof as has not heretofore been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) at the expiration of the term hereof, and after Tenant has vacated the Premises and delivered possession to Landlord. No trust relationship is created herein between Landlord and Tenant with respect to said Security Deposit. Landlord shall not be required to segregate such deposit from other Landlord moneys and shall not be required to pay any interest thereon.

## 9. Use.

The Premises shall be used and occupied only for the purpose as provided for in Section 1.11 and for no other purpose. Tenant shall conduct its business in a lawful manner (including obtaining and maintaining any required governmental permits and licenses) and shall not use or permit use of the Premises or the Common Areas in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Depot.

## 10. Maintenance and Repairs.

**Landlord's Obligations:** Landlord shall keep the Depot foundations, exterior walls, roof, fire sprinkler system and fire/smoke detection equipment, and common areas (as defined above), in good condition and repair; provided, however, Landlord shall not be obligated to paint exterior walls, or to repair or replace any windows, doors, or plate glass of the Premises. There shall be no abatement of rent or liability of Tenant on account of any injury or interference with Tenant's business with respect to any improvements, alterations, or repairs made by Landlord to the Depot or any part thereof. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Depot or Common Areas in good order, condition, and repair.

**Tenant's Obligations:** Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition, and repair (whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements, or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Landlord. Tenant, in keeping the Premises in good order, condition, and repair, shall exercise and perform good maintenance practices. Tenant's obligations shall include restorations, replacements, or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition, and state of repair. Tenant shall also, at Tenant's sole cost and expense, procure and maintain a contract, with copies to Landlord, in customary form and substance for and with a contractor specializing and experienced in the inspection, maintenance, and service of the heating, air conditioning, and ventilation system for the Premises. However, Landlord reserves the right to procure and maintain the contract for the heating, air conditioning, and ventilation systems, and if Landlord so elects, Tenant shall reimburse Landlord, upon demand, for the cost thereof.

If Tenant fails to perform its obligations under this Section, Landlord may enter upon the Premises, perform such obligations on Tenant's behalf, and put the Premises in good order, condition, and repair.

**Hazardous Substances.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material, or waste whose presence, nature, quantity, and/or intensity of existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety, or

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welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Tenant shall not engage in any activity in or about the Premises which constitutes a use of Hazardous Substances without the express written consent of Landlord and compliance in a timely matter (at Tenant's sole cost and expense) with all governmental requirements (including but not limited to compliance with all laws, rules, regulations, ordinances, directives, covenants, easements, and restrictions of record, permits, and the requirements of any applicable fire insurance underwriter or rating bureau). Landlord may (but without any obligation to do so) condition its consent, if granted, to Tenant's use of any Hazardous Substance upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises, and the environment against damage, contamination, or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises and/or the deposit of an additional Security Deposit. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

Tenant shall indemnify, protect, defend, and hold Landlord, its agents, employees, lenders, and ground Landlord, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of and involving any Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations under this subsection shall include, but not be limited to, the effects of any contamination or injury to person, property, or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration, and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation, or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement.

## 11. Utilities & Services.

Landlord shall be responsible for the payment of the following utilities and services that serve the Premises (check those that apply):

- Electricity
- Gas
- Water/Sewer
- Telephone & Data Service
- Trash
- Security Alarm Monitoring
- Janitorial Service & Supplies

Tenant shall be responsible for the direct payment or reimbursement to Landlord, as the case may be, of the following utilities and services that serve the Premises (check those that apply):

- Electricity
- Gas (and part of the CAM)
- Water/Sewer (and part of the CAM)
- Telephone & Data Service
- Trash (and part of the CAM)
- Security Alarm Monitoring
- Janitorial Service & Supplies

In the event any of Tenant's afore-mentioned utilities are not separately metered to the Premises, Tenant shall pay at Landlord's option, either Tenant's Share or a reasonable proportion to be determined by Landlord of all charges jointly metered with other Premises in the Building.

There shall be no abatement of rent and Landlord shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption, or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair, or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

## 12. Alterations and Additions.

Tenant shall not without Landlord's prior written consent make any alterations, improvements, additions, or repairs (hereinafter collectively referred to as "Alterations") in, on or about the Premises or the Depot. Should Landlord permit Tenant to make its own Alterations, Tenant shall use only contractors that are properly and adequately licensed and insured, and Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's and materialmen's liens and stop notices and to ensure completion of the work. Any Alterations in or about the Premises or the Depot that Tenant shall desire to make shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its consent to making such Alteration, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from the applicable governmental agencies, furnishing of a copy thereof to Landlord prior to the commencement of the work, and compliance by Tenant of all conditions of said permit in a prompt and expeditious manner.

Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien or stop notices against the Premises, the Building, or the Depot, or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in the Premises by Tenant, and Landlord shall have the right to post notices of non-responsibility in or on the Premises or the Building as provided by law.

All Alterations which may be made on the Premises by Tenant shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials and shall be the property of Landlord and shall remain upon and be surrendered with the Premises at the expiration of the Lease term, unless Landlord requires their removal pursuant to Section 18.

## 13. Insurance and Indemnity.

Liability and Property Insurance - Tenant: Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of Comprehensive General Liability insurance in an amount of not less than

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\$1,000,000 per occurrence of bodily injury and property damage combined or in a greater amount as reasonably determined by Landlord and shall insure Tenant with Landlord as additional insured against liability arising out of the use, occupancy, or maintenance of the Premises. Compliance with the above requirement shall not, however, limit the liability of Tenant hereunder. Tenant shall also maintain insurance coverage on all of Tenant's personal property, trade fixtures, and alterations and improvements in, on, or about the Premises similar in coverage to that carried by Landlord (such insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000 per occurrence, and the proceeds from any such insurance shall be used exclusively for the replacement of personal property and the restoration of trade fixtures, alterations, and improvements). Tenant shall deliver to Landlord certificates evidencing the existence and amounts of such insurance within seven (7) days after the Commencement Date of this Lease, and shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals thereof.

The cost of the premiums for the insurance policies maintained by Landlord hereinafter shall be a Common Area Operating Expense.

**Liability Insurance - Landlord:** Landlord shall obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Broad Form Property Damage insurance, plus coverage against such other risks Landlord deems advisable from time to time, insuring Landlord, but not Tenant, against liability arising out of the ownership, use, occupancy, or maintenance of the Depot in an amount not less than \$1,000,000 per occurrence.

**Property Insurance:** Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Depot improvements, but not Tenant's personal property, fixtures, equipment, or tenant improvements, in an amount of the full replacement cost thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and such other perils as Landlord deems advisable or may be required by a lender having a lien on the Depot. In addition, Landlord shall obtain and keep in force, during the term of this Lease, a policy of rental value insurance covering a period of one year, with loss payable to Landlord, which insurance shall also cover all Operating Expenses for said period. Tenant shall not be named in any such policies carried by Landlord and shall have no right to any proceeds therefrom. In the event that the Premises shall suffer any insured losses, the deductible amounts under the applicable insurance policies shall be deemed an Operating Expense. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies carried by Landlord. Tenant shall pay the entirety of any increase in the property insurance premium for the Depot over what it was immediately prior to the commencement of the term of this Lease if the increase is specified by Landlord's insurance carrier as being caused by the nature of Tenant's occupancy or any act or omission of Tenant.

**Waiver of Subrogation:** Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors, and/or invitees.

**Indemnity:** Tenant shall indemnify and hold harmless Landlord and its agents, Landlord's master or ground Landlord, partners and lenders, from and against any and all claims for damage to the person or property of anyone or any entity arising from Tenant's use of the Depot, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims, costs and expenses arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, employees, or invitees, and from and against all costs, attorney's fees, expenses and liabilities incurred by Landlord as the result of any such use, conduct, activity, work, things done, permitted or suffered, breach, default, or negligence, and in dealing reasonably therewith, including but not limited to the defense or pursuit of any claim or any action or proceeding involved therein; and in case any action or proceeding be brought against Landlord by reason of any such matter, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property of Tenant or injury to persons, in, upon or about the Depot arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

**Exemption of Landlord from Liability:** Tenant hereby agrees the Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises or the Depot, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Depot, or from other sources or places, or from new construction or the repair, alteration, or improvement of any part of the Depot, or of the equipment, fixtures, or appurtenances applicable thereto, and regardless of whether the cause of such damage or injury or the means or repairing the same is inaccessible, Landlord shall not be liable for any damages arising from any act or neglect of any other Tenant, occupant or user of the Depot, nor from the failure of Landlord to enforce the provisions of any other lease of any other Tenant of the Depot.

#### 14. Property Taxes.

**Real Property Taxes:** Landlord shall pay real property taxes and associated assessments applicable to the Depot, subject to reimbursement as a Common Area Operating Expense by Tenant in accordance with the provisions of Sections 1.09 and 6. Tenant shall also pay to Landlord the entirety of any increase in real property tax if assessed solely by reason of additional improvements placed upon the Premises by Tenant, or as possessory interest taxes due to Tenant's use of the Premises or Depot, or at Tenant's request. Real property taxes shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Depot or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agriculture, sanitary, fire, street, drainage or other improvement district thereof.

**Personal Property Taxes:** Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere.

#### 15. Assignment & Subletting.

Inasmuch as Landlord and Tenant agree that the overall operation of the Depot is largely dependent upon a successful and synergetic "tenant mix", Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises, without Landlord's prior written consent, which Landlord may withhold in its sole discretion. Landlord reserves the right to condition any approval or refuse to assign or sublet upon Landlord's determination that (a) the proposed assignee or subtenant shall conduct a business on the Premises of a quality and use that is substantially equal to that of Tenant and consistent with the general character of the other occupants of the

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Depot and not in violation of any exclusives or rights then held by other tenants, and (b) the proposed assignee or subtenant be at least as financially responsible as Tenant was expected to be at the time of the execution of this Lease or of such assignment or subletting, whichever is greater. Regardless of Landlord's consent, no assignment or subletting shall release Tenant of Tenant's obligations hereunder or alter the primary liability of Tenant to pay the rent and other sums due Landlord hereunder including Tenant's Share of Operating Expense Increase, and to perform all other obligations to be performed by Tenant hereunder. If Tenant's obligations under this Lease have been guaranteed by third parties, then an assignment or sublease, and Landlord's consent thereto, shall not be effective unless said guarantors give their written consent to such sublease and the terms thereof. The consent by Landlord to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Tenant or to any subsequent or successive assignment or subletting by the subtenant. Landlord shall be a party to, and have the right to review, any proposed subleases and associated documents. If Tenant shall request the consent of Landlord for a proposed assignment or subletting, then Tenant shall be required to submit whatever documentation and materials necessary in Landlord's sole discretion that it needs to review in connection with the proposed transaction. Further, Tenant shall pay Landlord's reasonable costs and expenses incurred in connection therewith, including attorneys', architects', engineers', or other consultants' fees, whether or not the transfer is consummated.

If, as of the effective date of any permitted assignment or subletting, the then remaining term of this Lease is less than three (3) years, Landlord may, as a condition to its consent, require that the amount of the Rent payable under this Lease be adjusted to what is then the market value for property similar to the premises then constituted, as determined by Landlord. In the event any profits should be realized by a subtenancy or assignment, then Landlord shall be entitled to all of any such profits.

In the event of any default under this Lease, Landlord may proceed directly against Tenant, any guarantors or anyone else responsible for the performance of this Lease, including the subtenant, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord or Tenant. The discovery of the fact that any financial statement relied upon by Landlord in giving its consent to an assignment or subletting was materially false shall, at Landlord's election, render Landlord's said consent null and void.

## 16. Default; Breach; Remedies.

**Tenant's Default/Breach:** The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

(a) The breach by Tenant of any of the covenants, conditions or provisions contained within this Lease, where such breach is of an incurable nature.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, and as when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(c) The failure of Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, where such failure is curable in nature and continues for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion. Such thirty (30) day notice shall constitute the sole and exclusive notice required to be given to Tenant under applicable Unlawful Detainer statutes.

(d) The discovery by Landlord that any financial statement given to Landlord by Tenant, or its successor in interest or by any guarantor of Tenant's obligation hereunder, was materially false.

**Landlord's Default/Breach:** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**Remedies:** In the event of any material default or breach of this Lease by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, recapture of any inducement such as abated rent periods, reasonable attorneys' fees, and any real estate commission actually paid; the worth at the time of award of the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have vacated or abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

**Late Charges:** Tenant hereby acknowledges that the late payment by Tenant to Landlord of Base Rent, Tenant's Share of Operating Expense Increase or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Base Rent, Operating Expense Increase, or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

## 17. Estoppel Certificate.

Each party (as "responding party") shall at any time upon not less than ten (10) days' prior written notice from the other party ("requesting party") execute, acknowledge, and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party, or specifying such

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defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Depot or of the business of Tenant. At the requesting party's option, the failure to deliver such statement within such time shall be a material default of this Lease by the party who is to respond, without any further notice to such party, or it shall be conclusive upon such party that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) if Landlord is the requesting party, not more than one month's rent has been paid in advance.

#### **18. Surrender; Move-out.**

On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord, which shall include the return of all keys and access control devices, in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Tenant. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, alterations, furnishings and equipment, and shall leave the HVAC equipment, power panels, electrical distribution systems, lighting fixtures and lamps, window coverings, wall and floor coverings, ceilings, plumbing fixtures, and all other building systems, fixtures, and improvements to the Premises in good operating condition.

#### **19. Holding Over.**

If Tenant, with Landlord's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant, except that the rent payable shall be 125% of the rent immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

#### **20. Substituted Premises.**

Landlord reserves the right, upon not less than sixty (60) days prior written notice to Tenant, to substitute for the Premises some other premises within the Building having substantially equivalent net rentable area as the Premises, subject to a 15% variation, provided that Landlord shall pay all expenses reasonably incurred in relocating Tenant's property to such new location, and upon the expiration of such written notice, such other premises shall be substituted for the Premises for all purposes under this Lease. Landlord shall not be obligated to Tenant for any losses resulting from the substitution of Premises, and Tenant agrees to hold Landlord harmless against any such losses.

#### **21. Landlord's Access.**

Landlord and Landlord's agents shall have the right to enter the Premises at reasonable time for the purpose of inspecting the same, performing any services required of Landlord, showing the same to prospective purchasers, lenders, or tenants, making such alterations, repairs, improvements, or additions to the Premises or to the Depot as Landlord may reasonably deem necessary or desirable and the erecting, using, and maintaining of utilities, services, pipes, and conduits through the Premises and/or other premises as long as there is no material adverse effect to Tenant's use of the Premises. Landlord may at any time place on or about the Premises or the Building any ordinary "For Sale" signs and Landlord may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All activities of Landlord pursuant to this paragraph shall be without abatement of rent, nor shall Landlord have any liability to Tenant for the same.

Landlord shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults, and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. Tenant waives any charges for damages or injuries or interference with Tenant's property or business in connection therewith.

#### **22. Security.**

Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Depot. Tenant assumes all responsibility for the protection of Tenant, its agents, and invitees and the property of Tenant and of Tenant's agents and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Depot or any part thereof, in which event the cost thereof shall be included within the definition of Common Area Operating Expenses.

Tenant shall not permit anyone, except in emergency or with Landlord's prior approval, to go upon the roof of the building nor to access electrical, utility, elevator, machinery or equipment rooms.

#### **23. Signs.**

Tenant shall not place any sign upon the Premises or the Depot without Landlord's prior consent. Under no circumstances shall Tenant place a sign on any roof of the Depot. Lettering on directory or monument signs, if applicable and which must be expressly approved herein, shall be provided  Landlord  Tenant, and shall conform to the Depot sign criteria. In the event Tenant is permitted signage on the Building exterior, such signage shall be subject to the Depot sign criteria and in accordance with applicable codes, requirements, and governmental approval of the City in which the Building is located. The installation, maintenance, repair, and removal (including any underlying damage caused by removal) of such exterior signage shall be provided by Tenant, at Tenant's sole cost and expense. Failure to maintain such signage shall, at Landlord's option, result in forfeiture of the sign position(s) and removal of existing signage (at Tenant's cost).

TENANT SHALL BE PERMITTED TO PLACE A TEMPORARY, UNATTACHED 'A-FRAME' STYLE SIGN AT THE METROLINK TRAIN PLATFORM, SO LONG AS SUCH PLACEMENT DOES NOT INTERFERE WITH RAILWAY OPERATIONS AND THAT SUCH SIGNAGE IS STORED IN TENANT'S PREMISES AT THE END OF EVERY BUSINESS DAY.

#### **24. Subordination.**

This Lease, and any Option or first refusal granted hereby, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Depot. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless otherwise terminated pursuant to its terms. Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder without further notice to Tenant or, at Landlord's option, Landlord shall execute such

Initials: \_\_\_\_\_

documents on behalf of Tenant as Tenant's attorney-in-fact.

## 25. Options.

As used in this paragraph the word "Option" has the following meaning: (1) the right or option to extend the term of this Lease or to renew this Lease; (2) the option or right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other space within the Depot or the right of first offer to lease other space within the Depot; (3) the right or option to purchase the Premises or the Depot, or the right of first refusal to purchase the Premises or the Depot, or the right of first offer to purchase the Premises or Depot.

Each Option granted to Tenant in this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises. In the event that Tenant has multiple options to extend or renew this Lease a later option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised. All rights of Tenant under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, during the term of this Lease, (i) Tenant fails to pay Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant), or (ii) Tenant fails to commence to cure any curable default or breach of the provisions of this Lease within thirty (30) days after the date that Landlord gives notice to Tenant of such default and/or Tenant fails thereafter to diligently prosecute said cure to completion, or (iii) Landlord gives to Tenant three or more notices of default for the non-payment of rent, whether or not the defaults are cured, or (iv) if Tenant has committed any non-curable breach or is otherwise in default of any of the terms, covenants, and conditions of this Lease.

Any and all Options granted to Tenant, if any, are hereby prescribed as follows:

None

## 26. Damage or Destruction.

In the event the Premises sustains damages of less than fifty percent (50%) of its then replacement value, then Landlord shall repair such damage (except for Tenant's improvements, trade fixtures and equipment) as soon as reasonably possible, and this Lease shall continue in full force and effect, and Rent and other charges shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. In the event such damages are uninsured, Landlord may elect not to restore and repair the Premises, in which case this Lease shall be terminated. In either case, if such damages or destruction were caused by a negligent or willful act of Tenant, Tenant's customers, or invitees, then Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent.

In the event the Premises sustains damages of more than fifty percent (50%) of its then replacement value, (unless caused by a negligent or willful act of Tenant in which case Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent), then Landlord may, at its sole option and whether or not the loss is insured or uninsured, shall either choose to restore the Premises, or may terminate this Lease sixty (60) days following the date of such damage or destruction.

## 27. General Lease Terms:

**Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**Time of Essence.** Time is of the essence with respect to the obligations to be preformed under this Lease.

**Additional Rent.** All monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to Tenant's Share of Operating Expense increase and any other expenses payable by Tenant hereunder shall be deemed to be rent.

**Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter, including but not limited to Letters of Intent, Proposals to Lease, and other documentation associated with the negotiation of this tenancy, shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Tenant hereby acknowledges that no real estate broker on this transaction nor the Landlord or any employee or agents of any said persons has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of the Premises or the Depot and Tenant acknowledges that Tenant assumes all responsibility regarding the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease, including but not limited to the Occupational Safety Health Act and the Americans with Disabilities Act ("ADA").

**Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Tenant or to Landlord at the address noted in Section 1.17 above. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

**Waivers.** No waiver by Landlord or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

**Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the

Initials: \_\_\_\_\_

money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as if it was not legally required to pay under the provisions of this Lease.

**Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

**Binding Effect; Jurisdiction.** This Lease shall bind the parties, their personal representatives, successors, and assigns. This Lease shall be governed by the laws of the State where the Depot is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Depot is located.

**Attorney's Fees.** If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial or appeal thereon, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court in the same or a separate suit, and whether or not such action is pursued to decision or judgment. Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notice of default (including but not limited to notices required under the Unlawful Detainer statutes) and consultations in connection therewith, whether or not a legal transaction is subsequently commenced in connection with such default, or incurred in collections of any amounts owed by Tenant to Landlord under this Lease.

**Consents.** Wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld or delayed, unless otherwise expressly stated that such consent may be withheld in Landlord's sole discretion.

**Guarantor.** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Tenant under this Lease.

**Authority.** The individuals executing this Lease on behalf of the Landlord represent and warrant to Tenant that they are fully authorized and legally capable of executing this Lease on behalf of Landlord and that such execution is binding upon all parties holding an ownership interest in the Depot, if Tenant is a corporation, trust, or general or limited partnership, Tenant, and each individual executing this Lease on behalf of such entity represent and warrant that such individual is duly authorized to execute and deliver this Lease on behalf of such entity.

**Conflict.** Any conflict between the printed provisions, Exhibits, or Addenda of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

**Multiple Parties.** If more than one person or entity is named as either Landlord or Tenant herein, except as otherwise expressly provided herein, the obligations of the Landlord or Tenant herein shall be the joint and several responsibility of all persons or entities named herein as such Landlord or Tenant, respectively.

**Confidentiality.** Tenant shall keep confidential the terms of this Lease, and Tenant shall not release or disseminate any of the terms or provisions of this Lease to any third party, other than to its attorneys, accountants and officers, (and then only to the extent that such attorneys, accountants or corporate officers have a need for this information to perform their respective professional duties, and in doing so expressly agree to be bound by the terms of the confidentiality provisions of this Lease), or where disclosure is required by regularly issued judicial process or by applicable securities laws, regulations and policies. This obligation of confidentiality shall survive the scheduled expiration or other termination of this tenancy.

#### **ATTACHMENTS:**

Attached hereto are the following documents which constitute a part of this Lease:

Exhibit "A" - Rules and Regulations  
Exhibit "A-2" - Employee Parking  
Exhibit "B" - Guaranty of Lease  
Exhibit "C" - Site Plan

#### **ADDITIONAL TERMS:**

**28. CONTINUOUS OPERATION.** As part consideration to Tenant in exchange for a reduced rental rate, which Tenant hereby acknowledges, Tenant shall be required to maintain consistent, daily business hours to enable the main Depot lobby to be opened to the public. Tenant's minimum operating hours shall be 6am to 6pm, Monday through Saturday. Unless Landlord grants its express written consent to the contrary, Tenant shall not be permitted to operate later than 8pm on any day, and hereby agrees to lock the Depot's main lobby doors no later than 8pm on each day.

Initials: \_\_\_\_\_

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE REAL ESTATE BROKERS, OR ANY OF THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVISE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

IN WITNESS HEREOF, Landlord and Tenant have executed this Agreement on the dates stated below. The Agreement is effective as of the date executed by SANBAG.

Iron Horse Café Inc.

SAN BERNARDINO ASSOCIATED GOVERNMENTS,  
acting as to SAN BERNARDINO COUNTY  
TRANSPORTATION COMMISSION

By: \_\_\_\_\_  
Lori Renee Reid-Denham

By: \_\_\_\_\_  
Janice Rutherford, Chairperson

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

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

By: \_\_\_\_\_  
Barbara Collins

APPROVED AS TO FORM

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

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

By: \_\_\_\_\_  
Shelly Maloney

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

CONCURRENCE

By: \_\_\_\_\_  
Jeffery Hill  
Contract Administrator

Initials: \_\_\_\_\_

## EXHIBIT "A" RULES AND REGULATIONS

### GENERAL RULES

1. Tenant shall not suffer or permit the obstruction of any Common Areas.
2. Landlord reserves the right to refuse access to any persons Landlord in good faith judges to be a threat to the safety, reputation, or property of the Depot or its occupants.
3. Tenant shall not make or permit any noise or odors that annoy or interfere with other Tenants or persons having business within the Depot.
4. Tenant shall not keep animals or birds within the Depot (unless a part of approved use as per Section 9 of this Lease), and shall not bring bicycles, motorcycles, or other vehicles into areas not designated as authorized for same.
5. Tenant shall not make, suffer, or permit litter except in appropriate receptacles for that purpose. All garbage and refuse shall be placed in containers designated for refuse collection, and such items must fit entirely within the receptacles. All large boxes and other refuse shall be broken down prior to placing in the containers. The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord.
6. Tenant shall not alter any exterior lock or install new or additional locks or bolts on exterior doors without providing Landlord copies of same.
7. Tenant shall not deface the walls, partitions, or other surfaces of the premises or the Depot.
8. Tenant shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Landlord.
9. Tenant shall return all keys, including duplicates, at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
10. No window coverings, shades, or awnings shall be installed or used by Tenant without Landlord's prior approval.
11. No Tenant, employee, or invitee shall go upon the roof of the Building without Landlord's prior approval.
12. Smoking shall be restricted to designated smoking areas, if any, and then not near, doors, windows, or other entrances, exits, or openings to other units within the Depot.
13. Tenant shall not install, maintain, or operate any vending machines upon the Premises without Landlord's written consent.
14. The premises shall not be used for lodging or manufacturing, cooking, or food preparation, except as an approved Use per Section 9 of this Lease.
15. Tenant shall comply with all safety, fire protection, and evacuation regulations established by Landlord or any applicable governmental agency.
16. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular Tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Tenant.
17. Tenant assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
18. Landlord reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Depot and its occupants. Tenant agrees to abide by these and such rules and regulations.
19. Signs shall conform to sign criteria established by Landlord and shall not exceed the quantity or dimensions authorized by Landlord. No signs (other than signs that strictly conform to sign criteria), placards, pictures, advertisements, names, or notices shall be inscribed, displayed, painted, or affixed on or to any part of the outside or inside of the Building or within the Common Areas of the Depot. Landlord shall have the right to remove any such non-conforming signs without notice to Tenant, at the expense of Tenant.
20. Tenant shall not disturb, solicit, or canvass any other Tenant within the Depot.
21. Tenant, its contractors, employers, or invitees, shall not loiter in the Common Areas of the Depot or in any way obstruct the entrances and driveways.
22. No antenna, aerial, discs, satellite dishes, or other such device shall be erected on the roof or exterior walls of the Building without Landlord's express consent.

### PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles, non-commercial pick-up trucks, and sport utility vehicles herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles".
2. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities.
3. Parking stickers or identification devices shall be the property of Landlord and be returned to Landlord by the holder thereof upon termination of the holder's parking privileges. Tenant will pay such replacement charge as is reasonably established by Landlord for the loss of such devices.
4. Landlord reserves the right to refuse the sale or issuance of identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws, and/or agreements.
5. Landlord reserves the right to relocate all or a part of parking spaces, and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances, and regulations.
6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons, or loss of property, all of which risks are assumed by the party using the parking area. No overnight parking shall be permitted.
8. The maintenance, washing, waxing, or cleaning of vehicles in the parking structure or Common Areas is prohibited.
9. Tenant shall be responsible for seeing that all of its employees, agents, and invitees comply with the applicable parking rules, regulations, laws, and agreements.
10. Landlord reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
11. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.
12. Violation of any of the parking rules or regulations may result, without notice, in the towing of any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors), the cost of which (including impound fees) shall be the sole responsibility of Tenant.

Initials: \_\_\_\_\_

**EXHIBIT "A-2"**

**EMPLOYEE PARKING RULES AND REGULATIONS**

The purpose of these rules is to provide customers with the most convenient access to the various businesses at the Depot, to designate employees a parking area within a reasonable distance from their Premises; to define prohibited employee parking; and to set forth the means of enforcement. "Employee" means any person employed full-time or part-time in any capacity by Tenant, and for purposes of this section, also includes contractors and vendors hired by Tenant. "Vehicle Owner" means a person who is named on the legal title of a vehicle as the registered owner. "Visitor" means a member of the public who is not included in the definition of Employee.

Employees shall park only in designated employee parking areas, as may be defined by Landlord, and shall be prohibited from parking in any other area. Tenant shall bear the sole responsibility to continually make their employees aware of these regulations, and also to take ongoing and continuous active steps in their enforcement. It is understood and agreed to by all parties that Tenant shall be charged with the primary responsibility of ensuring its employees are adhering to these rules and regulations. In the event Tenant is unable, unwilling, or fails to control its employee parking practices, then Landlord shall have the right, but not the obligation, to hire on site personnel to act as parking control for the Depot, and to recover all such costs from the offending Tenant as additional Rent.

In addition, Landlord or Landlord's agent may in their sole and absolute discretion enforce these rules against violators, without the need or requirement for advance notice, by any or all of the following, alone or in combination: (1) Issuing oral or written orders or directions to an owner or operator; (2) Issuing citations, including the assessment of fines; and/or (3) Removing an offending vehicle or causing such a vehicle to be removed by a private towing firm or contractor. Landlord may contract with an individual or firm to provide services for removing (towing) vehicles found in violation of these rules and to store such vehicles until claimed by the owner or disposed of as abandoned vehicles. The towing firm or individual shall release the vehicle to the owner after the service fee has been paid to the towing firm or individual. The amount of this fee will be determined by the towing contractor, and Landlord shall not be a party to that transaction.

**I have read the foregoing, have a complete understanding of its importance, and hereby agree to all of the terms and conditions contained therein.**

**Tenant:**

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

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

**Initials:** \_\_\_\_\_

\_\_\_\_\_

EXHIBIT "B"

GUARANTY OF LEASE

WHEREAS, San Bernardino County Transportation Commission (SANBAG), hereinafter referred to as "Landlord", and Iron Horse Cafe Inc., hereinafter referred to as "Tenant", are about to execute a document entitled "Lease" dated January 9, 2013 concerning the premises commonly known as 1170 West 3rd Street, unit #175, San Bernardino, California wherein Landlord will lease the premises to Tenant, and

WHEREAS, Lori Renee Reid-Denham, Barbara Collins, and Shelly Maloney, hereinafter referred to as "Guarantors" have a financial interest in Tenant, and

WHEREAS, Landlord would not execute the Lease if Guarantors did not execute and deliver to Landlord this Guarantee of Lease.

NOW THEREFORE, for and in consideration of the execution of the foregoing Lease by Landlord and as a material inducement to Landlord to execute said Lease, Guarantors hereby jointly, severally, unconditionally, and irrevocably guarantee the prompt payment by Tenant of all rentals and all other sums payable by Tenant under said Lease and the faithful and prompt performance by Tenant of each and every one of the terms, conditions, and covenants of said Lease to be kept and performed by Tenant.

It is specifically agreed and understood that the terms of the foregoing Lease may be altered, affected, modified, or changed by agreement Between Landlord and Tenant, or by a course of conduct, and said Lease may be assigned by Landlord or any assignee of Landlord without consent or notice to Guarantors and that this Guaranty shall thereupon and thereafter guarantee the performance of said Lease as so changed, modified, altered, or assigned.

This Guaranty shall not be released, modified, or affected by failure or delay on the part of Landlord to enforce any of the rights and remedies of the Landlord under said Lease, whether pursuant to the terms thereof or at law or in equity.

No notice of default need be given to Guarantors, it being specifically agreed and understood that the guarantee of the undersigned is a continuing guarantee under which Landlord may proceed forthwith and immediately against Tenant or against Guarantors following any breach or default by Tenant or the enforcement of any rights which Landlord may have as against Tenant pursuant to or under the terms of the within Lease or at law or in equity.

Landlord shall have the right to proceed against Guarantors hereunder following any breach or default by Tenant without first proceeding against Tenant and without previous notice to or demand upon either Tenant or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation, and protest, (c) all right to assert or plead any statute of limitations as to or relating to this Guaranty and the Lease, (d) any right to require the Landlord to proceed against the Tenant or any other Guarantor or any other person or entity liable to Landlord, (e) any right to require Landlord to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Landlord to proceed under any other remedy Landlord may have before proceeding against Guarantors, (g) any right of subrogation.

Guarantors do hereby subrogate all existing or future indebtedness of Tenant to Guarantors to the obligations owed to Landlord under the Lease and this Guaranty.

Any married person who signs this Guaranty expressly agrees that recourse may be had against his or her separate property for all of her obligations hereunder.

The obligations of Tenant under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors hereunder to do and provide the same relative to Guarantors.

The term "Landlord" whenever hereinabove used refers to and means the Landlord in the foregoing Lease specifically named and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee in such Lease or any part thereof, whether by assignment or otherwise. So long as the Landlord's interest in or to the leased premises or the rents, issues, and profits therefrom, or in, to, or under said Lease, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Landlord's interest in the leased premises or under said Lease shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee, or assignee under such mortgage, deed of trust, or assignment, of any purchase at sale by judicial foreclosure or under private power of sale, and of the successors and assigns of any such mortgage, beneficiary, trustee, assignee, or purchaser.

The term "Tenant" whenever hereinabove used refers to and means the Tenant in the foregoing Lease specifically named and also any assignee or subTenant of said Lease and also any successor to the interests of said Tenant, assignee, or subTenant of such Lease or any part thereof, whether by assignment, sublease, or otherwise.

In the event any action be brought by said Landlord against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee which shall be fixed by the court.

Executed at San Bernardino, California, on \_\_\_\_\_.

\_\_\_\_\_  
Lori Renee Reid-Denham

\_\_\_\_\_  
Barbara Collins

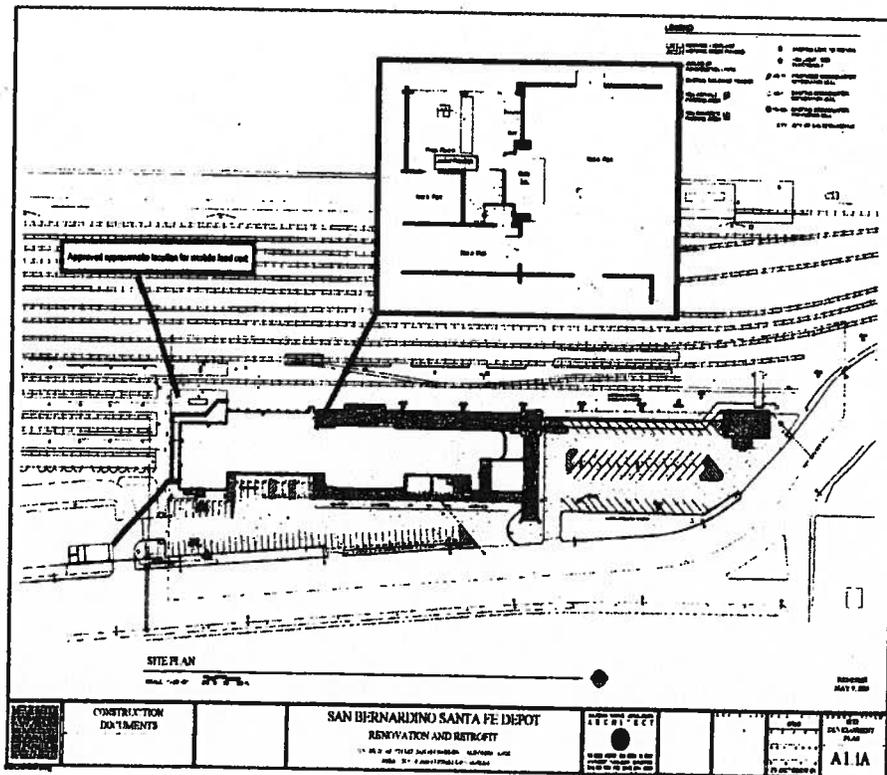
\_\_\_\_\_  
Shelly Maloney

"GUARANTORS"

Initials: \_\_\_\_\_

# EXHIBIT "C"

## SITE PLAN



Initials: \_\_\_\_\_



- 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: 23

**Date:** January 9, 2013

**Subject:** Right-of-Entry Permit to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Doty Brothers Equipment Company (dba) Doty Brothers Construction Company, which allows for construction of improvements authorized in Board approved license agreements C12235 and C12236 with Southern California Edison (SCE).

**Recommendation:\*** That the Board acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission:

- 1) Approve Contract No. R13090 with Doty Brothers Equipment Company doing business as Doty Brothers Construction Company granting a Right-of-Entry onto Redlands Subdivision Mile Post 5.16.
- 2) Authorize the Executive Director or his designee to execute this right-of-entry permit and any other necessary or convenient documents which are approved as to form by General Counsel and which implement the terms of any current existing railroad right-of-way license agreements.

**Background:** Between 1991 and 1993, San Bernardino Associated Governments, in its various capacities as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission (SANBAG) acquired the Baldwin Park branch line, the Pasadena Subdivision, and the Redlands branch line, all railroad rights-of-way, for its commuter rail program. Following the acquisition of these rail assets SANBAG contracted with the Los Angeles County

*Approved*  
*Board of Directors*

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

*Moved:*                      *Second:*

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

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

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

BRD1301a-maa

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R13090.docx>

Metropolitan Transportation Authority (LACMTA), in 1994, to provide property management services. During 2011, SANBAG went through a procurement process to re-bid the services provided by the LACMTA and on May 4, 2011, the Board awarded Contract No. C11206 to Epic Land Solutions, Inc. to provide these rail asset property management services

Historically, the management services provided to SANBAG by LACMTA included: environmental due diligence work, management of leases, licenses and easements, ensuring that weed abatement and trash removal is handled, preparing agreements and licenses for utilities and street crossings of the right-of-way, and marketing surplus property. To expedite the provision of these services, SANBAG provided the LACMTA power-of-attorney to handle these matters on SANBAG's behalf administratively. SANBAG's rail assets portfolio includes approximately 1,050 licenses, leases and agreements that generate roughly \$400,000 in annual revenue. The revenues generated by SANBAG's rail assets are used to fund improvements related to the rail system. Examples of past projects include the restoration of the San Bernardino Depot, the San Bernardino Parking Structure, and the restoration of the Upland Lemon Grower's Warehouse.

When SANBAG re-procured these services last year, SANBAG did not grant Epic Land Solutions, Inc. (Epic) a power-of-attorney. Consequently, Board action is required to authorize SANBAG to enter into or amend any new or existing license, lease or agreement regarding SANBAG's rail assets.

On July 11, 2012, the SANBAG Board approved license agreements C12235 and C12236 with Southern California Edison (SCE). The licenses (contracts) that were granted allowed for a brine line and a fiber-optic cable crossing of the Redlands branch line in the City of Redlands. SCE intends to have its contractor Doty Bros. Equipment Co. doing business as (dba) Doty Bros. Construction Company perform the installation of the brine line and fiber-optic cable in SANBAG's rail right-of-way. However, the license with SCE did not permit a third party contractor to perform the construction activities associated with the installation, thus requiring this right-of-entry permit. The permit allows SANBAG to terminate the permit upon 24 hours prior written notice.

In order to avoid further delays to SCE's project, staff is presenting this item directly to the Board without prior policy committee review. SCE's project requires their contractor to perform the work prior to a migratory bird that is due to inhabit the area in April. The work is scheduled to be completed by April 2, 2013. Taking the permit to the January 24<sup>th</sup> Commuter Rail and Transit Committee and the February 6<sup>th</sup> Board of Directors Meeting would not allow sufficient time for the contractor to perform the necessary work with the April 2<sup>nd</sup> completing date.

It may be necessary to refine the boiler-plate license agreements to address this issue and others. Therefore, staff is working with General Counsel to develop a policy governing future license, leases and agreements for SANBAG's rail assets. Options would likely include a range from continuing to present each new or amended agreement to the Board for action or by creating boiler-plate documents approved by the Board that could be executed by the Executive Director or his designee.

**Financial Impact:** Approval of this item will result in the payment of \$1,500 by Doty Brothers Equipment Company (dba) Doty Brothers Construction Company as a one-time administrative fee. The fees will be collected by Epic on behalf of SANBAG and retained in the SANBAG Rail Assets trust account until the funds are transmitted to SANBAG's Finance Department. The revenue may be budgeted in subsequent fiscal years for projects that benefit SANBAG's rail system/assets. All staff time associated with preparation of this item and coordination of the license document is consistent with the current Fiscal Year 2012/2013 Budget Task No. 0377 Commuter Rail Operations.

**Reviewed By:** This item has not been reviewed by any other Policy or Technical Advisory Committee. SANBAG General Counsel and Contract Administrator have reviewed and approved this item and right-of-entry permit as to form.

**Responsible Staff:** Mitch Alderman, Director of Transit and Rail Programs



**CONTRACT NO: R13090**

**By and Between**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, SAN BERNARDINO COUNTY  
TRANSPORTATION COMMISSION**

**AND**

**DOTY BROS. EQUIPMENT CO.  
DBA: DOTY BROS. CONSTRUCTION CO.**

**For**

**Right of Entry Permit on the Redlands Subdivision  
Mile Post 5.16**

**CONTRACTOR RIGHT-OF-ENTRY PERMIT**

THIS PERMIT ("Permit") is made and entered into as of January 9, 2013, by and between **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California, hereinafter referred to as "SANBAG" and **DOTY BROS. EQUIPMENT CO. DBA: DOTY BROS. CONSTRUCTION COMPANY**, a Corporation of the State of California, hereinafter referred to as "Permittee".

**PART I**

**BASIC PERMIT PROVISIONS**

1. Description of Premises:  
A parcel of property crossing SANBAG's Redlands Subdivision rail Right-of-Way at a location approximately 1,890'± easterly of Mountain View Avenue, approximately 630'± westerly of the center line of Bryn Mawr Avenue, and southerly of Lugonia Avenue in the City of Redlands, County of San Bernardino, Mile Post 5.16  
Approximate area:  
Seven Hundred Square Feet (700 Sq. Ft.) (§1)
2. Premises Address:  
Mountain View Avenue and Bryn Mawr Avenue (§1)
3. Commencement Date:  
JANUARY 9, 2013 (§2)
4. Term:  
98 Days only, provided however, that SANBAG may revoke this Permit in accordance with the provisions of Part II, Section 2 of this Permit. Unless otherwise revoked, this Permit automatically terminates at close of business on **April 16, 2013** (§2)
5. Use of Premises:  
Construction and installation of one (1) eight inch (8") brine line pipeline and two (2) two inch (2") conduits for fiber optic contained within a sixteen inch (16") steel casing only, and no other uses  
Permitted Hours of Use:  
7 AM to 5 PM (§3)

6. Payments: (circle one or both)
- (A) \$1,500.00 One-time administrative fee, payable in advance (§4)
- ~~B. N/A percent (N/A%) of the gross revenues from the use of the Premises during the term of this Permit (§4)~~
7. Security Deposit: \$N/A (§5)
8. Insurance Amount: (See Exhibit "B") (§11)
9. SANBAG's Address:
- San Bernardino Associated Governments  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715  
Attn: Director of Transit and Rail Programs (§15.1)
10. Permittee's Address:
- DOTY BROS. EQUIPMENT CO. DBA: DOTY BROS. CONSTRUCTION CO.  
Attn: Glen Pool (§15.1)
- Permittee's Contact Information:
- Business: 562-864-6566
- Cell: 562-230-5213
- Fax: 562-929-9368
- E-Mail: GPOOL@DOTYBROS.COM
11. Contractor's State License Number: 273024 (§15.17)
- Expiration Date: 12/31/2013

The foregoing Basic Permit Provisions and the General Permit Provisions set forth in attached Part II are incorporated into and made part of this Permit.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

**LICENSEE: DOTY BROS.  
EQUIPMENT CO. DBA DOTY BROS  
CONSTRUCTION CO**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY,  
SAN BERNARDINO COUNTY  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_  
Name Chris Christ  
Title Presidentr

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

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

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

**APPROVED AS TO FORM**

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

**CONCURRENCE**

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

**INDEX TO PERMIT - PART II**

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Exhibits:

- "A" Site Plan of Premises
- "B" Insurance Requirements
- "C" Permitted Hazardous Materials
- "D" Additional Provisions

## **PART II - GENERAL PERMIT PROVISIONS**

The parties hereto agree as follows:

### **1. PERMIT TO USE**

SANBAG hereby permits Permittee to occupy certain premises (the "Premises") described and consisting of approximately the area shown in Item 1 of the Basic Permit Provisions. The location of the Premises is described in Item 2 of the Basic Permit Provisions and is shown on the map or site plan attached hereto as Exhibit "A". The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property".

### **2. TERM**

The term of this Permit shall commence upon the "Commencement Date" specified in Item 3 of the Basic Permit Provisions and shall continue for the number of days provided in Item 4 of the Basic Permit Provisions; provided, however, that SANBAG may revoke this Permit without cause by providing Permittee with 24 hours' prior notice and may revoke this Permit immediately and without notice upon any breach of this Permit by Permittee.

### **3. USE; CONDITION OF PREMISES**

The Premises shall be occupied and used only for the purposes specified in Item 5 of the Basic Permit Provisions and for such other lawful purposes as may be directly incidental thereto. Permittee acknowledges that it has inspected and accepts the Premises in their present condition as suitable for the specified uses. Use of the Premises by Permittee shall be conclusive to establish that the Premises are in good and satisfactory condition upon entry of Permittee. Permittee shall not permit the Premises to be used for any purpose or in any manner which would render the insurance thereon void or the insurance risk more hazardous than that covered by the terms of this Permit.

### **4. PAYMENTS**

4.1 Basic Payments. The sums specified to be paid by Permittee in Item 6 of the Basic Permit Provisions shall constitute "Payments." Upon execution of this Permit, Permittee shall pay to SANBAG such sums as are specified in Item 6.A of the Basic Permit Provisions, if any. If Item 6.B of the Basic Permit Provisions is circled, a business operating statement showing all gross revenues and certified by Permittee as being correct, together with the outstanding amount of the Payment required hereunder shall be delivered to SANBAG by Permittee at the address set forth in Item 9 of the Basic Permit Provisions no later than five (5) days after the expiration or earlier termination of this Permit.

4.2 Late Charge. Permittee acknowledges that late payment by Permittee of any Payment owed to SANBAG under this Permit will cause SANBAG to incur costs not contemplated by this Permit, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any Payment due from Permittee is not received by SANBAG within five (5) days of when due, Permittee shall pay to SANBAG an additional sum of ten percent (10%) of the overdue Payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that SANBAG will incur by reason of a late payment by Permittee. Acceptance of any late payment charge shall not constitute a waiver of Permittee's default with respect to the overdue payment, nor prevent SANBAG from exercising any of the other rights and remedies available to SANBAG under this Permit, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 15.4.

### **5. SECURITY DEPOSIT**

Upon execution of this Permit and in addition to the Payment described in Section 4 above, Permittee shall pay to SANBAG a security deposit ("Security Deposit") in the amount set forth in Item 7 of the Basic Permit Provisions, which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the faithful performance by Permittee of all of the terms, covenants and conditions of this Permit. If at any time Permittee fails to keep and perform all of the term, covenants, and conditions of this Permit, including making any Payment required hereunder, SANBAG may, at its sole option, apply all or any portion of said security deposit to any overdue Payment and/or any loss or damage incurred by SANBAG by reason of Permittee's default or breach. Within a reasonable time

after termination of this Permit and the Permittee has vacated the Premises, SANBAG shall return without interest, said deposit or portion remaining, if any, after deductions for an amount equal to any unpaid Payment and loss and damage sustained by SANBAG due to any breach or default by Permittee.

## 6. COMPLIANCE WITH LAWS

Permittee shall not commit, suffer or permit any acts to be done upon the Premises in violation of any laws or ordinances, and will permit the SANBAG or its agents to enter said Premises at any reasonable time to inspect the same. Permittee shall, at its sole cost and expense, obtain all required permits or licenses required by any governmental authority for the use of the Premises for the time and use set forth above. Sale and consumption of alcohol is prohibited on the Premises.

## 7. TAXES

Permittee agrees to pay all lawful possessory interest taxes, assessments, or charges which at any time may be levied as a result of this Permit. This Permit may create a possessory interest subject to property taxation and Permittee may be subject to the payment of property taxes levied on such interest.

## 8. MAINTENANCE AND REPAIR

8.1 General Condition. Permittee, at Permittee's sole expense, shall maintain the Premises in a first-class condition during the term of this Permit and shall perform all maintenance and clean-up of the Premises as necessary to keep the Premises in good order and condition. Permittee shall not suffer or permit any dangerous condition to be created, exist or continue on the Premises. Permittee shall pay all costs of any utility services or appurtenances provided or installed for Permittee to or at the Premises. At the expiration of this Permit, Permittee shall remove, at Permittee's sole expense, any and all improvements placed or constructed by Permittee or any other person, shall repair all damage caused to the Premises during the term of this Permit and shall surrender possession of said Premises to SANBAG in as good order and condition as the Premises was delivered to the Permittee.

8.2 Liens. Permittee shall have no authority to create or place any lien or encumbrance of any kind or nature whatsoever upon the interest of SANBAG or Permittee in the Premises. Permittee covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed by Permittee on the Premises. Permittee shall discharge of record by payment, bonding or otherwise any claim of lien or stop notice filed against the Premises on account of any labor performed or materials furnished in connection with any work performed by Permittee on the Premises immediately upon the filing of any claim of lien or stop notice. Permittee shall indemnify and hold SANBAG harmless from any and all loss, cost or expense based on or arising out of asserted claims, liens or stop notice against the leasehold estate or against the right, title and interest of SANBAG in the Premises or this Permit arising from the act or agreement of Permittee. Permittee agrees to give SANBAG immediate written notice of the placing of any lien or stop notice or encumbrance against the Premises. SANBAG shall have the right, at SANBAG's option, of paying and discharging the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and applicable late charge, shall be immediately due and payable upon rendition of a bill therefor.

## 9. INDEMNIFICATION

Permittee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and its subsidiaries, officers, directors, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Permittee, or its officers, directors, affiliates, employees, agents, customers, visitors, invitees, licensees and contractors or anyone directly or indirectly employed by or for whose acts Permittee is liable (collectively, "Personnel") or invitees of Permittee in connection with the Premises or arising from the presence upon or performance of activities by Permittee or its Personnel with respect to the Premises, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Permittee or its Personnel, or (iii) non-performance or breach by Permittee or its Personnel of any term or condition of this Permit, in each case whether occurring during the term of this Permit or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Permit; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Permit. Upon request of SANBAG, Permittee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Permit.

Claims against the Indemnitees by Permittee or its Personnel shall not limit the Permittee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for a Permittee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

#### 10. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Permittee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Premises and any other property of, or under the control or custody of, Permittee, which is on or near the Premises. Permittee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Premises, accident or fire or other casualty on the Premises, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the Premises. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Permittee, on behalf of itself and its Personnel (as defined in Section 9) as a material part of the consideration for this Permit, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Permittee and/or its Personnel. In that connection, Permittee waives the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The provisions of this section shall survive the termination of this Permit.

#### 11. INSURANCE

Permittee, at its sole cost and expense, shall obtain and maintain in full force and effect during the term of this Permit insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". SANBAG reserves the right, throughout the term of this Permit, to review and change the amount and type of insurance coverage it requires in connection with this Permit or work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any work or maintenance on the Premises, Permittee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, SANBAG does not allow self-insurance, however, if Permittee can demonstrate assets and retention funds meeting SANBAG's self-insurance requirements, SANBAG may permit Permittee to self-insure; provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by SANBAG at its sole and absolute discretion. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Permittee under this Permit.

#### 12. TESTS AND INSPECTIONS

SANBAG shall have the right at anytime to inspect the Premises so as to monitor compliance with this Permit. If, in SANBAG's sole judgment, any installation on, or use or condition of the Premises may have an adverse effect on the Premises, adjacent property (whether or not owned by SANBAG) or SANBAG operations, SANBAG shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the Premises, as it determines to be necessary or useful to evaluate the condition of the Premises. Permittee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG. Permittee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

### 13. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

Permittee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises to be in violation of any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Permittee or the Premises ("Environmental Laws"). Except for Hazardous Materials expressly approved by SANBAG in writing as shown on Exhibit "C", Permittee shall not cause or permit, or allow any of Permittee's employees, agents, customers, visitors, invitees, licensees or contractors to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the Premises. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Permittee shall indemnify, defend (by counsel acceptable to SANBAG and hold harmless the Indemnities (as defined in Section 9) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Permittee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Premises or contamination of the Premises or adjacent property (i) which occurs due to the use and occupancy of the Premises by Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors, or (ii) which is made worse due to the act or failure to act of Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Permit; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Permit.

In addition, in the event of any release on or contamination of the Premises, Permittee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the Premises and all affected adjacent property -- whether or not owned by SANBAG) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover.

### 14. PERMITTEE'S COVENANTS

Permittee shall:

- (a) Deliver, at least five (5) days prior to any entry onto the Premises, written notice to SANBAG of its intention to enter the Premises, the proposed date and time of such entry and the nature, specific location and scope, of any proposed activity upon the Premises. Permittee may enter only on the dates and times specified in such notices.
- (b) Enter upon and use the Premises in such manner and at such time as shall not endanger or interfere with SANBAG's operations and in accordance with the regulations of SANBAG and instructions of SANBAG's representative. Permittee shall submit to SANBAG for approval all construction or work details and incidentals insofar as they affect SANBAG.
- (c) Maintain, at Permittee's expense, competent flagmen to protect and control movement of vehicles and equipment of Permittee while upon the Premises.
- (d) Notify SANBAG within three (3) days after all entry onto the Premises hereunder is completed.
- (e) Keep all equipment, tools and materials stored at least twenty (20) feet from the center line of any operable track. Explosives or other highly inflammable substances will not be stored on the Premises without the prior approval of SANBAG's representative.

(f) Reimburse SANBAG for all cost and expense incurred by SANBAG in connection with said entry onto the Premises, including without limitation the expense of furnishing such inspectors, watchmen and flagmen as SANBAG deems necessary and installation and removal of falsework beneath tracks.

## 15. GENERAL PROVISIONS

15.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in Items 9 or 10 of the Basic Permit Provisions, as the case may be. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

15.2 Governing Law. This Permit shall be governed by the laws of the State of California.

15.3 Severability. If any term, covenant, condition or provision of this Permit, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Permit, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15.4 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Permittee under this Permit, provided, however, that interest shall not be payable on late charges incurred by Permittee.

15.5 Captions. The Captions included in this Permit are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Permit or any provision hereof, or in any way affect the interpretation of this Permit.

15.6 Survival of Obligations. All obligations of Permittee hereunder not fully performed as of the expiration or earlier termination of the term of this Permit shall survive the expiration or earlier termination of this Permit, including without limitation, all payment obligations and all obligations concerning the condition of the Premises.

15.7 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Permit shall not invalidate this Permit nor shall it be considered a waiver by it of any other covenant or condition under this Permit.

15.8 Binding Effect. The terms, provisions and covenants and conditions contained in this Permit shall apply to, inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. If more than one person executes this Permit as Permittee, then each shall be jointly and severally liable for all obligations of Permittee hereunder.

15.9 Assignment. This Permit is personal to Permittee and Permittee shall not assign or transfer (whether voluntary or involuntary) this Permit in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole discretion. Any attempted act in violation of the foregoing shall be void and without effect and give SANBAG the right to immediately terminate this Permit.

15.10 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Permit, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

15.11 Nondiscrimination. Permittee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the Premises are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

15.12 Further Acts. Permittee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Permit.

15.13 Termination for Public Project. Permittee hereby expressly recognizes and agrees that the Premises is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Permittee's use of the Premises under this License is an interim use. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any public Project. Permittee expressly acknowledges and agrees that: (1) SANBAG may terminate this license for any public project; (2) Permittee will NOT oppose any Project when planned or implemented on or adjacent to the Premises; and (3) in the event SANBAG terminates this License and requires Permittee to vacate the Premises for any public Project, Permittee (a) shall not be entitled to receive any relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the Premises.

Permittee
SANBAG

15.14 Future Need of License Property. If SANBAG shall at any time, or from time to time, so require by written notice thereof to Licensee based on the need of SANBAG, in its sole discretion, for the License Property for its public purposes Licensee shall reconstruct, alter, make changes as required by SANBAG, relocate or remove its Facility at Licensee's sole cost and expense

15.15 Time of Essence. Time is of the essence.

15.16 No Recording. Permittee shall not record or permit to be recorded in the official records of the county where the Premises is located any memorandum of this Permit or any other document giving notice of the existence of this Permit.

15.17 Entire Agreement; Amendments. This Permit and the Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Permit may be amended at any time by the written agreement of SANBAG and Permittee. All amendments, changes, revisions, and discharges of this Permit in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

15.18 Broker's Fees. Permittee represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the brokerage firm specified in Item 11 of the Basic Permit Provisions, if any, and Permittee agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Permittee with regard to this leasing transaction.

15.19 Security Measures. Permittee hereby acknowledges that the Payments payable to SANBAG hereunder does not include the cost of guard service or other security measures, and that SANBAG shall have no obligation whatsoever to provide same. Permittee assumes all responsibility for the protection of Permittee, Permittees' subsidiaries, partners, officers, employees, and agents and their property from acts of third parties.

15.20 Effective Date/Nonbinding Offer. Submission of this Permit for examination or signature by Permittee does not constitute an offer or option for permit, and it is not effective as a permit or otherwise until executed and delivered by both SANBAG and Permittee. Each individual executing this Permit on behalf of SANBAG or Permittee represents and warrants to the other party that he or she is authorized to do so.

15.21 Subordinate Rights. This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property or any portion thereof in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, operate, maintain, use and/or relocate existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property or any portion thereof, and in connection therewith the right to grant and convey to others,

rights and interests to the SANBAG Property or any portion thereof. This Agreement is subject to all licenses, leases, easements, reservations, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the Property now or hereafter, and this Agreement is executed and delivered by SANBAG without any warranty of title, express or implied, and the words "grant" or "convey" as used herein shall not be construed as a warranty of title or as a covenant against the existence of any such title exceptions

15.22 Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein.

**Exhibit "A"**

Site Plan of Premises

See Attached Exhibits A-1 & A-2

**Exhibit "B-1"**

**INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS**

Lessee, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of SANBAG property hereunder by the Lessee, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

**Minimum Scope of Insurance** (Check all applicable boxes)

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any tenant improvements or betterments.
- Insurance Services Office Railroad Protective Liability
- Contractor's Pollution Liability with coverage for:

- a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
- d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

**Minimum Limits of Insurance** (Check all applicable boxes)

Lessee, Licensee, or Permittee shall maintain limits no less than:

- General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage.
- If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- Course of Construction: Completed value of the project.
- Property Insurance: Full replacement cost with no coinsurance penalty provision.
- Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- Contractors Pollution Liability: \$1,000,000 per occurrence/\$2,000,000 annual aggregate.

**Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by SANBAG. At the option of SANBAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG, its officials and employees; or the Lessee, Licensee, or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

## Exhibit "B-2"

### Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SANBAG, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; premises owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, its subsidiaries, officials and employees.
2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG, its subsidiaries, officials and employees.
4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

1. SANBAG shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG.

### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by SANBAG.

### Verification of Coverage

Lessee, Licensee, or Permittee shall furnish SANBAG with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the SANBAG before work commences. As an alternative, the Lessee, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

### Contractors and Subcontractors

Lessee, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by SANBAG.

**Exhibit "C"**

**Permitted Hazardous Materials**

**No hazardous materials are permitted to be used or stored on Premises**

## Exhibit "D-1"

### Additional Provisions

**Entry Onto Right-of-Way** No verbal approvals will be granted. The Contractor shall not enter onto the Right-of-Way unless Contractor has arranged for Railroad safety training as well as protective services and has paid all charges and fees. A fully executed copy of this Right-of-Entry must be in the possession of the contractor at the job site and must be produced by Contractor upon request by SANBAG, a law enforcement officer or Member Agency's representative. If said Agreement is not produced, SANBAG has the right to suspend work in the Right-of-Way until Contractor demonstrates possession of Agreement at the job site.

The Contractor's ability to enter the SANBAG Right-of-Way is subject to the absolute right of SANBAG to cause the Contractor's work on the SANBAG Right-of-Way to cease if, in the sole opinion of SANBAG or its representative, the Contractor's activities create a hazard to the SANBAG Right-of-Way, or SANBAG employees, or SANBAG operations, or any combination thereof.

At the request of SANBAG, Contractor shall remove from the Right-of-Way any employee or other individual who has not completed safety training or otherwise fails to conform to the instructions of SANBAG's representative in connection with the work on the Right-of-Way. Any right of Contractor to enter upon the Right-of-Way shall be suspended until such requests of SANBAG are met. Contractors shall defend, indemnify and hold harmless SANBAG and its representative against any claim arising from the removal of any such employee or other individual from the Right-of-Way.

**Return of Property** The Contractor agrees to return the Property to a condition substantially the same as before the construction, including replacement, repair, or reinstalling of railroad signs and property. Railroad signs include but are not limited to "No Trespassing", "Speed Limit", "Milepost", "Station Stop", and "Fiber Optics".

**Facilities** The Contractor may not move, relocate, remove, obstruct, or otherwise interfere with any railroad tracks, signals, cables, signs, flags or other railroad facilities, or any service or connection to any railroad facility.

**Completion of Work** The Contractor agrees to notify SANBAG or its Agent, in writing and orally, when use of the Right-of-Way or work is completed. Under no circumstances shall the temporary right of entry provided for under this Agreement be construed as granting to the Contractor or its Subcontractors and agents any right, title or interest of any kind or character in, on or about any Property.

**Emergency Phone Numbers** The Contractor must immediately contact SCRRRA and its representative in case of accidents, personal injury, defect in track, bridge or signals or any unusual condition that may affect the safe operation of the railroads. The following are SANBAG's emergency numbers:

Epic Land Solutions  
BNSF Railroad

951-321-1800  
909-386-4061

**EXHIBIT "D-2"**

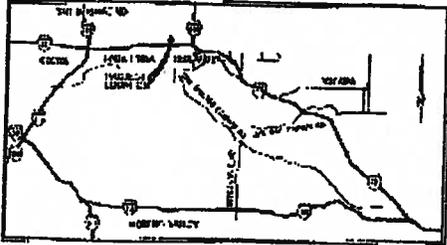
**SANBAG JACK AND BORE GENERAL NOTES (Redlands Branchline)**

1. See SANBAG General Notes for addition requirements.
2. The Contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG inspector has approved the layout will the Contractor be allowed to begin work.
3. Jacking and receiving pits shall be constructed outside of the railroad right-of-way unless otherwise shown on the SANBAG approved plans.
4. At no time shall any contractor be permitted to cross any track without the permission from the railroad flagman.
5. All jack and bore operations within the railroad right-of-way shall be performed continuously on a 24-hour basis until work is completed with a SANBAG or BNSF flagman and SANBAG inspector present at all times. Should work begin without the flagman and inspector present, the work will be halted and any casing installed will be abandoned in place, pressure grouted full, and capped to the satisfaction of the SANBAG.
6. The contractor shall construct a temporary fence along the railroad right-of-way, or along the edge of pits closest to the track, extending 50-feet in both directions from the pit. Fences are not required for work at grade crossings.
7. Pits shall be fenced on sides.
8. The Contractor/permittee shall provide SANBAG with as-built drawings prior to the release of any deposited fund balance.
9. The Contractor shall submit to SANBAG for review, drawings and calculations for any shoring that may be influenced by the railroad tracks. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
10. Prior to commencement of work, the Contractor shall submit to SANBAG for review, load calculations for the proposed jacking casing with applied load as defined by Cooper E-80 with a 50% added impact load. The calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
11. It shall be the Contractor's responsibility to contact Underground Alert prior to the commencement of construction. At the same time, the contractor shall notify BNSF for railroad signal mark-outs.
12. All backfilling shall be at 90% relative dry compaction. For areas within or that affect the railroad right-of-way, the contractor shall submit a compaction report prepared by a California licensed Geotechnical Professional Engineer prior to release of any deposited fund balance.
13. Prior to the commencement of work, the Contractor shall submit to SANBAG for review, a description of the work process including scheduled activities.
14. The Contractor shall remove all temporary facilities constructed on the railroad right-of-way, debris, and other items not originally at the site prior to construction and shall notify SANBAG that all construction has been completed. After as-builts have been received, SANBAG inspects the construction site and signs-off the work, SANBAG will release any unused deposit funds.
15. The Contractor or contracting party, shall obtain all permits necessary for the proposed project including but not limited to encroachment, SWPPP, and environmental permits, and third-party utility permits.

Permittee	SANBAG

Initials

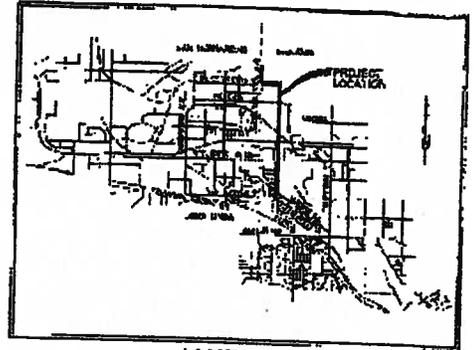
# CONSTRUCTION PLANS FOR MOUNTAINVIEW BRINELINE EXTENSION (PRIVATE LINE)



VICINITY MAP  
1/4" = 1/2 MI.

### INDEX OF DRAWINGS

NO.	DESCRIPTION
1	CONCEPTUAL PLAN
2	LOCATION MAP
3	VICINITY MAP
4	KEY MAP
5	AERIAL TARGET KEY MAP
6	HORIZONTAL CONTROL
7	VERTICAL CONTROL
8	AERIAL TARGET PANELS
9	KEY MAP AND SURVEY CONTROL



LOCATION MAP  
1/4" = 1/2 MI.

### CONTACT INFORMATION

<b>OWNER</b> CITY OF MOUNTAINVIEW 1000 W. 10TH ST. MOUNTAINVIEW, CALIF. 94038 TEL: (415) 947-1000	<b>DESIGNER</b> DUDEK 1000 W. 10TH ST. MOUNTAINVIEW, CALIF. 94038 TEL: (415) 947-1000	<b>CONSULTANT</b> SANBAG 1000 W. 10TH ST. MOUNTAINVIEW, CALIF. 94038 TEL: (415) 947-1000
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### BASIS OF DESIGN - CONCEPTUAL PLAN

THIS PLAN IS BASED ON THE CONCEPTUAL PLAN AND SURVEY CONTROL DRAWINGS. THE DESIGNER HAS CONDUCTED VISUAL INSPECTIONS AND SURVEYS OF THE PROJECT AREA. THE DESIGNER HAS OBSERVED THE PROJECT AREA AND HAS OBSERVED THE PROJECT AREA. THE DESIGNER HAS OBSERVED THE PROJECT AREA AND HAS OBSERVED THE PROJECT AREA.

### DECLARATION OF RESPONSIBLE CHARGE

I HEREBY DECLARE THAT I AM THE DESIGNER OF WORK FOR THE PROJECT AND I AM RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT. I HAVE OBSERVED THE PROJECT AREA AND I HAVE OBSERVED THE PROJECT AREA. I HAVE OBSERVED THE PROJECT AREA AND I HAVE OBSERVED THE PROJECT AREA.

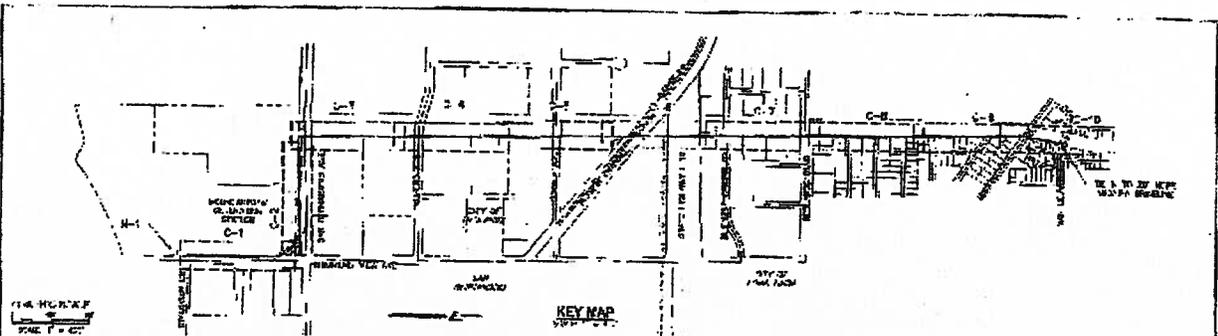
**DIG ALERT**



CALL TOLL FREE  
1-800-227-3888  
FOR  
ADVANCED DIG  
NOTICE  
SERVICES

UNIVERSITY MICROFILMS  
SERIALS ACQUISITION  
300 N. ZEEB RD.  
ANN ARBOR, MI 48106

			MOUNTAINVIEW BRINELINE EXTENSION	G-1 KEY MAP, LOCATION MAP, VICINITY MAP, SHEET INDEX, AND BASIS OF DESIGN
--	--	--	-------------------------------------	---



KEY MAP  
1/4" = 1/2 MI.



AERIAL TARGET KEY MAP  
1/4" = 1/2 MI.

### HORIZONTAL CONTROL

THE HORIZONTAL CONTROL IS BASED ON THE CONCEPTUAL PLAN AND SURVEY CONTROL DRAWINGS. THE DESIGNER HAS CONDUCTED VISUAL INSPECTIONS AND SURVEYS OF THE PROJECT AREA. THE DESIGNER HAS OBSERVED THE PROJECT AREA AND HAS OBSERVED THE PROJECT AREA.

### VERTICAL CONTROL

THE VERTICAL CONTROL IS BASED ON THE CONCEPTUAL PLAN AND SURVEY CONTROL DRAWINGS. THE DESIGNER HAS CONDUCTED VISUAL INSPECTIONS AND SURVEYS OF THE PROJECT AREA. THE DESIGNER HAS OBSERVED THE PROJECT AREA AND HAS OBSERVED THE PROJECT AREA.

### AERIAL TARGET PANELS

NO.	DESCRIPTION
1	CONCEPTUAL PLAN
2	LOCATION MAP
3	VICINITY MAP
4	KEY MAP
5	AERIAL TARGET KEY MAP
6	HORIZONTAL CONTROL
7	VERTICAL CONTROL
8	AERIAL TARGET PANELS
9	KEY MAP AND SURVEY CONTROL

			MOUNTAINVIEW BRINELINE EXTENSION	G-4 KEY MAP AND SURVEY CONTROL
--	--	--	-------------------------------------	-----------------------------------

**Governing**  
**SANBAG**  
SANTA ANA  
ASSOCIATED GOVERNMENTS

DATE: 03-22-94	EXHIBIT A
PROJECT: MOUNTAINVIEW BRINELINE EXTENSION	
DESIGNER: DUDEK	
CONSULTANT: SANBAG	
OWNER: CITY OF MOUNTAINVIEW	
PROJECT NO: 94-001	
SHEET NO: 1	
TOTAL SHEETS: 1	
DATE: 03-22-94	



- 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: 24

**Date:** January 9, 2013

**Subject:** Interstate 10 (I-10) Riverside Avenue Interchange Landscape Project

**Recommendation:\*** Authorize the Executive Director to complete negotiations and execute Contract C13093 "Takeover Agreement" with Financial Pacific Insurance Company upon approval by General Counsel.

**Background:** On April 4, 2007, SANBAG and the City of Rialto entered into a Measure I Project Advancement Agreement (PAA) No. C07170 for the advancement of construction of the I-10 Riverside Avenue Interchange Project. Under this agreement, the City of Rialto agreed to advance 100% of project costs. Seventy two percent (72%) of eligible project costs would be subject to reimbursement at a later date by SANBAG.

On June 4, 2008, the SANBAG Board of Directors approved a construction and maintenance Cooperative Agreement No. C08164 with the City of Rialto and Caltrans, which was amended on December 3, 2008 to include minor corrections to the agreement. Under agreement No. C08164, SANBAG agreed to provide construction management and administer the construction contract on behalf of the City with SANBAG bearing the cost of its own staff.

In June 2011, the Board approved Cooperative Agreement No. R11089 with the City of Rialto for Landscape Construction and Construction Landscape Maintenance of the Interstate 10 (I-10) Riverside Avenue Landscape ("Project").

*Approved*  
 Board of Directors

*Date: January 9, 2013*

*Moved: Second:*

*In Favor: Opposed: Abstained:*

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

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

In February 2012, SANBAG received ten (10) bids from contractors for landscape construction and one (1) year plant maintenance. The bids ranged from \$797,716 to a high of \$1,324,318. At the bid opening, America West Landscape Inc. ("America West") was identified as the lowest bidder at \$797,716.17. The America West bid documents were found to be responsive, as it was in compliance with the Invitation for Bids requirements. In April 2012, the Board approved award Construction Contract No. C12146 to America West for the project in the amount of \$797,716.17 plus established a Contingency/Allowance of \$204,850.00.

Work started in June 2012, and was to have been completed in October 2012. In early October 2012, America West defaulted on their obligations under the contract and a demand was made upon their performance and payment surety, Financial Pacific Insurance Company (Surety) to complete the work. Since October the Surety has been reviewing the project. In early December the Surety solicited bids to complete the project and proposed a draft "Takeover Agreement" to remedy America West default and to complete the project in accordance with the Performance Bond. Negotiations concerning the Takeover Agreement are currently on-going. It is anticipated that these negotiations can be completed by mid-January 2013 or sooner. The Surety intends to designate its contractor to complete the project within the same time frame, but no certain date can be set to commence work until the negotiations are complete.

It is advantageous to all parties involved to expedite the completion of the landscape project. Expediting the Takeover Agreement process will allow the Surety's completion contractor to begin work at the earliest possible date, rather than having to wait weeks for SANBAG approval processes. It will also help to preserve the work that has already been done on the project site, minimize cost increases for the project and serve the interests of the City of Rialto, a member agency of SANBAG. Furthermore, General Counsel has recommended expediting the approval process for the Takeover Agreement in this manner in order to preserve legal arguments concerning liquidated damages and other potential damage recoveries from the original contractor and/or Surety. Taking this matter directly to the Board without committee or Study Session review and recommendation, and authorizing the Executive Director to negotiate and execute the Takeover Agreement will ensure that completion of this project is expedited. Requiring committee/study session review would result in not being able to begin work on the project until mid-February at the earliest.

For the cited reasons, staff is requesting that authority be granted to the Executive Director to execute the Takeover Agreement, Contract C13093, with Financial Pacific Insurance Company for the I-10 Riverside Avenue Interchange Landscape

Construction Project, upon completion of negotiations and approval by General Counsel. The Surety's proposed draft of the Takeover Agreement is attached.

***Financial Impact:*** The recommendation is consistent with the SANBAG Fiscal Year 2012/2013 budget. Task No. 0841.

***Reviewed By:*** This item is not scheduled for review by any Policy Committee or Technical Advisory Committee. SANBAG General Counsel has reviewed this item.

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



## CONTRACT SUMMARY SHEET

Contract No. C 13093 Amendment No. \_\_\_\_\_

By and Between

Financial Pacific Insurance Company and San Bernardino Associated Governments

Contract Description 110 Riverside Ave Interchange Landscape Agreement Surety Takeover Agreement of America West Landscape Inc. contract C12146

<b>Board of Director's Meeting Date:</b> 1/9/13	
<b>Overview of BOD Action:</b> Provide authority for Executive Director to execute final Takeover Agreement with Surety for America West Landscape C12146. As part of the Takover Agreement C13093 will supercede C12146.	
<b>Is this a Sole-Source procurement?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	797,716.17	Original Contingency Amount
			\$ 204,850.00
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$	797,716.17	Revised Contingency Amount <i>Inclusive of prior amendments</i>
			\$ 204,850.00
Current Amendment Amount	\$	0	Contingency Amendment
			\$ 0
<b>TOTAL CONTRACT VALUE</b>	<b>\$</b>	<b>797,716.17</b>	<b>TOTAL CONTINGENCY VALUE</b>
			<b>\$ 204,850.00</b>
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>			<b>\$ 1,002,566.17</b>

Contract Start Date 1/09/13	Current Contract Expiration Date 12/31/14	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		
This is a construction contract.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>841</u> .				
<input type="checkbox"/> A Budget Amendment is required.				
How are we funding current FY? Local Funds from City of Rialto				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract:				
Per Cooperative agreement C11089 City of Rialto				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
<b>Check all applicable boxes:</b>	
<input checked="" type="checkbox"/> Retention? If yes, indicate % <u>5%</u> .	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ %	

Mike Barnum		12/19/12
Project Manager (Print Name)	Signature	Date
Garry Cohoe		12-19-12
Task Manager (Print Name)	Signature	Date
Andrea Zureick		12-19-12
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jedbery Hill		12/19/12
Contract Administrator (Print Name)	Signature	Date
William Stawski		12/19/12
Chief Financial Officer (Print Name)	Signature	Date

## TAKEOVER AGREEMENT

THIS TAKEOVER AGREEMENT ("Agreement") has been entered into on December \_\_, 2012, ("Effective Date") by and between the San Bernardino Associated Governments ("SANBAG") and Financial Pacific Insurance Company ("SURETY"). SANBAG and SURETY may hereinafter be collectively referred to as "Parties" and singularly as "Party."

### RECITALS

A. WHEREAS, on or about April 16, 2012, SANBAG entered into a contract ("Contract") for I-10 Riverside Avenue Interchange Landscape Construction, Project Number C 12146 ("Project") with America West Landscape, Inc. ("Former Contractor") A true and correct copy of the Contract is attached hereto as Exhibit "A" and incorporated herein by this reference;

B. WHEREAS, SURETY, as required by the Contract and the Public Works Statute issued a performance bond to its principal, Former Contractor, in favor of SANBAG, as Obligee, Bond No. 54190956 ("Bond") for the Contract, and

C. WHEREAS, on or about October 16, 2012, SANBAG terminated Former Contractor from further work under the Contract, and

D. WHEREAS, SANBAG has called upon SURETY to remedy the alleged default of Former Contractor on the Contract for the Project and to complete or procure the completion of the Contract in accordance with the Contract documents and the Bond for the Project ("Remaining Work");

E. WHEREAS, SANBAG desires to effect the completion of the Contract in order to preserve the work in place and to expedite completion and avoid the delays and inconvenience of re-letting;

F. WHEREAS, SURETY is willing to exercise its election to complete or to procure the completion of the Contract as a measure of cooperation with SANBAG providing SURETY can be assured in doing so it will receive the Contract Balance pursuant to the terms of the Contract;

G. WHEREAS, SANBAG represents it holds \$ \_\_\_\_\_ (\$116,000.00 Contract Balance on the Contract;

H. WHEREAS, SURETY desires to arrange for the completion of the Contract and proposes to have the Remaining Work completed by a competent and qualified contractor approved by SANBAG;

I. WHEREAS, SANBAG recognizes that, in procuring the completion of the Contract by a completion contractor, SURETY has conferred a benefit upon SANBAG in return for which SANBAG shall make payment of all such sums due or to become due under the Contract directly to SURETY; and

J. WHEREAS, SANBAG has agreed that the remaining Contract Balance from the Contract will be used for the completion of the Project and the Remaining Work subject to the terms and conditions of the Contract;

#### AGREEMENT

NOW, THEREFORE, in consideration of the premises, and the good and valuable considerations and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The recitals set forth above are expressly incorporated herein by this reference.
2. SURETY undertakes to procure the performance of the Remaining Work subject to and in accordance with all of the terms and conditions of the Contract. Further, SANBAG represents, based upon a reasonable investigation, that it has identified all known documents or documentation comprising the Contract. [attached as Ex A under recital A]
3. SANBAG acknowledges that SURETY has a prior equitable right to receive all proceeds from the Contract as the work proceeds and for all sums upon completion of the work covered by the Contract, pursuant to the terms of the Contract. Accordingly, SANBAG shall pay to SURETY, or its designee, all amounts to be paid by SANBAG under the Contract at the times and under the procedures according to the terms and conditions of the Contract, in accordance with payment terms of the Contract.

4. SURETY intends to relet the completion of the Contract for the Project to \_\_\_\_\_, a licensed contractor ("Completion Contractor")<sup>1</sup>. SANBAG consents to Completion Contractor completing the Remaining Work of the Contract. Completion Contractor shall be SURETY's representative with regard to completion of the Remaining Work. All documents pertaining to pay estimates, progress and final payments, shall be sent to:

"Completion Contractor"

Phone  
Email:

With copies to:

Rich Tropp  
Benchmark Consulting Services, LLC  
2 Venture, Suite 220  
Irvine, CA 92618  
Phone 949-622-9300  
Cell 949-813-5864  
Email: [rtropp@benchmarkconsulting.com](mailto:rtropp@benchmarkconsulting.com)

and

David L. Hughes  
BOOTH, MITCHEL & STRANGE LLP  
70 South Parker Street Ste. 6500  
Orange, CA 92868  
Cell 714-272-0866  
Email: [dlhughes@boothmitchel.com](mailto:dlhughes@boothmitchel.com)

5. SANBAG acknowledges that the Completion Contract between Surety and Completion Contractor will call for the Completion Contractor to coordinate all Project activities with SANBAG and SANBAG's representative and to otherwise conduct itself as if Completion Contractor had a direct contract with SANBAG. SURETY shall have no responsibility to review or transmit any construction documents between the Completion Contractor and SANBAG. No Party to this Agreement shall look to SURETY for any opinion, comment, or

<sup>1</sup> In the event SURETY does not hire \_\_\_\_\_ as the Completion Contractor, then any completion contractor selected shall be previously approved by SANBAG.

position on any of the construction documents generated between the Completion Contractor and SANBAG. SURETY has no opinion, comment or responsibility for any content of any construction documents between the Completion Contractor and SANBAG or SANBAG and the Completion Contractor with regard to the Remaining Work under the Contract.

6. Completion Contractor shall be a subcontractor to SURETY, and no contractual relationship, pursuant to this Agreement, shall exist between SANBAG and Completion Contractor. Completion Contractor shall provide all insurance required under the Contract, but shall not be required to provide payment and/or performance bonds to SANBAG. Routine day-to-day operations and decisions as to the manner of performance of the Remaining Work shall be made by the Completion Contractor, subject to the terms and conditions of the Contract, provided, however, that the Completion Contractor has no authority to: (i) agree to any changes in the Contract or Remaining Work; (ii) agree to any Change Orders; (iii) agree to any backcharges or deductions of any nature; (iv) agree to any schedule changes; (v) agree to any adjustments in the Contract amount, Contract Balances, or Remaining Work; or (vi) agree to perform warranty work of the Former Contractor or corrective work as a result of latent defect(s), if any, in the work performed by the Former Contractor, without the SURETY's prior express written consent which shall be delivered to SANBAG as a condition precedent to the Completion Contractor's negotiating items (i) through (vi). The Remaining Work shall be subject to inspection and acceptance by SANBAG, as provided in the Contract. A copy of all written communication by SANBAG directed to Completion Contractor shall be forwarded to SURETY on a current basis by email to SURETY's representative, Rich Tropp. All communications concerning matters of Contract administration (i.e., contractual or other notices required by law, payments, Change Orders, extensions of time, delays, claims, among other matters) shall be communicated to Completion Contractor only in writing, with a copy forwarded to SURETY's representative on a current basis.

7. In the event a dispute arises between SANBAG and Completion Contractor, or Completion Contractor is in default under the terms of the Contract, SANBAG shall give SURETY written notice thereof within three (3) calendar days of such default, Saturdays, Sundays and legal holidays excluded.

8. The Completion Contractor, as SURETY's representative, is authorized to make all routine day-to-day decisions as to the manner of performance of the Remaining Work of the Contract. SURETY reserves the right to terminate the Completion Contractor at any time, but within three (3) calendar days written notice to SANBAG, and promptly employ any other completion contractor acceptable to SURETY and pre-approved by SANBAG.

9. Except as provided in this Agreement, it is expressly understood that neither Party hereto waives any rights or defenses it or they may have in favor of or against one another or anyone else. It is further expressly understood that SURETY does not waive any rights it may have to funds payable under the Contract. Nothing in this Agreement shall prejudice the rights of either Party to seek a judicial or other appropriate determination of its rights or defenses.

10. The Parties hereto agree that SANBAG's right to liquidated damages for delays and SURETY's defenses to any such claim are not released or waived by this Agreement, except as modified herein and except to the extent that such delays may be excused under the terms and conditions of the Contract, and Completion Contractor is likewise entitled to such extensions of Contract time as are provided for under the Contract and is to be relieved of any delays excused under the Contract.

11. The Parties hereto agree that no liquidated damages will be assessed by SANBAG until after the completion date of \_\_\_\_\_, 2013. In the event work under the Contract is not substantially completed by that date, SANBAG may thereafter, at its sole discretion, assess liquidated damages as specified in the Contract for delays in completing the Contract.

12. SURETY, who will have no employees on the Project, (except for occasional visits) shall have no obligation to furnish any insurance under the Contract. It is understood and agreed that SURETY, by entering this Agreement, is not acting as a contractor, but instead in its capacity as a performance bond SURETY.

13. Save and except for as provided by law and the terms of the Contract, SANBAG agrees that it will not acknowledge or honor any claim or charges against the Contract Balance by any alleged assignees, successors, creditors or transferee of Former Contractor, or any other party making claim to any of such proceeds or balances, without the consent of SURETY.

14. SANBAG agrees that SURETY's liability on its Bond and this Agreement shall not exceed SURETY's bond penalty of \$797,716.17 on Bond 54190956 for the Contract.

15. THE PARTIES HERETO FURTHER AGREE THAT IN THE EVENT SURETY PAYS THE BOND PENALTY AMOUNT OF \$797,716.17 FOR WORK PERFORMED ON THE CONTRACT PURSUANT TO THIS AGREEMENT, THEN SURETY SHALL HAVE NO FURTHER OBLIGATIONS WHATSOEVER UNDER ITS BOND OR THIS AGREEMENT AND SUCH PAYMENT SHALL BE A FULL RELEASE OF ANY AND ALL OBLIGATIONS SURETY MAY HAVE UNDER ITS BOND OR THIS AGREEMENT ON THE CONTRACT.

16. SANBAG further agrees that all payments made by SURETY to any person or entity on account of the work required by the Contract shall be deemed to be payment under SURETY's Bond for the Project and shall reduce the penal sum of the Bond in an equal amount.

17. In consideration of the work completed by or on behalf of SURETY under the Contract for the Project or for payments by SURETY under its Bond, SANBAG hereby expressly subrogates SURETY to and assigns, conveys, sets over, and transfers to SURETY, any and all claims, causes of action, interests or demands, which SANBAG has, had, or may ever be entitled to assert against Former Contractor in connection with the Contract or Project, and expressly agrees that SURETY may pursue such rights, claims, interests, causes of action, demands and/or claims in any manner SURETY deems appropriate, including but not limited to matters pending in any bankruptcy proceeding, to the extent that SURETY in its sole discretion deems advisable.

18. The Parties herein agree to cooperate fully with each other to the end that the Contract may be completed as efficiently and quickly in strict accordance with the terms and conditions of the Contract.

19. The Parties and their signatories hereto warrant that each has the power and authority to execute this Agreement. The Parties agree that if SURETY certifies any claim arising out of or relating to the Contract, the Project, or this Agreement, such certification will be deemed

properly certified if made by an officer of SURETY. The Parties hereto have voluntarily executed this Agreement based on their independent investigation.

20. Save and except for those obligations which survive the completion of the Contract, if any such obligations exist, SANBAG and SURETY agree that the satisfactory completion of the Contract, as provided in the Contract documents as evidenced by SANBAG's acceptance of the work or SANBAG's beneficial occupancy of the Project shall satisfy and discharge SURETY's obligations under its Bond and under this Agreement.

21. The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the Parties and the Contract, but, if for any reason any provision of this Agreement is unenforceable or invalid, such provision shall be deemed severed from this Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this Agreement.

22. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements, arrangements and/or understandings by and between them. Except as herein modified, all terms and conditions of the Contract and Bond shall remain unchanged and in full force and effect.

23. This Agreement shall extend to and be binding upon the Parties hereto and their respective successors and assigns. No rights shall accrue hereunder to or for the use of any other person, firm, corporation, or governmental entity other than the Parties hereto and their respective successors, assigns and reinsurers.

24. SURETY agrees that it is not released from its payment bond for the Contract, and that those bond obligations shall be regulated by the terms of the payment bond and the statutes requiring them.

25. This Agreement may be executed in several counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which taken together shall constitute a single instrument. The Parties agree that original signatures on this Agreement

may be transmitted by electronic email in pdf format and that such signatures shall be treated as original signatures for all purposes.

26. This Agreement has been fully negotiated by the Parties and their counsel and shall not be construed in favor of or against either Party, regardless of who may have drafted it or any of its terms.

27. In the event of litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to its costs, including reasonable attorney's fees.

IN WITNESS WHEREOF, the Parties hereto have hereunder set their hand as of the Effective Date.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

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

\_\_\_\_\_  
[Name and Title]

FINANCIAL PACIFIC INSURANCE COMPANY

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

\_\_\_\_\_  
[Name and Title]

**AGENCY  
REPORTS**



# South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178  
(909) 396-2000 • www.aqmd.gov

December 12, 2012

**Members of the Governing Board:**

**Chairman**  
**Dr. William A. Burke**  
Speaker of the Assembly  
Appointee

**Vice Chairman**  
**Dennis R. Yates**  
Mayor, Chino  
Cities of San Bernardino County

**Michael D. Antonovich**  
Supervisor, Fifth District  
County of Los Angeles

**John J. Benoit**  
Supervisor, Fourth District  
County of Riverside

**Michael A. Cacciotti**  
Mayor, South Pasadena  
Cities of Los Angeles County/  
Eastern Region

**Josie Gonzales**  
Supervisor, Fifth District  
County of San Bernardino

**Ronald O. Loveridge**  
Mayor, Riverside  
Cities of Riverside County

**Joseph K. Lyou, Ph.D.**  
Governor's Appointee

**Judith Mitchell**  
Councilmember, Rolling Hills Estates  
Cities of Los Angeles County/  
Western Region

**Shawn Nelson**  
Supervisor, Fourth District  
County of Orange

**Dr. Clark E. Parker, Sr.**  
Senate Rules Appointee

**Jan Perry**  
Councilmember, 9<sup>th</sup> District  
City of Los Angeles Representative

**Miguel A. Pulido**  
Mayor, Santa Ana  
Cities of Orange County

To: Mayors and Councilmembers

From: Dennis R. Yates, Mayor/City of Chino  
Vice Chairman, South Coast AQMD Governing Board  
Representative, Cities of San Bernardino County

Attached is the agenda item and outcome of the December 7, 2012 AQMD Governing Board meeting.

**PUBLIC HEARING ITEM AT THE DECEMBER 7, 2012 BOARD MEETING**

**Adopt Final 2012 Air Quality Management Plan**

The Final 2012 Air Quality Management Plan (AQMP) has been developed in partnership with CARB, U.S. EPA, SCAG and stakeholders throughout the region including local government, health and environmental organizations, businesses and other stakeholders. The AQMP is the legally enforceable blueprint for how to meet and maintain state and federal air quality standards. The 2012 AQMP identifies control measures to demonstrate that the region will attain the federal 24-hour standard for PM2.5 by 2017. The AQMP also includes current and projected air quality, updated emissions inventories of stationary and mobile sources, updated growth projections, contingency measures, and an implementation schedule for adoption of the proposed control measures. In addition, the 2012 AQMP provides updates on progress towards meeting ozone standards for 2023 and 2032, an attainment demonstration for the 1-hour ozone standard and a summary of the air quality attainment status of the Coachella Valley.

**VOTES: 11 Yes, 0 No, 0 Abstain, 2 Absent**

**There are no public hearing items scheduled for the January 4, 2013 Board Meeting.**

**Please find enclosed the November issue of the AQMD Advisor.**

**ADDITIONAL  
INFORMATION**

APPOINTING/ELECTING AUTHORITY	REGIONAL COUNCIL (12:00 noon)	POLICY COMMITTEES (Regional Council Members Serve on One Each) (Subregional Appointments) (County Commissions Appoint One to TC) (10:00 a.m.)		
		Community, Economic, and Human Development	Energy and Environment	Transportation
District 6 (Grand Terrace, Colton, Loma Linda, Redlands, Yucaipa)	J. Harrison	J. Harrison	E. Graham	P. Eaton
District 7 (San Bernardino, Highland)	L. McCallon	L. McCallon		
District 8 (Rialto, Fontana)	D. Robertson	D. Robertson		
District 9 (Rancho Cucamonga, Upland, Montclair)	P. Eaton	P. Eaton		
District 10 (Chino, Chino Hills, Ontario)	E. Graham	E. Graham		
District 11 (Barstow, Big Bear, Needles, Twentynine Palms, Yucca Valley)	B. Jahn	B. Jahn		
District 65 (Adelanto, Apple Valley, Hesperia, Victorville)	Vacant (G. Coleman)	Vacant (G. Coleman)		
San Bernardino County	G. Ovitt	G. Ovitt		G. Ovitt
SANBAG Acting as County Transportation Commission	A. Wapner	A. Wapner		A. Wapner
SANBAG Subregional Appointees*		Julie McIntyre	Diane Williams	R. McEachron
*One appointee to each policy committee for a total of three appointees per subregion, plus one additional appointee for every SCAG District over three in the subregion. SANBAG has a total of seven subregional appointees to the policy committees.		Vacant (Mike Leonard)	Vacant (E. Scott)	Vacant (A. Wapner)
		Ray Musser		

**Rules of Appointment**

1. SANBAG policy stipulates that all SANBAG appointees be SANBAG Board Members.
2. SCAG President appoints Regional Council members to Standing and Policy Committees.

**Terms of Appointment**

Terms of appointment are two years, commencing on adjournment of the annual General Assembly in May of each year. Even-numbered District representatives' terms expire in even-numbered years; odd-numbered District representatives expire in odd-numbered years.

**Stipend Summary**

SCAG Regional Council members receive a \$120 stipend for attendance and travel to SCAG sponsored meetings. Regional Council members may also receive reimbursement for public transit expenses or a mileage reimbursement. Parking is validated at SCAG's downtown Los Angeles office for RC members. RC members are eligible to receive up to six (6) per diem stipends per month. Both RC members and Subregional Appointees, if eligible, may receive reimbursement (\$150 + taxes) for lodging (please review SCAG rules before making expenditure). Subregional Appointees shall receive a \$120 stipend for up to four Policy or Task Force meetings per month.

**Meeting Information**

The regular meetings of SCAG Regional Council and Policy Committees are on the 1<sup>st</sup> Thursday of each month at the SCAG offices located at 818 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor in Los Angeles. Generally, the Policy Committee meetings start at 10 AM and Regional Council meetings start at 12:15 PM.

**Policy Committees**

**Community, Economic, and Human Development:** Provides policy recommendations to the Regional Council on subjects of housing, land use, resource, economic, community development, infrastructure, employment, and regional disaster preparedness issues. Reviews and recommends to the Planning Committee revisions to the Housing, Economy, Growth Management, Human Resources, and Finance Chapters of the Regional Comprehensive Plan and Guide.

**Energy and Environment:** Acts as the policy advisory committee to the Regional Council on environmental issues, including air and water, hazardous, solid waste management, natural resources conservation, and energy conservation. Reviews the Environmental Impact Report of the Regional Comprehensive Plan and Guide. Provides recommendations to the Planning Committee on state and federal legislative proposals and administrative guidelines affecting environmental quality, resource conservation.

**Transportation and Communications:** Acts as the policy advisory committee to the Regional Council on all regional matters pertaining to the movement of goods and people on land, water, and air. Reviews and recommends to the Regional Council all major utility development plans. Addresses the location, size, or capacity, timing, and impact of facilities.

## SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p><b>General Policy Committee</b></p> <p>Membership consists of the following:                      SANBAG President, Vice President, and Immediate Past President                      4 East Valley (3 City, 1 County)                      4 West Valley (3 City, 1 County)                      4 Mt/Desert (3 City, 1 County)</p> <p>City members shall be SANBAG Board Members elected by caucus of city SANBAG Board Members within the subarea.</p> <p>All Policy Committee and Board Study Session Chairs are included in this policy committee.</p> <p>All City members serving as Board officers, Committee chairs, or Board Study Session Chair, are counted toward their subareas City membership.</p> <p>Supervisors collectively select their representatives. The SANBAG Vice President shall serve as Chair of the General Policy Committee.</p>	<p>Makes recommendations to Board of Directors and:</p> <p>(1) Provides general policy oversight which spans the multiple program responsibilities of the organization and maintains the comprehensive organization integrity;</p> <p>(2) Provides policy direction with respect to administrative issues, policies, budget, finance, audit, and personnel issues for the organization;</p> <p>(3) Serves as policy review committee for any program area that lacks active policy committee oversight.</p> <p>Committee has authority to approve contracts in excess of \$25,000 with notification to the Board of Directors.</p>	<p>Mike Leonard, Hesperia, Vice President (Chair)                      Janice Rutherford, Supervisor, President (Vice Chair)                      Larry McCallon, Highland, Past President</p> <p><u>West Valley</u>                      L. Dennis Michael, Rancho Cucamonga                      Ed Graham, Chino Hills                      Dennis Yates, Chino                      Gary Ovitt, Supervisor</p> <p><u>East Valley</u>                      Pat Morris, San Bernardino (Chair - CRTC)                      Richard Riddell, Yucaipa (Chair - MPC)                      James Ramos, Supervisor</p> <p><u>Mountain/Desert</u>                      Julie McIntyre, Barstow (Chair - MDC)                      Jim Harris, Twentynine Palms                      Robert Lovingood, Supervisor</p>	<p>6/30/2013                      6/30/2013                      6/30/2013</p> <p>6/30/2013                      6/30/2013                      6/30/2013                      6/30/2013</p> <p>6/30/2013                      6/30/2013                      6/30/2013</p> <p>6/30/2013                      6/30/2013                      6/30/2013</p>
<p><b>Commuter Rail &amp; Transit Committee</b></p> <p>Membership consists of 11 SANBAG Board Members:</p> <p>9 Valley-members, two being Southern California Regional Rail Authority (SCRRA) primary (*) and two being SCRRA alternate (**) members.</p> <p>2 Mountain/Desert Board Members who serve on the Board of a Mountain/Desert transit agency.</p> <p>SCRRA members and alternates serve concurrent with their term on the SCRRA Board of Directors as appointed by the SANBAG Board.</p> <p>Other members are appointed by the SANBAG President for 2-year terms.</p>	<p>Provides policy guidance and recommendations to the SANBAG Board of Directors and Southern California Regional Rail Authority (SCRRA) delegates with respect to commuter rail and transit service.</p> <p>* SCRRA Primary Member                      ** SCRRA Alternate Member</p>	<p>Pat Morris, San Bernardino* (Chair)                      Paul Eaton, Montclair* (Vice Chair)                      Pete Aguilar, Redlands                      Bill Jahn, Big Bear Lake                      Mike Leonard, Hesperia                      Larry McCallon, Highland**                      L. Dennis Michael, Rancho Cucamonga                      Ray Musser, Upland                      James Ramos, Supervisor                      Richard Riddell, Yucaipa                      Alan Warner, Ontario**</p>	<p>Indeterminate (6/30/2013)                      Indeterminate (6/30/2013)                      12/31/2014                      12/31/2013                      12/31/2013                      Indeterminate                      12/31/2013                      12/31/2013                      12/31/2014                      12/31/2014                      Indeterminate</p>

### SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p><b>Mountain/Desert Committee</b>                      Membership consists of 11 SANBAG Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, Second, and Third Districts.</p>	<p>Provides ongoing policy level oversight related to the full array of SANBAG responsibilities as they pertain specifically to the Mountain/Desert subregion.                      The Committee also meets as the Mountain/Desert Measure I Committee as it carries out responsibilities for Measure I Mountain/Desert Expenditure Plan.</p>	<p>Julie McIntyre, Barstow (Chair)                      Edward Paget, Needles (Vice Chair)                      Jim Harris, Twentynine Palms                      George Huntington, Yucca Valley                      Bill Jahn, Big Bear Lake                      Mike Leonard, Hesperia                      Robert Lovingood, Supervisor                      Ryan McEachron, Victorville                      James Ramos, Supervisor                      Vacant, (Rick Roelle) Apple Valley                      Janice Rutherford, Supervisor                      Cari Thomas, Adelanto</p>	<p>Indeterminate (6/30/2013)                      Indeterminate (6/30/2013)                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate                      Indeterminate</p>

**Policy Committee Meeting Times**

- General Policy Committee      Second Wednesday, 9:00 a.m., SANBAG Office
- Commuter Rail & Transit Committee      Third Thursday, 12:00 noon, SANBAG Office
- Mountain/Desert Committee      Third Friday, 9:30 a.m., Apple Valley

NOTE: Policy Committee meetings will not be held in July of each year (effective 9/5/12).

### Board of Directors Study Sessions for Metro Valley Issues

STUDY SESSION	PURPOSE	MEMBERSHIP	TERMS
<p>Board of Directors Study Sessions for Metro Valley Issues                      Refer to SANBAG Policy 10007.</p>	<p>To review, discuss, and make recommendations for actions to be taken at regular meetings of the Board on issues relating to Measure I Projects in the Valley.</p>	<p>Board of Directors                      Dick Riddell, Yucapa (Chair)                      Michael Tahan, Fontana (Vice Chair)</p>	<p>6/30/2013                      6/30/2013</p>

Meeting Time: Second Thursday, 9:00 a.m., SANBAG Office

## SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
<p><b>Audit Subcommittee of the Administrative Committee</b>                      In November 2008, the Board approved the creation of an Audit Subcommittee of the Administrative Committee to strengthen the financial oversight function of the Board. Additional SANBAG Board Members may be appointed annually at the discretion of the Board President.</p>	<p>The responsibilities of the Audit Subcommittee shall be to:</p> <ul style="list-style-type: none"> <li>• Provide a direct contact between the independent auditor and the Board of Directors before, during and after the annual audit.</li> <li>• Work with the auditor and SANBAG staff on reviewing and implementing practices and controls identified in the annual audit.</li> </ul>	<p>Audit Subcommittee (for FY 2011-2012 Audit)                      - SANBAG President – Janice Rutherford, Supervisor                      - Vice President – Mike Leonard, Hesperia                      - Immediate Past President – Larry McCallon, Highland                      - Presidential Appointment – Walt Stanckiewicz, Grand Terrace</p>
<p><b>Ad Hoc Committee on Litigation with San Bernardino County Flood Control District</b>                      In January 2007, the SANBAG President was authorized to appoint an ad hoc review committee of SANBAG Board Members who do not represent local jurisdictions party to the San Bernardino County Flood Control District vs. SANBAG litigation relative to the Colonies Development. In April 2008; the role of this committee was expanded to include the Cactus Basin litigation.</p>	<p>Reviews and provides guidance on litigation with San Bernardino County Flood Control District regarding the Colonies Development and the Cactus Basin in Rialto.</p>	<p>Pat Morris, San Bernardino, Chair                      Richard Riddell, Yucaipa                      Larry McCallon, Highland</p>
<p><b>Contracting Process</b>                      In July 2012, the SANBAG Board President appointed this ad hoc committee to strengthen SANBAG's procurement policies and procedures.</p>	<p>Reviews SANBAG's contracting policies and procedures and makes recommendations to improve them.</p>	<p>Michael Taham, Fontana - Chair                      Robert Lovingood, Supervisor                      Julie McIntyre, Barstow                      Walt Stanckiewicz, Grand Terrace                      Dennis Yates, Chino                      Alan Wapner, Ontario</p>
<p><b>Bylaws</b>                      In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's bylaws and recommend changes to strengthen SANBAG's corporate governance</p>	<p>Reviews SANBAG's bylaws and make recommendations to the Board on any necessary changes.</p>	<p>Rhodes "Dusty" Rigsby, Loma Linda - Chair                      Pat Morris, San Bernardino                      Mike Leonard, Hesperia                      Larry McCallon, Highland</p>
<p><b>Budget Process</b>                      In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's budget preparation process and final budget document and make recommendations to help improve communication and transparency of SANBAG's budget to elected officials and the general public.</p>	<p>Reviews SANBAG's budget adoption process and final budget document and make recommendations on changes to improve the process and the final budget document to make them more useful and informative to Board Members and the public.</p>	<p>Pete Aguilar, Redlands - Chair                      Kevin Ryan - Principal Transportation Planner, City of Fontana                      Sam Racadio – Council Member, City of Highland                      Mike Podegracz, P.E. – City Manager, City of Hesperia</p>

### SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
<p><b>Transportation Technical Advisory Committee (TTAC)</b>                      Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Administrative Officer.</p>	<p>SANBAG's Transportation Technical Advisory Committee was formed by SANBAG management to provide input to SANBAG staff on technical transportation-related matters and formulation of transportation-related policy recommendations to the SANBAG Board of Directors.                      The TTAC is not a Brown Act committee.</p>	<p>Generally meets on the first Monday of each month at 1:30 PM, at SANBAG.</p>
<p><b>City/County Manager's Technical Advisory Committee (CCM TAC)</b>                      The committee is made up of up to two representatives of the County Administrator's Office and the city manager or administrator from each city and town in the County.</p>	<p>SANBAG's City/County Manager's Technical Advisory Committee was established in the Joint Powers Authority that established SANBAG. The primary role of the committee is to provide a forum for the chief executives of SANBAG's member agencies to become informed about and discuss issues facing SANBAG. It also provides a forum for the discussion of items of mutual concern and a way to cooperate regionally in addressing those concerns.                      The CCM TAC is a Brown Act Committee.</p>	<p>Meets on the first Thursday of each month at 10:00 AM, at SANBAG.</p>
<p><b>Public and Specialized Transportation Advisory and Coordinating Council (PASTACC)</b>                      Membership consists of 13 members appointed by the SANBAG Board of Directors                      6 representing Public Transit Providers                      1 representing County Dept. of Public Works                      1 representing the Consolidated Transportation Services Agency                      5 representing Social Service Providers</p>	<p>Subject to the Transportation Development Act (TDA) Section 99238 – establishes PASTACC's statutory responsibilities:                      (1) Review and make recommendations to SANBAG on annual Unmet Transit Needs, Federal Transit Administration and Measure I Program applications and reports.                      (2) Assist SANBAG in developing public outreach approach on updating the Coordinated Public Transit/Human Services Transportation Plan and disseminate information in reference to State law and recommendations as they relate to transit and specialized transit.                      (3) Monitor and make recommendations on Federal regulatory processes as they relate to transit and specialized transit.                      (4) Address any special issues of PASTACC voting and non-voting members.                      The PASTACC is a Brown Act committee.</p>	<p>Meets the second Tuesday every other even month at 10:00 AM, at SANBAG.</p>
<p><b>Planning and Development Technical Forum (PDTF)</b>                      Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Chief Executive Officer.</p>	<p>The SANBAG Planning and Development Technical Forum was formed by SANBAG management to provide an opportunity for interaction among planning and development representatives of member agencies on planning issues of multijurisdictional importance.                      The PDTF is not a Brown Act Committee.</p>	<p>Meets the 4th Wednesday of each month at 2:00 p.m. at the Depot (in the SCAG Office).</p>

### SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
<b>Project Development Teams</b>	<p>Project Development Teams (PDTs) are assembled for all major project development activities by SANBAG staff.</p> <p>Teams are generally composed of technical representatives from SANBAG, member jurisdictions appropriate to the project, Caltrans, and other major stakeholder entities that have significant involvement in the project.</p> <p>PDTs make recommendations related to approaches to project development, evaluation of alternatives, and technical solutions.</p> <p>PDTs meet on a regular basis throughout the project phase to review progress and to provide technical input required for project development.</p> <p>The PDTs are not Brown Act Committees.</p>	Varies with the PDT, at SANBAG.

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
TMEE	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
VVTA	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