Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, San Bernardino, CA 92410
Phone: (909) 884-8276 Fax: (909) 885-4407
Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

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

AGENDA

Mountain/Desert Committee

June 21, 2013
9:30 a.m.

Location
Town of Apple Valley
14975 Dale Evans Parkway
Apple Valley, CA

Mountain/Desert Committee Membership

Chair
Julie McIntyre, Mayor
City of Barstow

Vice Chair
Ed Paget, Mayor
City of Needles

Cari Thomas, Mayor
City of Adelanto

Curt Emick, Mayor
Town of Apple Valley

Bill Jahn, Council Member
City of Big Bear Lake

Mike Leonard, Council Member
City of Hesperia

Jim Harris, Council Member
City of Twentynine Palms

Ryan McEachron, Mayor Pro Tem
City of Victorville

George Huntington, Council Member
Town of Yucca Valley

Robert Lovingood
Board of Supervisors

James Ramos
Board of Supervisors

Janice Rutherford
Board of Supervisors

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

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

> ***The San Bernardino County Transportation Commission,*** *which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.*
>
> ***The San Bernardino County Transportation Authority,*** *which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.*
>
> ***The Service Authority for Freeway Emergencies,*** *which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.*
>
> ***The Congestion Management Agency,*** *which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.*
>
> *As a* ***Subregional Planning Agency****, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.*

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

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

AGENDA

Mountain/Desert Committee

June 21, 2013

9:30 a.m.

Location
Town of Apple Valley
14975 Dale Evans Parkway
Apple Valley, CA

CALL TO ORDER:
(Meeting Chaired by: Julie McIntyre)

I. Pledge of Allegiance
II. Attendance
III. Announcements
IV. Agenda Notices/Modifications – Diane Greve

Notes/Actions

1. Possible Conflict of Interest Issues for the Mountain/Desert Committee Meeting of June 21, 2013. **Pg. 7**

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.

Consent Calendar

Consent Calendar items shall be adopted by a single vote unless removed by member request.

2. Attendance Register **Pg. 8**

A quorum shall consist of a majority of the membership of each SANBAG Policy Committee, except that all County Representatives shall be counted as one for the purpose of establishing a quorum.

Notes/Actions

Discussion Items

Administrative Matters

3. Election of Committee Chair and Vice Chair **Pg. 10**

That the Committee conduct elections for members to serve as Chair and Vice Chair of the SANBAG Mountain/Desert Policy Committee for terms to end June 30, 2014. **Andrea Zureick**

This item is not scheduled for review by any other policy committee or technical advisory committee.

Regional/Subregional Planning

4. High Desert Corridor **Pg. 17**

Receive an update on the status of project development for the High Desert Corridor. **Steve Smith**

This item is not scheduled for review by any other policy committee or technical advisory committee.

5. San Bernardino County Regional Greenhouse Gas Inventory and Reduction Plan and Environmental Impact Report (EIR) **Pg. 22**

Receive a presentation on the status of the San Bernardino County Regional Greenhouse Gas Inventory and Reduction Plan and Environmental Impact Report (EIR). **Steve Smith**

This item is also scheduled for review at the Metro Valley Study Session on June 13, 2013. Material in this item also has been reviewed by the Planning and Development Technical Forum (Planning/Community Development Directors) on May 22, 2013 and by the City/County Manager Technical Advisory Committee on June 6, 2013.

Project Delivery

6. Lenwood Road Grade Separation Project Assignment and Assumption Agreement **Pg. 31**

That the Committee recommend the Board:

Approve a new Assignment and Assumption Agreement C13127 between the San Bernardino County Transportation Commission (COMMISSION)) and the City of Barstow (CITY) assigning to and being assumed by COMMISSION the CITY's rights and obligations under the Overpass Agreement between BNSF Railway Company and CITY that are necessary for construction of the Lenwood Road Overpass Structure. **Garry Cohoe**

This item is not scheduled for review by any other Policy Committee or Technical Advisory Committee. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract as to form.

Discussion Items Continued....

Project Delivery (Cont.)

7. Mitigation Agreement for the I-15/I-215 Devore Interchange Reconstruction Project (Devore Interchange) **Pg. 111**

That the Committee recommend the Board acting as the San Bernardino County Transportation Commission:

1. Approve Purchase and Sale agreement with the Riverside-Corona Resource Conservation District based on the standard format in the Attachment "A" for the purchase from Riverside-Corona Resource Conservation District of 8.9 Acres of Enhancement Credits from the Program and authorize payment of $1,361,700 per said agreement for impacts to the Waters of the U.S. that result from activities authorized under section 404 of the Clean Water Act for the Devore Interchange Project upon approval of final agreement language by General Counsel. This purchase will be funded by Measure I 2010-2040 Cajon Pass Funds authorized under previously approved Cooperative Agreement C11103 with the California Department of Transportation.

2. Authorize the Executive Director to execute the purchase and sale agreement for the required waters mitigation based on the form in Attachment "A" upon approval of final language by General Counsel. **Garry Cohoe**

This item is also scheduled for review at the Board Metro Valley Study Session on June 13, 2013. SANBAG Contract Administrator and General Counsel have reviewed this item and a draft of the agreement.

Transportation Fund Administration

8. Major Local Highway Program Allocation, Funding Agreement and Budget Amendment for the Town of Yucca Valley **Pg. 170**

That the Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

1. Approve Allocation of $471,000 in Measure I Morongo Basin Subarea - Major Local Highway Program funds to the Town of Yucca Valley for the State Route 62/Dumosa Avenue Traffic Signal Project.

2. Approve a budget amendment to increase Task No. 0516, Measure I Mt/Desert Apportionment and Allocation, from $9,842,859 to $10,313,859 to be funded with $471,000 of Measure I Morongo Basin Subarea - Major Local Highway Program funds.

3. Approve Funding Agreement C13161 in the amount of $471,000 with the Town of Yucca Valley for the State Route 62/Dumosa Avenue Traffic Signal Project, with $471,000 funded by Measure I Morongo Basin Subarea - Major Local Highway Program funds. **Ellen Pollema**

This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract.

Notes/Actions

Comments from Committee Members

Brief Comments from Committee Members –

Public Comment

Brief Comments by the General Public –

Additional Information

Pg. 182

Acronym List

Complete packages of this agenda are available for public review at the SANBAG offices. Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

ADJOURNMENT:

******REMINDER: No Mountain/Desert Committee meeting in July******

Next Mountain/Desert Committee Meeting – Friday, August 16, 2013

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. 3rd Street, 2nd Floor, San Bernardino, CA.

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

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

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

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

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

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

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

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

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

Basic Agenda Item Discussion.

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

The Vote as specified in the SANBAG Bylaws.

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

Amendment or Substitute Motion.

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

Call for the Question.

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

The Chair.

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

Courtesy and Decorum.

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

Adopted By SANBAG Board of Directors January 2008

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM ___1_____

Date: June 21, 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:

Item No.	Contract No.	Principals & Agents	Subcontractors
		None	

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

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

*

Approved
Mountain Desert Policy Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

*Witnessed:*_____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply.
MDC1306z-aa

AGENDA ITEM #2

MOUNTAIN/DESERT POLICY COMMITTEE ATTENDANCE RECORD – 2013

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Cari Thomas + City of Adelanto	**	X	X	X	X							
Curt Emick Town of Apple Valley	**	X	X	X	X							
Julie McIntyre City of Barstow	**	X	X	X	X							
Bill Jahn City of Big Bear Lake	**	X		X	X							
Mike Leonard City of Hesperia	**	X	X	X								
Ed Paget City of Needles	**	X	X	X	X							
Jim Harris City of Twentynine Palms	**	X	X	X	X							
Ryan McEachron City of Victorville	**	X	X	X								
George Huntington Town of Yucca Valley	**	X	X	X	X*							
Robert Lovingood County of San Bernardino	**	X			X							
Janice Rutherford County of San Bernardino	**											
James Ramos County of San Bernardino	**											

*Non-voting City Representative attended
+ Measure I Committee representative

**The Mountain/Desert Committee did not meet
x*Alternate Attended

*** New SANBAG Board Member

X = Member attended meeting.
MDCatt12.doc

Empty box = Member did not attend meeting

Crossed out box = Not a Board Member at the time.

AGENDA ITEM #2

MOUNTAIN/DESERT POLICY COMMITTEE ATTENDANCE RECORD – 2012

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Cari Thomas + City of Adelanto	X	X	X	X	X	X	X		X	X	**	X
Rick Roelle Town of Apple Valley		X			X			X		X*	**	
Julie McIntyre City of Barstow	X	X			X	X	X		X	X	**	X
Bill Jahn City of Big Bear Lake	X	X	X	X		X	X	X	X	X	**	
Mike Leonard City of Hesperia	X	X	X	X		X	X	X	X	X*	**	X
Ed Paget City of Needles	X	X	X	X	X	X	X	X	X		**	X
Jim Harris City of Twentynine Palms	X	X	X	X	X	X	X	X	X	X	**	
Ryan McEachron City of Victorville	X	X	X	X	X		X	X	X	X	**	X
George Huntington Town of Yucca Valley	X		X	X	X	X	X	X	X		**	X
Brad Mitzelfelt County of San Bernardino		X				X		X	X	X	**	N/A
Janice Rutherford County of San Bernardino		X					X			X	**	
Neil Derry County of San Bernardino	X	X	X	X				X	X	X	**	N/A
Robert Lovingood*** County of San Bernardino												X
James Ramos*** County of San Bernardino												X

*Non-voting City Representative attended
+ Measure I Committee representative

**The Mountain/Desert Committee did not meet
x*Alternate Attended

*** New SANBAG Board Member

X = Member attended meeting.
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TRANSPORTATION MEASURE I

■ 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: June 21, 2013

Subject: Election of Committee Chair and Vice Chair

Recommendation: That the Committee conduct elections for members to serve as Chair and Vice Chair of the SANBAG Mountain/Desert Policy Committee for terms to end June 30, 2014.

Background: Terms for the Chair and Vice Chair of each of the SANBAG policy committees expire on June 30, 2013. Election of Chair and Vice Chair for each of the policy committees is scheduled to immediately follow the annual election of SANBAG Officers, which occurred at the June Board of Directors meeting.

The duties of the Chair include participation in legislative advocacy efforts; serving on the General Policy Committee; representing SANBAG at public events; and representing Policy Committee recommendations at SANBAG Board meetings.

This item provides for an election to be conducted, which will identify the Chair and Vice Chair of the Committee to serve until June 30, 2014. A complete listing of SANBAG policy committees, membership, and chairs is attached to this item for reference.

Financial Impact: This item has no financial impact on the adopted SANBAG Budget.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee.

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

Approved
Mountain/Desert Policy Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply.

MDC1306a-az

http://portal.sanbag.ca.gov/mgmt/committee/desert/mdc2013/mdc1306/AgendaItems/MDC1306a1-az.docx

SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
General Policy Committee 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) City members shall be SANBAG Board Members elected by caucus of city SANBAG Board Members within the subarea. All Policy Committee and Board Study Session Chairs are included in this policy committee. All City members serving as Board officers, Committee chairs, or Board Study Session Chair, are counted toward their subareas City membership. Supervisors collectively select their representatives. The SANBAG Vice President shall serve as Chair of the General Policy Committee.	Makes recommendations to Board of Directors and: (1) Provides general policy oversight which spans the multiple program responsibilities of the organization and maintains the comprehensive organization integrity; (2) Provides policy direction with respect to administrative issues, policies, budget, finance, audit, and personnel issues for the organization; (3) Serves as policy review committee for any program area that lacks active policy committee oversight. Committee has authority to approve contracts in excess of $25,000 with notification to the Board of Directors.	Mike Leonard, Hesperia, Vice President (Chair) Janice Rutherford, Supervisor, President (Vice Chair) Larry McCallon, Highland, Past President <u>West Valley</u> L. Dennis Michael, Rancho Cucamonga Ed Graham, Chino Hills Dennis Yates, Chino Gary Ovitt, Supervisor <u>East Valley</u> Pat Morris, San Bernardino (Chair - CRTC) Richard Riddell, Yucaipa (Chair – MPC) James Ramos, Supervisor <u>Mountain/Desert</u> Julie McIntyre, Barstow (Chair - MDC) Jim Harris, Twentynine Palms Robert Lovingood, Supervisor	6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013
Commuter Rail & Transit Committee Membership consists of 11 SANBAG Board Members: 9 Valley-members, two being Southern California Regional Rail Authority (SCRRA) primary (*) and two being SCRRA alternate (**) members. 2 Mountain/Desert Board Members who serve on the Board of a Mountain/Desert transit agency. SCRRA members and alternates serve concurrent with their term on the SCRRA Board of Directors as appointed by the SANBAG Board. Other members are appointed by the SANBAG President for 2-year terms.	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. * SCRRA Primary Member ** SCRRA Alternate Member	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 Wapner, Ontario**	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

SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Mountain/Desert Committee Membership consists of 11 SANBAG Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, Second, and Third Districts.	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.	Julie McIntyre, Barstow (Chair) Edward Paget, Needles (Vice Chair) Curt Emick, Apple Valley 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 Janice Rutherford, Supervisor Cari Thomas, Adelanto	Indeterminate (6/30/2013) Indeterminate (6/30/2013) Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate

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).

12

Board of Directors Study Sessions for Metro Valley Issues

STUDY SESSION	PURPOSE	MEMBERSHIP	TERMS
Board of Directors Study Sessions for Metro Valley Issues Refer to SANBAG Policy 10007.	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.	Board of Directors Dick Riddell, Yucapa (Chair) Michael Tahan, Fontana (Vice Chair)	 6/30/2013 6/30/2013

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

Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan

COMMITTE	PURPOSE	MEMBERSHIP	TERMS
Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan The ITOC shall provide citizen review to ensure that all Measure I funds are spent by the San Bernardino County Transportation Authority (hereby referred to as the Authority) in accordance with provison of the Expenditure Plan and Ordinance No. 04-01.	The ITOC shall review the annual audits of the Authority; report findings based on the audits to the Authority; and recommend any additional auditfs for consideration which the ITOC believes may improve the financial operation and integrity of program implementation. The Authority shall hold a publicly noticed meeting, which may or may not be included on the agenda of a regularly scheduled Board meeting, with the participation of the ITOC to consider the findings and recommendations of the audits.	Richard Haller Rod Johnson Norman Orfall Craig Scott Larry Sharp Ray Wolfe, Ex-Officio In addition to the appointed members, the SANBAG Executive Director will serve as an ex officio member.	12/31/12 12/31/12 12/31/14 12/31/14 12/31/14

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
Audit Subcommittee of the Administrative Committee 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.	The responsibilities of the Audit Subcommittee shall be to: • Provide a direct contact between the independent auditor and the Board of Directors before, during and after the annual audit. • Work with the auditor and SANBAG staff on reviewing and implementing practices and controls identified in the annual audit.	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 Stanckiewitz, Grand Terrace
Ad Hoc Committee on Litigation with San Bernardino County Flood Control District 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.	Review and provide guidance on litigation with San Bernardino County Flood Control District regarding the Colonies Development and the Cactus Basin in Rialto.	Pat Morris, San Bernardino, Chair Richard Riddell, Yucaipa Larry McCallon, Highland
Bylaws 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	Review SANBAG's bylaws and make recommendations to the Board on any necessary changes.	Rhodes "Dusty" Rigsby, Loma Linda - Chair Pat Morris, San Bernardino Mike Leonard, Hesperia Larry McCallon, Highland
Budget Process 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.	Review 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.	Bill Jahn, City of Big Bear Lake - 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
Contracting Process In July 2012, the SANBAG Board President appointed this ad hoc committee to strengthen SANBAG's procurement policies and procedures.	Review SANBAG's contracting policies and procedures and make recommendations to improve them.	Michael Tahan, Fontana - Chair Robert Lovingood, Supervisor Julie McIntyre, Barstow Walt Stanckiewicz, Grand Terrace Dennis Yates, Chino Alan Wapner, Ontario

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
Omnitrans Comprehensive Operational Analysis In January 2013, the SANBAG Board President appointed this ad hoc committee to work with Omnitrans Board members to review the Comprehensive Operational Analysis (COA) of Omnitrans and to make recommendations based on the COA review.	Review the Comprehensive Operational Analysis of Omnitrans and make recommendations to address projected fiscal shortfalls associated with Omnitrans operations and capital projects.	Janice Rutherford Supervisor Dick Riddell, Yucaipa Alan Wapner, Ontario Pat Morris, San Bernardino Deborah Robertson, Rialto Penny Lilburn , Omnitrans
Right of Way In February 2013, the SANBAG Board President appointed this ad hoc committee	Review Right of Way policies and make recommendations on changes and signature authority limits.	Curt Emick, Apple Valley James Ramos, Supervisor Deborah Robertson, Rialto Michael Tahan, Fontana
Legislative In March 2013, the SANBAG Board President appointed this ad hoc committee. This committee will consist of the SANBAG Board Officers.	Review proposed legislation at the state and federal level. Provide direction to staff on positions consistent with the Board-adopted legislative platform.	SANBAG President – Janice Rutherford, Supervisor SANBAG Vice President – Mike Leonard, Hesperia SANBAG Immediate Past President – Larry McCallon, Highland

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
Transportation Technical Advisory Committee (TTAC) Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Administrative Officer.	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.	Generally meets on the first Monday of each month at 1:30 PM, at SANBAG.
City/County Manager's Technical Advisory Committee (CCM TAC) 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.	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.	Meets on the first Thursday of each month at 10:00 AM, at SANBAG.
Public and Specialized Transportation Advisory and Coordinating Council (PASTACC) 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	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.	Meets the second Tuesday every other even month at 10:00 AM, at SANBAG.
Planning and Development Technical Forum (PDTF) Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Chief Executive Officer.	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.	Meets the 4th Wednesday of each month at 2:00 p.m. at the Depot (in the SCAG Office).

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
Project Development Teams	Project Development Teams (PDTs) are assembled for all major project development activities by SANBAG staff. 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. PDTs make recommendations related to approaches to project development, evaluation of alternatives, and technical solutions. PDTs meet on a regular basis throughout the project phase to review progress and to provide technical input required for project development. The PDTs are not Brown Act Committees.	Varies with the PDT, at SANBAG.

Governments SANBAG Working Together

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ 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: June 21, 2013

Subject: High Desert Corridor

Recommendation:* Receive an update on the status of project development for the High Desert Corridor

Background: An update on the High Desert Corridor was last provided to the Mountain/Desert Committee on March 15, 2013. One of the purposes of that update was to replace the earmark funds originally programmed on the High Desert Corridor, but were programmed and reallocated to Victorville's Green Tree Boulevard Extension Project, which is part of the Yucca Loma Corridor. The SANBAG Board subsequently re-allocated $3,947,535 in Measure I Major Local Highways Program (MLHP) originally designated for Green Tree Boulevard to the High Desert Corridor project development effort.

The purpose of this agenda item is to provide an update of progress on the High Desert Corridor project development effort, being managed by the Los Angeles County Metropolitan Transportation Authority (Metro), with work being performed under a contract with Caltrans. An update on the High Desert Corridor is being provided in June to the Metro board by their staff.

The environmental clearance of the 63-mile High Desert Corridor between State Route (SR) 14 in Los Angeles County and SR-18/Bear Valley Road in San Bernardino County is included in Metro's Long Range Transportation Plan (LRTP) and Southern California Association of Governments' (SCAG) Regional

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Approved
Mountain/Desert Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

MDC1306a-ss

http://portal.sanbag.ca.gov/mgmt/committee/desert/mdc2013/mdc1306/AgendaItems/MDC1306a1-ss.pdf

Transportation Plan (RTP). A conceptual diagram of the Corridor is provided in Attachment 1. The Project is also part of Metro's Measure R Accelerated Highway Program, from which funding is provided to the Project. The scope of the Project Approval and Environmental Document (PA & ED) work contained in the funding agreement between Metro and Caltrans includes a project report, alternative analyses, technical assessments, modeling, conceptual and preliminary engineering, and a Draft and Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

Thirteen partner agencies meet on a periodic basis for the development of the PA & ED. These partner agencies include Metro, Caltrans Districts 7 and 8, High Desert Corridor Joint Powers Authority (JPA), SANBAG, SCAG, Cities of Lancaster, Palmdale, Adelanto, Victorville, Town of Apple Valley, and the Counties of Los Angeles and San Bernardino. Supervisor Robert Lovingood and Victorville Mayor Pro Tem Ryan McEachron sit on the JPA Board for San Bernardino County.

Currently, the project has $30 million in Measure R funds from Metro and $15.5 million in grand-fathered Regional Improvement Program (RIP) funds from Caltrans District 7. The City of Victorville and the High Desert Corridor JPA were granted $16.4 million in Federal Demonstration funds for the environmental clearance work. This includes the previously referenced $3.9 in funds that has been provided from the San Bernardino County side.

The following items identify the recent activities and progress on the PA & ED for Project:

- In November and December 2012, Metro and Caltrans hosted two elected official briefings and four public meetings for the Project. A total of 334 attendees (in person and online) participated in the outreach meetings that covered communities in Los Angeles and San Bernardino Counties. The outreach meetings provided a Project update and introduced new Project components, including the incorporation of a high speed rail feeder system (Xpress West), a bike facility, and possible energy production/transmission facilities.

- Staff is preparing for public outreach meetings in July 2013 and will include updates to the Purpose and Need, alternatives, preliminary findings on the Rail Alternative Analysis, schedule and the environmental process.

- The Purpose and Need was updated to reflect the motion approved on March 22, 2012 for a Strategic Multipurpose Corridor.

- Metro staff facilitated a site visit for Karen Hedlund, Federal Railroad Administration (FRA)'s Deputy Administrator, and provided an overview of the Project's needs, objectives, constraints, and potential impacts. The FRA officially became a Cooperating Agency for the development of the EIS.

- Conceptual and preliminary engineering continues for a wye rail connection in the city of Palmdale, vehicle access from Palmdale Boulevard to the Project's highway alignment and the bicycle facility extending to the Palmdale Transportation Center.

- There is a continued effort for the development of the National Environmental Policy Act (NEPA) 404 Coordination which requires participation from the United States (US) Environmental Protection Agency, US Army Corps of Engineers and US Fish and Wildlife Services. The NEPA 404 Coordination includes on-going efforts for the development of the Purpose and Need, identification of alternatives, the preliminary least environmentally damaging practicable alternative and Conceptual Mitigation Plan.

- The project design team identified an alternative alignment around the Federal Correctional Institution in Victorville due to Right-of-Way (ROW) constraints between the prison and the Southern California Logistics Airport (SCLA) with the inclusion of the rail component. The proposed alternative would bypass the prison to the south and impact existing and future proposed development within the City of Victorville. Victorville expressed support for the original alignment along the existing Air Expressway corridor, and the project team has continued to refine the design to ensure the project could fit within the constrained ROW between the prison and SCLA. Metro and the project team continue to coordinate with the Victorville Federal Correctional Complex to ensure sufficient ROW clearance will be available along the proposed High Desert Corridor alignment. Improvements to existing prison access and relocation of infrastructure may be required to satisfy project ROW requirements.

- The project team continues to coordinate with the Xpress West High Speed Rail system with respect to connectivity to the proposed Victorville station and design considerations for extension of high speed rail westerly along the High Desert Corridor to Palmdale. Metro will be sharing the most recent rail alignment designs for local jurisdiction review in June. The design has considered ways to avoid interference with the rail spur to SCLA.

- The project team continues to evaluate potential archeological impacts between SCLA and the I-15 corridor.

- Tolling of the High Desert Corridor facility continues to be assumed west of US 395 to Palmdale. Local jurisdictions continue to support the assumption

that tolling will not occur east of US 395. Funding of these segments is acknowledged to be a major challenge.

- Efforts will be made to integrate the bike component of the High Desert Corridor project with the existing and proposed active transportation facilities in the Antelope and Victor Valleys.
- The current plan terminates the High Desert Corridor freeway facility east of I-15 at Choco Road in the Town of Apple Valley then transitioning to an at-grade expressway that will continue easterly to SR-18/Bear Valley Road. The objective is to maintain an expanded ROW for a future ultimate facility.
- A request was made at the April 10, 2013 High Desert Corridor JPA Board meeting to increase the environmental ROW clearance between SR-14 and 100th Street from 300' to 500'. Staff is working towards the necessary work to expand the ROW and analyze the potential effect to the budget and schedule. Coordination has also been initiated to obtain a commitment from Los Angeles World Airports for the additional environmental ROW clearance.
- Expansion of the environmental ROW clearance in the City of Palmdale will require an additional three months to conduct the necessary biological surveys and technical assessments. The additional three months have been included in the schedule below:
    - Rail Alternative Analysis – July 2013
    - Technical Studies – October 2013
    - Draft PA & ED – March 2014
    - Public Hearings – April 2014
    - Final PA & ED – December 2014

NEXT STEPS

Metro and Caltrans staff will continue working on the environmental clearance for the Project. As work progresses on the Project, staff will provide updates to the Board periodically. The feasibility of the project will ultimately be determined by the willingness of the private sector to assume responsibility and risk for much of its construction under a Public/Private Partnership (P3).

Financial Impact: This item has no impact to the SANBAG Fiscal Year 2012/2013 Budget.

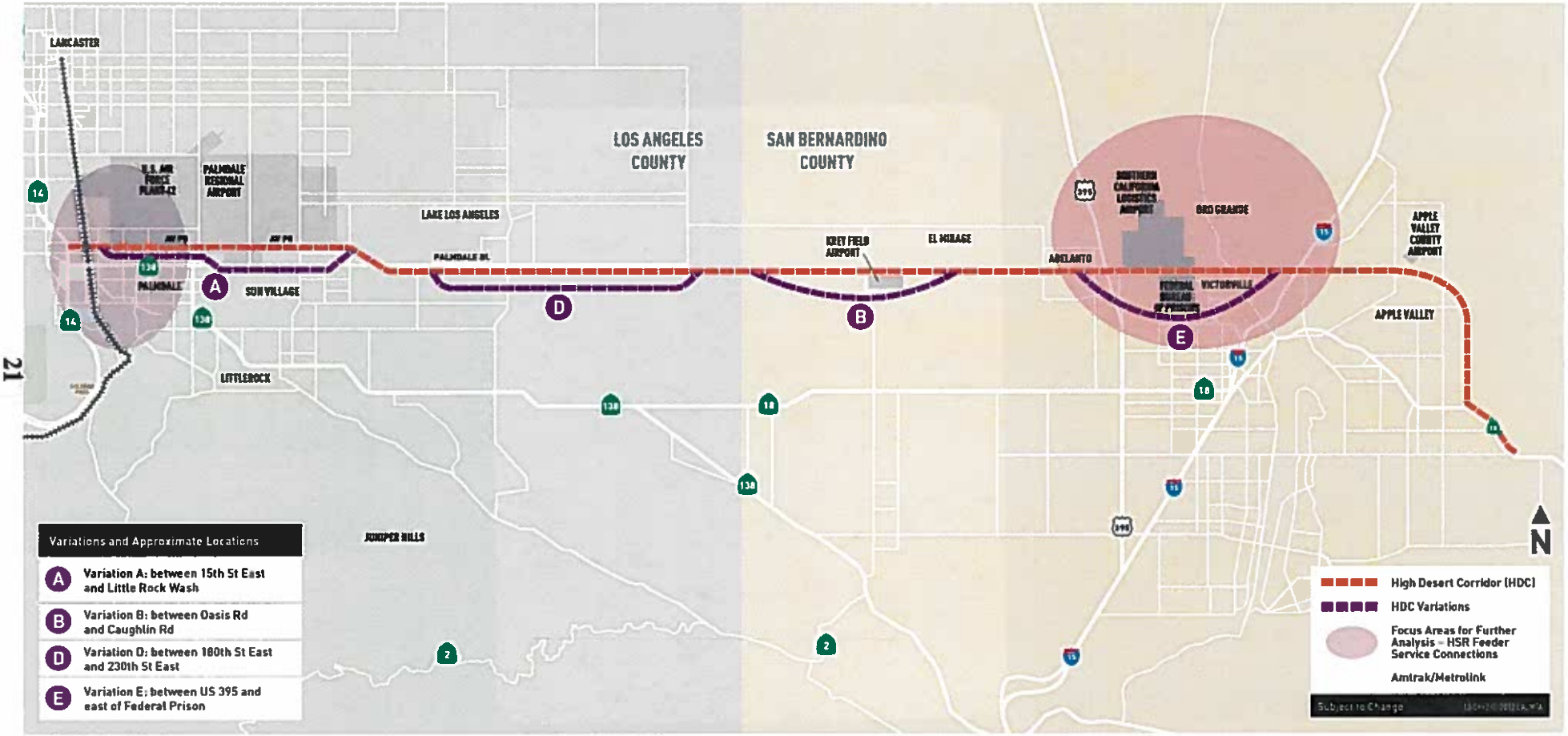
Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff: Steve Smith, Director of Planning

MDC1306a-ss

ATTACHMENT 1

High Desert Corridor



Metro

MDC1306a1–ss

Caltrans

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TRANSPORTATION MEASURE I

■ 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: June 21, 2013

Subject: San Bernardino County Regional Greenhouse Gas Inventory and Reduction Plan and Environmental Impact Report (EIR)

Recommendation:* Receive a presentation on the status of the San Bernardino County Regional Greenhouse Gas Inventory and Reduction Plan and Environmental Impact Report (EIR).

Background: In 2006, the California legislature passed Assembly Bill (AB) 32. The law establishes a limit on greenhouse gas (GHG) emissions for the state of California to reduce state-wide emissions to 1990 levels by 2020. The law directed the California Air Resources Board (CARB) to develop a plan (AB 32 Scoping Plan) that charts a path towards the GHG reduction goal using all technologically feasible and cost effective means. The AB 32 Scoping Plan recommends that California cities and counties seek to reduce their GHG emissions consistent with statewide reductions. Senate Bill (SB) 375, passed in 2008, requires regional transportation planning to promote reductions in passenger and light duty vehicle GHG emissions.

In response to these initiatives, an informal project partnership, led by SANBAG, is cooperating in compiling an inventory of GHG emissions and an evaluation of reduction measures that could be adopted by the 21 Partnership cities within San Bernardino County. The 21 cities participating in this project are Adelanto,

*

Approved
Mountain/Desert Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC		CTA		SAFE		CMA	

Check all that apply.

MDC1306b-ss
http://portal.sanbag.ca.gov/mgmt/committee/desert/mdc2013/mdc1306/AgendaItems/MDC1306b1-ss.pdf

Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Hesperia, Highland, Loma Linda, Montclair, Needles, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Twentynine Palms, Victorville, Yucaipa, and Yucca Valley. There were a number of reasons for conducting this effort collaboratively for multiple cities, including the economies of scale as well as greater consistency in terminology and methodology among jurisdictions. Because SANBAG is leading this effort, SANBAG is serving as the Lead Agency under the California Environmental Quality Act (CEQA).

The County of San Bernardino (County) adopted a GHG Reduction Plan for unincorporated areas of San Bernardino County that includes a set of GHG inventories and reduction measures. This project builds upon the work completed by the County with specific GHG inventories and proposed reduction measures for the 21 participating cities. The consultant preparing the Reduction Plan is ICF Jones and Stokes, Inc. The EIR is being prepared by Atkins North America, Inc. These two firms were also involved in preparation of the GHG Plan for the County of San Bernardino.

Each of the 21 participating cities has worked extensively with the consulting team to craft a GHG reduction plan that is consistent with its local jurisdiction goals and policies. Each of the cities has identified its own GHG reduction target and GHG measures designed to reach that target. These are reflected in the SANBAG GHG Plan.

There are a number of benefits to local jurisdictions of preparing a greenhouse gas reduction plan, including the following:

- Assessment of all GHG emission sources comprehensively and consistently instead of individually for different projects.
- Economies of scale allowing comprehensive assessment of all GHG emission sources at significantly lower costs to each participating city.
- Streamlining of project approvals and CEQA by providing for "tiering" from a local reduction plan and its associated CEQA document.
- Strategic evaluation of overall GHG emissions reductions measures, including reduction effectiveness, costs and savings, and other community co-benefits, such as improved air quality.
- Selection of feasible and cost-effective means to reduce GHG emissions including many that can save money for municipal governments, businesses, individuals, and the community as a whole.
- Identification of the local role in reducing GHG emissions in light of larger state efforts.
- Identification of credit for prior and ongoing city actions.
- Local control of GHG emission reductions and CEQA thresholds

A Notice of Preparation (NOP) of the EIR for the GHG Reduction Plan was issued on November 9, 2012, and a public scoping meeting was held on November 28. The NOP is provided as an attachment to this agenda item and contains more information about the Plan. Each of the 21 cities has the option to use the information in the Plan and EIR to prepare its own Climate Action Plan (CAP), which it would develop and adopt subsequent to the completion of SANBAG's Plan and EIR.

A draft of the San Bernardino County Greenhouse Gas Inventory and Reduction Plan is scheduled for public release in late June 2013. The draft EIR is planned for public release in mid to late July. The release of the EIR will initiate a 45-day review and comment period, after which the EIR will be finalized and responses to comments will be prepared. SANBAG will adopt portions of the Plan that represent the agency's responsibilities and will certify the EIR. This action is projected to occur in Fall 2013, after which each jurisdiction will pursue the course it considers appropriate for its circumstances.

Michael Hendrix, with Atkins North America and consultant for the EIR, will provide a presentation on the Plan and EIR and will be available for questions.

Financial Impact: This item is consistent with the adopted FY 2012-2013 budget, Task 0495. The Greenhouse Gas Reduction Plan and EIR are being funded primarily from contributions from the 21 participating cities, Council of Governments dues, and Measure I 1990-2010 Transportation Management and Environmental Enhancement funds.

Reviewed By: This item is also scheduled for review at the Metro Valley Study Session on June 13, 2013. Material in this item also has been reviewed by the Planning and Development Technical Forum (Planning/Community Development Directors) on May 22, 2013 and by the City/County Manager Technical Advisory Committee on June 6, 2013.

Responsible Staff: Steve Smith, Director of Planning

MDC1306b-ss

San Bernardino Associated Governments

NOTICE OF PREPARATION

Governments SANBAG Working Together

DATE: November 9, 2012

FROM: San Bernardino Associated Governments (SANBAG), Department of Planning, 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410-1715

TO: Interested Agencies, Organizations, and Individuals

SUBJECT: Notice of Preparation of an Environmental Impact Report

PROJECT TITLE: San Bernardino County Regional Greenhouse Gas Inventory and Reduction Plan

An environmental review of the San Bernardino County Regional Greenhouse Gas Inventory and Reduction Plan ("Project") must be conducted under the California Environmental Quality Act ("CEQA") because implementation of reduction measures as part of the Project will require discretionary approvals from state and local agencies, which will result in physical changes within the Project Area. As Lead Agency for CEQA for the preparation of the Environmental Impact Report ("EIR"), SANBAG issues this Notice of Preparation ("NOP") for the proposed Project in San Bernardino County, California. This NOP provides a description of the Project and solicits comments from responsible agencies, trustee agencies, federal, state, and local agencies and the general public, on the scope and content of the EIR. Comments received in response to this Notice will be reviewed and considered by SANBAG in preparation of the EIR. Due to time limits, as defined by CEQA, responses should be sent at the earliest possible date, but no later than December 14, 2012. SANBAG needs to know the views of interested agencies as to the environmental information that is germane to those agencies' statutory responsibilities in connection with the Project.

Comments and questions may be directed to Steve Smith, Director of Planning, SANBAG Planning Department: 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410-1715,
Or by email to ssmith@sanbag.ca.gov

Please include in your response the name, phone number, and address of the contact person for the responding agency.

A Scoping Meeting will be held on Wednesday November 28, 2012 4-6 pm at the Southern California Association of Governments (SCAG) office 1170 West Third Street, 1st Floor, San Bernardino, CA

Oral and written comments will be accepted during the Scoping Meeting.

PROJECT BACKGROUND

In 2006, the California legislature passed Assembly Bill (AB) 32. The law establishes a limit on greenhouse gas (GHG) emissions for the state of California to reduce state-wide emissions to 1990 levels by 2020. The law directed the California Air Resources Board (CARB) to develop a plan (AB 32 Scoping Plan) that charts a path towards the GHG reduction goal using all technologically feasible and cost effective means. The AB 32 Scoping Plan recommends that California cities and counties seek to reduce their GHG emissions consistent with statewide reductions. Senate Bill (SB) 375, passed in 2008, requires regional transportation planning to promote reductions in passenger and light duty vehicle GHG emissions. In response to these initiatives, an informal project partnership, led by SANBAG, is cooperating in compiling an inventory of GHG emissions and an evaluation of reduction measures that could be adopted by the 21 Partnership cities within San Bernardino County. The 21 Partnership cities participating in this Project are Adelanto, Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Hesperia, Highland, Loma Linda, Montclair, Needles, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Twentynine Palms, Victorville, Yucaipa, and Yucca Valley. Because SANBAG is leading this effort, SANBAG is the Lead Agency under CEQA. The County of San Bernardino (County) adopted a GHG Reduction Plan for unincorporated areas of San Bernardino County that includes a set of GHG inventories and reduction measures. This Project builds upon the work completed by the County with specific GHG inventories and proposed reduction measures for the 21 Partnership cities.

PROJECT DESCRIPTION

Environmental Setting

The Project is a plan for the reduction of GHG emissions within San Bernardino County. As such, the Project site includes the entire County, which occupies approximately 20,100 square miles. San Bernardino County is located within Southern California (Figure 1, Regional Location Map). The twenty-one Partnership cities are located throughout San Bernardino County (Figure 2, Project Area).

The informal partnership led by SANBAG began in January of 2010 and the GHG inventories initiated that same year. The year 2008 was chosen as the baseline year for the Project because that was the most recent year a complete data set of GHG emission sources was available at the time the inventory was initiated and was consistent with the County's baseline year. The population of the 21 Partnership cities was 1,562,363 with an employment base of 596,744 jobs and 455,595 households in 2008. Total GHG emissions, excluding stationary sources, associated with the activities of the population and jobs of all Partnership cities in 2008 were 12,858,269 metric tons of carbon dioxide equivalents (MTCO2e).

Plan Purpose, Project Goals, and Description

The Purpose of the Plan is to reduce GHG emissions within the region. To fulfill that purpose, the Partnership has committed to undertake the following actions that will reduce GHG emissions associated with its regional (or countywide) activities as a whole:

1. Prepare a current year (2008) GHG emissions inventory for each of the 21 Partnership cities in the County.

2. Prepare a future year (2020) GHG emissions forecasts for each of the cities.

3. Develop a tool for each city to develop its municipal inventory (i.e., emissions due only to the city's municipal operations and sometimes referred to as municipal inventory) and municipal reduction plan.

4. Develop GHG reduction targets and measures, and City selection of targets and measures appropriate for each jurisdiction. The GHG reduction measures provide the mechanisms that will reduce GHG emissions regionally and within each city. Note that the comprehensive list below shows all GHG reduction measures under consideration. Each city is determining for themselves which GHG reduction measures will achieve the reduction target for their jurisdiction. The Candidate GHG reduction measures under consideration by the Partnership cities include:

- Implementation of the Sustainable Community Strategy in land use design and location,
- Smart Bus Technologies for local transit,
- Energy efficiency retrofits for existing buildings,
- Energy efficient outdoor lighting for commercial and industrial uses,
- Green Building Ordinance,
- Solar installation for new housing,
- Solar installation for new commercial/industrial uses,
- Solar energy for warehouse/logistics facilities,
- Solar installation retrofits for existing housing,
- Solar installation retrofits for existing commercial/industrial uses,
- Renewable Co-generation facilities,
- Carbon sequestration through urban forestry enhancements,
- Green roofs and rooftop gardens,
- Energy efficient equipment upgrades at wastewater treatment facilities,
- Methane capture and recovery systems at wastewater treatment faculties,
- Recycled water systems,
- Voluntary CALGREEN water conservation design in new buildings,
- Water efficient retrofits of existing buildings,
- Water efficient landscaping practices,
- Construction equipment Idling Restriction Ordinance,
- Landscaping equipment efficiency,
- GHG Performance Standards for new development.

The anticipated GHG reductions of the measures being chosen by each city is quantified for year 2020 and included in the projected 2020 Reduced GHG emission inventories to demonstrate achievement of the reduction targets.

5. Develop "the basis for" community climate action plans (CAPs) for each jurisdiction meeting jurisdiction identified reduction goals.

This San Bernardino County Regional Greenhouse Gas Reduction Plan (Plan) satisfies the Partnership goals 1, 2, 4 and 5 listed above. A tool for inventorying municipal GHG emissions and planning for their reduction was developed and provided to the Partnership cities separately in 2011.

The Project Goals include:

- Determine feasible GHG reduction measures for each Partnership City that fulfill the reduction targets cost effectively;
- Provide GHG reductions that build upon and are complementary to the GHG reductions implemented by the State and County;
- Provide a collaborative planning process that accounts for and facilitates the SANBAG administered programs that will reduce GHG emissions within each of the Partnership cities;
- Provides regional support for each Partnership City in the reduction of GHG emissions;
- Provide foundational data, analysis and planning that can be used by each Partnership City in the development of their own Climate Action Plan (CAP) that fulfills the requirements of CEQA Guidelines §15183.5.

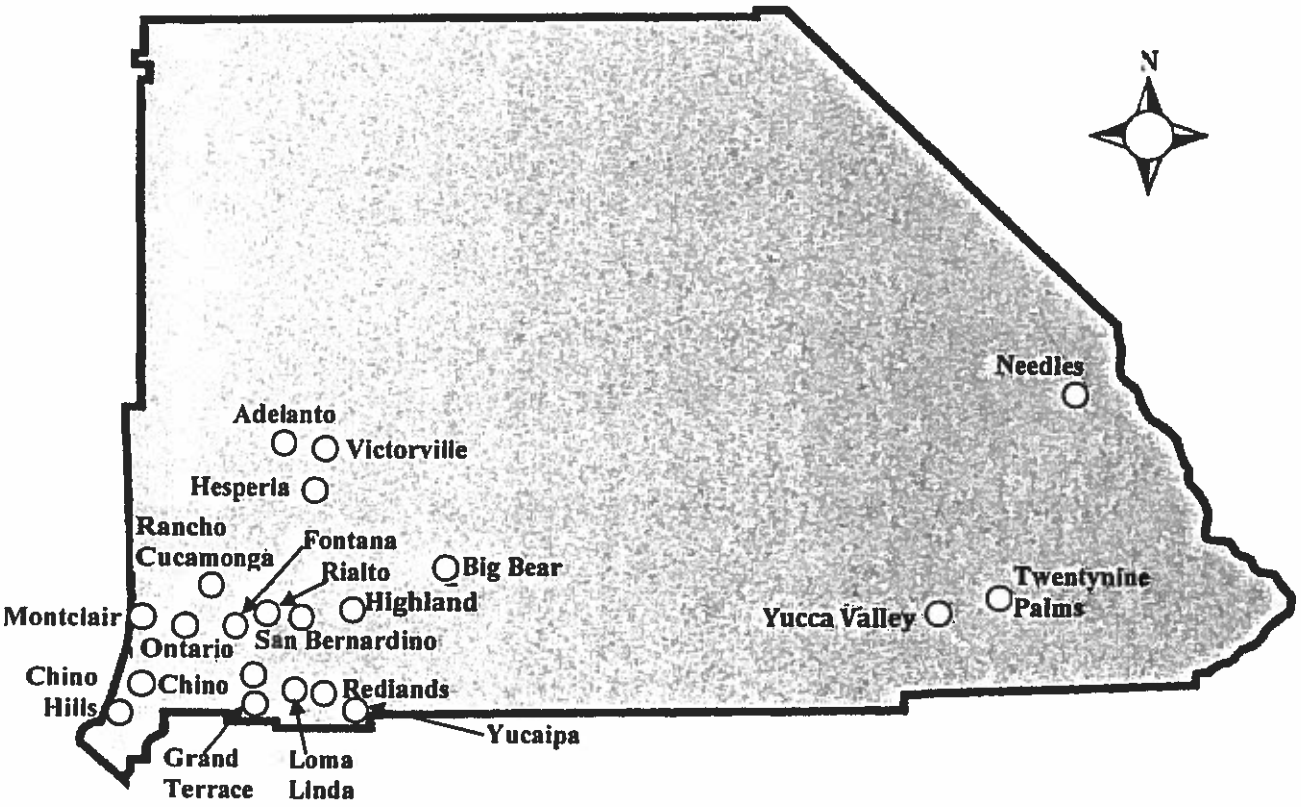
To fulfill these goals, the Project includes the actions that each city has selected in order to reduce GHG emissions, state-mandated actions, GHG emissions avoided in 2020 associated with each local and state action, and each city's predicted progress towards their selected GHG reduction goal. Within the Plan each city has its own section which details the city's 2008 GHG emissions inventory, 2020 GHG emissions forecast, reduction goal and City-selected GHG reduction strategies, and related General Plan policies or other ongoing programs in the city. The GHG reduction plans developed for each Partnership City as part of this Plan are intended to serve as a foundation upon which each individual jurisdiction may decide to develop its own customized and comprehensive climate action plan. This effort leveraged work efforts that would be common to all jurisdictions and allowed each city to select its own individual programs and policies, which differ from city to city. SANBAG anticipates that individual cities may choose to utilize the information in this document to complete and adopt their own CAPs.

Potential Environmental Impacts

SANBAG, as CEQA Lead Agency, has determined that an EIR will be required based upon preliminary review of the project and has identified the following topics to be addressed in the EIR: aesthetics, agricultural resources, air quality, biological resources, cultural resources, , geology and soils, global climate change, hazards and hazardous materials, hydrology/ water quality, land use/ planning, mineral resources, noise, population and housing, public services, recreation, traffic and circulation, and utilities and services. This determination was made without the use of an Initial Study as provided in the CEQA Guidelines Section 15060 (d) which states that "If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process . . .."

Figure 1 – Regional Project Location

Figure 2 – Project Area



Comment Due Date

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than **December 14, 2012.**

Comments should be sent to:

Steve Smith, Director of Planning
SANBAG Planning Department
1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410-1715,

Or by email to ssmith@sanbag.ca.gov

Please include in your response the name, phone number, and address of the contact person for the responding agency.

Governments SANBAG Working Together

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TRANSPORTATION MEASURE I

■ 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: June 21, 2013

Subject: Lenwood Road Grade Separation Project Assignment and Assumption Agreement

Recommendation:* That the Committee recommend the Board:

Approve a new Assignment and Assumption Agreement C13127 between the San Bernardino County Transportation Commission (COMMISSION)) and the City of Barstow (CITY) assigning to and being assumed by COMMISSION the CITY's rights and obligations under the Overpass Agreement between BNSF Railway Company and CITY that are necessary for construction of the Lenwood Road Overpass Structure.

Background: **This is a required approval to allow the Lenwood Road Grade Separation project to proceed to construction.** In May 2011, the County of San Bernardino, the City of Barstow (CITY), and the San Bernardino Associated Governments, acting as the San Bernardino County Transportation Commission (SANBAG) entered into an Agreement C11199 to fully fund the construction of the grade separation over BNSF tracks at Lenwood Road. This project will grade separate Lenwood Road and the BNSF Railway tracks, increasing safety and eliminating the delay at the existing at-grade crossing. In February 2012, this agreement was amended to swap Congestion Management and Air Quality (CMAQ) funds with Surface Transportation Program (STP) funds. As we approach the construction phase, the City of Barstow has been working with

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Approved
Mountain Desert Policy Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

MDC1306a-bmf

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C13127.doc

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/Lenwood%20GS%20Overpass%20Agreement.pdf

BNSF to finalize the Overpass Construction & Maintenance (C&M) Agreement (Overpass Agreement). The document was fully executed in May, 2013. The Public Utilities Commission (CPUC) application has been approved.

The project is scheduled to go to the California Transportation Commission (CTC) on June 11, 2013, for the allocation of $8,885,000 of Trade Corridor Improvement Funds (TCIF) funds. Once these funds are allocated, the project has six months to award a construction contract.

Construction will start in November, 2013. To construct the Lenwood Road Overpass Structure, the CITY must assign the obligations of the Overpass Agreement to COMMISSION and COMMISSION must assume the obligations of the Overpass Agreement by approving Assignment and Assumption Agreement C13127. Staff recommends approval of C13127. Under the Assignment and Assumption Agreement COMMISSION will assume all of CITY's obligations under the Overpass Agreement related to and during the construction phase of the construction of the overpass structure. CITY will retain all of its obligations under the Overpass Agreement that arise out of maintenance of the Overpass Structure and occupancy and use of BNSF right-of-way after construction of the Overpass Structure is completed. This Assignment and Assumption Agreement does not change any of the funding obligations of the parties to C11199.

Financial Impact: This item is consistent with the 2012/2013 and draft 2013/2014 SANBAG budget. This item has no impact on either budget. Task No. 0881, the Lenwood Grade Separation Project.

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

Responsible Staff: Garry Cohoe, Director of Project Delivery

MDC1306a-bmf

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 13127 Amendment No. 0

By and Between

San Bernardino County Transportation Commission and City of Barstow

Contract Description Assignment and Assumption Agreement for the Lenwood Grade Separation Project

Board of Director's Meeting Date: July 3, 2013

Overview of BOD Action: Approval of a new Assignment and Assumption Agreement C13127. City of Barstow assigns and Commission assumes rights and obligations under the BNSF Overpass Agreement.

Is this a Sole-Source procurement? ☐ Yes ☒ No

CONTRACT OVERVIEW

Original Contract Amount	$	0	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$		**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$		**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	0	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	0

Contract Start Date	Current Contract Expiration Date	Revised Contract Expiration Date
July 3, 2013	December 31, 2017	

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

FINANCIAL INFORMATION

☒ Budget authority for this contract currently exists in Task No. 0881.

☐ 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:*

Budgeted under contract C11199-1.

☐ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Barbara Fortman Project Manager (Print Name)	Barbara Fortman Signature	5.31.13 Date
Garry Cohoe Task Manager (Print Name)	Garry Cohoe Signature	6.3.13 Date
Andrea Zureick Dir. of Fund Admin. & Programming (Print Name)	Andrea Zureick Signature	6/4/13 Date
Jeffery Hill Contract Administrator (Print Name)	Jeffery Hill Signature	6/4/13 Date
W. Smith Chief Financial Officer (Print Name)	Signature	6/5/13 Date

ASSIGNMENT AND ASSUMPTION AGREEMENT

CONTRACT NO. C13127

BY AND BETWEEN

THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

AND

THE CITY OF BARSTOW

LENWOOD ROAD/BNSF GRADE SEPARATION

This Assignment and Assumption Agreement Contract No. C13127 (CONTRACT) is by and between the San Bernardino County Transportation Commission (hereinafter called COMMISSION) and the City of Barstow (hereinafter called CITY).

RECITALS:

A. CITY and BNSF Railway Company (BNSF) have entered into an Overpass Agreement (AGREEMENT), BNSF File No. BF10001915, Lenwood Road Overpass, U.S. DOT No. 026062X, LS 7600, MP5.77, Cajon Subdivision, effective as of March 4, 2013 to construct the Lenwood Road Overpass (STRUCTURE), including but not limited to, any and all changes to telephone, telegraph, signal, and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering, and contract preparation.

B. BNSF consented to the assignment to and assumption by COMMISSION of a portion of the CITY's rights and obligations under the AGREEMENT (See Article IV, Paragraph 17).

C. It is the intent of the Parties to assign the CITY's obligations to perform construction work under the AGREEMENT during the STRUCTURE's construction phase to the COMMISSION. It is further the intent of the parties that upon completion of the STRUCTURE the CITY will be responsible for the ownership and maintenance of the STRUCTURE and shall retain all obligations related thereto as set forth in the AGREEMENT.

NOW THEREFORE, THE PARTIES HEREBY AGREE:

1. CITY hereby assigns to COMMISSION and COMMISSION hereby assumes all of the CITY's rights and obligations under the AGREEMENT that are necessary to construct the STRUCTURE The rights and obligations assigned to and assumed by COMMISSION include the following:

   (a) All CITY obligations under AGREEMENT Article III entitled "Agency Obligations" with the exception of Paragraph 9 related to future inspection and maintenance of the STRUCTURE, and of Paragraph 16 related to indemnification of BNSF.

(b) All CITY obligations under AGREEMENT Article IV entitled "Joint Obligations" with the exception of Paragraphs 10, 11, 14 and 15.

(c) The COMMISSION is specifically assigned the power but not the obligation to enforce any of the terms of the AGREEMENT, including but not limited to BNSF's obligations under the AGREEMENT.

2. CITY retains all of CITY's rights and obligations under the AGREEMENT that:

(a) are applicable after completion of the construction of the STRUCTURE; and

(b) arise out of occupation and use of BNSF's property or right-ofway, and ownership or maintenance of the STRUCTURE.

3. COMMISSION agrees to incorporate into the "San Bernardino Associated Governments Special Provisions for Construction of the Lenwood Road Grade Separation over the BNSF Railroad in the City of Barstow, San Bernardino County" all conditions of the AGREEMENT that are required by the AGREEMENT to be so incorporated.

4. COMMISSION agrees to assume CITY's obligations that may arise under AGREEMENT Paragraph 16 from the Effective Date of this Contract through the date COMMISSION files a Notice of Completion of the Structure.

5. The parties further agree that the payment from BNSF required under AGREEMENT Article IV Paragraph 5 will be made payable to the COMMISSION.

6. The AGREEMENT is attached to this Contract as Exhibit H and is incorporated herein by this reference.

7. The Recitals set forth above in this Contract are incorporated into and made a part of this Contract.

8. This Contract is not intended to amend, supersede or modify in any way funding obligations set forth in the Cooperative Agreement No. C11199 between CITY, COMMISSION and the County of San Bernardino entered into May 2011, and amended in February 2012.

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

IN WITNESS WHEREOF, the authorized parties have executed this Contract below, and the Contract is effective as of the date executed by COMMISSION.

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____
Janice Rutherford
President, SANBAG Board of Directors

Date: _____

CITY OF BARSTOW:

By: _____

Printed Name: _____
Title: _____

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

Date: _____

EXHIBIT H

OVERPASS AGREEMENT

BETWEEN BNSF RAILWAY COMPANY AND CITY OF BARSTOW

OVERPASS AGREEMENT

BNSF File No. BF10001915
Lenwood Road Overpass
U.S. D.O.T. No. 026062X
LS 7600
MP 5.77
Cajon Subdivision

This Agreement (**"Agreement"**), is executed to be effective as of March 4, 2013 (**"Effective Date"**), by and between BNSF RAILWAY COMPANY, a Delaware corporation (**"BNSF"**), and the City of Barstow, a political subdivision of the State of California (**"Agency"**).

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Barstow, State of California; and

WHEREAS, Agency desires to improve the existing Lenwood Road at-grade crossing by constructing a new crossing at separated grades to be known as the Lenwood Road Overpass, D.O.T. No. 026062X; and

WHEREAS, the existing Lenwood Road at-grade crossing will be permanently closed, vacated and removed upon completion of construction and the placing in service of the new Lenwood Road Overpass.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I) SCOPE OF WORK

1. The term **"Project"** as used herein includes any and all work related to the construction of the proposed Lenwood Road Overpass (hereinafter referred to as the **"Structure"**), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities,

preliminary and construction engineering and contract preparation. During construction of the Structure, vehicular traffic will be excluded from the use of Lenwood Road between Main Street and Jasper Road. Additionally, temporary controls during construction must be in compliance with Section 8A-08, "Temporary Traffic Control Zones" of the Manual of Uniform Traffic Control Devices ("MUTCD"), U.S. Department of Transportation.

ARTICLE II) BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand Dollars and No/100 dollars ($2,000.00), together with the sum of Six Thousand Three Hundred Dollars ($6,300.00) for Temporary Construction License, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

(a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;

(b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the Agency's use of the Structure;

(c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure.

(d) Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any temporary crossing requested to aid in the construction of this Project.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) twenty-four (24) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the

use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than construction. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of Seven Thousand Four Hundred Forty Five Dollars ($7,445.00), such payment to be made within thirty (30) days of the giving of the Notice to Proceed pursuant to Article III, Section 17 of this Agreement, and provided further that Agency is in compliance with the terms and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

(a) Procurement of materials, equipment and supplies necessary for the railroad work;

(b) Preliminary engineering, design, and contract preparation;

(c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C;

(d) Furnishing engineering and inspection as required in connection with the construction of the Project;

(e) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;

(f) If required, removal of the existing Lenwood Road at-grade crossing, including removal of the automatic warning devices, and obliteration of the crossing between the rails and two feet outside thereof; and

(g) If required, construction of a temporary pedestrian at-grade crossing and installation of automatic warning devices at Agency's expense.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 6 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which is past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section. **For purposes of computing the time limits prescribed by Section 911.2 of the CALIFORNIA GOVERNMENT CODE for the presentment of a claim against the San Bernardino County Transportation Commission (SANBAG), the cause of action for failure to reimburse BNSF for the cost of the Railroad Work performed by it pursuant to this Agreement shall be**

deemed to have accrued one hundred eighty (180) days from the date of the final invoice.

ARTICLE III) AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Agency must provide for and maintain minimum vertical and horizontal clearances, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project.

Prior to execution of this Agreement, Agency shall have provided to BNSF exact minimum vertical and horizontal clearances for the Project, and such Final Clearances must have been previously approved by BNSF and attached hereto and incorporated herein as Exhibit C ("Final Clearances"). Agency shall not deviate from the Final Clearances agreed to prior to this Agreement without the prior written approval of BNSF.

4. Agency must acquire all rights of way necessary for the construction of the Project.

5. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (http://www.bnsf.com/communities/faqs/pdf/utility.pdf), for the installation or relocation of wire lines, pipe lines and other facilities owned by private

persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project..

6. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

(a) Construction of the Structure;

(b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;

(c) Provide suitable drainage, both temporary and permanent;

(d) Installation of a gate in the fence along the southerly boundary of BNSF's right of way in order to provide BNSF with permanent access for maintenance purposes;

(e) Temporary Installation of K-Rail (Jersey) barriers and chain link fencing along Lenwood Road between the tracks and the traveled roadways;

(f) Construction and removal of a temporary pedestrian roadway detour crossing of the tracks, including chain link fence;

(g) Provide appropriate pedestrian control during construction;

(h) Installation and maintenance of an 8-ft. high fence and/or concrete combination (throw fence) on the outside barrier of the Structure;

(j) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF; and

(k) Removal of the signal house on the southwest quadrant of the Lenwood Road existing at-grade crossing.

7. Agency must apply and maintain said D.O.T. Crossing number 026062X in a conspicuous location on the Structure.

8. Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

9. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the letter agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

10. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

11. Agency or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Agency's contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

12. Agency must include the following provisions in any contract with its provider(s) performing work on said Project:

(a) The Provider is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Provider will be responsible for contacting BNSF's Engineering Representative – Greg Rousseau – 909-386-4079, BNSF's Signal Representative – Dennis Skeels – 909-386-4053 and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Provider must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The Provider must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

(b) The Provider will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Provider must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

(c) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative (Greg Rousseau – 909-386-4079) to stop construction at no cost to the Agency or BNSF until these items are completed.

(d) In addition to the liability terms contained elsewhere in this Agreement, the Provider hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Provider, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Provider, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY PROVIDER WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefore (i) the provisions set forth in Articles III and IV; and (ii) the provisions set forth in Exhibit C, Exhibit C-I, and Exhibit F attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 14, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

(a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;

(b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;

(c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-I, and (ii) delivered to and secured BNSF's approval of the required insurance;

(d) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative Greg Rousseau – 909-386-4079 eight (8) weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project; and

(e) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F, attached to this Agreement and incorporated herein.

15. Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

16. **TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS,**

SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

17. Agency must give BNSF's Manager of Public Projects written notice to proceed (**"Notice to Proceed"**) with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

18. Agency must perform all necessary work to obtain the permanent closure and vacation of Lenwood Road across BNSF's right-of-way and must barricade the road approaches prior to completion of the Project. BNSF will cooperate with Agency to achieve the closure and vacation of Lenwood Road and will remove the crossing surface within its right-of-way.

ARTICLE IV) JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to

conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the Greg Rousseau – 909-386-4079.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Oliver Chi
Assistant City Manager
City of Barstow
220 East Mountain View Street, Suite A
Barstow, CA 92311
Phone: (760) 577-4510
Fax: (760) 255-5154

Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Oliver Chi, Assistant City Manager, City of Barstow – 760-577-4510 for appropriate corrective action.

5. BNSF will contribute One Million Thirty Five Thousand Seven Hundred Sixty One Dollars and Eight Cents ($1,035,761.08) - **hereinafter referred to as "BNSF's Share"** - towards the total actual costs of the Project. BNSF's Share will be based on the costs for preliminary engineering, right-of-way and construction within the following limits;

(a) Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the appropriate state highway agency; and

(b) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in 23 CFR 646.210(c)(1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

Additionally, local, state and federal funds will be used in the construction of the Project. The total actual cost of construction for the Project is presently estimated to be Twenty Million Five Hundred Forty Seven Thousand Dollars ($20,547,000.00), more particularly described (together with BNSF's Share) on Exhibit G attached hereto and incorporated herein.

6. Pursuant to this section and Article II, Section 6 herein, Agency must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement, less BNSF's Share as set forth in Article IV, Section 5 herein. BNSF's Share must be paid upon completion of the Project.

In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorneys fees pursuant to California Civil Code Section 1717, as well as other litigation costs, including expert witness fees. The prevailing Party shall also be entitled to recover all actual attorneys fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding.

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

9. Subject to the restrictions imposed by Article IV, Section 8 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference D.O.T. Crossing No. 026062X and must state the time that construction activities will begin.

10. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:

(a) Agency will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b). Agency and BNSF shall perform the necessary work to obtain the permanent closure of Lenwood Road.

(b) Agency must, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.

(c) Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.

(d) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.

(e) Agency must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.

(f) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage, which may be changed from time to time:

Railroad Protective Liability insurance naming only ***BNSF*** as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to ***BNSF*** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.
- As used in this paragraph, "***BNSF***" means "Burlington Northern Santa Fe, LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

- In lieu of providing a Railroad Protective Liability Policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.

11. Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.

12. Agency must provide one set of as built plans (prepared in **English Units)** to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

13. Subject to the restrictions imposed by Article IV, Section 8 above and in accordance with the requirements of Article III, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

14. In the event that BNSF shall deem it necessary or desirable in the future, in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its expense, have full right to make such changes or additions, provided such changes or additions do not change or alter the Structure herein proposed to be constructed and provided further, however, that should it become necessary or desirable in the future to change, alter, widen or reconstruct the Structure to accommodate railroad Projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by the alteration of the Structure will be divided between BNSF and Agency in such shares as may be mutually agreed to by the parties hereto.

15. Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction, must receive BNSF's prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement. Furthermore, any alteration or reconstruction of the highway components of the Structure will be covered by a Commission Order.

16. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of California and the Federal Highway Administration, for a period of three (3) years from the date of final BNSF invoice under this Agreement.

17. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party; however, BNSF agrees that Agency may assign its rights and obligations under this Agreement to the San Bernardino County Transportation Commission.

18. In the event construction of the Project does not commence within two (2) years of the Effective Date, this Agreement will become null and void.

19. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

20. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

21. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

22. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF:

BNSF's Manager of Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408
909-386-4472

Agency:

Oliver Chi
Assistant City Manager
City of Barstow
220 East Mountain View Street, Suite A
Barstow, CA 92311
Phone: 760-577-4510
Fax: 760-255-5154

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: STEVE ANDERSON

Title: CHIEF ENGINEER

WITNESS:

_____

AVP - Engineering Services

AGENCY

CITY OF BARSTOW

By: Charles C Mitchell

Printed Name: Charles C. Mitchell

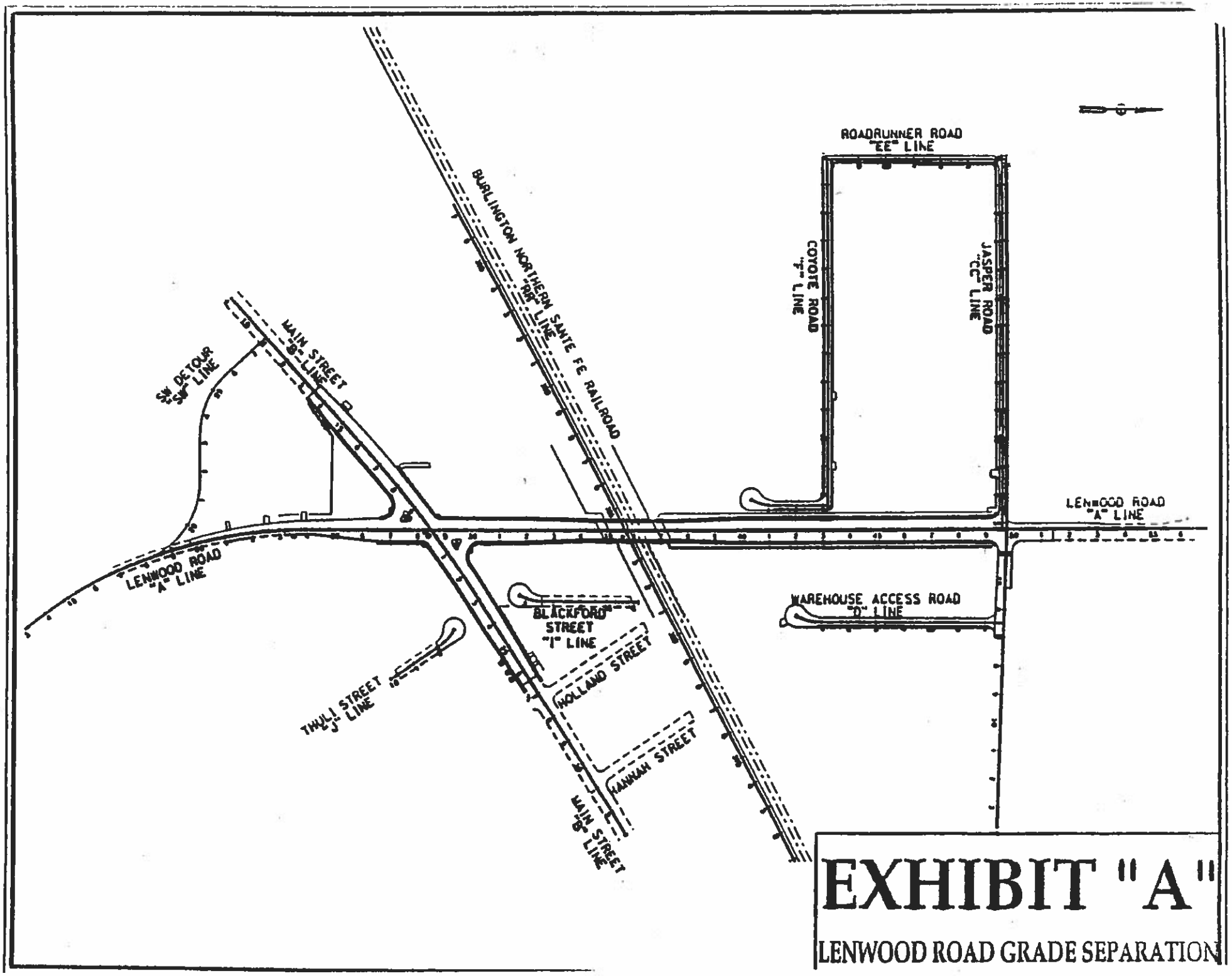
Title: City Manager

WITNESS:

JoAnne V. Cousino

JoAnne V. Cousino, City Clerk

CITY OF BARSTOW INCORPORATED SEPT. 30, 1947 BARSTOW, CALIFORNIA


ROADRUNNER ROAD
"EE" LINE
BURLINGTON NORTHERN SANTE FE RAILROAD
"RR" LINE
COYOTE ROAD
"F" LINE
JASPER ROAD
"CC" LINE
MAIN STREET
"B" LINE
SW DETOUR
"SW" LINE
LENWOOD ROAD
"A" LINE
LENWOOD ROAD
"A" LINE
WAREHOUSE ACCESS ROAD
"D" LINE
BLACKFORD
STREET
"I" LINE
HOLLAND STREET
HANNAH STREET
THULI STREET
"J" LINE
MAIN STREET
"B" LINE
EXHIBIT "A"
LENWOOD ROAD GRADE SEPARATION

FORT WORTH, TEXAS
CALIFORNIA DIVISION
CAJON SUB DIVISION
LINE SEGMENT 7600

EXHIBIT "A"
ATTACHED TO THE CONSTRUCTION AND
MAINTENANCE AGREEMENT BETWEEN
BNSF RAILWAY COMPANY AND CITY OF BARSTOW

SANFORD C. SEXHUS
VICE PRESIDENT ENGINEERING

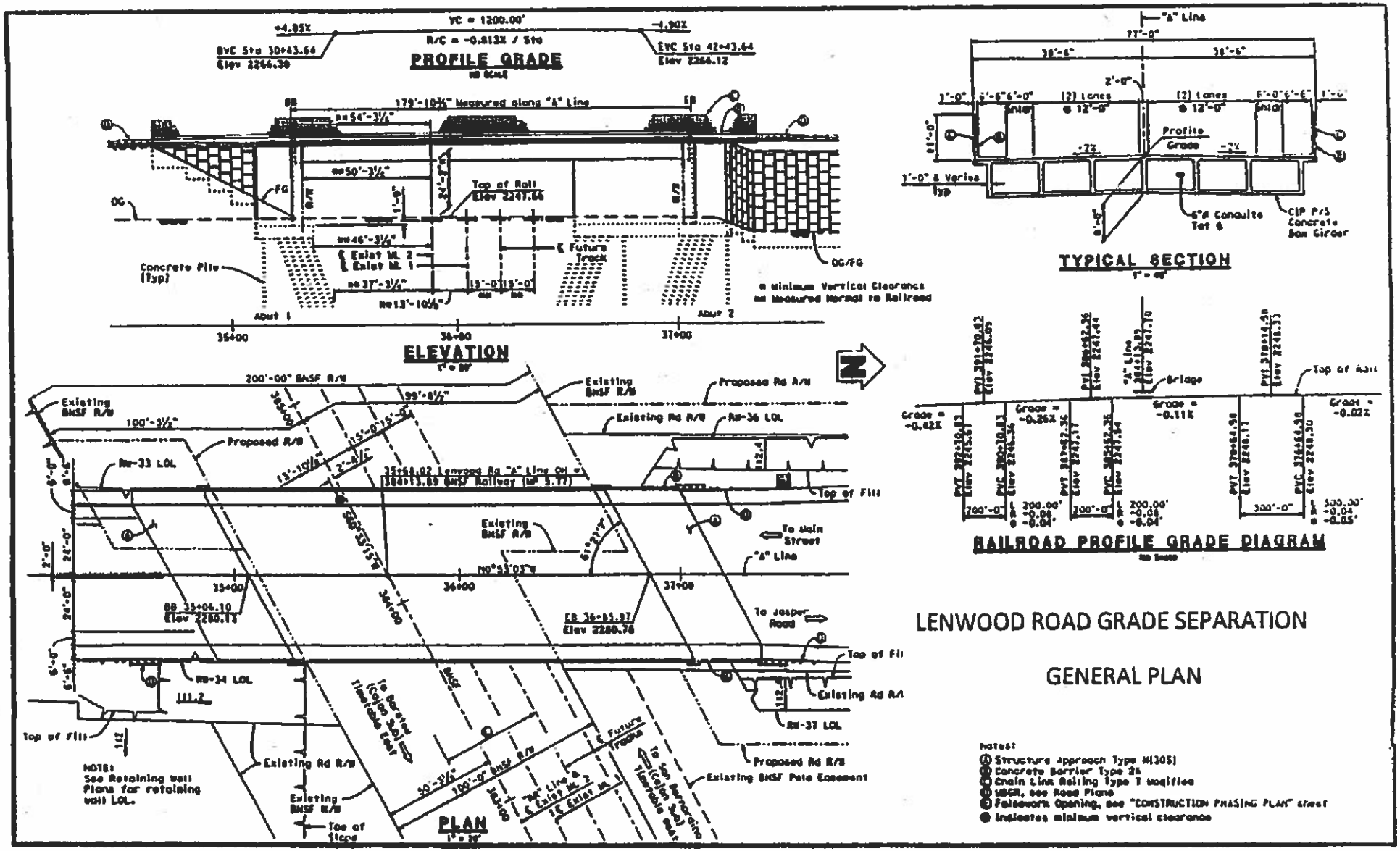
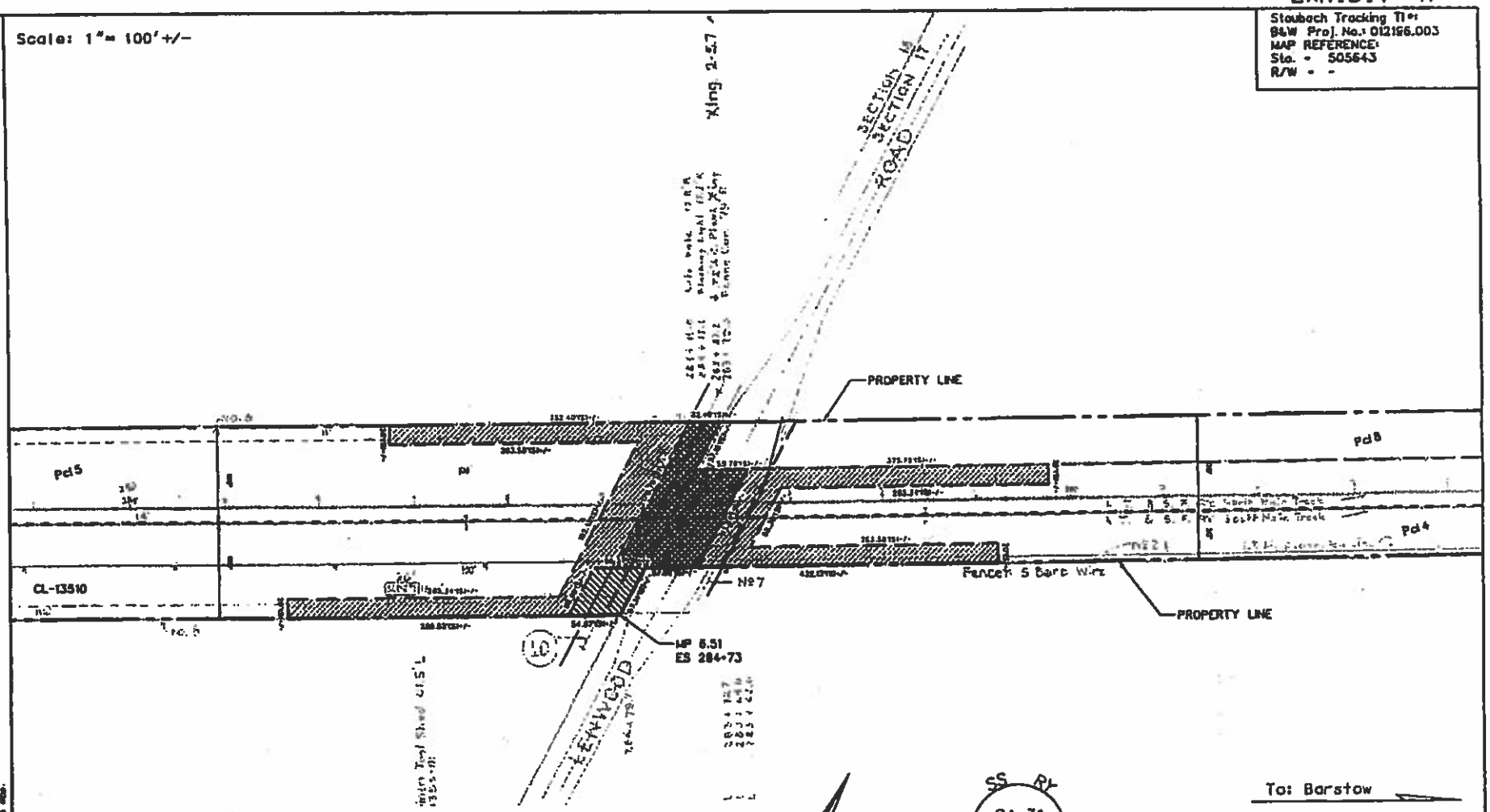


EXHIBIT "A"

Stoubach Tracking TI#:
B&W Proj. No.: 012196.003
MAP REFERENCE:
Sta. - 505643
R/W - -

Scale: 1" = 100'+/-



This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF does no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.

NOTE: ALL R/W AND FACILITES SUBJECT TO JOINT OPERATION WITH UNION PACIFIC RR ACCORDING TO CONTRACT CL-13510 MP 0.0 TO MP 81.4

To: San Bernardino County Transportation Commission
Near: Barstow
San Bernardino County
California

Legend:
- Permanent Easement
- Temporary Construction Easement
- Temporary Aerial Easement

MEASUREMENTS BASED ON PROVIDED SURVEYS
(S) MEASUREMENTS TAKEN OFF SURVEY
(M) MEASUREMENT

California Division
Cajon Subdivision - L.S. 7200-6
Vol. Sec. 48020
SS RY CA-31, Map 44D
Sec. 18/17, T09N, R02W SBM
April 17, 2013
M.P. 6.51 JHL

DRAWING NO. 3-57470

Exhibit A
Temporary Construction License

T9N, R2W, Sections 17 & 18, S.B.M.

Owner: BNSF Railroad

To: City of Barstow

EXHIBIT "A"

Legal Description

A portion of BNSF Railroad property, in the City of Barstow, County of San Bernardino, State of California, as per Plat recorded in book 804, pages 35-36 of Maps, in the office of the county recorder of said county, described as follows:

Commencing at the Northwest corner of Section 17, Township 9 North, Range 2 West, San Bernardino Meridian;

Thence S 00°26 '30" E, along the West line of said Section 17, a distance of 1299.73 feet to the point being the POINT of BEGINNING,

Thence continuing S 00°26 '30" E, along the West line of said Section 17, a distance of 57.16 feet;

Thence N 60°34 '04" E, a distance of 375.76 feet;

Thence S 29°25 '56" E, a distance of 20.00 feet;

Thence S 60°34 '04" W, a distance of 285.34 feet;

Thence S 00°53 '03" E, a distance of 68.30 feet;

Thence N 60°34 '04" E, a distance of 263.58 feet;

Thence S 29°25 '56" E, a distance of 20.00 feet;

Thence S 60°34 '04" W, a distance of 432.13 feet;

Thence S 00°53 '03" E, a distance of 56.90 feet;

Thence S 60°34 '04" W, a distance of 295.52 feet;

Thence N 29°25 '56" W, a distance of 20.00 feet;

Thence N 60°34 '04" E, a distance of 285.34 feet;

Thence N 00°53 '03" W, a distance of 182.13 feet;

Thence S 60°34 '04" W, a distance of 263.58 feet;

Thence N 29°25 '56" W, a distance of 20.00 feet;

Thence N 60°34 '04" E, a distance of 352.40 feet to the POINT of BEGINNING.

Tract contains 44,767 square feet, 1.03 acres, more or less.

(End Exhibit "A")

This legal description was prepared by me or under my direction.

By: _____

Benjamin M. Aragon, Professional Land Surveyor

Date: 8 / 10 / 12 PLS 8016

LICENSED LAND SURVEYOR
BENJAMIN M. ARAGON
EXP. 12-31-12
L.S. 8016
STATE OF CALIFORNIA

EXHIBIT "B"
EASEMENT AGREEMENT

FOR CONSTRUCTION OF A SEPARATED GRADE CROSSING
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR CONSTRUCTING A NEW CROSSING AT SEPARATED GRADES (**"Easement Agreement"**) is made and entered into as of the ____ day of _____ 2013 (**"Effective Date"**), by and between BNSF RAILWAY COMPANY, a Delaware corporation (**"Grantor"**), and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, a public agency of the State of California (**"Grantee"**).

A. Grantor owns or controls certain real property situated at or near the vicinity of Barstow, County of San Bernardino, State of California, (Lenwood Street Grade Separation Project), as described or depicted on **Exhibit "A-1"** attached hereto and made a part hereof (the **"Premises"**).

B. Grantor and Grantee have entered into that certain Overpass Agreement dated as of March 4, 2013 concerning improvements on or near the Premises (the **"Overpass Agreement"**).

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the Overpass Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Overpass Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 **Granting of Easement.**

1.1 Easement Purpose. The **"Easement Purpose"** shall be for the purposes set forth in the Overpass Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as **"Improvements"** and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Overpass Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement (**"Easement"**) over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, **"Laws"**). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the Overpass Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

(a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, **"Lines"**) upon, over, under or across the Premises;

(b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

(c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 **Term of Easement**. The term of the Permanent Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. The term of this Temporary Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is twenty-four months (24) after the Effective Date.

Section 3 **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 **Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other improvements and/or interfere with their

service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 **Taxes and Recording Fees**. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 **Environmental.**

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor

may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the improvements and restore the Premises as provided in **Section 9.**

Section 8 **Default and Termination.**

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9.**

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the Overpass Agreement, at law or in equity.

Section 9 **Surrender of Premises.**

9.1 **Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:**

(a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;

(b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;

(c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

(d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon

any termination of the Easement, all liabiities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 **Liens**. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 **Tax Exchange**. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 **Notices**. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the Overpass Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 **Recordation**. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 **Miscellaneous**.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of California without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other

agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

ADMINISTRATIVE FEE

15. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **$2,000.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

CITY OF BARSTOW, a political subdivision of the State of California

By: _____
Name: _____
Title: _____

Form 704Overpass; Rev. 8/17/11

EXHIBIT "B-1"

MEMORANDUM OF EASEMENT

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of_____, 2013, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (**"Grantor"**), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **CITY OF BARSTOW**, a political subdivision of the State of California **Grantee"**), whose address for purposes of this instrument is 220 E. Mountain View St., Barstow CA 92311, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Colton, San Bernardino County, California, as described on **Exhibit "A-1"** attached hereto and incorporated herein by reference (the **"Premises'**);

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 2013 (the **"Easement Agreement"**) which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the **"Easement"**); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:
BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2013, by _____ (name) as _____(title) of **BNSF RAILWAY COMPANY**, a Delaware corporation.

_____
Notary Public

My appointment expires:_____

(Seal)

GRANTEE:
CITY OF BARSTOW, a political subdivision of the State of California

By: _____
Name:_____
Title:_____

STATE OF _____§
§
COUNTY OF _____§

This instrument was acknowledged before me on the _____ day of _____, 2013, by _____ (name) as _____(title) of _____, a _____.

_____
Notary Public

My appointment expires:_____

(Seal)

EXHIBIT "C"

To Construction and Maintenance Agreement

CONTRACTOR REQUIREMENTS
LENWOOD ROAD OVERHEAD

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as **"Railway"** where work is over or under on or adjacent to **Railway** property and/or right-of-way, hereafter referred to as **"Railway Property"**, during **CITY OF BARSTOW**, a political subdivision of the State of California, hereinafter referred to as (**"CITY"**) removal of the existing at-grade crossing at Lenwood Road, DOT # 026062X, CPUC # 002-5.7 through the construction of a new grade separated overhead crossing, USDOT No. 026062X, CPUC # 002B-5.70-A BNSF's Milepost 5.77, and Line Segment 7600 on BNSF's Cajon Subdivision.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) CITY fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) the Exhibit C-1 Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not

limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Oliver Chi
Assistant City Manager
City of Barstow
220 East Mountain View Street, Suite A
Barstow, CA 92311
Phone: (760) 577-4510
Fax: (760) 255-5154

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under the Exhibit C-1 Agreement.

- **1.01.06** The Contractor must notify CITY'S Assistant City Manager 760-577-4510 and Railway's Manager Public Projects, telephone number 909-386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF-10001915.

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over

Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

1.01.08 Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.**

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by CITY.

- **1.03.02** The Contractor must notify the Railway's Division Engineer at 909-386-4504 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

1.03.04 Upon completion of construction, the following clearances shall be maintained:

- 72'-0" Northeasterly from centerline of track, Main 1, to face of column Bent 3 and 39'-11" Southwesterly Horizontally from centerline of track, Main 3, to face of crash wall for Bent 2.
- 24'-1 1/4" Vertically above top of rail

- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to CITY and must not be undertaken until approved in writing by the Railway, and until the AUTHORITY has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by CITY.

- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by CITY for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.contractororientation.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railway under the Exhibit C-1 Agreement which are determined by Railway in its sole discretion **a)** to be on Railway's property, or **b)** that require access to Railway Critical Infrastructure, Railway Critical Information Systems, Railway's

  Employees, Hazardous Materials on Railway's property or is being transported by or otherwise in the custody of Railway, or Freight in Transit involving Railway.

  The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at http://www.e-railsafe.com, in addition to any other applicable regulatory requirements.

  Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railway's designee. Contractor shall be subject to periodic audit to ensure compliance.

  Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railway shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railway's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railway's operations, assets or personnel.

  Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster (telephone 909-386-4061)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.

- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.

- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by **CITY**. The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and

unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average daily train traffic on this route is 84 freight trains and 2 passenger trains.

  Train timetable speeds are:

  Westward: 50 MPH Passenger, 35 MPH Freight
  Eastward: 79 MPH Passenger, 55 MPH Freight
  Eastward: 70 MPH, Qualifying Freight

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a

representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.contractororientation.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable
and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (909-386-4079).** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under the Exhibit C-1 Agreement, Contractor must

immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C)
- ☐ Non-employee (N) *(i.e. emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- ☐ Contractor/safety sensitive (F)
- ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H)
- ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off Railway Property

If train involved, Train ID: _____

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

_____ _____ _____
(Name) (Employee No.) (Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY

1. Accident City/St: _____ 2: Date: _____ Time:: _____

County: _____ 3. Temperature: _____ 4. Weather: _____

(if non BNSF location)

Mile Post / Line Segment _____

5. Driver's License No. (and state) or other ID:

_____ SSN(required): _____

6. Name (last, first, mi):

_____

7. Address: _____ City: _____ St: _____ Zip: _____

8 Date of Birth: _____ and/or Age: _____ Gender: _____

(If available)

Phone Number: _____

Employer: _____

9. Injury: _____ 10. Body Part: _____

(i.e. laceration, etc.) (i.e. Hand, etc.)

11. Description of Accident (To include location, action, result, etc.) _____

_____

_____

_____

_____

_____

12. Treatment:

☐ First Aid Only

_____

☐ Required Medical Treatment

_____

☐ Other Medical Treatment

_____

13. Dr. Name: _____ Date: _____

14: Dr. Address:

Street: _____ City: _____ St: ____ Zip: _____

15: Hospital Name:

_____

16: Hospital Address:

Street: _____ City: _____ St: ____ Zip: _____

17: Diagnosis:

_____

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: BF-10001915
Agency Project: Lenwood Road Overhead- USDOT No. 026062X

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 2013, with **CITY OF BARSTOW**, a political subdivision of the State of California, hereinafter referred to as (**"CITY"**) for the performance of certain work in connection with the following project: **Removal of the existing at-grade crossing at Lenwood Road, DOT # 026062X, CPUC # 002-5.7 through the construction of a new grade separated overhead crossing, USDOT No. 026062X, CPUC # 002B-5.70-A BNSF's Milepost 5.77, and Line Segment 7600 on BNSF's Cajon Subdivision.**

Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **CITY** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any

of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's Property. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody, or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this ***Agreement***, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following addresses:

BNSF Railway Company
Manager Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408
Phone: 909-386-4472
Fax: 909-386-4479
Melvin.Thomas@bnsf.com

AND

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify ***Railway*** in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration.

Any insurance policy must be written by a reputable insurance company acceptable to ***Railway*** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this ***Agreement*** has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this ***Agreement***.

Not more frequently than once every five years, ***Railway*** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain the insurance coverage(s) set forth herein, naming ***Railway*** as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify ***Railway*** to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify ***Railway*** herein.

Failure to provide evidence as required by this section shall entitle, but not require, ***Railway*** to terminate this ***Agreement*** immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall 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 ***Railway*** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving ***Railway*** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, ***Railway*** means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto,

resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative (BNSF Project Engineer, 909-386-4079) eight (8) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

_____

Contractor

By:_____

Printed Name: _____

Title: _____

Contact Person: _____

Address: _____

City:_____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail:_____

BNSF Railway Company

By:_____

Name: _____
Manager Public Projects

Accepted and effective this _____day of 20__.

Exhibit D

Lenwood Road Overpass Grade Separation Project

Cost Estimates for Railroad Work (BNSF Cost)

Estimate	Cost
Inspector	$111,100
Flagging	$553,748
Crossing Removal	$185,808
Surface	$92,904
Signal	$27,232
Total:	**$970,792**

AUTHORITY FOR EXPENDITURE

LOCATION :	JEWEL (MT I)	LINE SEGMENT :	7600	AFE NUMBER :	
PLANITEM NUMBER :	VARIOUS	MILEPOST :	5.7	RFA NUMBER :	5901314
PROPERTY OF :	BNSF RAILWAY COMPANY	DIVISION :	CA	CPAR NUMBER :	CB960113
OPERATED BY :	BNSF RAILWAY COMPANY	SUBDIVISION :	CAJON	BUDGET YEAR :	2014
JOINT FACILITY :	CITY OF BARSTOW	TRACK TYPE :	1, 2	BUDGET CLASS :	6
% BILLABLE (+/-) :	100.0	TAX STATE :	CA	REPORTING OFFICE :	106
		SPONSOR :	VP ENGINEERING	CENTER/ROLLUP :	28965

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - XING REMOVAL / RESTORATION - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO CITY OF BARSTOW

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
PTR026062X4	7600	5.7	5.7	1	JEWEL (MT I)	JEWEL (MT I)	PUBLIC IMPROVEMENT PROJECT	2014
PTR026062X5	7600	5.7	5.7	2	JEWEL (MT I)	JEWEL (MT I)	PUBLIC IMPROVEMENT PROJECT	2014

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	55,450	55,450
MATERIAL COSTS	0	0	0	0	48,416	48,416
OTHER COSTS	0	0	0	0	81,942	81,942
TOTALS	0	0	0	0	185,808	185,808

SYSTEM MAINTENANCE AND PLANNING - KANSAS CITY
ESTIMATE REF. NUMBER: 5901314
COSTING DATE: 01/01/2014

PRINTED ON: 05/13/2013
ESTIMATED BY: MARSHALL
PRINTED BY: MARSHALL

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF BARSTOW

LOCATION JEWEL (MT 1) DETAILS OF ESTIMATE PLAN ITEM : PTR026062X4 VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - TRACK 1 XING REMOVAL / RESTORATION - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO THE CITY OF BARSTOW

REMOVE 64' EXISTING CONCRETE CROSSING SURFACE AN D LONG TIE RAIL PANELS, REPLACE WITH 4 PANELS AND RAIL

BILLING INFORMATION:
OLIVER CHI, ASST CITY MANAGER
CITY OF BARSTOW
220 EAST MOUNTAIN VIEW ST
BARSTOW, CA 92311

RFA REQUESTED BY: GREG ROUSSEAU 5/13/13

AFE REQUESTED BY:

MAINTAIN PROPRIETARY CONFIDENTIALITY
THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS. PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS. THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
FLAGGING - OTHER R.O.W. - CAP	40.0	MH	918	
PLACE FIELD WELDS - CAP	80.0	MH	2,061	
REPLACE RAIL/OTM - CAP	24.0	MH	551	
REPLACE TRACK PANELS - CAP	96.0	MH	2,202	
SURFACE TRACK - REPLACEMENT - CAP	48.0	MH	1,251	
UNLOAD RAIL/OTM - REPLACEMENT - CAP	24.0	MH	551	
UNLOAD TRACK PANELS - REPLACEMENT	48.0	MH	1,101	
PAYROLL ASSOCIATED COSTS			5,693	
DA OVERHEADS			7,264	
EQUIPMENT EXPENSES			4,686	
INSURANCE EXPENSES			1,447	
TOTAL LABOR COST			27,725	27,725
**********				
MATERIAL				
**********				
BALLAST-CORONA, CA (REPLACES NEWBERRY)	150.0	NT **	1,500	
TRACK PANEL, 136 STANDARD RAIL, 40 FT- GRADE 5	3.0	EA **	12,675	
RAIL, 136 LB NEW WELDED :STANDARD CARBON	260.0	LF **	4,719	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	4.0	KT	272	
MATERIAL HANDLING			956	
ONLINE TRANSPORTATION			2,416	
USE TAX			1,508	
OFFLINE TRANSPORTATION			162	
TOTAL MATERIAL COST			24,208	24,208
**********				
OTHER				
**********				
CONTRACTOR - BALLAST DELIVERY	1.0	LS	2,000	
CRANE RENTAL	1.0	LS	30,000	
TOTAL OTHER ITEMS COST			32,000	32,000
PROJECT SUBTOTAL				83,933
CONTINGENCIES				8,051

BILL PREPARATION FEE	920
GROSS PROJECT COST	92,904
LESS COST PAID BY BNSF	0
TOTAL BILLABLE COST	92,904

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF BARSTOW

LOCATION JEWEL (MT 1) | DETAILS OF ESTIMATE | PLAN ITEM : FTR026062X5 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - TRACK 2 XING REMOVAL / RESTORATION - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO THE CITY OF BARSTOW

REMOVE 64' EXISTING CONCRETE CROSSING SURFACE AN D LONG TIE RAIL PANELS, REPLACE WITH 4 PANELS AND RAIL

BILLING INFORMATION:
OLIVER CHI, ASST CITY MANAGER
CITY OF BARSTOW
220 EAST MOUNTAIN VIEW ST
BARSTOW, CA 92311

RFA REQUESTED BY: GREG ROUSSEAU 5/13/13

AFE REQUESTED BY:

MAINTAIN PROPRIETARY CONFIDENTIALITY
THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS. PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS. THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
FLAGGING - OTHER R.O.W.- CAP	40.0	MH	918	
PLACE FIELD WELDS - CAP	80.0	MH	2,061	
REPLACE RAIL/OTM - CAP	24.0	MH	551	
REPLACE TRACK PANELS - CAP	96.0	MH	2,202	
SURFACE TRACK - REPLACEMENT - CAP	48.0	MH	1,251	
UNLOAD RAIL/OTM - REPLACEMENT - CAP	24.0	MH	551	
UNLOAD TRACK PANELS - REPLACEMENT	48.0	MH	1,101	
PAYROLL ASSOCIATED COSTS			5,693	
DA OVERHEADS			7,264	
EQUIPMENT EXPENSES			4,686	
INSURANCE EXPENSES			1,447	
TOTAL LABOR COST			27,725	27,725
**********				
MATERIAL				
**********				
BALLAST-CORONA, CA (REPLACES NEWBERRY)	150.0	NT **	1,500	
TRACK PANEL, 136 STANDARD RAIL, 40 FT- GRADE 5	3.0	EA **	12,675	
RAIL, 136 LB NEW WELDED :STANDARD CARBON	260.0	LF **	4,719	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	4.0	KT	272	
MATERIAL HANDLING			956	
ONLINE TRANSPORTATION			2,416	
USE TAX			1,508	
OFFLINE TRANSPORTATION			162	
TOTAL MATERIAL COST			24,208	24,208
**********				
OTHER				
**********				
CONTRACTOR - BALLAST DELIVERY	1.0	LS	2,000	
CRANE RENTAL	1.0	LS	30,000	
TOTAL OTHER ITEMS COST			32,000	32,000
PROJECT SUBTOTAL				83,933
CONTINGENCIES				8,051

BILL PREPARATION FEE	920
GROSS PROJECT COST	92,904
LESS COST PAID BY BNSF	0
TOTAL BILLABLE COST	92,904

AUTHORITY FOR EXPENDITURE

LOCATION :	JEWEL (MT 1)	LINE SEGMENT :	7600	AFE NUMBER :	
PLANITEM NUMBER :	VARIOUS	MILEPOST :	5.7	RFA NUMBER :	5901414
PROPERTY OF :	BNSF RAILWAY COMPANY	DIVISION :	CA	CPAR NUMBER :	CB960113
OPERATED BY :	BNSF RAILWAY COMPANY	SUBDIVISION :	CAJON	BUDGET YEAR :	2014
JOINT FACILITY :	CITY OF BARSTOW	TRACK TYPE :	S	BUDGET CLASS :	6
% BILLABLE (+/-) :	100.0	TAX STATE :	CA	REPORTING OFFICE :	106
		SPONSOR :	VP ENGINEERING	CENTER/ROLLUP :	28965

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - INSPECTOR / COORDINATOR - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO CITY OF BARSTOW

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
PTR026062X2	7600	5.7	5.7	S	JEWEL (MT 1)	JEWEL (MT 1)	PUBLIC IMPROVEMENT PROJECT	2014
PTR026062X3	7600	5.7	5.7	S	JEWEL (MT 1)	JEWEL (MT 1)	PUBLIC IMPROVEMENT PROJECT	2015

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	0	0
MATERIAL COSTS	0	0	0	0	0	0
OTHER COSTS	0	0	0	0	111,100	111,100
TOTALS	0	0	0	0	111,100	111,100

SYSTEM MAINTENANCE AND PLANNING - KANSAS CITY
ESTIMATE REF. NUMBER: 5901414
COSTING DATE: 01/01/2014

PRINTED ON: 05/13/2013
ESTIMATED BY: MARSHALL
PRINTED BY: MARSHALL

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF BARSTOW

LOCATION JEWEL (MT 1) | DETAILS OF ESTIMATE | PLAN ITEM : PTR026062X2 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - INSPECTOR / COORDINATOR 2014 - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO THE CITY OF BARSTOW

50 DAYS INSPECTION / COORDINATION @ $1000 PER DAY = $50K

BILLING INFORMATION:
OLIVER CHI, ASST CITY MANAGER
CITY OF BARSTOW
220 EAST MOUNTAIN VIEW ST
BARSTOW, CA 92311

RFA REQUESTED BY: GREG ROUSSEAU 5/13/13

AFE REQUESTED BY:

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
TOTAL LABOR COST			0	0
**********				
MATERIAL				
**********				
TOTAL MATERIAL COST			0	0
**********				
OTHER				
**********				
INSPECTOR / COORDINATOR	1.0	LS	50,000	
TOTAL OTHER ITEMS COST			50,000	50,000
PROJECT SUBTOTAL				50,000
CONTINGENCIES				5,000
BILL PREPARATION FEE				550
GROSS PROJECT COST				55,550
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				55,550

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF BARSTOW

LOCATION JEWEL (MT 1) | DETAILS OF ESTIMATE | PLAN ITEM : PTR026062X3 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - INSPECTOR / COORDINATOR 2015 - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO THE CITY OF BARSTOW

50 DAYS INSPECTION / COORDINATION @ $1000 PER DAY = $50K

BILLING INFORMATION:
OLIVER CHI, ASST CITY MANAGER
CITY OF BARSTOW
220 EAST MOUNTAIN VIEW ST
BARSTOW, CA 92311

RFA REQUESTED BY: GREG ROUSSEAU 5/13/13

AFE REQUESTED BY:

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
TOTAL LABOR COST			0	0
**********				
MATERIAL				
**********				
TOTAL MATERIAL COST			0	0
**********				
OTHER				
**********				
INSPECTOR / COORDINATOR	1.0	LS	50,000	
TOTAL OTHER ITEMS COST			50,000	50,000
PROJECT SUBTOTAL				50,000
CONTINGENCIES				5,000
BILL PREPARATION FEE				550
GROSS PROJECT COST				55,550
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				55,550

AUTHORITY FOR EXPENDITURE

LOCATION :	JEWEL (MT I)	LINE SEGMENT :	7600	AFE NUMBER :	
PLANITEM NUMBER :	VARIOUS	MILEPOST :	5.7	RFA NUMBER :	5901514
PROPERTY OF :	BNSF RAILWAY COMPANY	DIVISION :	CA	CPAR NUMBER :	CB960113
OPERATED BY :	BNSF RAILWAY COMPANY	SUBDIVISION :	CAJON	BUDGET YEAR :	2014
JOINT FACILITY :	CITY OF BARSTOW	TRACK TYPE :	S	BUDGET CLASS :	6
% BILLABLE (+/-) :	100.0	TAX STATE :	CA	REPORTING OFFICE :	106
		SPONSOR :	VP ENGINEERING	CENTER/ROLLUP :	28965

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - FLGAGGING - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO CITY OF BARSTOW

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
PTR026062X	7600	5.7	5.7	S	JEWEL (MT I)	JEWEL (MT I)	PUBLIC IMPROVEMENT PROJECT	2014
PTR026062X1	7600	5.7	5.7	S	JEWEL (MT I)	JEWEL (MT I)	PUBLIC IMPROVEMENT PROJECT	2015

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	498,423	498,423
MATERIAL COSTS	0	0	0	0	0	0
OTHER COSTS	0	0	0	0	55,325	55,325
TOTALS	0	0	0	0	553,748	553,748

SYSTEM MAINTENANCE AND PLANNING - KANSAS CITY
ESTIMATE REF. NUMBER: 5901514
COSTING DATE: 01/01/2014

PRINTED ON: 05/13/2013
ESTIMATED BY: MARSHALL
PRINTED BY: MARSHALL

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF BARSTOW

LOCATION JEWEL (MT 1) | DETAILS OF ESTIMATE | PLAN ITEM : PTR026062X | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - FLAGGING 2014 - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO THE CITY OF BARSTOW

240 DAYS FLAGGING - 8 ST, 4 OT

BILLING INFORMATION:
OLIVER CHI, ASST CITY MANAGER
CITY OF BARSTOW
220 EAST MOUNTAIN VIEW ST
BARSTOW, CA 92311

RFA REQUESTED BY: GREG ROUSSEAU 5/13/13

AFE REQUESTED BY:

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
FLAGGING - OTHER R.O.W. - CAP	2880.0	MH	77,079	
PAYROLL ASSOCIATED COSTS			50,849	
DA OVERHEADS			76,816	
EQUIPMENT EXPENSES			21,558	
INSURANCE EXPENSES			12,941	
TOTAL LABOR COST			239,243	239,243
**********				
MATERIAL				
**********				
TOTAL MATERIAL COST			0	0
**********				
OTHER				
**********				
TOTAL OTHER ITEMS COST			0	0
PROJECT SUBTOTAL				239,243
CONTINGENCIES				23,924
BILL PREPARATION FEE				2,632
GROSS PROJECT COST				265,799
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				265,799

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF BARSTOW

LOCATION JEWEL (MT 1) | DETAILS OF ESTIMATE | PLAN ITEM : PTR026062X1 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

LENWOOD ROAD GRADE SEPARATION - FLAGGING 2015 - SC DIV CAJON SUB LS 7600 MP 5.7 - 100% BILLABLE TO THE CITY OF BARSTOW

260 DAYS FLAGGING - 8 ST, 4 OT

BILLING INFORMATION:
OLIVER CHI, ASST CITY MANAGER
CITY OF BARSTOW
220 EAST MOUNTAIN VIEW ST
BARSTOW, CA 92311

RFA REQUESTED BY: GREG ROUSSEAU 5/13/13

AFE REQUESTED BY:

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
FLAGGING - OTHER R.O.W.- CAP	3120.0	MH	83,502	
PAYROLL ASSOCIATED COSTS			55,086	
DA OVERHEADS			83,218	
EQUIPMENT EXPENSES			23,355	
INSURANCE EXPENSES			14,019	
TOTAL LABOR COST			259,180	259,180
**********				
MATERIAL				
**********				
TOTAL MATERIAL COST			0	0
**********				
OTHER				
**********				
TOTAL OTHER ITEMS COST			0	0
PROJECT SUBTOTAL				259,180
CONTINGENCIES				25,918
BILL PREPARATION FEE				2,851
GROSS PROJECT COST				287,949
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				287,949

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF LENWOOD, CA

LOCATION LENWOOD | DETAILS OF ESTIMATE | PLAN ITEM : PSI026062X | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

REVISED TO NEW PRICING LIST 09/04/03

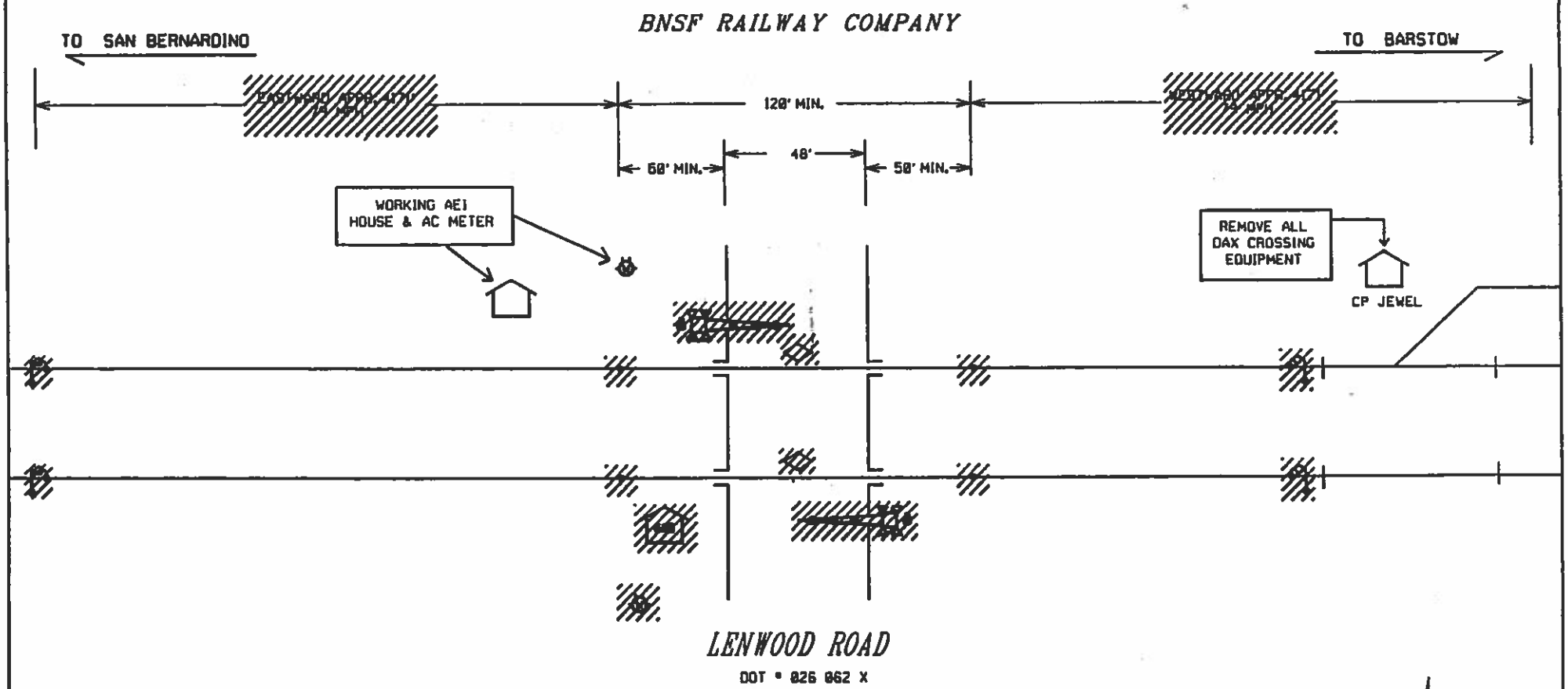
REMOVE CROSSING EQUIPMENT AT LENWOOD ROAD IN LENWOOD, CA. CALIFORNIA DIV., CAJON SUBDIV., L/S 7600, M.P. 0005.70, DOT #026 062 X
MONTHLY POWER UTILITY COST CENTER: 61692
SEQ. #51215
THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.
THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR MATERIAL, LABOR, AND OVERHEADS.

********** SIGNAL WORK ONLY **********

THE CITY OF LENWOOD, CA. IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
SIGNAL FIELD LABOR - CAP	224.0	MH	7,038	
PAYROLL ASSOCIATED COSTS			4,258	
DA OVERHEADS			6,781	
EQUIPMENT EXPENSES			2,327	
INSURANCE EXPENSES			1,107	
TOTAL LABOR COST			21,511	21,511
**********				
MATERIAL				
**********				
TOTAL MATERIAL COST			0	0
**********				
OTHER				
**********				
CONTRACT ENGR.	1 0	EA N	3,000	
TOTAL OTHER ITEMS COST			3,000	3,000
PROJECT SUBTOTAL				24,511
CONTINGENCIES				2,451
BILL PREPARATION FEE				270
GROSS PROJECT COST				27,232
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				27,232



REMOVE: ALL CROSSING EQUIPMENT

CONTROL DEVICES: CONSTANT WARNING

BOLD - IN - OUT SALVAGE: NONE

INSTRUMENT HOUSE
BELL
METER
CROSSING CONTROLL CONNECTIONS
BIDIRECTIONAL CROSSING CONTROL
UNIDIRECTIONAL CROSSING CONTROL
COUPLER OR TERMINATION
GUARD RAIL

Warning device placement:
Clearance to C.L. Track = Min. 12'
Edge of Road to C.L. Foundation:
Min. 4'3" with curb.
Min. 8'3" without curb.
Max. 12'
House Clearance: 25' Min. to Near Rail
30' Min. to Edge of Road
ALL LIGHTS TO BE LED

BNSF RAILWAY CO.
LOCATION: LENWOOD, CA.
STREET: LENWOOD ROAD
LS: 7600
M.P. 5.70
DOT # 026 062 X
DIVISION: CALIFORINA
SUBDIVISION: CAJON
KANSAS CITY
NO SCALE
DATE: 01/18/2013
FILE: 76005_70.dgn
JWM

Exhibit E

Melvin Thomas
Manager Public Projects

BNSF Railway Company
740 East Carnegie Drive
San Bernardino, CA 92408
(909) 386-4472 (office)
(909) 831-8109 (cell)
(909) 386-4479 (fax)
Melvin.Thomas@bnsf.com

January 31, 2013

OLIVER CHI
Assistant City Manager
City of Barstow
220 East Mountain View Street
Barstow, CA 92311

SUBJECT: Letter of Intent for Grade Separation at Lenwood Road in Barstow, CA, US DOT# 026062X, on BNSF Railway Company's Cajon Subdivision, Railroad MP 5.7

Dear Mr. Chi,

This letter is to acknowledge receipt of the City of Barstow's ("City") final plans and specifications for the construction of a grade separation and elimination of the grade crossing at Lenwood Road in Barstow, CA, US DOT# 026062X and the BNSF Railway Company's ("BNSF") Main Tracks at Mile Post 5.7, Cajon Subdivision. After review of the plans and specifications and conversations with you and your staff, BNSF would like to formally identify our support of the grade separation project as we continue with the final processing of the Construction & Maintenance (C&M) Agreement.

The BNSF agrees, in concept, to the following terms:

- The construction of the grade separation of Lenwood Road over the BNSF tracks.
- Elimination of the Lenwood Road at-grade crossing as part of the project.
- The current language within the C&M Agreement, subject to approval by the Barstow City Council.
- The granting of property rights required for the construction of the project upon execution of the agreement which is currently anticipated by March 30, 2013.
- The total estimated costs for the temporary license, permanent easement, force account work for BNSF required construction activities, and BNSF flagging and inspection.
- To contribute five (5) percent towards the cost of the theoretical structure, totaling $1,035,761.08. This amount shall constitute BNSF's contribution pursuant to applicable law, as defined in 23CFR 646.210(c).

BNSF Authorizes the use of this letter to allow the City to certify the property rights for obligation of project funding. In addition, BNSF authorizes the use of this letter as an exhibit to the City's CPUC General Order 88-B application for alteration of the subject grade crossing. As the project progresses towards construction, we look forward to working with you to coordinate specific requirements of the project. Should you have any questions, please feel free to contact me at (909) 386-4472 or via email at Melvin.Thomas@bnsf.com.

Sincerely,
BNSF Railway Company

Melvin Thomas
Manager Public Projects

Exhibit F

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Agency shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Agency will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Agency will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Providers have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any

invitation to bid and specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Provider entering BNSF's right-of –way or property, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Agency shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

The Agency will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Trespasser control shall be the responsibility of the Agency. Graffiti removal will be the responsibility of the Agency.

BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of

damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will be not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.

Exhibit G

Lenwood Road Overpass Grade Separation Project
Estimated Total Project Cost

SANBAG

LENWOOD ROAD GRADE SEPARATION
PRELIMINARY ESTIMATE OF COST
100% PS&E

URS

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
1	068105	RESIDENT ENGINEER'S OFFICE	LS	1	$250,000.00	$250,000.00
2	074018	PREPARE STORM WATER POLLUTION PREVENTION PLAN	LS	1	$ 10,000.00	$ 10,000.00
3	074020	TEMPORARY FIBER ROLL	LF	11,920	$ 3.00	$ 35,480.00
4	074028	TEMPORARY SILT FENCE	LF	260	$ 3.50	$ 910.00
5	074031	TEMPORARY GRAVEL BAG BERM	LF	10,230	$ 3.50	$ 35,805.00
6	074041	STREET SWEEPING	LS	1	$ 10,000.00	$ 10,000.00
7	120099	CONSTRUCTION AREA SIGNS	LS	1	$ 20,000.00	$ 20,000.00
8	120100	TRAFFIC CONTROL SYSTEM	LS	1	$ 150,000.00	$ 150,000.00
9	120149	TEMPORARY PAVEMENT MARKING (PAINT)	SQFT	336	$ 3.00	$ 1,008.00
10	120159	TEMPORARY TRAFFIC STRIPE (PAINT)	LF	33,456	$ 0.50	$ 16,727.50
11	128601	TEMPORARY SIGNAL SYSTEM	LS	0	$ 150,000.00	$ -
12	128650	PORTABLE CHANGEABLE MESSAGE SIGN	EA	5	$ 5,000.00	$ 25,000.00
13	129000	TEMPORARY RAILING (TYPE K)	LF	3,857	$ 17.00	$ 65,569.00
14	150605	REMOVE FENCE	LF	7,230	$ 2.00	$ 14,460.00
15	150620	REMOVE GATE	EA	1	$ 400.00	$ 400.00
16	150710	REMOVE TRAFFIC STRIPE	LF	3,100	$ 0.34	$ 1,054.00
17	150711	REMOVE PAINTED TRAFFIC STRIPE	LF	2,500	$ 0.34	$ 850.00
18		REMOVE PAINTED PAVEMENT MARKING	SF	240	$ 2.18	$ 523.20
19	150714	REMOVE THERMOPLASTIC TRAFFIC STRIP	LF	9,500	$ 0.39	$ 3,705.00
20	150742	REMOVE ROADSIDE SIGN	EA	52	$ 150.00	$ 7,800.00
21	152390	RELOCATE ROADSIDE SIGN	EA	9	$ 300.00	$ 2,700.00
22	152370	RELOCATE MAILBOX	EA	35	$ 275.00	$ 9,625.00
23	152440	ADJUST MANHOLE TO GRADE	EA	12	$ 750.00	$ 9,000.00
24	153211	REMOVE CONCRETE SIDEWALK AND DRIVEWAY	SY	114	$ 12.00	$ 1,368.00
25	153215	REMOVE CONCRETE (CURB AND GUTTER)	LF	1,883	$ 5.00	$ 9,415.00
26	153218	REMOVE CONCRETE SIDEWALK	SQFT	8,131	$ 1.00	$ 8,131.00
27	153249	REMOVE CONCRETE (MISCELLANEOUS)	SQFT	2,699	$ 2.00	$ 5,398.00
28	160101	CLEARING AND GRUBBING	LS	1	$ 100,000.00	$ 100,000.00
29	160126	REMOVE TREE	EA	15	$ 700.00	$ 10,500.00
30	170101	DEVELOP WATER SUPPLY	LS	1	$ 100,000.00	$ 100,000.00
31		LEAD COMPLIANCE PLAN	LS	1	$ 5,000.00	$ 5,000.00
32	190101	ROADWAY EXCAVATION	CY	7,400	$ 10.00	$ 74,000.00
33	190110	LEAD COMPLIANCE PLAN	LS	1	$ 5,000.00	$ 5,000.00
34	192003	STRUCTURE EXCAVATION (BRIDGE)	CY	1,209	$ 62.00	$ 74,958.00
35	192037	STRUCTURE EXCAVATION (RETAINING WALL)	CY	270	$ 60.00	$ 16,200.00
36	193003	STRUCTURE BACKFILL (BRIDGE)	CY	3,107	$ 53.00	$ 164,671.00
37	193013	STRUCTURE BACKFILL (RETAINING WALL)	CY	360	$ 26.00	$ 9,360.00
38	194001	DITCH EXCAVATION	CY	3,000	$ 30.00	$ 90,000.00
39	197020	EARTH RETAINING STRUCTURE	SQFT	67,400	$ 53.00	$ 3,572,200.00
40	198001	IMPORTED BORROW	CY	258,000	$ 15.00	$ 3,870,000.00
41	203016	EROSION CONTROL (TYPE D)	ACRE	10	$ 5,000.00	$ 50,000.00
42		TEMPORARY FIBER ROLL	LF	11900	$ 3.00	$ 35,700.00
43		TEMPORARY SILT FENCE	LF	260	$ 3.50	$ 910.00
44		TEMPORARY GRAVEL BAG BERM	LF	10300	$ 3.50	$ 36,050.00
45	208279	4" PLASTIC PIPE	LF	90	$ 1.00	$ 90.00
46	260201	CLASS 2 AGGREGATE BASE	CY	10,400	$ 50.00	$ 520,000.00
47	390132	HOT MIX ASPHALT (TYPE A)	TON	17,200	$ 100.00	$ 1,720,000.00
48	394090	PLACE HOT MIX ASPHALT (MISC AREA)	SY	9	$ 50.00	$ 450.00
49	401050	JOINTED PLAIN CONCRETE PAVEMENT	CY	1,700	$ 142.00	$ 241,400.00
50	490738	FURNISH PILING (CLASS 140) (ALTERNATIVE X)	LF	10,781	$ 50.00	$ 539,050.00
51	490739	DRIVE PILE (CLASS 140) (ALTERNATIVE X)	EA	338	$ 1,800.00	$ 608,400.00
52	500001	PRESTRESSING CAST-IN-PLACE CONCRETE	LS	1	$ 175,000.00	$ 175,000.00
53	510051	STRUCTURAL CONCRETE (BRIDGE FOOTING)	CY	845	$ 300.00	$ 253,500.00
54	510053	STRUCTURAL CONCRETE (BRIDGE)	CY	1,159	$ 575.00	$ 666,425.00
55	510053	STRUCTURAL CONCRETE (BRIDGE) (4.5 KSI)	CY	1,193	$ 575.00	$ 685,975.00
56	510072	STRUCTURAL CONCRETE, BARRIER SLAB	CY	74	$ 734.50	$ 54,353.00
57	510088	STRUCTURAL CONCRETE (APPROACH SLAB) (TYPE N(305))	CY	172	$ 500.00	$ 86,000.00
58	510090	STRUCTURAL CONCRETE (BOX CULVERT)	CY	141	$ 500.00	$ 70,500.00
59	510409	CLASS 1 CONCRETE (RETAINING WALL)	CY	135	$ 600.00	$ 81,000.00
60	510502	MINOR CONCRETE (MINOR STRUCTURE)	CY	130	$ 1,200.00	$ 156,000.00
61	511064	FRACTURED RIB TEXTURE	SQFT	67,400	$ 2.00	$ 134,800.00
62	518051	PTFE SPHERICAL BEARING	EA	14	$ 7,500.00	$ 105,000.00
63	519109	JOINT SEAL (MR 2")	LF	178	$ 66.00	$ 11,968.00
64	520102	BAR REINFORCING STEEL (BRIDGE)	LB	628,508	$ 1.00	$ 628,508.00

Page 1 of 2

Governments SANBAG Working Together

LENWOOD ROAD GRADE SEPARATION
PRELIMINARY ESTIMATE OF COST
100% PS&E

URS

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
65	520103	BAR REINFORCING STEEL (RETAINING WALL)	LB	7,540	$ 1.60	$ 12,064.00
66	520107	BAR REINFORCING STEEL (BOX CULVERT)	LB	22,610	$ 1.00	$ 22,610.00
67	566011	ROADSIDE SIGN - ONE POST	EA	49	$ 300.00	$ 14,700.00
68	650014	18" REINFORCED CONCRETE PIPE (CLASS 4)	LF	304	$ 00.00	$ 30,720.00
69	650018	24" REINFORCED CONCRETE PIPE (CLASS 4)	LF	488	$ 140.00	$ 68,320.00
70	650026	36" REINFORCED CONCRETE PIPE (CLASS 4)	LF	450	$ 240.00	$ 108,000.00
71	703233	GRATED LINE DRAIN	LF	20	$ 120.00	$ 2,400.00
72	705204	18" CONCRETE FLARED END SECTION	EA	2	$ 750.00	$ 1,500.00
73	705206	24" CONCRETE FLARED END SECTION	EA	1	$ 1,000.00	$ 1,000.00
74	705207	36" CONCRETE FLARED END SECTION	EA	1	$ 1,200.00	$ 1,200.00
75	721010	ROCK SLOPE PROTECTION (BACKING NO.1, METHOD B)	CY	28	$ 200.00	$ 5,600.00
76	721011	ROCK SLOPE PROTECTION (BACKING NO.2, METHOD B)	CY	6	$ 200.00	$ 1,200.00
77	721015	ROCK SLOPE PROTECTION (LIGHT, METHOD B)	CY	128	$ 200.00	$ 25,600.00
78	729011	ROCK SLOPE PROTECTION FABRIC (CLASS B)	SY	350	$ 10.00	$ 3,500.00
79	731502	MINOR CONCRETE (MISC CONSTRUCTION)	CY	17	$ 400.00	$ 6,800.00
80		MINOR CONCRETE (LONGITUDINAL GUTTER)	LF	50	$ 200.00	$ 10,000.00
81	731504	MINOR CONCRETE (CURB AND GUTTER)	CY	392	$ 500.00	$ 196,000.00
82	731511	MINOR CONCRETE (ISLAND PAVING)	CY	16	$ 400.00	$ 6,400.00
83	731516	MINOR CONCRETE (DRIVEWAY)	CY	12	$ 300.00	$ 3,600.00
84	731521	MINOR CONCRETE (SIDEWALK)	CY	432	$ 500.00	$ 216,000.00
85	731523	MINOR CONCRETE (CURB RAMP)	CY	10	$ 800.00	$ 8,000.00
86	750001	MISCELLANEOUS IRON AND STEEL	LB	1,350	$ 2.00	$ 2,700.00
87	750501	MISCELLANEOUS METAL (BRIDGE)	LB	9,496	$ 12.00	$ 113,952.00
88	800380	CHAIN LINK FENCE (TYPE CL-6)	LF	2,356	$ 14.00	$ 32,984.00
89	810110	SURVEY MONUMENT	EA	20	$ 700.00	$ 14,000.00
90		BNSF FENCE	LF	1,176	$ 20.00	$ 23,520.00
91		BNSF DRIVE GATE	EA	2	$ 2,000.00	$ 4,000.00
92	832001	METAL BEAM GUARD RAILING	LF	2,260	$ 23.00	$ 51,980.00
93	833032	CHAIN LINK RAILING (TYPE 7)	LF	2,700	$ 60.00	$ 162,000.00
94	833033	CHAIN LINK RAILING (TYPE 7 MODIFIED)	LF	360	$ 70.00	$ 25,200.00
95	833140	CONCRETE BARRIER (TYPE 26)	LF	304	$ 125.00	$ 38,000.00
96	839521	CABLE RAILING	LF	240	$ 16.00	$ 3,840.00
97	839543	TRANSITION RAILING (TYPE WB)	EA	4	$ 3,300.00	$ 13,200.00
98	839559	TERMINAL SYSTEM (TYPE ET)	EA	4	$ 2,500.00	$ 10,000.00
99	839578	END CAP (TYPE TC)	EA	4	$ 175.00	$ 700.00
100	839725	CONCRETE BARRIER (TYPE 736)	LF	202	$ 80.00	$ 16,160.00
101		INSTALL ROADSIDE SIGNS - ONE POST	EA	113	$ 300.00	$ 33,900.00
102	840504	4" THERMOPLASTIC TRAFFIC STRIPE	LF	13,328	$ 1.00	$ 13,328.00
103	840506	6" THERMOPLASTIC TRAFFIC STRIPE	LF	3,056	$ 1.50	$ 4,582.50
104	840511	4" THERMOPLASTIC TRAFFIC STRIPE (DASHED WHITE)	LF	8,112	$ 1.00	$ 8,112.00
105	840519	THERMOPLASTIC CROSSWALK AND PAVEMENT MARKING	SQFT	937	$ 3.00	$ 2,811.00
106	840680	PAINT PAVEMENT MARKING (2-COAT)	SQFT	354	$ 10.00	$ 3,540.00
107	860261	SIGNAL AND LIGHTING (LOCATION 1)	LS	1	$ 145,270.00	$ 145,270.00
108	860402	LIGHTING (CITY STREET)	LS	1	$ 82,100.00	$ 82,100.00
109	999990	MOBILIZATION (10%)	LS	1	$ 1,695,000.00	$ 1,695,000.00
		SUBTOTAL				$ 16,636,979.20
		SANBAG SUPPLEMENTAL FUNDS				
S1	066022	RIGHT OF WAY DELAY	LS	1	$10,000.00	$10,000.00
S2	066060	ADDITIONAL TRAFFIC CONTROL	LS	1	$20,000.00	$20,000.00
S3	066696	ADDITIONAL WATER POLLUTION CONTROL	LS	1	$10,000.00	$10,000.00
		SUBTOTAL SUPPLEMENTAL FUNDS				$40,000.00
		SANBAG CONTINGENCIES				
C1		CONTINGENCY AT 10%				$1,667,980.00

PROJECT SUBTOTAL: $20,546,959.20

TOTAL PROJECT COST $20,547,000

ESTIMATED BY:

CHECKED BY: APPROVED BY:

Governments SANBAG Working Together

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ 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: June 21, 2013

Subject: Mitigation Agreement for the I-15/I-215 Devore Interchange Reconstruction Project (Devore Interchange)

Recommendation:* That the Committee recommend the Board acting as the San Bernardino County Transportation Commission:

1. Approve Purchase and Sale agreement with the Riverside-Corona Resource Conservation District based on the standard format in the Attachment "A" for the purchase from Riverside-Corona Resource Conservation District of 8.9 Acres of Enhancement Credits from the Program and authorize payment of $1,361,700 per said agreement for impacts to the Waters of the U.S. that result from activities authorized under section 404 of the Clean Water Act for the Devore Interchange Project upon approval of final agreement language by General Counsel. This purchase will be funded by Measure I 2010-2040 Cajon Pass Funds authorized under previously approved Cooperative Agreement C11103 with the California Department of Transportation.

2. Authorize the Executive Director to execute the purchase and sale agreement for the required waters mitigation based on the form in Attachment "A" upon approval of final language by General Counsel.

Background: The Devore Interchange Project is currently under design by the selected Design-Build firm and construction is anticipated to start within the next month. The project received environmental clearance in February, 2012. Part of the

*

Approved
Mountain Desert Policy Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

MDC1306a-ds

Attachment: http://portal.sanbag.ca.gov/mgmt/committee/desert/mdc2013/mdc1306/AgendaItems/MDC1306a1-ds.pdf

conditions of environmental approval includes the requirement to obtain a section 404 permit from the United States Army Corps of Engineers (USACE). This 404 permit provides approval for limited impacts to jurisdictional waters of the United States provided such impacts are limited to a very small area. For the Devore project, there are a number of existing small drainage channels which convey storm runoff from the mountains, under the freeway, and down to Cajon Wash. These channels are impacted by project construction as the widening of the freeway requires extending the underground channels below the widened freeway and reconstruction in many cases of the inlet and outlet structures.

Recommendation 1: To mitigate for these impacts to U.S. jurisdictional waters, San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Commission is agreeing to purchase mitigation credits at the Riverside-Corona Resource Conservation District (RCRCD) bank. The mitigation bank for San Bernardino County did not have available credits. The mitigation ratio for credits to impacted acres is 5:1, meaning SANBAG is required to purchase five times the number of acres impacted to satisfy the requirements of the permit. This is a standard requirement by the USACE. The cost of the 8.9 acres of mitigation credit is $1,361,700. This cost has been approved and budgeted within cooperative agreement C11103 which was approved by the Board of Directors on June 1, 2011, and an amendment approved at the March 7, 2012, Board meeting which gave approval for expenditures up to $50,353,825. Per this agreement with Department of Transportation (Caltrans), SANBAG agreed to pay for all right of way, utilities, and mitigation costs using Measure I funding and to be the implementing agency for this phase of work. As a result, this agreement is between SANBAG and the RCRCD for the benefit of the overall project.

Recommendation 2: The agreement in Attachment "A" is a standard purchase and sale agreement for these mitigation credits. General Counsel has reviewed the basic form of the agreement and will review the final version submitted for execution. Upon General Counsel acceptance of the final wording in the agreement, it will be provided for signature by the Executive Director. Since this project will be starting construction soon, it is important to complete the terms of the permit as soon as possible. The delegation of signature authority to the Executive Director will expedite execution of this agreement and payment of funds for purchase of these credits. Staff recommends approval of both recommendations.

Financial Impact: This item is consistent with the proposed SANBAG Fiscal Year 2013/2014 budget. This agreement will be funded with Measure I 2010-2040 Cajon Pass funds under Task Number No. 0880. The total amount of the subject agreement is

within with the programmed cost for the Right of Way phase and the approved project phase costs of cooperative agreement C11103.

Reviewed By: This item is also scheduled for review at the Board Metro Valley Study Session on June 13, 2013. SANBAG Contract Administrator and General Counsel have reviewed this item and a draft of the agreement.

Responsible Staff: Garry Cohoe, Director of Project Delivery

AGREEMENT FOR SALE OF CREDITS FROM THE RIVERSIDE-CORONA RESOURCE CONSERVATION DISTRICT IN-LIEU FEE PROGRAM

This Agreement is entered into this _____ day of _____ 2013, by and between Riverside-Corona Resource Conservation District ("RCRCD"), and the San Bernardino Associated Governments ("Project Proponent") (collectively the "Parties"), as follows:

RECITALS

A. RCRCD has developed the RCRCD In-Lieu Fee Program (the "Program"); and

B. The Program was approved by the Los Angeles District of the U.S. Army Corps of Engineers ("USACE"), Region IX of the U.S. Environmental Protection Agency ("USEPA"), and the California Regional Water Quality Control Board, Region 8 ("RWQCB") (jointly referred to as the Interagency Review Team (the "IRT") on July 26, 2012 and is currently in good standing with the IRT; and

C. RCRCD has received approval from the IRT to sell Credits from the Program to offset impacts; and

D. Project Proponent is seeking to purchase Compensatory Mitigation Credits ("Credits") from the Program for impacts to the Waters of the U.S. that result from activities authorized under section 404 of the Clean Water Act (Exhibit "A"). The number of ILF Credits to be acquired by the Propect Proponent for the Interstate 15 / Interstate 215 Interchange Improvements Project (the "Project"), that would take place within unnamed tributaries to Cajon Creek near the community of Devore, San Bernardino County, California ("Impact Location") is 6.6 acres for the enhancement of wetlands, as described in Special Condition No. 3 of 404 Permit No. SPL-2009-00460-VCC and an anticipated 2.3 acres for the enhancement of wetlands in a too be issued permit for the impacts to Cajon Creek for a total of 8.9 acres; and

E. USACE is requiring Project Proponent to purchase 8.9 Enhancement Credits to mitigate for impacts to Waters of the U.S. at the Impact Location by the Project, which is described in Exhibit "B"; and

F. Project Proponent desires to purchase from RCRCD and RCRCD desires to sell and convey to Project Proponent, Credits from the Program.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Subject to the terms and conditions herein, RCRCD agrees to sell to Project Proponent and Project Proponent agrees to purchase from **RCRCD 8.9 Acres of Enhancement Credits from the Program ("Credits") for the purchase price of $1,361,700.** The purchase price for said Credits shall be paid by means acceptable to RCRCD. The Parties shall mutually agree to a "Closing Date" by which the Credit sale transaction will be completed, which shall be no later than the execution of this agreement. On the Closing Date, RCRCD shall transfer to Project Proponent evidence that the Credits have been allocated to the Project by Bill of Sale in the form attached as Exhibit "C", and Project Proponent shall pay the purchase price specified above.

2. In the event Project Proponent has not delivered the Purchase Price to RCRCD on or before the Closing Date, this Agreement shall automatically terminate without need for any further action by RCRCD and RCRCD shall have no further obligations to Project Proponent under this Agreement.

3. The sale and transfer herein is not intended as a sale or transfer to Project Proponent of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

4. Project Proponent shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay, fix, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the mitigation property associated with Credits sold, or the Program.

5. The Credits herein sold and conveyed to Project Proponent shall be non-transferable and non-assignable, and shall be used as compensatory mitigation only in connection with the Project.

6. All representations, warranties, and covenants embodied in this Agreement shall survive the transfer of the Credits hereunder.

7. RCRCD shall cooperate and assist Project Proponent by providing documentation required by the IRT, and other regulatory agencies to establish that the Credits may be used to compensate for the Project's impacts described above. RCRCD shall provide USACE with a Statement of Sale of Credit in the form of the attached Exhibit "D" no later than 30 days after the Closing Date of a successful sale.

8. Any notice or other written communication given pursuant to this Agreement shall be delivered to the other Party by first class U.S. mail, certified or registered U.S. mail or facsimile mail with mailed copy as follows:

Project Proponent:	Garry Cohoe San Bernardino Associated Governments 1170 West 3rd Street, 2nd Floor San Bernardino, CA 92410-1715 Telephone: 909.884.8276 Facsimile: 909.885.4407
RCRCD:	Shelli Lamb, District Manager 4500 Glenwood Dr, Bldg A Riverside, CA 92501-3042 Telephone: (951) 683-7691 Facsimile: (951) 683-3814
Copy To:	Steve Anderson, General Counsel, RCRCD Best Best & Krieger LLP 3390 University Avenue, 5th Floor Riverside, CA 92501 Telephone: (951) 686-1450 Facsimile: (951) 686-3083

9. It is agreed that all understandings and agreements heretofore had between the Parties respecting the transactions contemplated by this Agreement are merged in this Agreement, which fully and completely expresses the agreement of the Parties. There are no representations, warranties, or agreements except as specified and expressly set forth herein, in the exhibits annexed hereto, or to be set forth in the instruments or other documents delivered or to be delivered hereunder.

10. Any corporation signing this Agreement, and each agent, officer, director, or employee signing on behalf of such corporation, but in his or her individual capacity, represents and warrants that said Agreement is duly authorized by and binding upon said corporation, duly adopted by said Board of Directors and transcribed in full in the minutes of said corporation. Any individual signing this Agreement on behalf of a partnership or business entity other than a corporation represents that such other entity has power and authority to enter into this Agreement, and by such person's act is bound hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written,

RCRCD:	PROJECT PROPONENT:
By: _____	By: _____
Its: _____	Its: _____

24632.00029\7636514.3

Exhibit A

404 PERMIT

DEPARTMENT OF THE ARMY
Los Angeles District Corps of Engineers
P.O. Box 532711
Los Angeles, CA 90017-3401

REPLY TO
ATTENTION OF

February 4, 2013

Regulatory Division

Scott Quinnell, Senior Environmental Planner
California Department of Transportation, District 8
464 West 4th Street, 6th Floor
San Bernardino, California 92401-1400

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATIONS

Dear Mr. Quinnell,

This correspondence is in reply to your application, dated April 30, 2012, for a Department of the Army Permit. Your proposed project, Interstate 215/15 Interchange Improvement Project, would result in discharges of permanent fill into approximately 1.231 acre and of temporary dredged or fill material into approximately 0.07 acre of non-wetland waters of the U.S. Therefore, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; 33 C.F.R. parts 323 and 330), your proposed project requires a Department of the Army permit. The proposed work would take place within unnamed tributaries to Cajon Creek near the community of Devore, San Bernardino County, California (see attached figures).

I have determined construction of Interstate 215/15 Interchange Improvement Project complies with Nationwide Permit (NWP) No. 14 Linear Transportation Projects, if conducted as described in your application. This letter covers multiple verifications, listed below.

Specifically, you are authorized to (as shown on the enclosed figures):

- Discharge permanent fill material into approximately 1.231 acre (10,716 linear feet) and temporarily discharge dredged or fill material into approximately 0.070 acre (335 linear feet) of non-wetland waters of the U.S. to construct the Interstate 15/ Interstate 215 Interchange Improvement Project at the following locations (also see attached tables):
  - PCN Group 2 (South of I-15/I-215 Interchange Area, Cajon Creek Subwatershed): Permanent: 0.086 acre non-wetland waters of the U.S.; and Temporary: 0.006 acre non-wetland waters of the U.S.
  - PCN Group 3 (North of Pittman Canyon): Permanent: 0.459 acre non-wetland waters of the U.S.; and Temporary: 0.023 acre non-wetland waters of the U.S.
  - PCN Group 4 (Pittman Canyon Subwatershed): Permanent: 0.496 acre non-wetland waters of the U.S.; and Temporary: 0.029 acre non-wetland waters of the U.S.
  - PCN Group 5 (Cable Creek Subwatershed): Permanent: 0.190 acre non-wetland waters of the U.S.; and Temporary: 0.012 acre (25 linear feet) of non-wetland waters of the U.S.

For this NWP No. 14 verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the following non-discretionary Special Conditions listed below:

1. The Permittee shall abide by the terms and conditions of the Clean Water Act (CWA) section 401 Water Quality Standards Certification, dated October 10, 2012.

2. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a complete set of final detailed grading/construction and drainage plans showing all work areas and structures in waters of the U.S. All plans shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated August 6, 2012 (http://www.spl.usace.army.mil/Portals/17/docs/regulatory/Permit_Process/SPD-RG_map-drawing-standards_final_20120806v3.pdf). All plan sheets shall be signed, dated, and submitted on paper no larger than 8.5 x 11 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps Regulatory Division-approved plans.

3. Prior to initiating construction in waters of the U.S., and to mitigate for permanent impacts to 1.231 acre of non-wetland waters of the U.S. and for temporary impacts to 0.070 acre of non-wetland waters of the U.S., the Permittee shall provide documentation verifying purchase of 6.6 acres credits for the enhancement of wetlands from a Corps-approved in-lieu fee program (SAWA Arundo Removal Program). The Permittee shall not initiate work in waters of the U.S. prior to receiving written confirmation (by letter or e-mail) from the Corps Regulatory Division as to compliance with this special condition. The Permittee retains responsibility for providing the compensatory mitigation until the number and resource type of credits described above have been secured from a sponsor and the Corps Regulatory Division has received documentation that confirms that the sponsor has accepted the responsibility for providing the required compensatory mitigation. This documentation may consist of a letter or form signed by the sponsor, with the permit number and a statement indicating the number and resource type of credits that have been secured from the sponsor.

4. The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter avoided waters of the U.S. areas shown in the attached figures. Adverse impacts to waters of the U.S. beyond the Corps Regulatory Division-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.

5. Upon project completion, all temporary fills shall be removed and all temporarily affected streams shall be re-contoured to pre-construction conditions. In addition, the Permittee shall hydroseed, where possible, the disturbed portions of the earthen stream banks with native, non-invasive species, as appropriate to the affected areas, to reduce the potential for erosion. The Permittee shall submit the proposed planting palette for review and approval by the Corps Regulatory Division prior to initiation of construction. The Permittee shall ensure the

hydroseeded areas are maintained and monitored for a period of two years after completing the seeding activities, such that less than 10 percent of the areas disturbed by the project are vegetated by non-native and invasive plant species. For each project drainage feature, the Permittee shall submit a memorandum by December 15th after completion of the two year maintenance and monitoring period. The memo shall indicate for each project crossing/impact area, when temporary construction areas were re-contoured to pre-construction conditions, when native seeding was completed, the species and percent cover (absolute) of invasive and/or non-invasive plant species that occur onsite each year prior to treatment, and when and how many/the extent of invasive and/or non-invasive plant species were removed that year.

6. Within 45 calendar days of completing authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a memo including the following:
   A) Date(s) work within waters of the U.S. was initiated and completed;
   B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions completed or being taken to achieve compliance);
   C) Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.; and
   D) One copy of as-built drawings for the entire project (all sheets must be signed, dated, to-scale, and no larger than 8.5 x 11 inches); and
   E) Signed Certification of Compliance.

Endangered Species Act

7. This Corps permit does not authorize you to take any threatened or endangered species, in particular the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) and arroyo toad (*Anaxyrus californicus*), or to adversely modify designated critical habitat of any species. In order to legally take a federally listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA section 10 permit, or a Biological Opinion (BO) under ESA section 7, with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (USFWS) BO (FWS-SB-10B0097-12F0001) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps Regulatory Division permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, terms and conditions of which are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with the incidental take specified in the BO, where a take of the federally listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps Regulatory Division permit. The Corps Regulatory Division and USFWS are the appropriate authorities to determine compliance with the terms and conditions of the referenced BO and with the ESA.

Cultural Resources:

8. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the

Permittee shall notify the Corps' Regulatory Division and Archeology staff (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861) within 24 hours. The Permittee shall immediately suspend all work within 100 feet of any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

Your verification is valid through March 18, 2017. All nationwide permits will expire on March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. A public notice of the change(s) will be issued when any of the NWPs are modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date on which the relevant NWP is reissued, modified, or revoked, you will have twelve (12) months from the date of the reissuance, modification, or revocation of the NWP to complete the activity under the present terms and conditions of the relevant NWP.

A preliminary jurisdictional determination (PJD) has been conducted to determine the extent of U.S. Army Corps of Engineers (Corps) geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication that Corps geographic jurisdiction may be present on a particular site, but is not appealable. Please refer to the enclosed Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form for more information.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact Veronica Chan at 213-452-3292 or via e-mail at Veronica.C.Chan@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: http://per2.nwp.usace.army.mil/survey.html.

"Building Strong and Taking Care of People!"

Sincerely,

Mark D. Cohen
Deputy Chief, Regulatory Division

Enclosure(s)

LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

CERTIFICATE OF COMPLIANCE WITH DEPARTMENT OF THE ARMY NATIONWIDE PERMIT

Permit Number: *SPL-2009-00460-VCC*

Name of Permittee: *California Department of Transportation, District 8 (POC: Scott Quinnell)*

Date of Issuance: *February 4, 2013*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-RG-SPL-2009-00460-VCC
P.O. Box 532711
Los Angeles, CA 90017-3401

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this Nationwide Permit, you may be subject to permit suspension, modification, or revocation procedures as contained in 33 C.F.R. § 330.5 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

_____ _____
Signature of Permittee Date

Table 1 - Waters of the United States

Group 2

Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)		Total Impact (acres)	Approximate Linear Feet of Impact
					Non-Wetland	Wetland		
51	Concrete and earthen-bottomed roadside drainage channels, devoid of vegetation	Jurisdictional	6 / 267	Permanent	0.027	0.000	0.027	152
				Temporary	0.005	0.000	0.005	34
52	Earthen-bottomed. Flows easterly under the I-15 via a small culvert	Jurisdictional	2 / 993	Permanent	0.003	0.000	0.003	63
				Temporary	0.000	0.000	0.000	0
53	Flows under the I-15 via a large RCB culvert to D53	Jurisdictional	12 / 205	Permanent	0.056	0.000	0.056	205
				Temporary	0.000	0.000	0.000	0
54	Small earthen-bottomed roadside drainage ditch	Jurisdictional	1 / 340	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
55	Small earthen-bottomed roadside drainage ditch	Jurisdictional	1 / 410	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
56	Small earthen-bottomed roadside drainage ditch	Jurisdictional	2 / 432	Permanent	0.000	0.000	0.000	0
				Temporary	0.001	0.000	0.001	15
57	Large concrete aprons	Jurisdictional	6 / 2615	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
73a	Concrete-apron devoid of vegetation	Jurisdictional	10 / 2213	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
80	D80 flows into D81, D81 conveys flows under I-15 via a large RCB culvert to D53	Jurisdictional	34 / 113	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
81	D80 flows into D81, D81 conveys flows under I-15 via a large RCB culvert to	Jurisdictional	8 / 578	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
83	Concrete or earthen-bottomed roadside drainage	Jurisdictional	2 / 219	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
97	Earth-Bottom	Jurisdictional	0.5 / 157	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
98	**Impacts Already Included in Drainage 41** – Kimbark Canyon	Jurisdictional	--	Permanent	0.000	0.000	0.000	0

Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)		Total Impact (acres)	Approximate Linear Feet of Impact
					Non-Wetland	Wetland		
	Drainage: natural, earthen-bottomed drainage			Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					**0.086**	**0.000**	**0.086**	**420.000**
Total Temporary Impacts					**0.006**	**0.000**	**0.006**	**49.000**

Table 1 - Waters of the United States

Group 3

Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)		Total Impact (acres)	Approximate Linear Feet of Impact
					Non-Wetland	Wetland		
15	Natural, earthen-bottomed. Flows under the I-15 via a 6-foot CSP and flows under Cajon Blvd via a 3-foot CSP directly into Cajon Creek.	Jurisdictional	11 / 304	Permanent	0.051	0.000	0.051	201
				Temporary	0.000	0.000	0.000	0
17	Earth-Bottom	Jurisdictional	2 / 589	Permanent	0.027	0.000	0.027	515
				Temporary	0.000	0.000	0.000	0
18	Earth-Bottom	Jurisdictional	6 / 393	Permanent	0.004	0.000	0.004	25
				Temporary	0.000	0.000	0.000	0
19	Earth-Bottom	Jurisdictional	2 / 204	Permanent	0.003	0.000	0.003	55
				Temporary	0.000	0.000	0.000	0
20	Earth-Bottom	Jurisdictional	1 / 374	Permanent	0.005	0.000	0.005	176
				Temporary	0.000	0.000	0.000	0
21	Earth-Bottom	Jurisdictional	7 / 472	Permanent	0.053	0.000	0.053	260
				Temporary	0.004	0.000	0.004	26
22	Earth-Bottom	Jurisdictional	3 / 542	Permanent	0.006	0.000	0.006	80
				Temporary	0.002	0.000	0.002	25
23	Natural, earthen-bottomed flows under Cajon Blvd. in a double box culvert	Jurisdictional	9 / 464	Permanent	0.058	0.000	0.058	124
				Temporary	0.006	0.000	0.006	28
24	Earth-Bottom	Jurisdictional	8 / 131	Permanent	0.003	0.000	0.003	36
				Temporary	0.003	0.000	0.003	16
25	Partially concrete-lined and partially earthen-bottomed roadside drainage ditches	Jurisdictional	1 / 480	Permanent	0.011	0.000	0.011	480
				Temporary	0.000	0.000	0.000	0
26	Partially concrete-lined and partially earthen-bottomed roadside drainage ditches	Jurisdictional	1 / 1238	Permanent	0.014	0.000	0.014	1238
				Temporary	0.000	0.000	0.000	0
28	Earth-Bottom	Jurisdictional	3 / 1121	Permanent	0.070	0.000	0.070	997

Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)		Total Impact (acres)	Approximate Linear Feet of Impact
					Non-Wetland	Wetland		
				Temporary	0.003	0.000	0.003	50
32	Earthen channel and large CSP draining Middleman Canyon drainage (D33)	Jurisdictional	2 / 1655	Permanent	0.060	0.000	0.060	1302
				Temporary	0.001	0.000	0.001	30
33	Middleman Canyon-natural, earthen-bottomed drainage. Flows under I-15 via a 6-foot CSP; a 4-foot x 8-foot double box culvert conveys flows under Cajon Blvd.	Jurisdictional	8 / 265	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
34	Earthen-bottomed drainages. Flows under the I-15 via a 4-foot CSP	Jurisdictional	4 / 722	Permanent	0.004	0.000	0.004	38
				Temporary	0.000	0.000	0.000	0
35	Earthen-bottomed. Flows under the I-15 via a 4-foot CSP	Jurisdictional	4 / 80	Permanent	0.007	0.000	0.007	80
				Temporary	0.000	0.000	0.000	0
36	Natural, earthen-bottomed. Flows under the I-15 via a 6-foot CSP and flows under Cajon Blvd via a 3-foot CSP directly into Cajon Creek.	Jurisdictional	9 / 663	Permanent	0.037	0.000	0.037	181
				Temporary	0.003	0.000	0.003	15
82	Concrete or earthen-bottomed	Jurisdictional	5 / 933	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
87	Earth-Bottom	Jurisdictional	2 / 411	Permanent	0.018	0.000	0.018	354
				Temporary	0.000	0.000	0.000	0
99	Earth-Bottom	Jurisdictional	1 /184	Permanent	0.004	0.000	0.004	112
				Temporary	0.000	0.000	0.000	0
100	Earth-Bottom	Jurisdictional	0.5 / 93	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
101	Earth-Bottom	Jurisdictional	0.5 / 64	Permanent	0.001	0.000	0.001	58
				Temporary	0.000	0.000	0.000	0
102	Earth-Bottom with Pipe Outfall	Jurisdictional	1 / 147	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
103	Earth-Bottom with Pipe Outfall	Jurisdictional	2 / 51	Permanent	0.002	0.000	0.002	40
				Temporary	0.001	0.000	0.001	11
104	Earth-Bottom	Jurisdictional	1 / 431	Permanent	0.010	0.000	0.010	431
				Temporary	0.000	0.000	0.000	0

Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)		Total Impact (acres)	Approximate Linear Feet of Impact
					Non-Wetland	Wetland		
105	Earth-Bottom	Jurisdictional	1 / 174	Permanent	0.004	0.000	0.004	174
				Temporary	0.000	0.000	0.000	0
106	Earth-Bottom	Jurisdictional	1 / 313	Permanent	0.007	0.000	0.007	313
				Temporary	0.000	0.000	0.000	0
107	Earth-Bottom	Jurisdictional	1 / 263	Permanent	0.000	0.000	0.000	16
				Temporary	0.000	0.000	0.000	0
108	Earth-Bottom	Jurisdictional	1 / 103	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
109	Earth-Bottom	Jurisdictional	1 / 163	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
120	Outside BSA, connects to D23 - Natural, earthen-bottomed flows under Cajon Blvd. in a double box culvert	Jurisdictional	–	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					**0.459**	**0.000**	**0.459**	**7284.000**
Total Temporary Impacts					**0.023**	**0.000**	**0.023**	**201.000**

Table 1 - Waters of the United States

Group 4

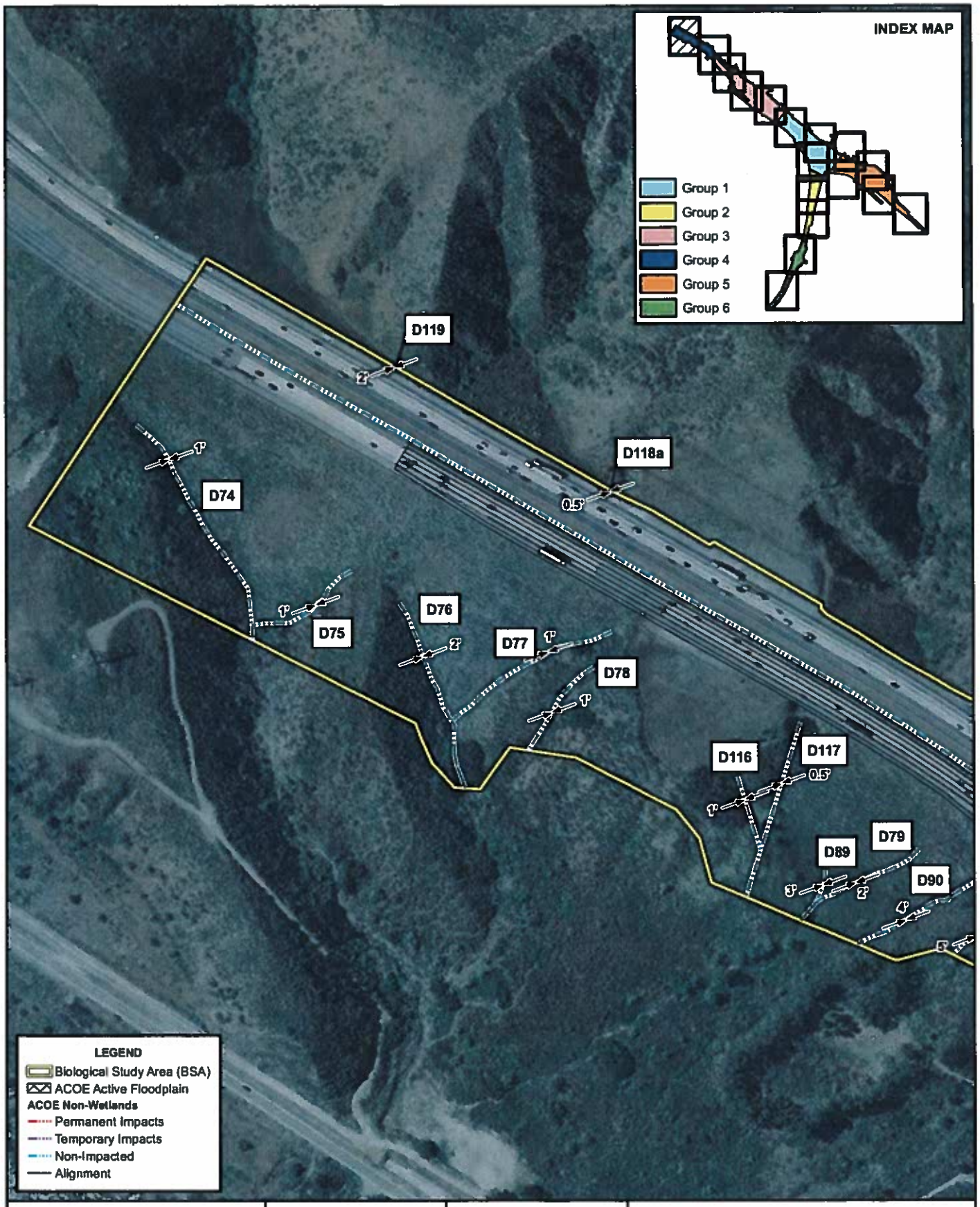
Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)		Total Impact (acres)	Approximate Linear Feet of Impact
					Non-Wetland	Wetland		
29	Earth-Bottom	Jurisdictional	30 / 468	Permanent	0.203	0.000	0.203	295
				Temporary	0.028	0.000	0.028	41
30	Earth-Bottom	Jurisdictional	9 / 677	Permanent	0.140	0.000	0.140	677
				Temporary	0.000	0.000	0.000	0
31	Earth-Bottom	Jurisdictional	5 / 1534	Permanent	0.130	0.000	0.130	1134
				Temporary	0.000	0.000	0.000	0
74	Earth-Bottom	Jurisdictional	1 / 592	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
75	Earth-Bottom	Jurisdictional	1 / 281	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
76	Earth-Bottom	Jurisdictional	2 / 472	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
77	Earth-Bottom	Jurisdictional	1 / 438	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
78	Earth-Bottom	Jurisdictional	1 / 250	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
79	Earth-Bottom	Jurisdictional	2 / 278	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
89	Earth-Bottom	Jurisdictional	3 / 135	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
90	Earth-Bottom	Jurisdictional	4 / 242	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
91	Earth-Bottom	Jurisdictional	5 / 182	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
92	Earth-Bottom	Jurisdictional	3 / 137	Permanent	0.007	0.000	0.007	96
				Temporary	0.001	0.000	0.001	19
110	Earth-Bottom	Jurisdictional	10 / 116	Permanent	0.007	0.000	0.007	29
				Temporary	0.000	0.000	0.000	0
111	Earth-Bottom	Jurisdictional	1 / 208	Permanent	0.004	0.000	0.004	176
				Temporary	0.000	0.000	0.000	0
112	Earth-Bottom	Jurisdictional	1 / 191	Permanent	0.002	0.000	0.002	68
				Temporary	0.000	0.000	0.000	0

113	Earth-Bottom	Jurisdictional	0.5 / 47	Permanent	0.000	0.000	0.000	35
				Temporary	0.000	0.000	0.000	0
114	Earth-Bottom Extension to drainage 90	Jurisdictional	1 / 175	Permanent	0.002	0.000	0.002	88
				Temporary	0.000	0.000	0.000	0
115	Earth-Bottom Outside of BSA	Jurisdictional	–	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
116	Pipe System along dralange	Jurisdictional	1 / 179	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
117	Earth-Bottom	Jurisdictional	0.5 / 431	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
118a	Earth-Bottom	Jurisdictional	0.5 / 12	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
118b	Earth-Bottom	Jurisdictional	0.5 / 170	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
119	Earth-Bottom	Jurisdictional	2 / 13	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					**0.496**	**0.000**	**0.496**	**2598.000**
Total Temporary Impacts					**0.029**	**0.000**	**0.029**	**60.000**

Table 1 - Waters of the United States

Group 5

Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)		Total Impact (acres)	Approximate Linear Feet of Impact
					Non-Wetland	Wetland		
45	Earth-Bottom	Jurisdictional	20 / 3146	Permanent	0.190	0.000	0.190	414
				Temporary	0.012	0.000	0.012	25
47	Cable Creek (D47-D49, D85, D86, and D88) is a larger natural, earthen-bottomed drainage	Jurisdictional	20 / 47	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
48	Cable Creek (D47-D49, D85, D86, and D88) is a larger natural, earthen-bottomed drainage	Jurisdictional	3 / 467	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
49	Cable Creek (D47-D49, D85, D86, and D88) is a larger natural, earthen-bottomed drainage	Jurisdictional	2 / 1468	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
85	Cable Creek (D47-D49, D85, D86, and D88) is a larger natural, earthen-bottomed drainage	Jurisdictional	1 / 198	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
86	Cable Creek (D47-D49, D85, D86, and D88) is a larger natural, earthen-bottomed drainage	Jurisdictional	2 / 518	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
88	Cable Creek (D47-D49, D85, D86, and D88) is a larger natural, earthen-bottomed drainage	Jurisdictional	10 / 1278	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					**0.190**	**0.000**	**0.190**	**414.000**
Total Temporary Impacts					**0.012**	**0.000**	**0.012**	**25.000**



Prepared By:

Map Created: 1/7/2013

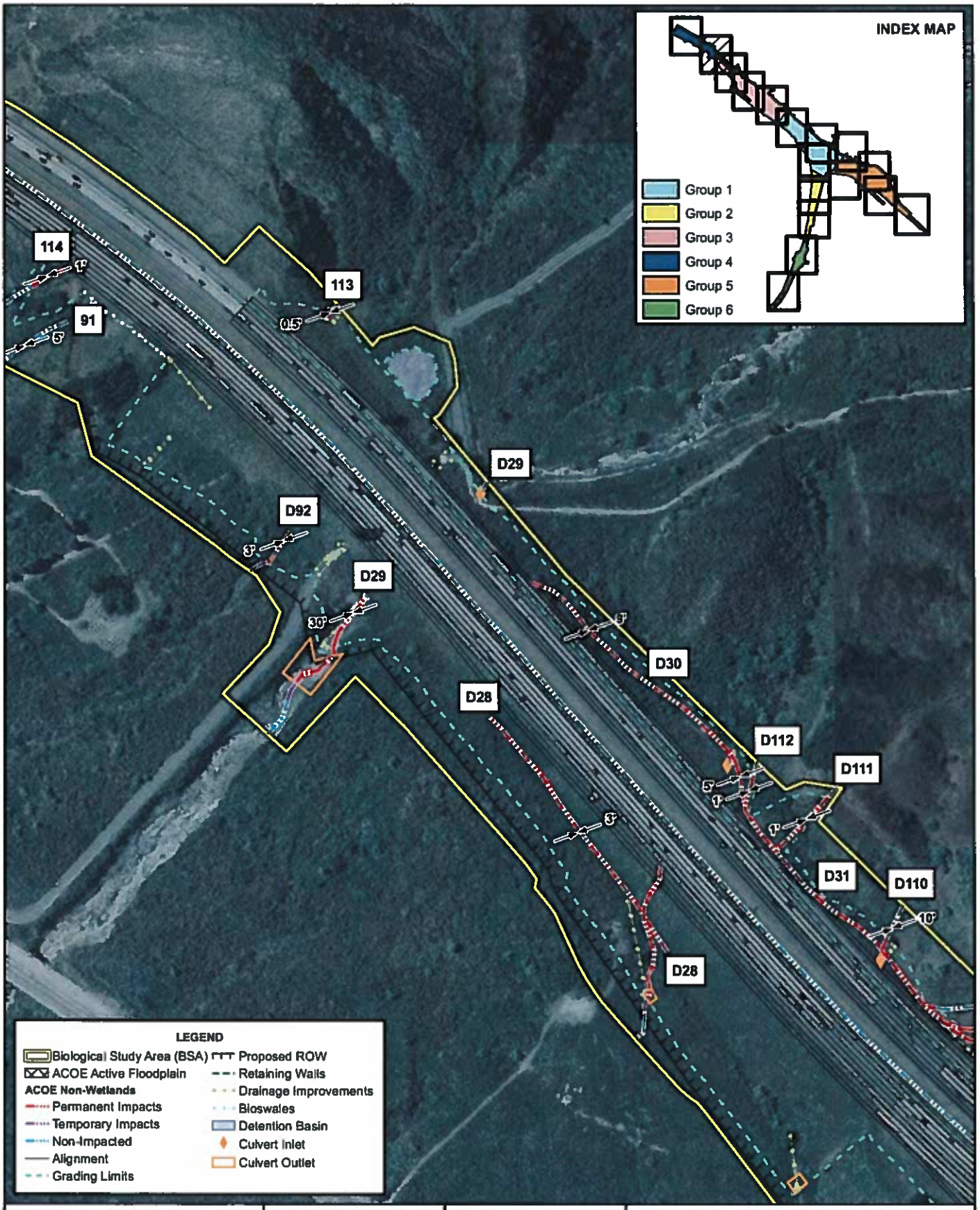
1 inch = 300 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 4
Sheet 1 of 2



Prepared By:

Caltrans

Map Created: 11/8/2012

1 inch = 300 feet

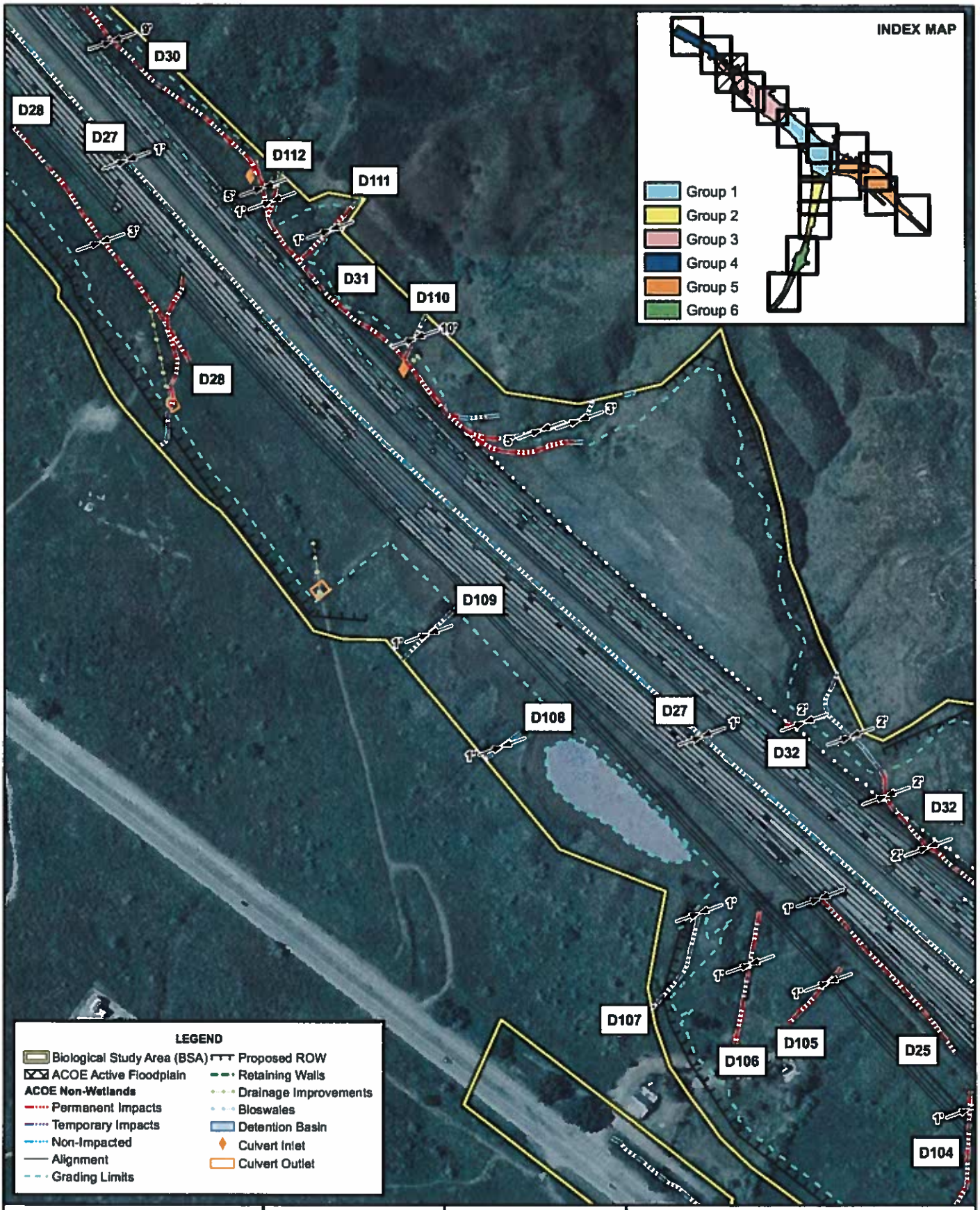
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 5 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 4
Sheet 2 of 2



Prepared By:

Map Created: 11/6/2012

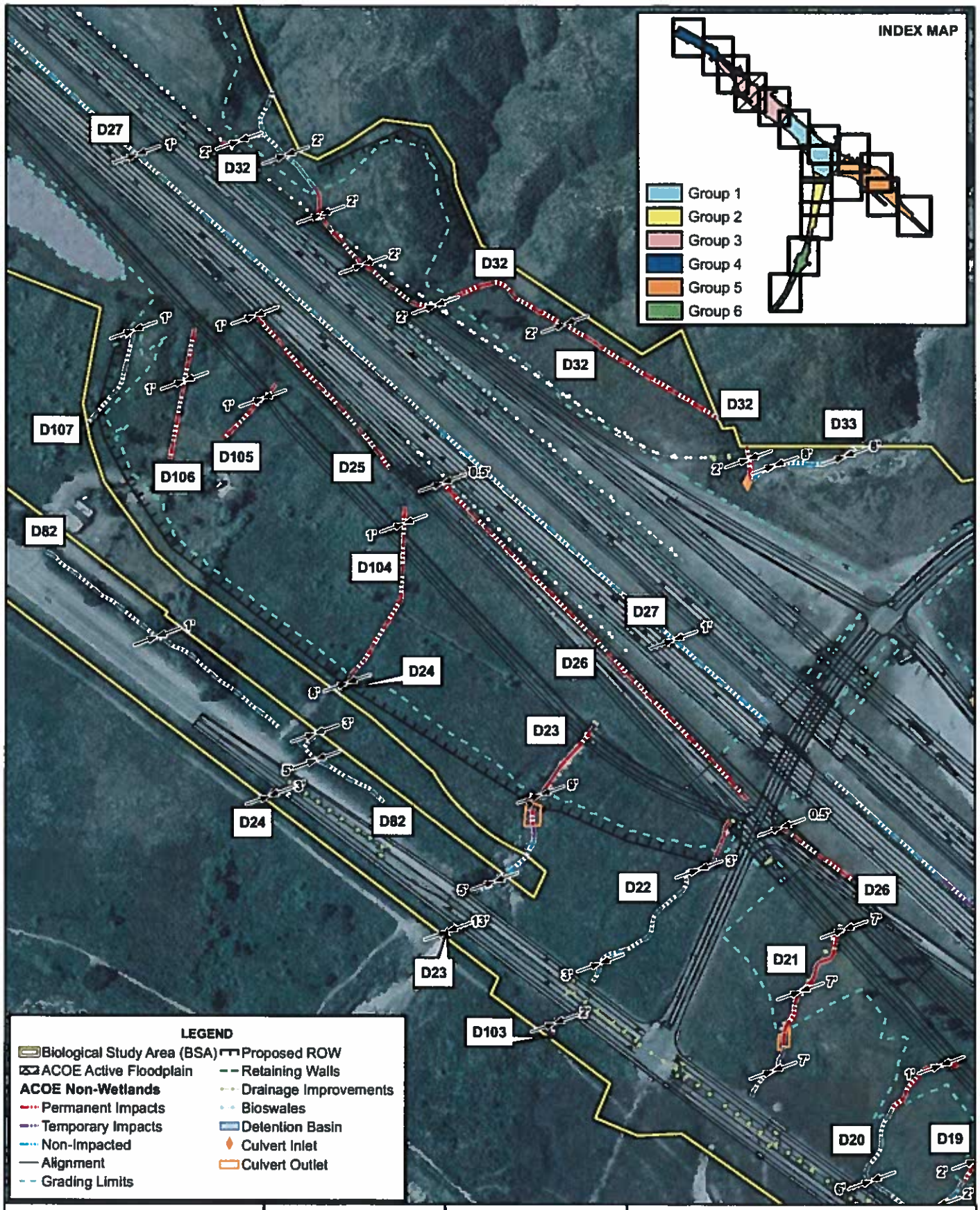
1 inch = 300 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 3
Sheet 1 of 3



Prepared By:

Map Created: 11/5/2012

1 inch = 300 feet

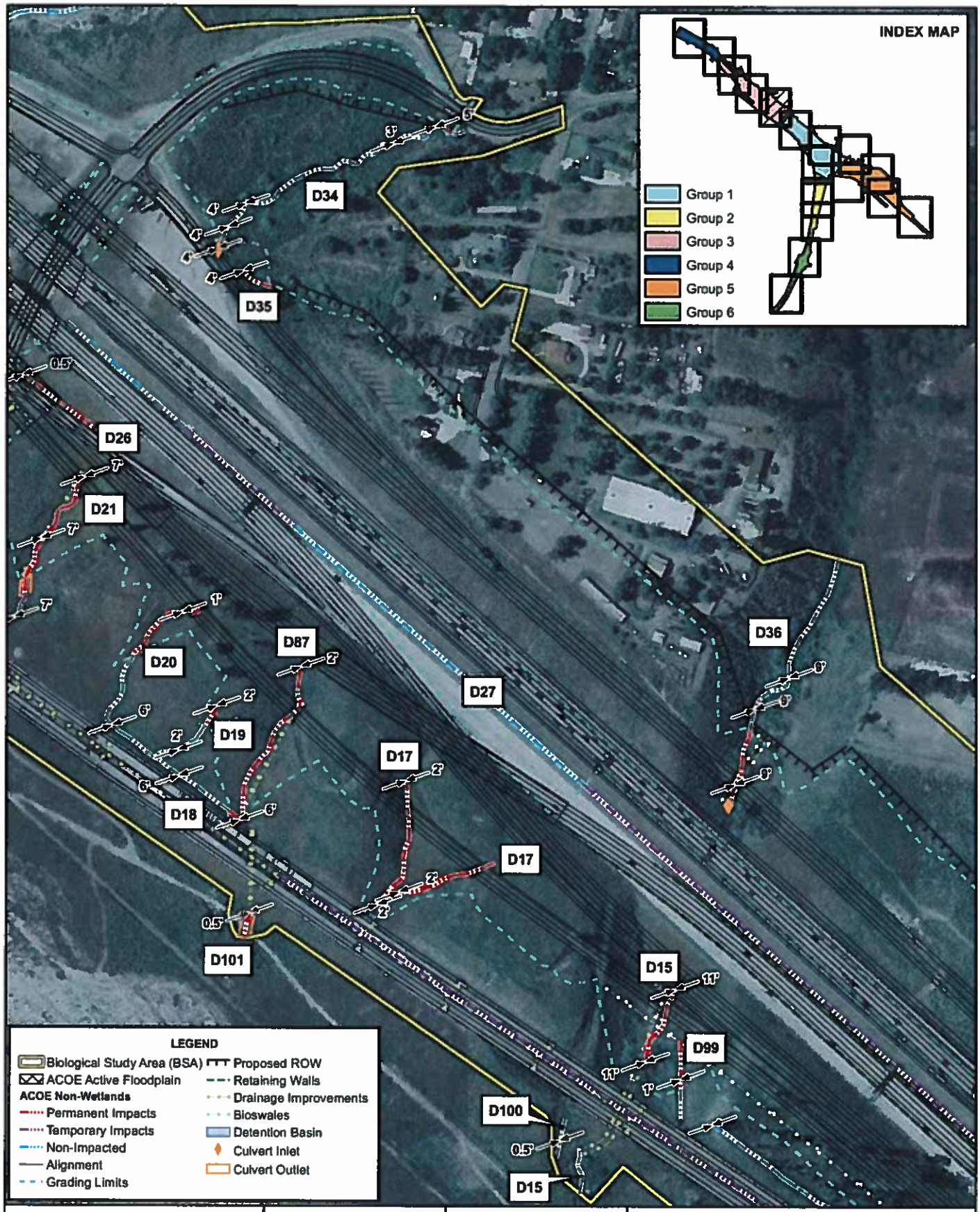
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 6 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 3
Sheet 2 of 3



Prepared By:

Map Created: 11/5/2012

1 inch = 300 feet

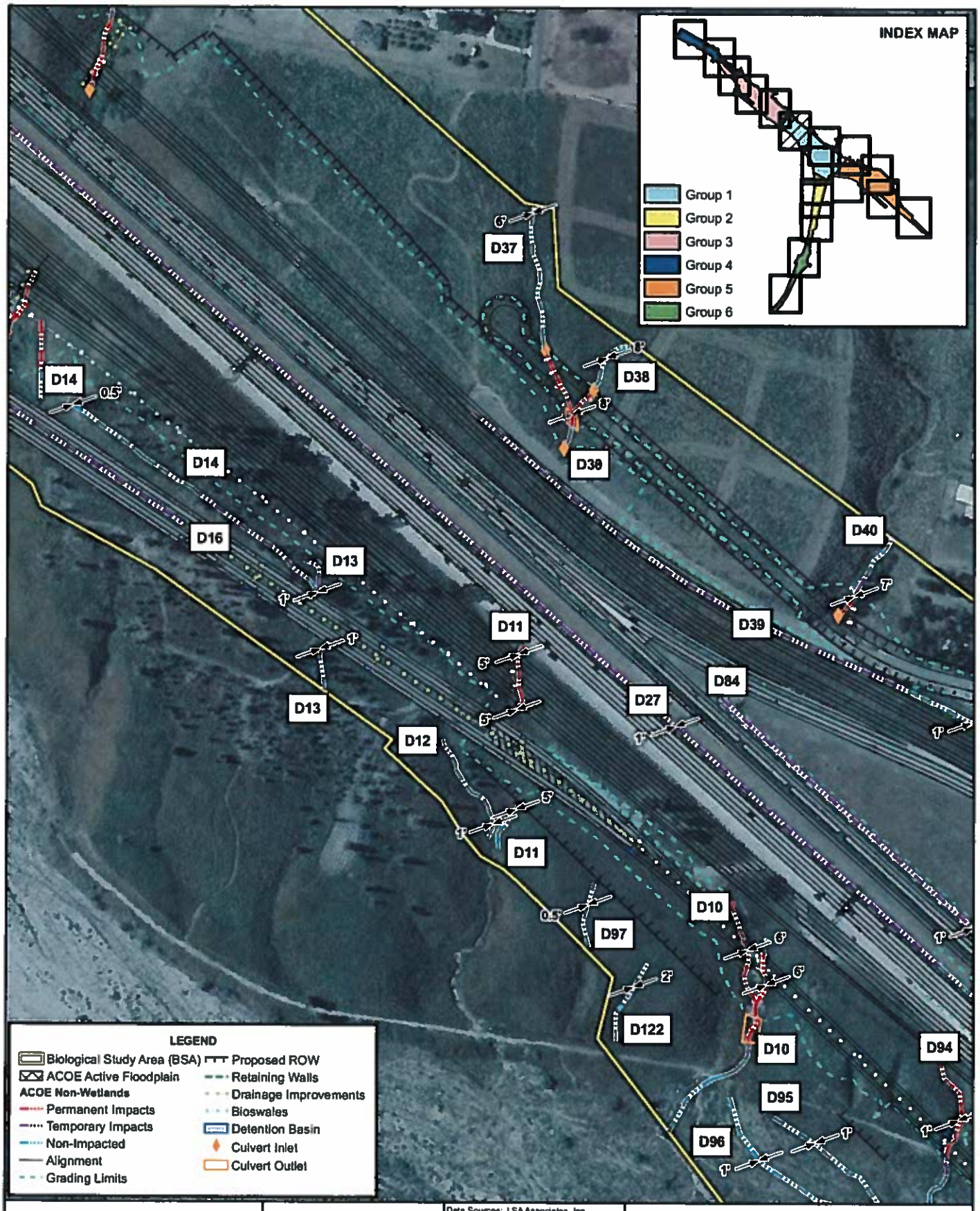
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 6 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 3
Sheet 3 of 3



Prepared By:

Map Created: 11/2/2012

1 inch = 300 feet

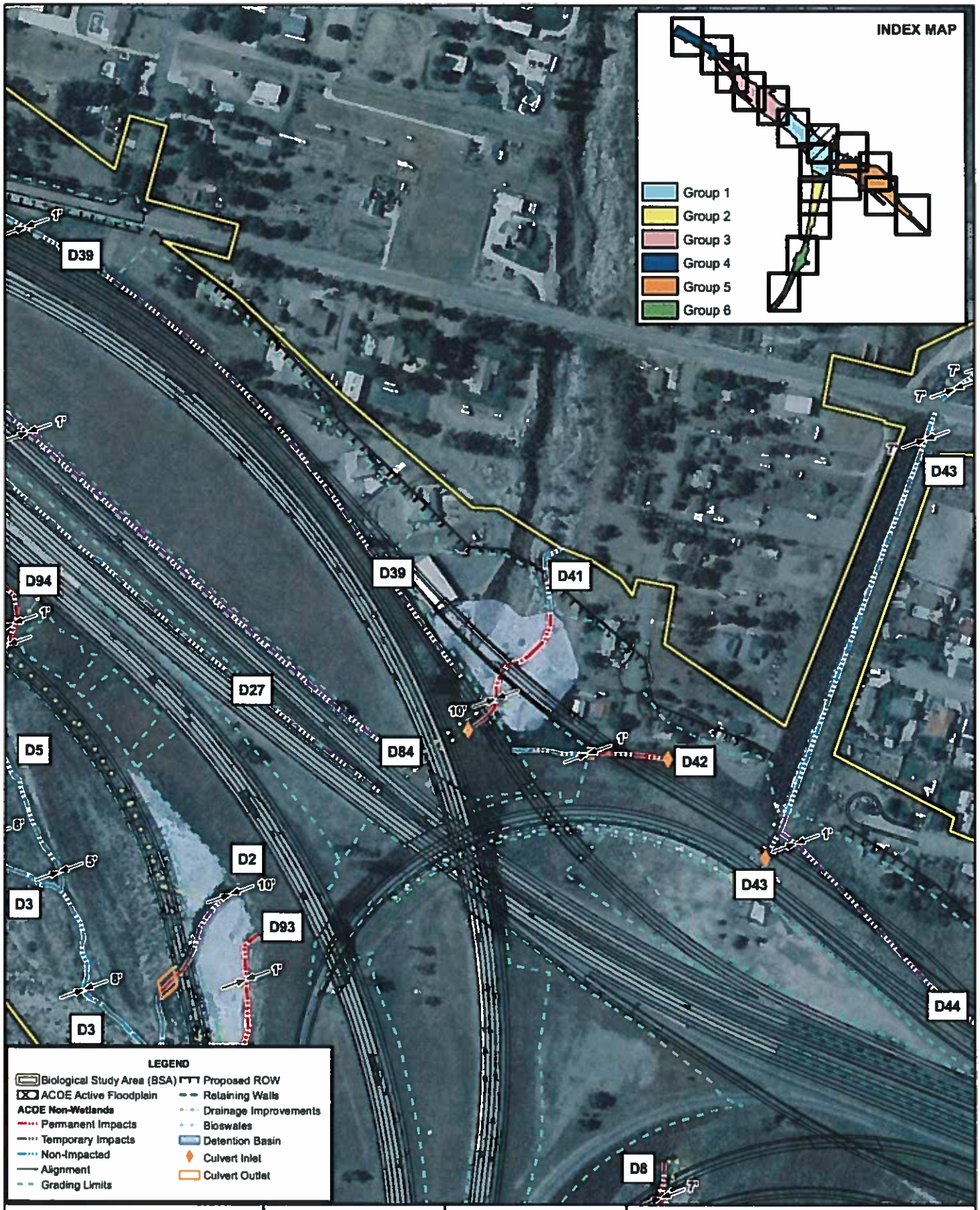
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 6 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 1
Sheet 1 of 3



Prepared By:

Map Created: 12/20/2012

1 inch = 300 feet

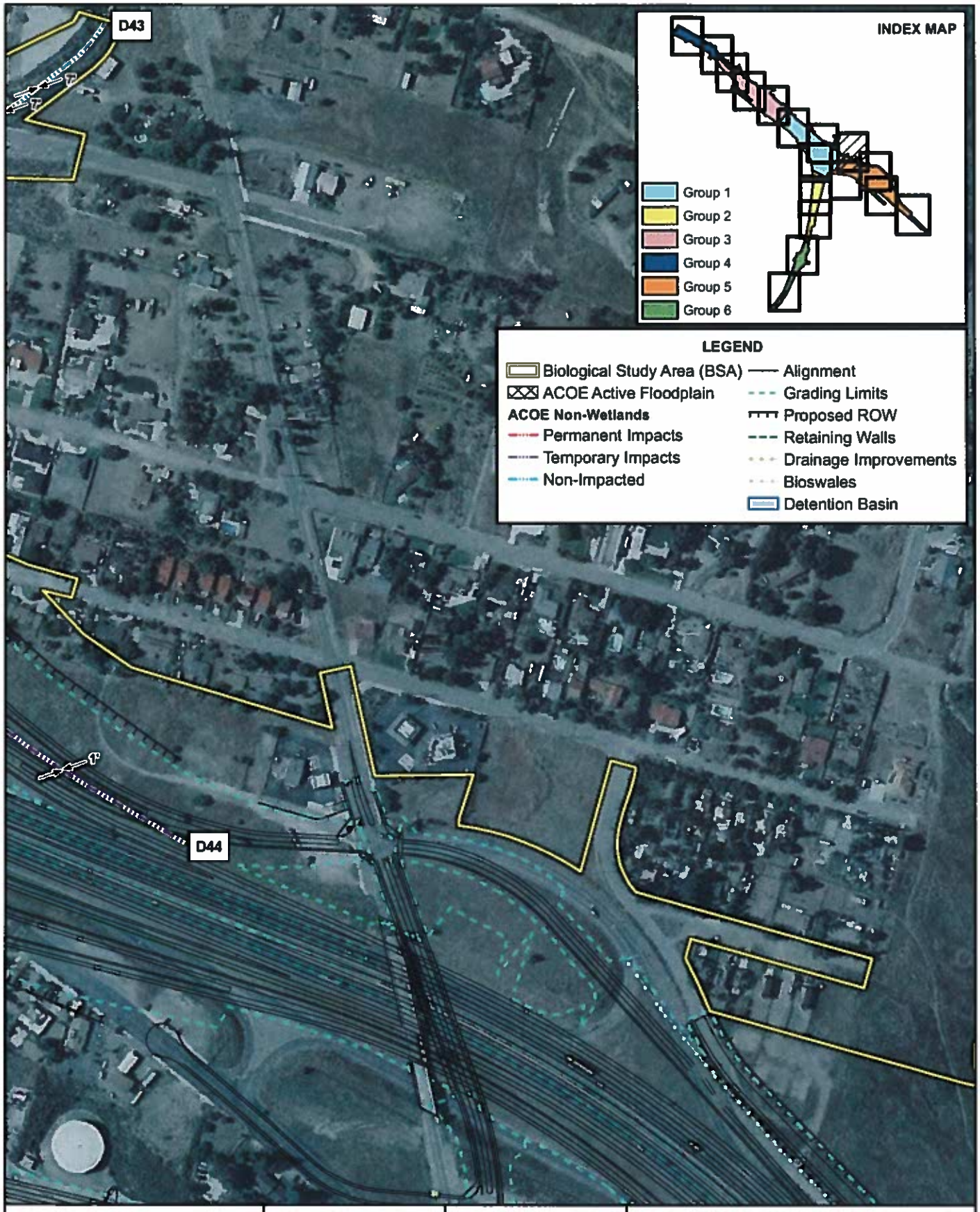
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 6 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 1
Sheet 2 of 3



Prepared By:

Map Created: 10/19/2012

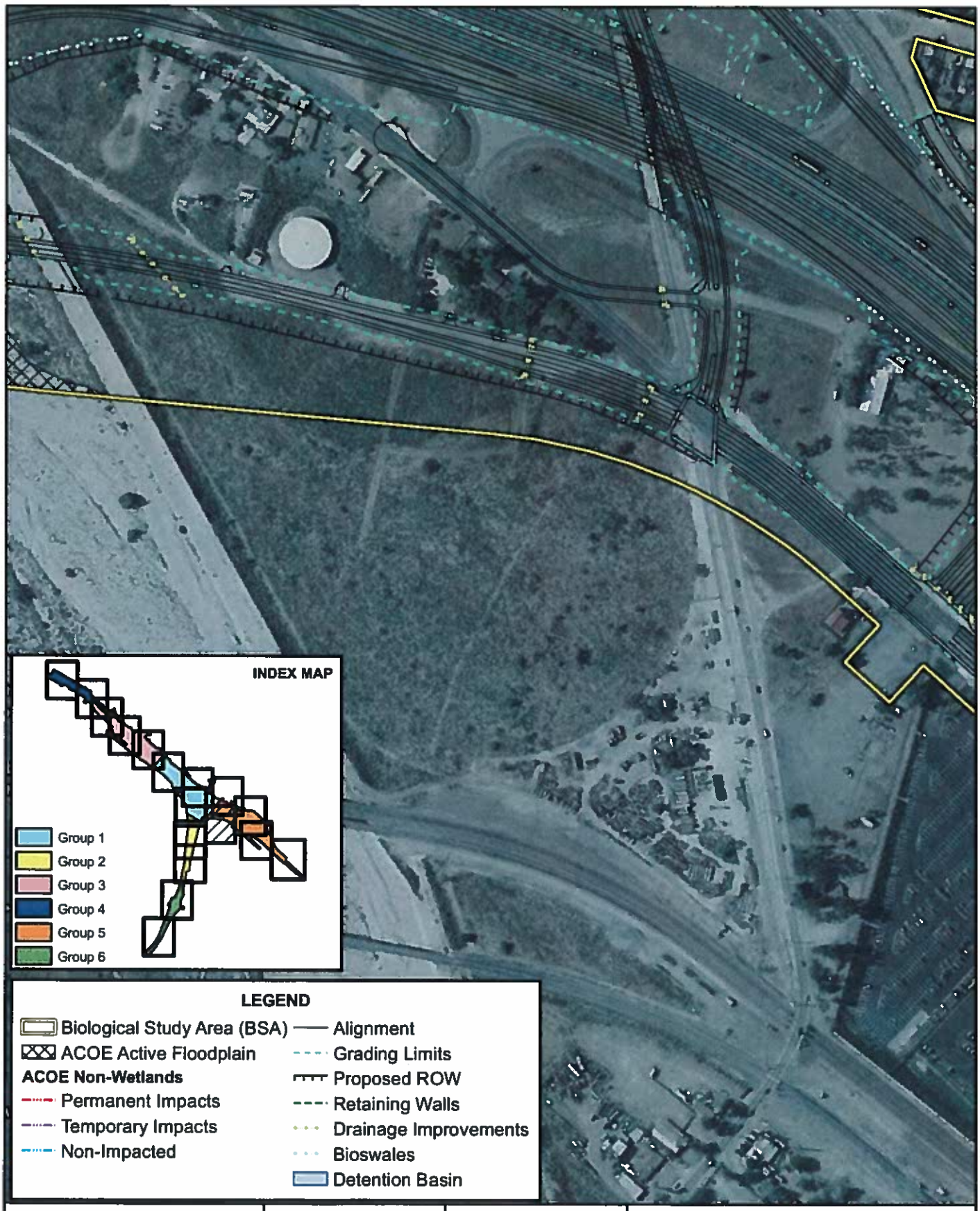
1 inch = 300 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 5
Sheet 1 of 5



Prepared By:

Map Created: 10/16/2012

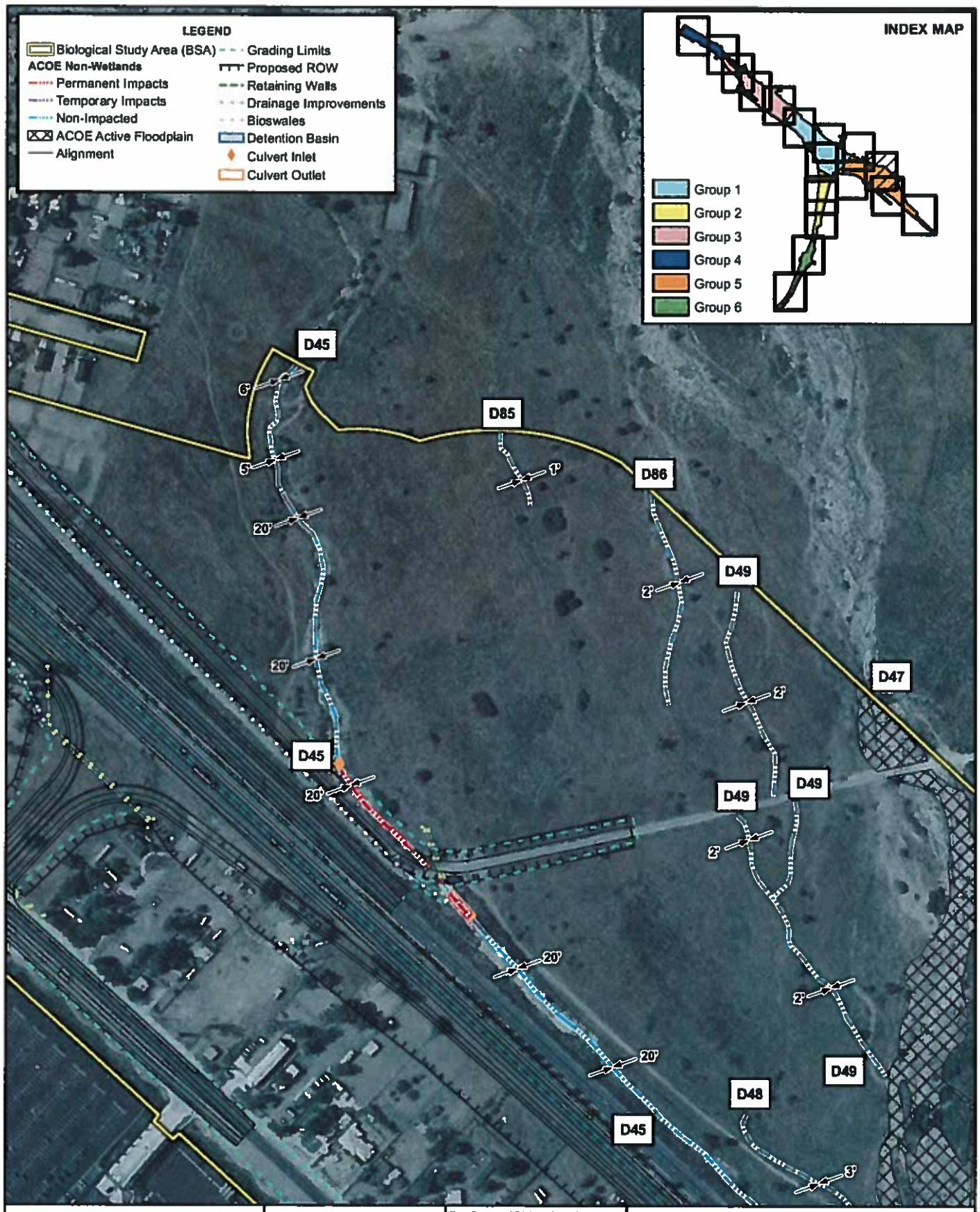
1 inch = 300 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 5
Sheet 2 of 5



Prepared By:

Map Created: 10/19/2012

1 inch = 300 feet

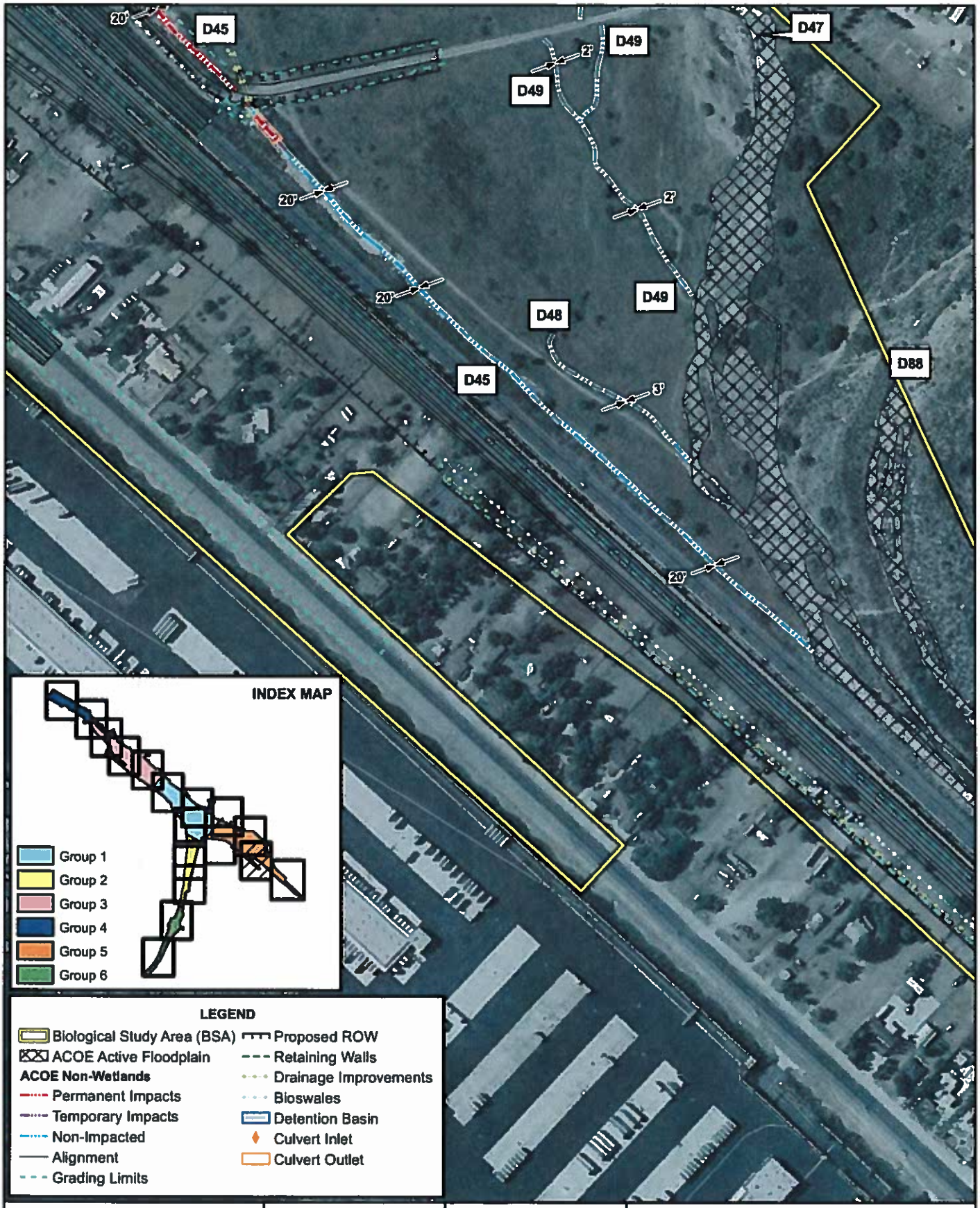
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 6 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 5
Sheet 3 of 5



Prepared By:

Map Created: 10/19/2012

1 inch = 300 feet

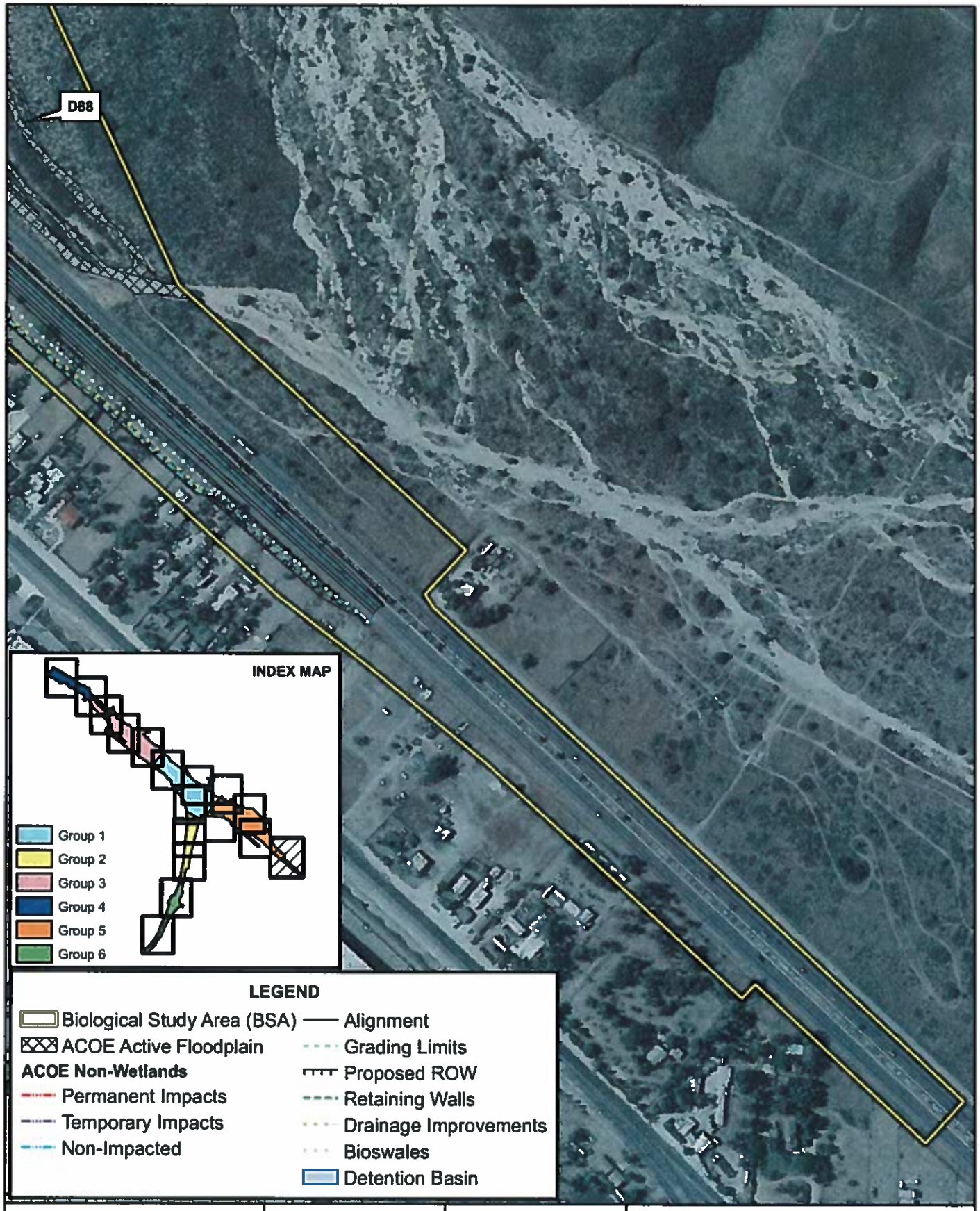
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 5 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 5
Sheet 4 of 5



Prepared By:

Map Created: 10/19/2012

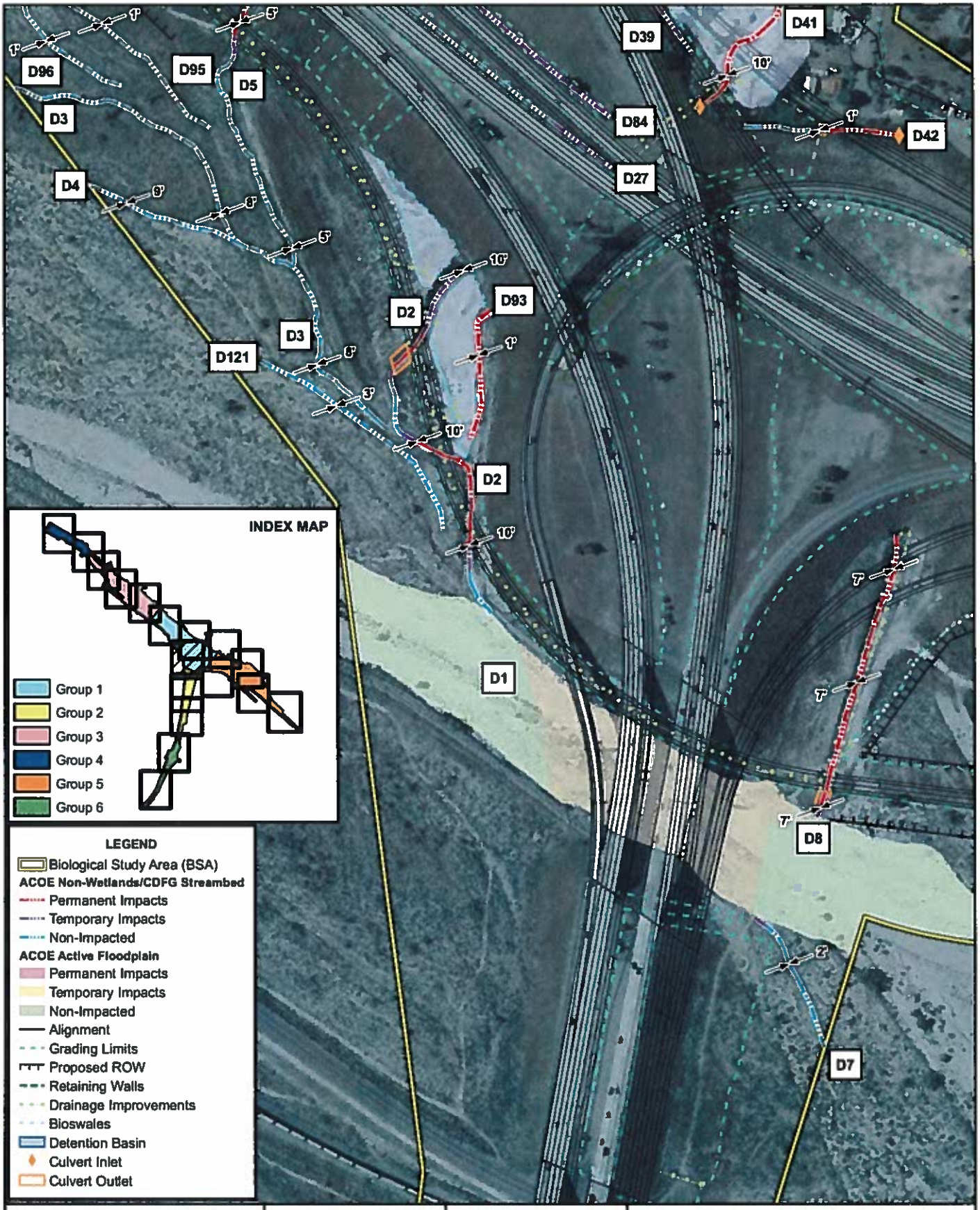
1 inch = 350 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 5
Sheet 5 of 5



Prepared By:

Map Created: 12/20/2012

1 inch = 300 feet

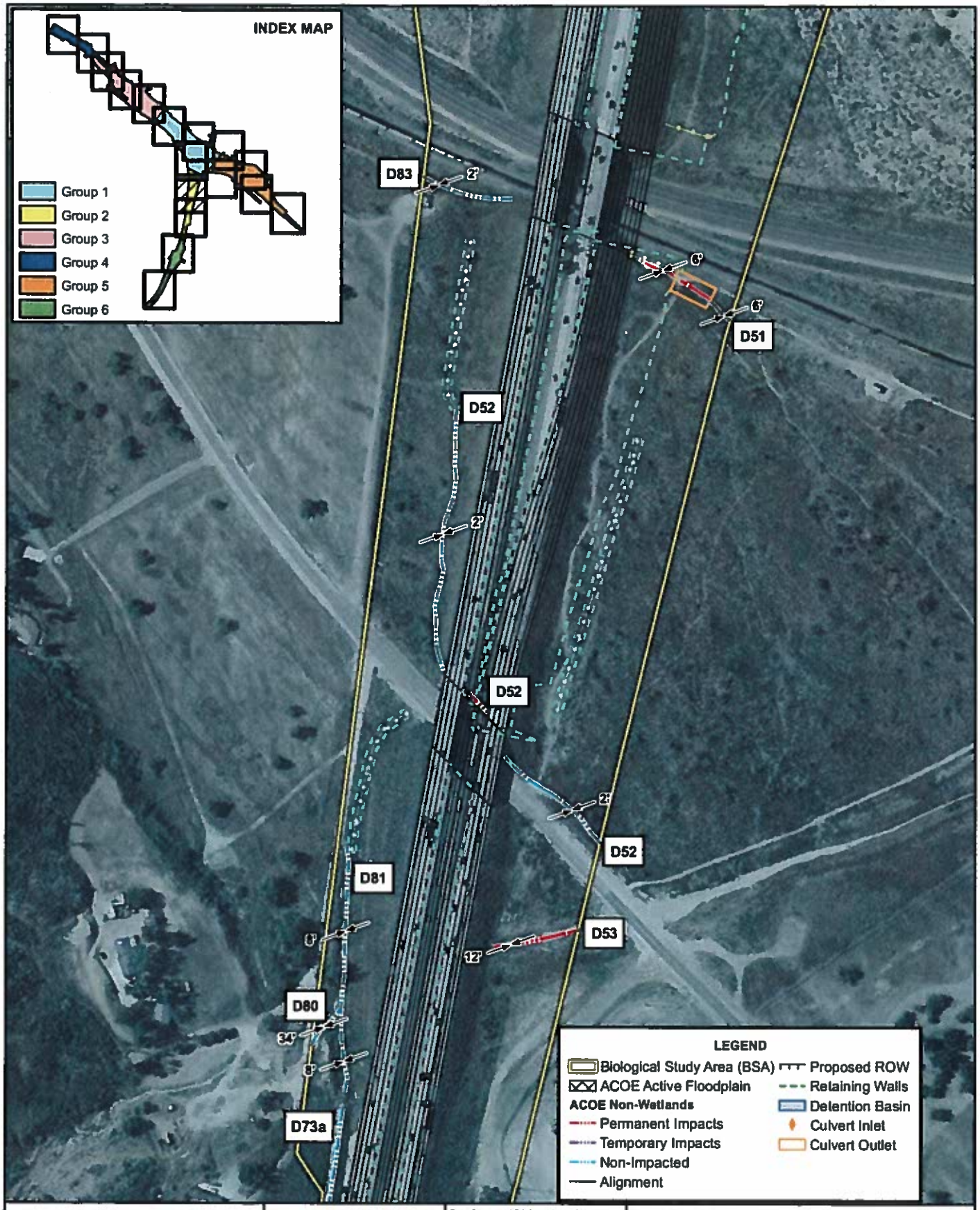
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 6 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size.

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 1
Sheet 3 of 3



Prepared By:

Map Created: 11/5/2012

1 inch = 300 feet

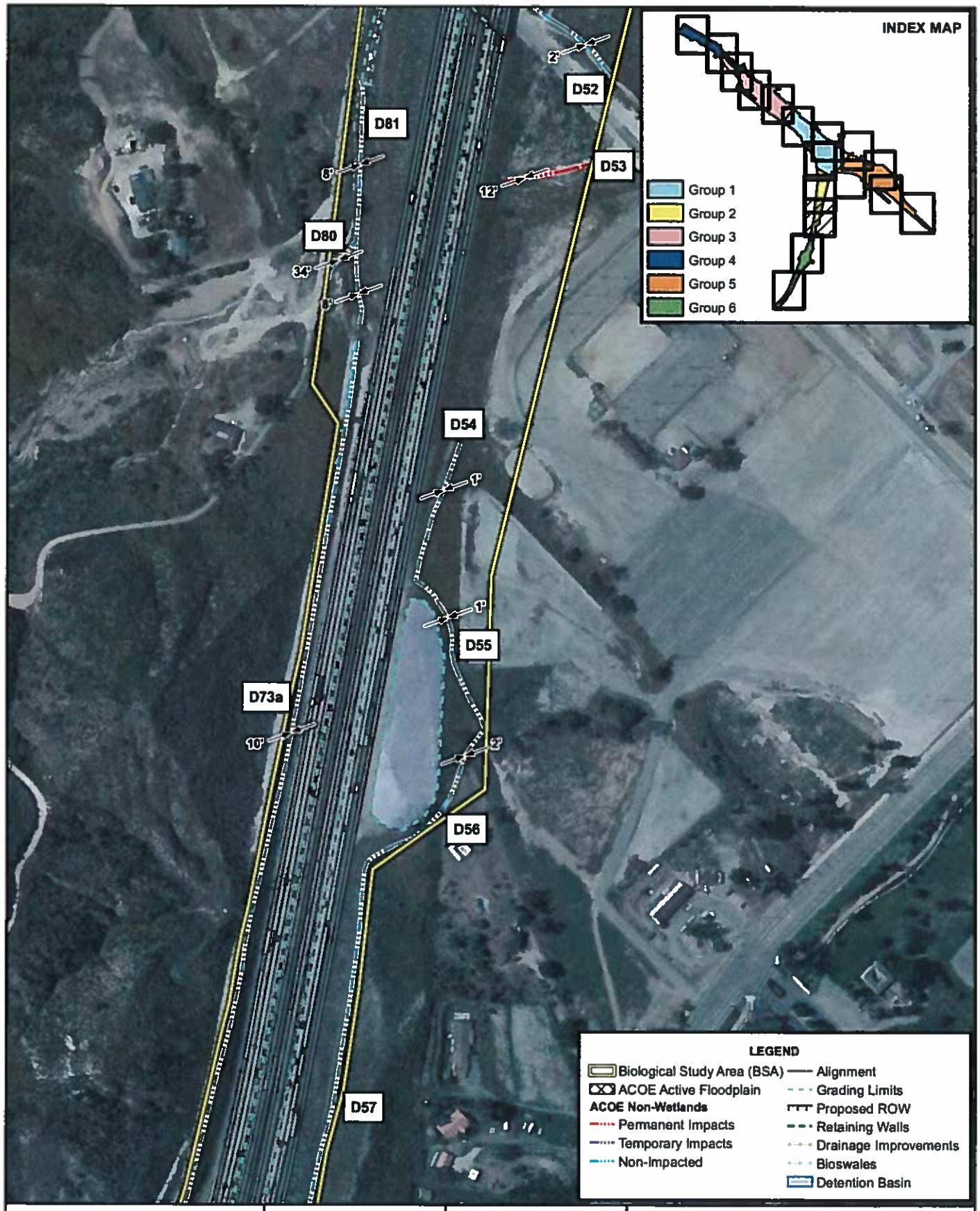
Data Sources: LSA Associates, Inc.
ESRI

Note: The width of the rip-rap pad was assumed to be 6 times the culvert size and the length of the rip-rap pad was assumed to be 10 times the culvert size

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 2
Sheet 1 of 2



Prepared By:

Map Created: 11/20/2012

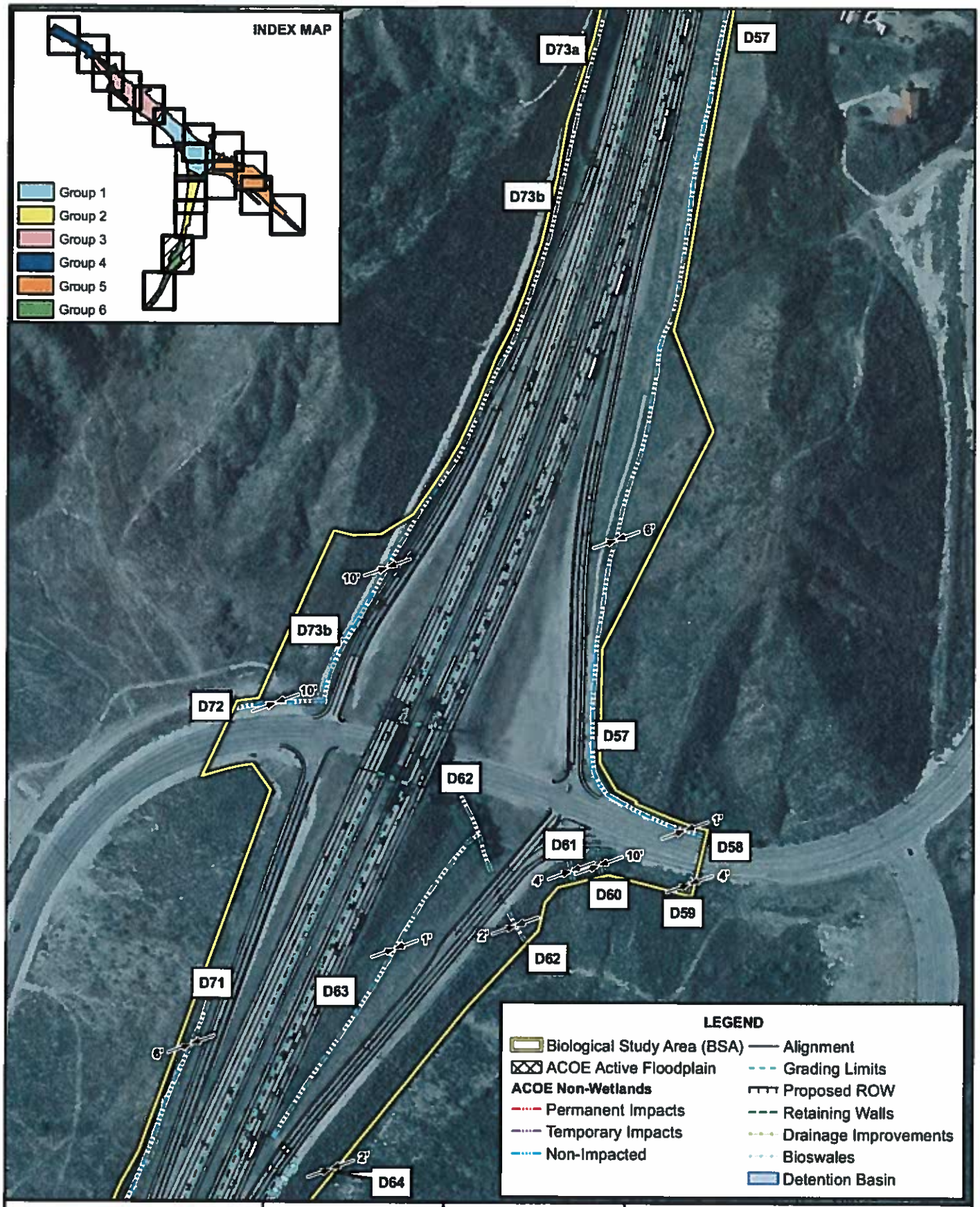
1 inch = 300 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT

Impacts to Potential Waters of the U.S.

FIGURE 5
Group 2
Sheet 2 of 2



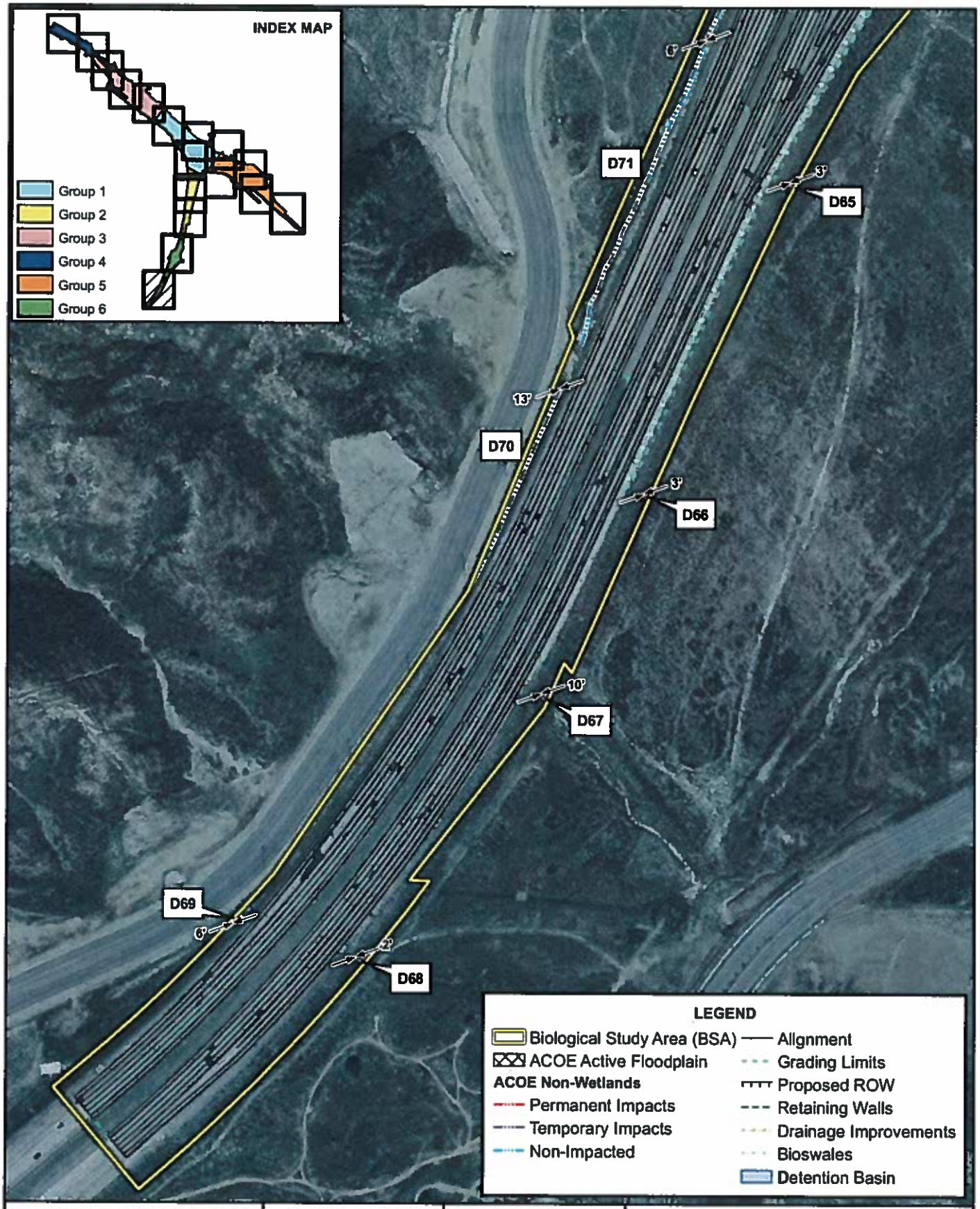
Prepared By:

Map Created: 10/19/2012

1 inch = 300 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT
Impacts to Potential Waters of the U.S.
FIGURE 5
Group 6
Sheet 1 of 2



Prepared By:

Map Created: 10/19/2012

1 inch = 300 feet

Data Sources: LSA Associates, Inc.
ESRI

I-15/I-215 INTERCHANGE IMPROVEMENTS PROJECT
Impacts to Potential Waters of the U.S.
FIGURE 5
Group 6
Sheet 2 of 2

Enclosure 1: NATIONWIDE PERMIT (NWP) NUMBER(S) 14 Linear Transportation Projects. TERMS AND CONDITIONS

1. Nationwide Permit(s) (NWP) No. 14 Linear Transportation Projects. Terms:

Your activity is authorized under Nationwide Permit (NWP) Number(s) 14 Linear Transportation Projects. subject to the following terms:

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404) Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

2. Nationwide Permit General Conditions: The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. 1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
   (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
   (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of

the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the

project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.
(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on,

determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.
(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.
(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

    "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

    _____
    (Transferee)

    _____
    (Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required

compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;
(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300

linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

3. Regional Conditions for the Los Angeles District:

In accordance with General Condition Number 27, "Regional and Case-by-Case Conditions," the following Regional Conditions, as added by the Division Engineer, must be met in order for an authorization by any Nationwide to be valid:

1. For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.

2. Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert

regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

3. When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: http://www.spl.usace.army.mil/regulatory. In addition, the PCN shall include:
   a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
   b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

   c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.

4. Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations:
   a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
   b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: http://www.swr.noaa.gov/efh.htm.
   c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
   d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

5. Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWPs 5, 6, and 27 with the submission of a PCN in accordance with General Condition 31 and Regional Condition 3.

6. Individual Permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills in perennial and intermittent watercourses otherwise authorized under NWPs 29, 39, 42 and 43, and in ephemeral watercourses for these NWPs for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP 14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.

7. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.

8. In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 26 selected NWPs within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.

9. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 29, 39, 40 and 42, 43, 44, 51 and 52 or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:
   a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
   b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 31 and Regional Condition 3;
   c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
   d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.

10. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

4. **Further information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
   ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
   (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
   ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.
   (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
   (b) This permit does not grant any property rights or exclusive privileges.
   (c) This permit does not authorize any injury to the property or rights of others.
   (d) This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
   (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
   (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
   (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
   (d) Design or construction deficiencies associated with the permitted work.
   (e) Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
   (a) You fail to comply with the terms and conditions of this permit.
   (b) The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
   (c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

   Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.

7. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition H below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

8. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: California Department of Transportation District 8 (POC: Scott Quinnell)	File Number: SPL-200900460-VCC	Date: 2-4-13

Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact: Thomas J. Cavanaugh Administrative Appeal Review Officer, U.S. Army Corps of Engineers South Pacific Division 1455 Market Street, 2052B San Francisco, California 94103-1399 Phone: (415) 503-6574 Fax: (415) 503-6646 Email: thomas.j.cavanaugh@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

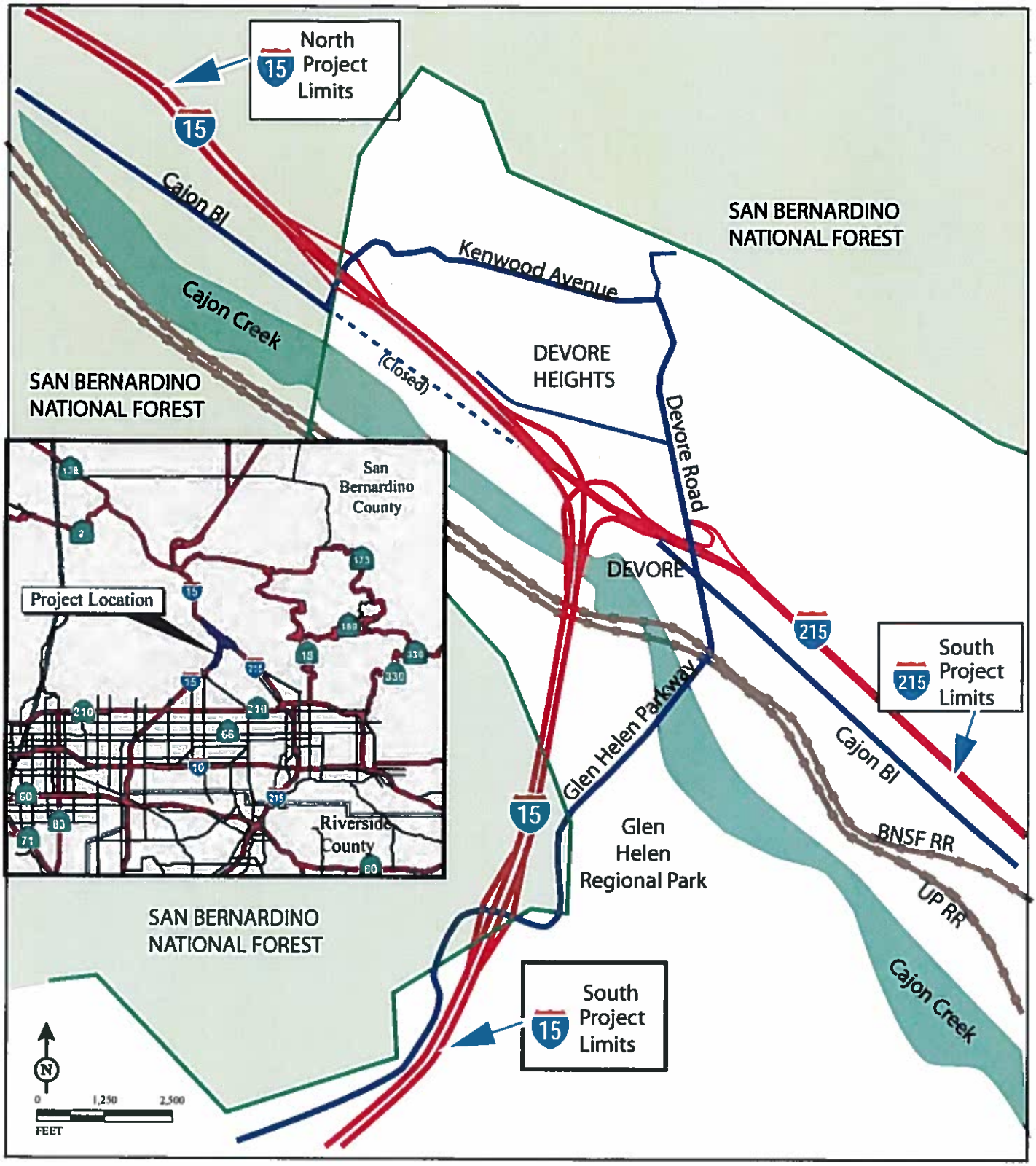
_____ Signature of appellant or agent.	Date:	Telephone number:

SPD version revised December17, 2010

Exhibit B

PROJECT DESCRIPTION

The proposed project provides operational improvements to the I-15 and I-215 Interchange near the unincorporated community of Devore in southwestern San Bernardino County. The project limits extend along I-15 from approximately 0.8 mile south of the Glen Helen Parkway undercrossing to 1.4 miles north of the Kenwood Avenue undercrossing, and along I-215 from 1.2 miles south of the Devore Road overcrossing to the I-15 junction, as shown in the attached Figure 1. The project also includes the reconnection of Cajon Boulevard and local roadway changes.



LEGEND

Freeway/Ramps

Local Street

Railroad

Map Source: LSA

FIGURE 1

I-15/I-215 Interchange Improvements

Regional and Project Location Map

Exhibit C

BILL OF SALE

Contract No. _____

In consideration of the payment of **$1,361,700,** receipt of which is hereby acknowledged, RCRCD does hereby recognize that Interstate 15 / Interstate 215 Interchange Improvements Project (the "Project Applicant"), has acquired 8.9 Enhancement Credits from the RCRCD In-Lieu Fee Program (the "Program"), developed and approved by the Los Angeles District of the U.S. Army Corps of Engineers, Region IX of the U.S. Environmental Protection Agency and the California Regional Water Quality Control Board, Region 8.

RCRCD, administrator of the Program, represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

DATED: _____

By: _____
District Manager

Exhibit D

STATEMENT OF SALE OF CREDIT

RCRCD letterhead

June 5, 2013

U.S. Army Corps of Engineers
Los Angeles District – Regulatory Division
915 Wilshire Blvd.
Los Angeles, CA 90017

Subject: Statement of Sale for 8.9 Credits from the RCRCD In-Lieu Fee Program to the San Bernardino Associated Governments

The Riverside-Corona Resource Conservation District has an agreement with the U.S. Army Corps of Engineers – Los Angeles District to operate an In-Lieu-Fee Program. This letter confirms the sale of 8.9 credits of enhancement. These credits are being used as compensatory mitigation for 1.697 acres of impact to Cajon Creek and its tributaries in the Impact HUC 18070203 as authorized by DA permit SPL-2009-00460-VCC. By selling credits to the above permittee, RCRCD is the party responsible for fulfilling the mitigation aspect of Special Condition 3 of the Permit(s) listed above.

Signed

Governments SANBAG Working Together

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ 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: June 21, 2013

Subject: Major Local Highway Program Allocation, Funding Agreement and Budget Amendment for the Town of Yucca Valley

Recommendation:* That the Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

1. Approve allocation of $471,000 in Measure I Morongo Basin Subarea - Major Local Highway Program funds to the Town of Yucca Valley for the State Route 62/Dumosa Avenue Traffic Signal Project.

2. Approve a budget amendment to increase Task No. 0516, Measure I Mt/Desert Apportionment and Allocation, from $9,842,859 to $10,313,859 to be funded with $471,000 of Measure I Morongo Basin Subarea - Major Local Highway Program funds.

3. Approve Funding Agreement C13161 in the amount of $471,000 with the Town of Yucca Valley for the State Route 62/Dumosa Avenue Traffic Signal Project, with $471,000 funded by Measure I Morongo Basin Subarea - Major Local Highway Program funds.

Background: In April 2013, representatives of all agencies in the Morongo Basin subarea met and nominated projects to be eligible for regional funds. The Town of Yucca Valley (Town) nominated the State Route 62/Dumosa Avenue Traffic Signal Project. The Town has approved a 75 unit senior housing development at this intersection. The purpose of the project is to provide safe and efficient mobility

*

Approved
Mountain/Desert Policy Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC		CTA	X	SAFE		CMA	

Check all that apply.
MDC1306a-ep
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C13161.doc

of visitors and goods at this intersection on this heavily traveled transportation corridor. The project benefits include increased pedestrian safety, increased pedestrian and vehicular visibility, installation of ADA compliant curb ramps, signalization, elimination of a two-way center left turn lane and construction of medians.

The Town has contributed approximately $30,000 to the project for conceptual design and had committed an additional $150,000 in "Low-Mod Funds" that the Department of Finance does not acknowledge as an enforceable obligation. In April 2013 the Town requested that Major Local Highway Program (MLHP) funds be made available for all phases of the Project, and the project was approved by the subarea representatives as eligible for an allocation of MLHP funds.

Financial Impact: This item is not consistent with the proposed Fiscal Year 2013/2014 budget. A budget amendment is required to increase Task No. 0516 by $471,000 to be funded by Measure I Morongo Basin Subarea – Major Local Highway Program funds.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item and a draft of the Contract.

Responsible Staff: Ellen Pollema, Transportation Planning Analyst

MDC1306a-ep

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 13161 Amendment No. _____

By and Between

San Bernaridno County Transportation Authority and Town of Yucca Valley

Contract Description The State Route 62/Dumosa Avenue Traffic Signal Project

Board of Director's Meeting Date: 7/3/13

Overview of BOD Action: (1) Approve MLHP Allocation of $471,000; (2) Approve budget amendment to increase Task 0516; (3) Approve Funding Agreement C13161

Is this a Sole-Source procurement? ☐ Yes ☐ No

CONTRACT OVERVIEW

Original Contract Amount	$	471,000	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$		**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$		**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$		**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	471,000

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
7/3/13	7/3/18	

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

FINANCIAL INFORMATION

☐ Budget authority for this contract currently exists in Task No. 0516.

☒ A Budget Amendment is required.

How are we funding current FY? N/A. For 2013/2014, funded by MI Morongo Basin MLHP

☐ Federal Funds ☐ State Funds ☐ Local Funds ☐ TDA Funds ☒ Measure I Funds

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

To be funded by MI Morongo Basin Subarea Major Local Highway Program Funds.

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Ellen Pollema	Ellen Pollema	5/31/13
Project Manager (Print Name)	Signature	Date
Andrea Zureick	Andrea Zureick	6/3/13
Task Manager (Print Name)	Signature	Date
Andrea Zureick	Andrea Zureick	6/3/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill		6/4/13
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

PROJECT FUNDING AGREEMENT C13161

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

TOWN OF YUCCA VALLEY

FOR

THE STATE ROUTE 62/DUMOSA AVENUE TRAFFIC SIGNAL PROJECT, TOWN OF YUCCA VALLEY

THIS Project Funding Agreement ("Agreement") is made and entered into this _____ day of _____ by and between the San Bernardino County Transportation Authority (hereinafter referred to as "AUTHORITY") and the TOWN OF YUCCA VALLEY (hereinafter referred to as "TOWN"). AUTHORITY and TOWN shall be individually or collectively, as applicable, known as "Party" or "Parties."

RECITALS

A. The Measure I 2010-2040 Expenditure Plan and the Morongo Subarea transportation planning partners have identified projects eligible for partial funding from Measure I 2010-2040 Rural Mountain/Desert Subarea Major Local Highway Program ("MLHP") funds;

B. The Design, Right of Way, and Construction Phases of the State Route 62/Dumosa Avenue Traffic Signal Project in the TOWN ("PROJECT") is one of the projects identified as eligible for such funding and is described more fully in Attachment A;

C. AUTHORITY has determined that the PROJECT is eligible to receive the Rural Mountains/Desert Subarea MLHP funds;

D. On _____, AUTHORITY's Board of Directors approved allocation of _____ in Rural Mountains/Desert Subarea MLHP funds to TOWN for the PROJECT;

E. This Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan;

F. Parties desire to proceed with the PROJECT in a timely manner;

G. This Agreement is intended to delineate the duties and funding responsibilities of the Parties for the PROJECT; and

H. AUTHORITY and TOWN are entering into this Agreement with the understanding that AUTHORITY will reimburse TOWN for eligible PROJECT expenditures with MLHP funds.

NOW, THEREFORE, AUTHORITY and TOWN agree to the following:

SECTION I

AUTHORITY AGREES:

1. To reimburse TOWN for the actual cost of the PROJECT up to a maximum of $471,000 in MLHP Funds. An estimate of costs for the PROJECT is provided in Attachment B. AUTHORITY shall have no further responsibilities to provide any funding for PROJECT exceeding this amount.

2. To reimburse TOWN within 30 days after TOWN submits an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by TOWN up to a maximum of $471,000, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to AUTHORITY as frequently as monthly.

3. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of TOWN performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to AUTHORITY when planning and conducting additional audits.

4. AUTHORITY shall assign a project liaison for the purpose of attending Project Development Team (PDT) meetings.

SECTION II

TOWN AGREES:

1. To be the lead agency for this PROJECT and to diligently undertake and complete in a timely manner the Scope of Work for the PROJECT as shown in Attachment A.

2. To be responsible for expending that portion of the eligible PROJECT expenses that are incurred by TOWN, subject to reimbursement by AUTHORITY hereunder, for an amount not to exceed $471,000 in MLHP Funds, and are reimbursable by AUTHORITY in accordance with Section I, Paragraph 2. Expenses relative to time spent on the PROJECT by TOWN are considered eligible PROJECT expenses and may be charged to the PROJECT funds subject to AUTHORITY's guidelines.

3. To abide by all AUTHORITY, TOWN, County, State, and Federal laws, regulations, policies and procedures pertaining to the PROJECT.

4. To prepare and submit to AUTHORITY an original and two copies of signed invoices for reimbursement of eligible PROJECT expenses. Invoices may be submitted to AUTHORITY as frequently as monthly.

5. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to AUTHORITY or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of AUTHORITY during normal business hours at TOWN's TOWN Hall. Copies will be made and furnished by TOWN upon written request by AUTHORITY or CALTRANS.

6. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support TOWN's requests for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by TOWN.

7. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Final Report of Expenditures and final invoice no later than 120 days following the completion of those expenditures. An original and two copies of the Final Report of Expenditures shall be submitted to AUTHORITY and must state that these PROJECT funds were

used in conformance with this Agreement and for those PROJECT-specific work activities described.

8. To cooperate in having a PROJECT-specific audit completed by AUTHORITY, at AUTHORITY's option and expense, upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.

9. To repay to AUTHORITY any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within one hundred twenty (120) days of TOWN receiving notice of audit findings, which time shall include an opportunity for TOWN to respond to and/or resolve the findings. Should the findings not be otherwise resolved and TOWN fail to reimburse moneys due AUTHORITY within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both Parties, the AUTHORITY reserves the right to withhold future payments due TOWN from any source under AUTHORITY's control.

10. To include AUTHORITY in Project Development Team (PDT) meetings if and when such meetings are held and in related communications on PROJECT progress, to provide at least quarterly schedule updates to AUTHORITY, and to consult with AUTHORITY on critical issues relative to the PROJECT.

11. As an eligible PROJECT expense, to post signs at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of AUTHORITY and TOWN.

SECTION III

IT IS MUTUALLY AGREED:

1. To abide by all applicable Federal, State and Local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the Effective Date of this Agreement.

2. The final PROJECT cost may ultimately exceed current estimates of PROJECT cost. Any additional eligible costs resulting from unforeseen conditions over the estimated total of the PROJECT cost, shall be borne by TOWN unless prior authorization has been approved by the AUTHORITY Board of Directors pursuant to Section III, Paragraph 3 of this Agreement;

3. In the event TOWN determines PROJECT work may exceed the not to exceed amount identified in Section I, Paragraph 1, TOWN shall inform AUTHORITY of this determination and thereafter the Parties shall work together in an attempt to agree upon an amendment to the PROJECT amounts

identified in this Agreement. In no event, however, shall AUTHORITY be responsible for PROJECT costs in excess of the PROJECT amounts identified herein absent a written amendment to this Agreement that is approved by the Parties.

4. Eligible PROJECT reimbursements shall include only those costs incurred by TOWN for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.

5. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction delegated to TOWN under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, TOWN shall fully defend, indemnify and save harmless AUTHORITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction delegated to TOWN under this Agreement. TOWN's indemnification obligation applies to AUTHORITY's "active" as well as "passive" negligence but does not apply to AUTHORITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

6. Neither TOWN nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless TOWN, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. AUTHORITY's indemnification obligation applies to TOWN's "active" as well as "passive" negligence but does not apply to TOWN's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

7. This Agreement will be considered terminated upon reimbursement of eligible costs by AUTHORITY or July 1, 2017, whichever is sooner, provided that the provisions of Paragraphs 6, 7, 8, 9 and 10 of Section II, and Paragraphs 5 and 6 of Section III, shall survive the termination of this Agreement. The Agreement may also be terminated by AUTHORITY, in its sole discretion, in the event the PROJECT work described in Attachment A has not been initiated or let by TOWN within twelve (12) months of the Effective Date of this Agreement.

8. AUTHORITY may terminate this Agreement if TOWN fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.

9. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.

10. Attachment A, State Route 62/Dumosa Ave. Traffic Signal Project Description of Project and Milestones, and Attachment B, State Route 62/Dumosa Ave. Traffic Signal Project Funding Summary, are attached to and incorporated into this Agreement.

11. This Agreement is effective and shall be dated on the date executed by AUTHORITY.

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

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
Janice Rutherford, Chairperson

Date: _____

APPROVED AS TO FORM AND PROCEDURE:

By: _____
Eileen Monaghan Teichert
AUTHORITY General Counsel

Date: _____

By: _____
Jeffery Hill
Contract Administrator

Date: _____

TOWN OF YUCCA VALLEY

By: _____
Merl Abel
Mayor

Date: _____

APPROVED AS TO FORM AND PROCEDURE:

By: _____
Lona N. Laymon, Esquire
TOWN Counsel

ATTACHMENT A

STATE ROUTE 62/DUMOSA AVENUE TRAFFIC SIGNAL PROJECT, TOWN OF YUCCA VALLEY

Project Title
SR62/Dumosa Ave Traffic Signal
Location, Project Limits, Description, Scope of Work, Legislative Description
Construction of a traffic signal at the intersection of SR62 and Dumosa Avenue including ADA compliant ramps, raised median construction on Dumosa Ave south of SR62 and modifications to the existing turn pockets for east and west bound traffic on SR62.
Purpose and Need
The existing commercial shopping centers, Town Hall Complex and proposed 75 unit Senior Housing Development generates a highly traveled intersection by both pedestrians and vehicles. The purpose of the project is to provide safe and efficient interstate and interregional mobility of visitors and goods and an improved and safe transportation corridor through the Town of Yucca Valley for both visitors and local residents who use the route to access not only our public & commercial facilities, but also Joshua Tree National Park and the California Welcome Center as well as military vehicles accessing the Twentynine Palms Marine Corps Air Ground Combat Center.
Project Benefits
Project benefits include increased pedestrian safety, increased pedestrian and vehicular visibiilty resulting in a potential reduction of vehicular conflicts, installation of ADA compliant curb ramps, signalization, elimination of two way center left turn lane and construction of medians resulting in a reduction of vehicular turning movements and expanding existing turn lanes resulting in potential reduction in vehicular conflicts.

Project Milestone			Proposed
Project Study Report Approved			
Begin Environmental (PA&ED) Phase			06/01/13
Circulate Draft Environmental Document	Document Type	N/A	
Draft Project Report			08/01/13
End Environmental Phase (PA&ED Milestone)			08/01/13
Begin Design (PS&E) Phase			07/01/13
End Design Phase (Ready to List for Advertisement Milestone)			09/01/13
Begin Right of Way Phase			
End Right of Way Phase (Right of Way Certification Milestone)			
Begin Construction Phase (Contract Award Milestone)			03/01/14
End Construction Phase (Construction Contract Acceptance Milestone)			07/01/14
Begin Closeout Phase			07/01/14
End Closeout Phase (Closeout Report)			08/01/14

Description of Project and Milestones

ATTACHMENT B

STATE ROUTE 62/DUMOSA AVENUE TRAFFIC SIGNAL PROJECT, TOWN OF YUCCA VALLEY

Funding Summary

Component	Total Cost	AUTHORITY SHARE* - MLHP Funds	TOWN Local Measure I Funds
All Phases	$521,000	$471,000	$50,000
Total	**$521,000**	$471,000	$50,000

*AUTHORITY's Share can be from sources under control of AUTHORITY including but not limited to Measure I Major/Local Highways program, and State Transportation Improvement Program (STIP), or Surface Transportation Program (STP) without necessitating an amendment of this agreement.

SANBAG Acronym List

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
SRTP	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 21st 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

Governments
SANBAG
Working Together

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