

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: August 10-11, 2011

Reference No.: 4.16
Action

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: William D. Bronte, Chief
Division of Rail

Subject: **SUBMITTAL OF DEFINITIVE AGREEMENTS AND SUMMARIES FOR A TRADE CORRIDOR IMPROVEMENT FUND RAIL PROJECT IN ACCORDANCE WITH ASSEMBLY BILL 105 (2011)**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) accept the summaries of the Definitive Agreements between the San Bernardino Associated Governments, Union Pacific Railroad (UPRR) and BNSF Railway Company (BNSF) as prepared by the Department and at the request of the Commission; Copies of those Definitive Agreements are attached in accordance with Assembly Bill 105 (AB 105).

ISSUE:

In September 2008, Assembly Bill 268 (AB 268) added Section 8879.52 to the Government Code, which required the Department to make a one-time report on or before February 18, 2009, to certain committees of the Legislature summarizing “any memorandum of understanding or any other agreement executed between a railroad company and any state or local transportation agency” for any project that receives Trade Corridors Improvement Funds (TCIF). The Department submitted the required report on February 18, 2009.

In March 2011, AB105 amended Section 8879.52 of the Government Code. The amendment calls on the Commission to submit a report to certain legislative committees summarizing “any memorandum of understanding, along with a copy of the memorandum, or any agreement executed between a railroad company and any state or local transportation agency” for any project that receives Trade Corridors Improvement Funds (TCIF).

The Memorandum of Understanding (MOU) for the Colton Crossing Grade Separation Project (Project) was executed after the Department’s reporting requirements, pursuant to AB 268, had expired but before the Commission’s reporting duties began under AB 105. Although no legislative report is necessary regarding the Project MOU, both a summary and a copy of it are attached

because the Project MOU is relevant to an understanding of the definitive agreements discussed for which the Commission is called upon to report pursuant to AB 105.

At the request of the Commission, the Department has prepared a summary of the Colton Crossing Grade Separation Project's Memorandum of Understanding and its accompanying definitive agreements.

BACKGROUND:

The Project is funded with a combination of TCIF funds, State Transportation Improvement Program (STIP) funds, a federal Transportation Investment Generating Economic Recovery (TIGER) grant, and funds pledged by UPRR and BNSF.

The Project will construct a grade-separated crossing of railroad tracks within the city of Colton. Currently, north/south mainline tracks on the BNSF San Bernardino Subdivision intersect with the east/west mainline tracks on the UPRR Yuma Subdivision. These tracks cross perpendicularly and at grade. The San Bernardino Associated Governments (SANBAG), BNSF and UPRR (collectively referred to as the "Parties") are undertaking the construction of the Project to permit trains traveling on the BNSF tracks to pass beneath the UPRR tracks without conflict of movement. The major elements of the Project's scope include:

- Build an elevated grade-separation structure, approximately 7,250 feet long, that will span the two BNSF mainline tracks between Rancho Avenue and Mount Vernon Avenue,
- Construct two UPRR mainline tracks and a maintenance road on the new structure,
- Modify the existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline tracks, and
- Make provisions to allow future connection between UPRR and BNSF tracks in the southwest quadrant.

The Project MOU was executed between the Parties on May 5, 2010. This MOU is the legal agreement between SANBAG and the railroads that defines the Project's scope, schedule, costs and public benefits. An MOU must be executed before a project baseline agreement can be approved.

Some of the major benefits outlined in the Project MOU include:

- Improved regional freight train corridor mobility,
- Improved reliability for both passenger and freight trains,
- Improved local and regional air quality, and
- Reduced congestion on local streets.

The Project Baseline Agreement (PBA) between the Commission, Department and SANBAG was approved by the Commission at its May 2010, meeting. The PBA enumerates the Project's scope, cost, benefits and funding commitment of SANBAG as the sponsoring agency and establishes the baseline for project delivery monitoring. The PBA commits the Department and SANBAG to the terms and conditions needed for project delivery. The executed MOU was incorporated into the PBA as an attachment. The project schedule and funding are as follows:

Project Schedule	Planned	Actual
Begin Environmental Phase	Jan-07	Jan-07
Circulate Draft Environmental Document (ND/FONSI)	Nov-10	Feb-10
End Environmental Phase	Feb-11	May-11
Begin Design Phase	Jun-10	Jun-10
End Design Phase	Jun-11	Jun-11
Begin Right-of-Way Phase	Feb-11	Feb-11
End Right-of-Way Phase	Jun-11	Jun-11
Begin Construction Phase	Sep-11	
End Construction Phase	Mar-14	

Project Funding Plan (in \$1,000s)

Phase of Work	Estimated Cost	TCIF	Supplemental Funding			
			IIP-PTA	TIGER	BNSF	UPRR
Environmental	\$ 3,689		\$ 3,689			
Design	\$ 11,600				\$ 700	\$ 10,900
Right-of-Way	\$ 21,800				\$ 2,500	\$ 19,300
Construction	\$164,905	\$ 91,305		\$ 33,800	\$ 9,300	\$ 30,500
Total	\$201,994	\$ 91,305	\$ 3,689	\$ 33,800	\$ 12,500	\$ 60,700
Percentage	100%	45%	2%	17%	6%	30%

In the MOU, the Parties agreed to formalize details of funding, construction, operations, maintenance, and implementation of public benefits through separate definitive agreements (Definitive Agreements). The Parties signed the Definitive Agreements on June 1, 2011. These agreements consist of a “Cooperative Agreement for Right-of-Way Acquisition for Colton Crossing Rail-Grade Separation Project” (Right-of-Way Agreement), an “Agreement Regarding Implementation of Public Benefits Related to the Colton Crossing Rail-Grade Separation Project” (Public Benefits Agreement), and a “Cooperative Agreement for the Construction and Maintenance of the Colton Crossing Rail-Grade Separation Project” (Construction and Maintenance Agreement).

Right-of-Way Agreement

UPRR and BNSF own or have the right to use and operate over the real property and rail facilities at and near the Colton Crossing. Construction of the Project requires the acquisition of certain additional rights where the Project is to be located. The Right-of-Way Agreement defines each party’s roles and responsibilities with respect to obtaining the right-of-way certification necessary for construction of the Project. Major areas of this agreement include:

- Each party’s commitment to cover all costs for real property,
- Responsibility for final right-of-way engineering,

- Responsibility for encroachment permits or other property rights, and
- Handling of utility conflicts facilities on or near impacted right-of-way.

Public Benefits Agreement

The Public Benefits Agreement defines the anticipated benefits of the completed Project. Detailed analyses of benefits were contained in the TCIF Project Application. This agreement formalizes the specific passenger rail benefits that will be derived from the Project and the performance measurements used to assess those benefits.

The passenger rail benefits include:

- Passenger Rail Study for one additional passenger station between the cities of Colton and Indio,
- Additional Passenger Train Slots on the BNSF San Bernardino Subdivision,
- Grant SANBAG the right of first refusal to purchase right-of-way in the city of Redlands,
- Elimination of Union Pacific/Metrolink Interlocker,
- Allow for electrification of passenger trains operating on the BNSF San Bernardino Subdivision, and
- An easement to construct a new tail track adjacent to the mainline track in Taylor Yard.

The project performance measures consist of:

- Vehicle travel time savings from reduced delay at rail-highway crossings,
- Environmental savings from reduced time-in queue at rail-highway crossings,
- Travel time savings for trains from reduced delay at the Colton Crossing, and
- Environmental savings from reduced train delay at Colton Crossing.

Construction and Maintenance Agreement

The Construction and Maintenance Agreement defines the roles of UPRR, BNSF and SANBAG during construction and after completion of the Project. Major areas of the agreement include:

- Project design and construction,
- Project funding,
- Record keeping and audits,
- Ownership of facilities,
- Maintenance of track and facilities for 20 years, and
- Operations.

Attachments

MEMORANDUM OF UNDERSTANDING

Colton Crossing Rail Grade-Separation Project

This Memorandum of Understanding (“**Memorandum**”), dated this 5th day of May 2010, is by and between the San Bernardino Associated Governments, a joint powers agency (“**SANBAG**”), Union Pacific Railroad Company (“**Union Pacific**”), and BNSF Railway Company (“**BNSF**”). For purposes of this Memorandum, SANBAG, BNSF, and Union Pacific are sometimes collectively referred to as “parties” and individually as a “party.” Likewise, BNSF and Union Pacific are sometimes collectively referred to as the “railroads.”

This Memorandum is made with reference to the following recitals:

A. The parties agree that an efficient and capable freight rail system is critical to assuring the growth of the State’s economy. As stated in the California State Rail Plan 2007-08 to 2017-18, an ongoing partnership with freight railroads and others is required to maximize benefits, including freight mobility, safety, energy, and environmental objectives. Working together to eliminate rail infrastructure chokepoints and improve rail-system efficiency is essential to achieving these goals.

B. The Colton Crossing consists of two BNSF San Bernardino Subdivision mainline tracks that run north/south and cross two Union Pacific Yuma Subdivision mainline tracks that run east/west. The BNSF and Union Pacific tracks cross at grade and perpendicular to one another. The railroads own or have the right to use and operate over the real property and rail facilities at and near the Colton Crossing, as more particularly described in Exhibit A (the “**Premises**”). The Colton Crossing causes delays and congestion because trains must stop and wait for other trains on conflicting tracks to pass through the crossing.

C. The majority of passenger and freight rail movements between Los Angeles, the Inland Empire, and points east must pass through the Colton Crossing. Elsewhere on these corridors, BNSF and Union Pacific have both made capacity improvements whose long-term capacity value may not be fully realized because of the constraints created by the Colton Crossing.

D. The parties propose a project to grade-separate the Colton Crossing (the “**Project**”). As described in Exhibit B, the Project would consist of a flyover to elevate the Union Pacific mainline tracks and permit trains traveling on the BNSF tracks to pass beneath the Union Pacific tracks without conflict of movement. As set forth in greater detail in Exhibit F, the parties expect that the Project will:

- a. Improve freight train corridor mobility through the region;
- b. Reduce train delays caused by conflicting movements at the Colton Crossing, thus improving reliability of both passenger and freight trains;
- c. Improve local and regional air quality by reducing the time that locomotives spend idling and by reducing truck volumes on local roads and freeways;

- d. Minimize noise associated with train staging operations and idling locomotives;
- e. Reduce long-term congestion and improve safety on the regional freeway network by shifting loads from trucks to trains and reducing the number of interstate trucks traveling on the freeways;
- f. Increase the efficiency of rail movement in the region, thereby enhancing the competitiveness of the Port of Los Angeles and Port of Long Beach;
- g. Create employment opportunities related to the construction of a major rail improvement project.

E. On November 7, 2006, California voters approved The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 as Proposition 1B (the “**Act**”). The Act provided for \$2 billion to be transferred to the Trade Corridors Improvement Fund (the “**TCIF**”) for infrastructure improvements along corridors having a high volume of freight movement. The California Transportation Commission (the “**Commission**”) thereafter, on November 27, 2007, established certain guidelines by which the TCIF program will be implemented and, on April 10, 2008, adopted certain clarifying resolutions (collectively, the “**TCIF Guidelines**”). The parties agree that the Project satisfies the TCIF Guidelines and qualifies as the type of project for which TCIF funds should be used.

F. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (“**ARRA**”). Among other things, the ARRA created the Transportation Investment Generating Economic Recovery (“**TIGER**”) program. The TIGER program authorizes the Secretary of Transportation to issue up to \$1.5 billion in grants on a competitive basis for capital investments in surface transportation infrastructure projects that will have a significant impact on the nation, a metropolitan area, or a region. Passenger and freight rail projects are among those eligible for TIGER grants. The ARRA authorizes funding for TIGER grants through September 30, 2011. In cooperation with the railroads, the California Department of Transportation (“**Caltrans**”) applied for TIGER funding for the Project, as reflected in Exhibit G. On February 17, 2010, the Secretary of Transportation granted \$33.8 million in TIGER funds for the Project.

G. Caltrans, Union Pacific, and BNSF submitted the construction of the Project for adoption into the TCIF program. As of April 10, 2008, the Commission had already programmed ninety-seven million three hundred and five thousand dollars (\$97,305,000) in TCIF funds for the Project, subject to the Commission’s review of the Project’s requirements and delivery schedule contained in the Project’s baseline agreement. (*See* Cal. Gov. Code §8879.52(d).)

H. At a specially scheduled meeting on March 25, 2010, the Commission reviewed the proposed baseline agreement for the Project. Finding deficiencies, the Commission rejected the agreement, thereby freeing the TCIF funds previously programmed for the Project. The primary basis for the Commission’s action was its conclusion that the agreement did not provide sufficient public benefits. Pursuant to Government Code §8879.52(d), the Commission directed

local transportation agencies in the Los Angeles / Inland Empire Corridor to propose alternative projects for consideration for these TCIF funds. At the same time, the Commission noted that grade separation of the Colton Crossing could still be eligible for TCIF funding under a new application and specifically directed local agencies to consider resubmitting the Project for TCIF funding under revised terms.

I. Since the March 25, 2010 Commission meeting, the railroads and the Southern California Consensus Group, which represents SANBAG, Southern California Regional Rail Authority (“**MetroLink**”), Southern California Association of Governments, Alameda Corridor – East Construction Company, Alameda Corridor Transportation Authority, Orange County Transportation Authority, Riverside County Transportation Commission, Los Angeles County Metropolitan Transportation Authority (“**Metro**”), Ventura County Transportation Commission, Port of Los Angeles, Port of Long Beach, and Port of Hueneme, have worked together to evaluate additional public benefits that will qualify the Project for funding. Having reached agreement on additional terms, the parties presented the Project for reconsideration at the Commission’s April 8, 2010 meeting. Deferring action on the merits of the proposal, the Commission directed the parties to submit an executed memorandum of understanding and proposed baseline agreement for TCIF funding in the amount of ninety-one million three-hundred thousand dollars (\$91,300,000) for the Commission’s consideration on or before May 7, 2010.

J. SANBAG and the railroads now desire to enter into this Memorandum in order to outline some of the main terms that would govern the proposed investment in the Project of TCIF funds allocated by the Commission pursuant to the TCIF Guidelines (the “**State Contribution**”), the supplemental funding (described in Exhibit G, the “**Supplemental Funding**”) to be provided for the Project, the design and construction of the Project, the achievement of public benefits to be realized as a result of the Project, and the process for negotiating and preparing binding Definitive Agreements (as defined below) to cover all such matters.

K. The parties acknowledge that the allocation of the State Contribution for construction of the Project is contingent upon, among other things, its adoption by the Commission pursuant to applicable law and the TCIF Guidelines, the appropriation of funds by the California state Legislature (the “**Legislature**”), the execution of a project baseline agreement (the “**Project Baseline Agreement**”) between SANBAG and the Commission, commitment of sufficient Supplemental Funding to complete the Project, and continued adherence to the accountability implementation plan adopted by the Commission, including the provision of financial and performance audits and quarterly progress reports.

NOW, THEREFORE, the parties agree as follows:

1. Project. The Project will consist of the construction and operation of various upgrades and improvements to the existing grade, tracks, signal, and related infrastructure located on the Premises. The current Project scope includes, without limitation, construction of an elevated flyover of the Union Pacific tracks over the BNSF tracks, as more specifically described in Exhibit B. Final Project concept, design, and scope may be reduced or expanded by mutual written agreement of the parties prior to commencement of construction of the Project as

the result of final engineering, an environmental assessment, or an updated economic analysis. The parties agree that funding for the Project is subject to Project approval and environmental clearance processes necessary to comply with the California Environmental Quality Act (“CEQA”). The State will be the responsible CEQA lead agency. The Federal Railroad Administration will be the lead agency under the National Environmental Policy Act (“NEPA”). The Project is expected to generate significant public benefits, as described in Exhibit F.

2. Project Baseline Budget. As of the date hereof, (i) the Project baseline budget and schedule attached hereto as Exhibit C represent the estimated Project costs and the current Project funding plan and schedule, and (ii) the non-State Contribution funding described in Exhibit E and Exhibit G is expected to be available to fund part of the development of the Project in accordance with the contemplated Project scope, budget, and schedule, and is expected to be fully committed, consistent with the amounts and allocations set forth in Exhibit C and Exhibit E, at or prior to execution of the Definitive Agreements. Any change in the Project budget, funding plan, scope, or schedule described in the attached Exhibits B, C, E and G will require prior written approval of the parties, and will require an amendment to the Project Baseline Agreement and may require an amendment to one or more Definitive Agreements, with any amendment to the Project Baseline Agreement requiring approval by the Commission.

3. Overall Schedule. The parties contemplate that, subject to obtaining all necessary approvals, the parties will enter into one or more agreements covering the construction, operation, maintenance, and funding of the Project, and implementation of public benefits generated by the Project (the “**Definitive Agreements**”), on a date no sooner than six months prior to the beginning of construction, which is currently projected to commence in September 2011. The Parties contemplate that SANBAG will be the implementing agency, and the railroads will complete design, right-of-way, and construction of the Project under agreement with SANBAG and commence operations over the new improvements by dates to be established in the Definitive Agreements. The parties further contemplate that negotiation of the Definitive Agreements for the Project, environmental review, and permitting will be conducted in accordance with the schedule attached hereto as Exhibit C. The parties agree to use reasonable efforts, including dedication of sufficient staff time as they respectively deem necessary, to meet the milestones set forth in Exhibit C.

4. Definitive Agreements. This Memorandum is intended by the parties as a summary of some, but not all, of the basic terms associated with the Project. Except for the confidentiality provisions, this Memorandum is non-binding. The parties contemplate that, subject to obtaining all necessary approvals from their respective governing bodies, they would enter into certain Definitive Agreements, including, but not limited to, the following:

(a) A design and right-of-way agreement that defines the roles and responsibilities of the parties (the “**Design and Right-of-Way Agreement**”) with respect to these tasks as soon after the TCIF Baseline Agreement is executed as is feasible.

(b) An Agreement for Construction, Funding, and Operation of the Colton Crossing Grade Separation Project that will cover the scope, construction, operation, maintenance, and funding of the Project (the “**Construction and Operation Agreement**”). The Construction and Operation Agreement will establish dates for the construction term, which

dates shall be subject to adjustment for permitting, force majeure, and other approved delays as defined therein; provided that the parties acknowledge that, pursuant to the TCIF Guidelines, construction on the Project must commence by December 31, 2013 or the funding as contemplated herein may terminate. Similar terms will likewise be included to the extent they are necessary to reflect TIGER requirements. A brief summary of certain key terms in the Construction and Operation Agreement is attached hereto as Exhibit E. The parties may also enter into one or more ancillary agreements that they mutually agree are necessary or helpful in connection with the development, environmental review, permitting, or construction of the Project.

(c) An Agreement Regarding Implementation of Public Benefits that will detail the public benefits to be realized as a result of the Project (the “**Public Benefits Agreement**”) and the plan to implement the same (to the extent it is not governed in the Construction and Operation Agreement). A brief summary of the contemplated public benefits that will accrue as a result of the Project and by when those benefits will be realized is attached hereto as Exhibit F. The parties may also enter into one or more ancillary agreements that they mutually agree are necessary or helpful in connection with the realization of public benefits from the Project.

5. Negotiations and Due Diligence. From the date of this Memorandum until such time that negotiations may be terminated as provided in Section 12 of this Memorandum, the parties contemplate that (i) each of the parties will use reasonable, good-faith efforts to negotiate and document each Definitive Agreement, including devoting sufficient staff and time as they deem appropriate to complete such negotiations; (ii) the railroads will grant permission to SANBAG to inspect the Premises, provided that SANBAG enters into each railroad’s standard right-of-entry agreement, subject to review of forms and agreed-upon changes to such forms, for such inspections; and (iii) to the extent permitted by applicable law, the railroads will provide to SANBAG information that is not proprietary, privileged, or subject to a confidentiality obligation and that is reasonably requested by SANBAG concerning the Project or the subdivisions impacted by the Project that will assist SANBAG in evaluating the costs and impacts of the Project and in identifying and evaluating the proposed public benefits of the Project. Prior to a railroad’s delivery of any such non-public information under this Section (“**Confidential Information**”), the parties will enter into confidentiality agreements that will govern the protection of such Confidential Information, which agreements, however, will be subject to the requirements of the California Public Records Act. Such confidentiality agreements will also include provisions for SANBAG to notify the railroads of any requests SANBAG receives to disclose Confidential Information.

6. Disbursement of Funds.

(a) Pursuant to the TCIF Guidelines, funding for projects adopted into the TCIF program will be allocated by the Commission from funds appropriated by the Legislature or from other state or federal funds appropriated to fund the TCIF program. The funds allocated to the Project will be disbursed by the State to SANBAG pursuant to applicable regulations and guidelines, with SANBAG disbursing the funds pursuant to a procedure to be set forth in the Design and Right-of-Way Agreement and Construction and Operation Agreement.

(b) The parties acknowledge that all projects adopted into the TCIF program are statutorily mandated to have supplemental funding equal to or greater than the State Contribution (the “**Supplemental Funding Requirement**”). Local, federal, or private funds expended after the adoption of the Project into the TCIF program may be used to meet the Supplemental Funding Requirement; provided, however, that while the funding plan may include state funds in addition to the State Contribution, those additional state funds may not be used to satisfy the Supplemental Funding Requirement. Each railroad’s supplemental funding obligation is described in Exhibit C, Exhibit E, and Exhibit G. The parties agree that any TIGER funding received for the Project will be applied to satisfy the Supplemental Funding Requirement.

(c) The parties acknowledge and agree that the approved State Contribution may be used only for the payment or reimbursement of construction costs, which shall be defined in the Construction and Operation Agreement.

7. Conditions Precedent. Conditions precedent to entering into the Definitive Agreements include:

(a) Demonstration of Public Benefits. The public benefits resulting from the Project must be commensurate with the anticipated investment of the State Contribution to the Project. The parties will cooperate in identifying and quantifying public benefits expected to result from the Project, drafting and executing the Public Benefits Agreement providing for the implementation and achievement of such public benefits, and in developing metrics for the measurement of public benefits realized over the economic life of the Project.

(b) Project Scope and Budget. The railroads acknowledge that the scope and layout of the Project is subject to SANBAG’s review and approval. The parties further acknowledge and agree that, pursuant to the TCIF Guidelines, the Project must satisfy the statutorily-required useful life for capital assets set forth in the California General Obligation Bond Law (Section 16727(a) of the California Government Code). In order to meet these requirements, the railroads would need to prepare and submit the scope, specifications, schedule, and budget for the Project to SANBAG for review and approval in accordance with the schedule set forth in Exhibit C. The railroads agree to respond within a reasonable time to any comments that SANBAG may have.

(c) Commission Approval of Project. The Commission must adopt the Project pursuant to applicable law and the TCIF Guidelines.

(d) Dedication of TIGER Funding. The Secretary of Transportation must grant TIGER funds in an amount sufficient to satisfy that portion of the Supplemental Funding for the Project that the railroads have not committed to pay, as set forth in Exhibit C.

8. Ownership of Project Site and Improvements. The railroads either hold all property rights that will be necessary for the construction of the Project, or prior to commencement of construction, they shall acquire or cause to be acquired any such necessary rights.

9. Press Releases/Communications. The parties will cooperate in good faith during the term of this Memorandum to coordinate any press releases or other communications or statements to the press concerning the negotiations contemplated hereby or the proposed State funding for the Project.

10. Disclaimer of Liabilities. Except for the breach of any confidentiality provisions contained herein, no party shall have any liability to any other party for any liabilities; losses; damages, whether special, incidental or consequential; costs; or expenses incurred by such other party in the event the negotiations contemplated hereunder are terminated for any reason. Each party agrees that there are no representations or warranties concerning the Project, including but not limited to any implied warranties such as fitness for a particular use or merchantability. Except to the extent otherwise provided in any Definitive Agreement, each party shall be solely responsible for its own expenses, legal fees, and consultant fees related to the negotiations described in this Memorandum, regardless of whether any of the transactions contemplated herein are consummated. Notwithstanding any other provision herein, the terms of the Definitive Agreements shall govern questions regarding issues of liability, indemnity, and insurance with respect to the construction, maintenance, and operation of the Project.

11. Termination. The parties agree that any party to this Memorandum may unilaterally withdraw from negotiation or dealing with respect to the Project or the Definitive Agreements contemplated herein at any time, with or without cause, at the withdrawing party's sole discretion upon thirty days prior written notification to the other parties. Notwithstanding this Section, the terms of an executed Definitive Agreement shall govern the obligations of the parties with respect to the grounds and manner of termination of the executed Definitive Agreement.

12. Preparation of Project Baseline Agreement. The parties agree to work together in good faith to negotiate and prepare the Project Baseline Agreement. The railroads further agree to work in good faith to provide SANBAG with such information as it may need to prepare timely reports to the Commission in relation to the Project Baseline Agreement. The Parties acknowledge that this Memorandum shall be referred to in the Project Baseline Agreement and included as an attachment thereto.

13. Continuation of Existing Rail Service.

Amtrak operates passenger service on the Union Pacific and BNSF tracks located at the Colton Crossing. The Southern California Regional Railroad Authority (“**SCRRA**” or “**Metrolink**”) operates by agreement on the BNSF tracks at this location. Plans for the Project will include provisions that coordinate passenger train operations through the Project limits on both lines during and after construction. As noted in Exhibit F, passenger lines are expected to enjoy the benefits of fewer delays after the Project is completed. Any effects to the on-time performance of passenger trains operating through the Colton Crossing during and after construction of the Project will be subject to and resolved on terms consistent with the operating agreements between the passenger and freight railroads and any agreements that the freight and passenger railroads may negotiate for purposes of operations during the construction period.

14. Miscellaneous.

(a) Governing Law. Except on subjects preempted by Federal law, this Memorandum shall be governed by and construed in accordance with the laws of the State of California.

(b) Headings. The Section headings in this Memorandum are for convenience only and shall not be used for any purpose in the interpretation of this Memorandum.

(c) Severability. If any clause or provision of this Memorandum is illegal, invalid, or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Memorandum shall not be affected but shall remain in full force and effect.

(d) Exhibits. All of the exhibits attached to this Memorandum are hereby incorporated by this reference.

(e) Relationship of the Parties. Each party is and shall at all times be and remain independent from the other parties hereto and, except to the extent otherwise expressly set forth in the Definitive Agreements, shall not be deemed an agent of any other party. Nothing contained herein shall have the effect of creating a joint venture or partnership between or among any of the parties hereto. No party shall have any right or power to obligate or bind any other party in any manner whatsoever. This Memorandum is not intended and shall not be construed to create any beneficiary rights in any individual or entity not a party hereto. None of the parties hereto is a fiduciary of any other party.

(f) Amendments. This Memorandum cannot be modified or amended in any way except in writing, signed by the parties hereto.

(g) Notices. Any notice required or authorized to be given hereunder or any other communications between the parties provided for under the terms of this Memorandum shall be in writing, unless otherwise provided, and shall be served personally or by reputable express courier service or by facsimile transmission addressed to the relevant party at the address stated below or at any other address notified by that party to the other as its address for service. Any notice so given personally or by express courier service shall be deemed to have been served and received upon delivery, or attempted delivery, and any notice so given by facsimile transmission shall be deemed to have been served and received on dispatch. As proof of such service and receipt, it shall be sufficient to produce a receipt showing delivery, or attempted delivery, by personal service or by express courier service, or an activity report of the sender's facsimile machine showing the correct facsimile number of the party to whom notice is served and the correct number of pages transmitted. The parties' addresses for service are:

Union Pacific: Union Pacific Railroad Company
10031 Foothills Boulevard
Roseville, CA 95747
Attention: Jerry Wilmoth
General Manager Network Infrastructure
Telephone: (916) 789-6360
Facsimile: (916) 789-6058

BNSF: BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attention: Dean Wise
Vice President, Network Strategy
Telephone: (817) 593-3156
Facsimile: (817) 352-7154

SANBAG: San Bernardino Associated Governments
1170 West Third Street, Second Floor
San Bernardino, CA 92410-1715
Attention: Deborah Barmack
Executive Director
Telephone: (909) 884-8276
Facsimile: (909) 885-4407

(h). Counterparts. This Memorandum may be executed in one or more counterparts, each of which when so executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(i) Entire Agreement. This Memorandum constitutes a single, integrated, written contract expressing the entire agreement of the parties. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth herein. All prior discussions and negotiations have been and are merged and integrated into, and superseded by, this Memorandum.

(j) Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this Memorandum shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder will be deemed a waiver of any other or subsequent breach.

(k) No Presumption Against Drafting Party. This Memorandum and the provisions contained therein shall not be construed or interpreted for or against any party because that party drafted or caused its legal representative to draft any of the Memorandum's provisions.

(l) Authority. Each individual executing this Memorandum hereby represents and warrants that he or she has the capacity set forth on the signature pages with full power and authority to bind the party on whose behalf he or she is executing the Memorandum.

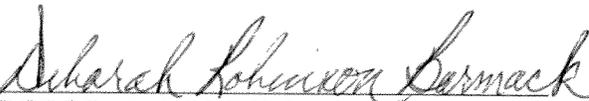
(m) Assignment. This Memorandum shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns. No party may assign its rights or obligations under this Memorandum to a third party without the written consent of the other parties, except where assignment occurs as a result of a sale or transfer of all or substantially all of a party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties as of the date first written above.

[Signature Page to Follow]

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

UNION PACIFIC RAILROAD COMPANY

By: 
DEBORAH ROBINSON BARMACK
Executive Director
San Bernardino Associated Governments

By: _____
DENNIS J. DUFFY
Vice Chairman Operations
Union Pacific Railroad

Approved as to Form:

Approved as to Form:

By: 
JEAN-RENE BASLE
General Counsel
San Bernardino Associated Governments

By: _____
DAVID M. PICKETT
General Attorney
Union Pacific Railroad

BNSF RAILWAY COMPANY

By: _____
DEAN WISE
Vice President Network Strategy
BNSF Railway Company

Approved as to Form:

By: _____
DAVID RANKIN
Senior General Attorney
BNSF Railway Company

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By: _____
DEBORAH BARMACK
Executive Director
San Bernardino Associated Governments

Approved as to Form:

By: _____
JEAN-RENE BASLE
General Counsel
San Bernardino Associated Governments

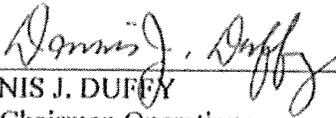
BNSF RAILWAY COMPANY

By: _____
DEAN WISE
Vice President Network Strategy
BNSF Railway Company

Approved as to Form:

By: _____
DAVID RANKIN
Senior General Attorney
BNSF Railway Company

UNION PACIFIC RAILROAD COMPANY

By:  _____
DENNIS J. DUFFY
Vice Chairman Operations
Union Pacific Railroad

Approved as to Form:

By:  _____
DAVID M. PICKETT
General Attorney
Union Pacific Railroad

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BNSF RAILWAY COMPANY

By: Deft. Wise
DEAN WISE
Vice President Network Strategy
BNSF Railway Company

Approved as to Form:

By: David Rankin
DAVID RANKIN
Senior General Attorney
BNSF Railway Company

EXHIBIT A

Description of Premises

The Project is located in Colton, California where Union Pacific Railroad's Alhambra and Yuma Subdivisions (MP 538.7) intersect with BNSF's San Bernardino Subdivision.

EXHIBIT B

Preliminary Description of the Project



The Project would elevate Union Pacific's east / west tracks over the BNSF's north / south tracks. The planned project scope includes:

- Construct a structure, approximately 7,250 feet long, between Rancho Avenue (MP 538.5) and Mount Vernon Avenue (MP 539.7) with approximately a 0.65% grade at the west approach and approximately a 1.17% grade at the east approach
- Two mainline tracks and a maintenance road will be constructed on the structure
- Opening under the grade separation structure for the BNSF tracks would accommodate a potential third BNSF mainline track with 20 ft track centers
- One of the existing UPRR mainline tracks would be converted to become the Colton Yard lead / Yuma connector track with an at-grade crossing diamond at the junction with the BNSF
- Modify existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline 2 track
- Design provides for future connection between UPRR and BNSF tracks in the southwest quadrant

EXHIBIT C

Estimated Project Schedule and Proposed Funding Plan Summary

Project Schedule

Begin Preliminary Engineering and Environmental	Underway
Complete Preliminary Engineering / Technical Studies	June 2010
Begin Design – Track & Structures	June 2010
Begin Design – Signal	August 2010
Circulate Draft Environmental Document	November 2010
Complete Environmental Clearance	February 2011
Begin ROW Acquisition	February 2011
Begin Utility Relocation	March 2011
Execute Public Benefits Agreement	March 2011
Execute Construction & Maintenance Agreement	March 2011
End Permitting / NEPA	June 2011
Final Design Complete	June 2011
Right-of-Way Certification	June 2011
Advertise Construction Contract	July 2011
Award Construction Contract	September 2011
Begin Construction	September 2011
End Construction	March 2014

Funding Plan (costs in millions of dollars)

	TIGER Funds	State STIP	State TCIF	Union Pacific	BNSF	Local Funds	TOTAL	
Project Approval / Environmental Documentation		\$3.7	-			\$0	\$3.7	1.8%
Plans, Specifications and Estimates		-	-	\$10.9	\$0.7	\$0	\$11.6	5.8%
Right-of-Way (Capital and Support)	\$4.9	-	-	\$19.3	\$2.5	\$0	\$26.7	13.2%
Construction (Capital and Support)	\$28.9	-	\$91.3	\$30.5	\$9.3	\$0	\$160.0	79.2%
TOTAL	\$33.8	\$3.7	\$91.3	\$60.7	\$12.5	\$0	\$202.0	
	16.7%	1.8%	45.2%	30.1%	6.2%	0%		100.0%

Due to rounding, the total amount may deviate slightly from the actual total. The figures provided in this table reflect estimates of the costs of the various components of the Project. These figures are provided for planning purposes only and are not meant to limit how funds from a specific source may be used on the Project or how the total funding may be allocated among the various costs.

Notes:

- Estimated construction costs are in 2012 dollars
- TCIF funds and Railroad funding subject to receipt of TIGER funding and terms of this memorandum
- BNSF and Union Pacific's contribution can be offset by other grants they receive, as long as with the addition of the grant funds the ratio of funds on the Project is still in compliance with the TCIF requirements.

EXHIBIT D

Intentionally Omitted

EXHIBIT E

Certain Key Terms and Concepts for Construction and Operation Agreement

Note: The descriptions below are intended to summarize certain terms and concepts to be included in the Construction and Operation Agreement, subject to negotiation of the Definitive Agreements. The terms and concepts would be set forth in full in the Construction and Operation Agreement, which agreement also would contain other terms and provisions to be specified and agreed upon by the parties.

A. Project Scope, Schedule and Budget.

1. The Construction and Operation Agreement will include a detailed and complete description of the Project scope and specifications and identification of the party responsible to complete the various elements of the Project, which shall be agreed upon by the parties at or prior to the execution of the Construction and Operation Agreement.
2. The Construction and Operation Agreement will include a detailed and complete budget and construction schedule for the Project based upon the agreed Project scope and specifications. The budget and construction schedule will be agreed upon by the parties at or prior to execution of the Construction and Operation Agreement.
3. Any changes to the Project's final approved scope, specifications, schedule, or budget from that attached to the Construction and Operation Agreement shall require prior approval by SANBAG and the railroads and may require an amendment to the Project Baseline Agreement by the Commission. All parties agree to consider such proposals in good faith and to review and respond to any such proposed changes within a reasonable time.
4. Any cost increases resulting from any changes to the Project's approved scope, specifications, schedule, or construction budget shall be the responsibility of parties other than SANBAG, unless such cost increases result from a change in the Project scope, as set forth in Exhibit B, requested by SANBAG (but only in its capacity as a party to the Definitive Agreements); provided that in no event shall the State Contribution be required to exceed the Supplemental Funding as described by Exhibit G or the amount allocated by the Commission. In addition, reductions to the Project's approved scope, benefits, specifications, schedule, or budget may result in a reduction in the State Contribution, as will be set forth in the Construction and Operations Agreement.
5. The railroads will use reasonable efforts to reduce or minimize Project costs, including, but not limited to, providing to the Project the benefit of reduced materials prices resulting from the railroads' bulk purchase of materials. The benefits of any cost

reductions will be credited equally toward the State Contribution and Supplemental Funding Requirement.

6. In the event the Commission allocates an amount lower than fifty percent (50%) of the Project's final approved budget for eligible construction costs, SANBAG and the railroads may jointly agree to adjust the Project's scope and schedule to reflect the new Project budget (it being acknowledged that SANBAG or either railroad may elect to terminate the Project following review of any such proposed adjustments).

B. Funding Sources.

1. The State Contribution currently planned for the Project is ninety-one million three-hundred thousand dollars (\$91,300,000), based on the information available at this time, including information regarding the Project's scope, budget, schedule, and anticipated public benefits as submitted to the Commission. The final State Contribution will be specified in the Construction and Operation Agreement, and will be subject to reduction (i) as provided in Section A.3 above, or (ii) if the Commission allocates a lower amount for the Project, in which case such lower amount shall be the State Contribution (it being acknowledged that SANBAG or either railroad may elect to terminate the Project following review of any such proposed reductions).
2. The Construction and Operation Agreement will include a commitment for BNSF and Union Pacific to provide their respective funding contributions as set forth in Exhibit C. Any cost overruns will be the responsibility of Union Pacific.
3. SANBAG is not required to provide and is not providing any funding for the Project.

C. Conditions to all Disbursements. The Definitive Agreements will contain specific conditions to all disbursements of the State Contribution, including:

1. Appropriation of funds for the Project by the Legislature, and allocation of funds to the Project by the Commission in an amount sufficient to cover requested disbursements. If the Legislature or Commission fails to so appropriate and allocate such funds then railroads shall have no further obligation regarding the Project. If the Legislature or Commission fails to so appropriate and allocate such TCIF funds then the State is not liable to use State funds for the reimbursements of prior expenditures by the railroads on the Project. Federal funds are subject to the Federal fund requirements and are not subject to the provisions of this section.
2. Establishment and maintenance by railroads and their subcontractors of an accounting system that properly accumulates and segregates incurred Project costs by line item. The accounting system shall conform to Generally Accepted Accounting Principles. In addition, the accounting system shall enable the determination of incurred costs at interim

points of completion, and provide support for the railroads' expenditures to be counted as matching or reimbursable payments.

- D. Conditions to Specific Disbursements. The Definitive Agreements will contain specific conditions to all disbursements of the State Contribution and TIGER funds, including submittal by the railroads of evidence the railroads or other third parties have paid a sufficient amount of Project construction costs to date, excluding amounts reimbursed or requested to be reimbursed from the State Contribution, so that the one to one (1:1) ratio between the State Contribution and the Supplemental Funding payments of construction costs is not exceeded.
- E. Description of Costs Eligible for Reimbursement from the State Contribution and Costs that Qualify Toward Supplemental Funding Requirement.
1. The State Contribution may only be used to reimburse already paid eligible construction costs and the parties' administration costs. Eligible construction costs, including the costs of acquiring materials to be incorporated into the improvements to be constructed as part of the Project, shall be determined in accordance with the provisions of applicable state and federal law.
 2. Expenditures that do not qualify toward the Supplemental Funding Requirement are (i) amounts incurred or paid prior to adoption of the Project into the TCIF program, and (ii) any payments or contributions by the State of California to the cost of the Project, or to reimburse railroads for any such cost, other than the State Contribution.
 3. Amounts received for the salvage, reuse, or recycling of any materials in connection with the Project shall be applied to reduce the overall cost of the Project.
 4. The Supplemental Funding may be used to reimburse the Parties eligible administration costs.
- F. General Post Construction Operating Covenants.
1. The railroads will maintain in service the track and other improvements built as part of the Project (the "**Project Facilities**") for a minimum of twenty (20) years after completion of construction (the "**Operating Term**").
 2. The railroads will maintain the Project Facilities in good repair on the Premises throughout the Operating Term.
 3. Should any of the Project Facilities be damaged or destroyed during the Operating Term, the railroads will restore and repair such damage or destruction.
 4. The railroads acknowledge that all post-construction activities, including maintenance, repair, restoration, and replacement, shall be at no cost to SANBAG.

G. Miscellaneous.

1. The Construction and Operation Agreement will be binding upon any assignees or other transferees of the railroads' right to operate freight service on the Premises.
2. The Construction and Operation Agreement will contain provisions giving the Federal Government, the State, and SANBAG the right to audit the Project records maintained by railroads or their contractors, including technical and financial data, at any time during the course of the Project and for four (4) years after the date of the final completion of the Project. Any such audits will be conducted in accordance with Generally Accepted Government Auditing Standards.

EXHIBIT F
Description of Projected Public Benefits

- A. **Project Category:** Rail

- B. **Project Type:** Rail-Rail At-Grade crossing eliminated

- C. **Project Outputs and Metrics (Five years after Project completion) ***

Project Output Elements		Metric	Quantity Projected
1.	New Structures	Number of Structures Constructed	1
2.	Rail-Rail At-Grade Crossing	Number of At-Grade crossings eliminated	1

D. **Project Benefit Outcomes and Metrics (at Project completion) ***

Project Outcome	Metric	Determination Approach	2019 Build Case	2006 Baseline
1. Throughput	Rail Freight Volume (Trains feet per day) (No commuters)	Actual	966,154	663,811
2. Velocity	Transit time through Corridor (MPH)	BNSF Mainline Actual	30.00	10.75
		UP Mainline Actual	42.50	10.75
3. Reliability	Variability in Transit time (Avg Annual Delay Hours)	Actual	(74,852)	N/A

- * Decrease highway accidents from occurring by more than 800 accidents over the life of the project
- 4. Safety
 - * Avoid three fatal accidents and 100 injury accidents over the life of the project
 - * Reduce the number of heavy truck accidents by an average of 38 incidents per year
 - * *Source: Accident rates from CalTrans "Cal-BC" model*
- 5. Congestion Reduction
 - * Average annual reduction in delay for vehicles equals 2.9 MM passenger hours
 - * Average annual reduction in time-in-queue for delay equals 2.4 MM hours
 - Average annual reduction from vehicles
 - * HC = 2.8 tons
 - * CO = 18.6 tons
 - * NOx = 4.9 tons
 - * PM = 1.0 tons
 - * CO2 = 10,982 tons
- 6. Emissions Reduction
 - Average annual reduction from locomotives
 - * HC = 42.8 tons
 - * CO = 146.1 tons
 - * NOx = 67.4 tons
 - * PM = 5.8 tons
 - * CO2 = 23,371 tons
 - Average annual gallons saved
 - * Gasoline = 907,590
 - * Diesel = 79,060
 - * Oil = 101,583
- 7. Other Outcomes

Note:

* Project estimates based on information developed for the BNSF and Union Pacific Public Benefit Study for Colton Grade Separation dated February 5, 2008. The Project scope as more specifically described in Exhibit B, may be modified as set forth in this Memorandum. The Parties contemplate that prior to project construction, estimates will be revised in accordance with the final Project scope of work and updated methodology as agreed upon between the parties in the Definitive Agreements. The Parties further contemplate these revised estimates will be the basis for comparing outcomes five (5) years after Project completion.

E. Summary of Long-Term Expected Benefits

The following table presents the total discounted value of net public benefits presently expected to accrue to California through 2035 with the full implementation of the Project. As the table demonstrates, the total value of these benefits to the State of California would most likely be about \$503 million, but could range anywhere from \$390 million to \$624 million.

Discounted Value of Net Benefits Through 2035

(USD in millions of 2007 dollars)

Net Benefit Name	Net Benefit Category	Range	Average (Likely Value)
Travel time savings for Vehicles from reduced delay at rail / highway crossings	Transportation System Savings	\$160 - \$288	\$220
Inventory travel time savings for Trains from reduced delay at Colton crossing		\$150 - \$340	\$242
Vehicle operating cost savings from reduced time-in-queue at rail / highway crossings		\$15 - \$28	\$22
Environmental savings from reduced time-in-queue for Vehicles at rail / highway crossings	Environmental Improvements	\$2 - \$4	\$3
Environmental savings from reduced Train delay at Colton crossing		\$11 - \$23	\$17
Total Discounted Value of Benefits Accruing in California <i>(Note: Separate calculations, may not add)</i>		\$390 - \$624	\$503
Total Discounted Value of Benefits Accruing Outside California <i>(Note: Separate calculations, may not add)</i>		\$203.7	\$203.7
Total Discounted Value of Benefits <i>(Note: Separate calculations, may not add)</i>		\$594 - \$828	\$706.7

Source: HDR Inc., Public Benefit Study for Colton Crossing Grade Separation, February 5, 2008
Parsons Brinckerhoff, Colton Crossing Grade Separation Project TIGER Application,
September 2009

F. Passenger Rail Benefits

The following passenger rail benefits will accrue from the completion of the Colton project:

1. Improved Operational Reliability and Travel Times

Due to the volume of passenger and freight trains that pass through Colton Crossing, the variable nature of train arrivals, the different types of trains, and movement conflicts associated with an existing at-grade rail crossing, delays to trains of all types can occur. Grade separating the crossing will provide for more fluid operations of both freight and passenger train traffic. With the completion of the Project, operational efficiency and reliability benefits will accrue to the following passenger services:

- Amtrak Intercity Passenger Trains:

- Southwest Chief (daily service on BNSF trackage)
- Sunset Limited (tri-weekly service on UP trackage)
- SCRRRA Commuter Trains:
 - Metrolink Service (daily service on BNSF trackage)

2. Enhanced Capacity for Potential Future Services

The completion of this project may provide opportunities for potential future passenger services along the Union Pacific or BNSF network trackage (subject to other capacity improvements). Such future services are subject to requirements in any applicable agreements or any future negotiations between the appropriate freight railroad and the interested service parties.

3. Passenger Rail Study

Union Pacific is agreeable to undertake the initial phase of a study for additional Metrolink service on Union Pacific's Yuma Subdivision between Colton and Indio, upon receipt of a formal request from Metrolink, acting through the Riverside County Transportation Commission, that clearly outlines its proposed operation, to determine what improvements would be required to support such request. The study will commence upon execution of the Definitive Agreement by all parties for the construction and operation of the Colton Flyover Project. The study will be performed to comply with Union Pacific Commuter Access Principles, a copy of which is attached to this Memorandum as Exhibit H. After this initial review, the parties will determine the process to be followed to complete the review. However, Union Pacific will make the final determination of what would be required on its property to mitigate the impact of any new Metrolink service and no service will commence until the Colton Flyover and necessary improvements are completed and in service.

4. Sale of Right of Way in Redlands

Union Pacific will sell to SANBAG, for the benefit of Metrolink for railroad operations, a strip of Union Pacific's right of way in Redlands that will be approximately thirteen feet (13') wide and three-thousand three-hundred feet (3,300') long. The specific size of the property to be sold is yet to be determined. The property is generally located between Church Street and Judson Street. This transaction will be completed through a separate agreement. SANBAG will pay Union Pacific fair market value for the property, which will be determined through protocols to be agreed upon by the parties. The protocol is to be included in the Public Benefits Agreement.

5. Elimination of Union Pacific/Metrolink Interlocker

Through a separate agreement, Union Pacific, BNSF, and SANBAG will develop a plan to eliminate the need for the interlocker at the rail grade crossing between Union Pacific's Riverside Industrial Lead and Metrolink's Perris Valley Line.

6. Review of Feasibility of Higher Vertical Clearance of the Colton Flyover

Union Pacific will review the feasibility of constructing the Colton Flyover structure with adequate vertical clearance so as not to preclude the possibility for electrification of passenger trains operating on the BNSF San Bernardino Subdivision. Factors to be considered include, but are not limited to, existing restrictions, such as the vertical clearance on the BNSF line at the I-10 Freeway (24'2"); the limitation on adjusting the profile due to constraints at Mount Vernon Avenue and Rancho Avenue overhead structures; the impacts any increase in approach grades may have on Union Pacific train operations; clearance requirements established by law, including General Orders promulgated by the California Public Utilities Commission; and the project cost increase between a clearance of 23'6" and the clearance required to allow for electrification of passenger trains on the BNSF line.

7. Limitation on Conveyance of Air Rights

Metro's Gold Line operates on an easement on Union Pacific's property in an area commonly known as the "Cornfield" in the Chinatown area of Los Angeles. Metro wishes to prohibit the construction of any structures above its easement without its consent. Union Pacific is agreeable to amending the existing easement to prohibit Union Pacific from granting such construction rights to a third party without Metro's prior concurrence and with the further understanding that Metro would have no obligation to acquiesce to such requests. This change will be made through a separate transaction and at no charge to Metro. Exhibit I shows the general location and limits of the subject easement. The parties will amend the easement to reflect this change prior to the execution of the Definitive Agreements.

8. Taylor Yard Tail Track Easement

Union Pacific will donate an easement to Metrolink for railroad purposes only for Metrolink to construct a new tail track adjacent to the mainline track in the Taylor Yard. This transaction will be completed through a separate agreement. Exhibit J shows the limits of the proposed tail track. The easement is to be granted prior to the execution of the Definitive Agreements.

9. Additional Passenger Train Slots on the BNSF San Bernardino Subdivision

BNSF and the Riverside County Transportation Commission (RCTC) will execute an agreement by which those parties will agree as follows:

- i. To allow RCTC to convert 4 non-revenue commuter train moves (i.e., 2 round trip trains) between the Riverside Downtown Station and San Bernardino on the San Bernardino Subdivision (SBS) to revenue train moves (for a total of 12 commuter revenue train moves) upon completion of the Project without at that time triggering the obligation under existing agreements to provide funding to BNSF for a proportion of its contribution to such Project, with such converted 4 commuter revenue train moves replacing 4 of the non-revenue commuter train moves permitted on the SBS under 2/14/1996 Letter Agreement between RCTC and BNSF, and to be operated in essentially the same operating windows and on the basic schedules that would be permitted for such nonrevenue train movements. Any other additional commuter train moves shall be subject to the requirements under existing agreements for RCTC to fund the Stage 4 improvements including, but not limited to, the Project.
- ii. Provided, the ability to operate any additional revenue train moves under the terms of subparagraph (i) of the above would be effective upon completion of an agreement to modify the indemnity and insurance requirements set forth in the SBS Shared Use Agreement between RCTC and BNSF in a manner consistent with the Perris Valley Memorandum of Understanding dated December 9, 2009 between BNSF and RCTC such that the modified indemnity and insurance requirements would apply to all commuter train moves on the SBS Subdivision.

G. Project Benefits Estimate Conditional Statement

The parties agree that all Project outcomes, estimates, and benefits can be affected by the behavior of several external variables over time. Such variables include, but are not limited to, population growth and disposable income; global, national, and State economic conditions and development patterns; global trade trends; governmental policies; environmental conditions and regulation; changes in customer supply and demand (including for merchandized products, agricultural products); fuel prices; and acts of God. As Union Pacific operates pursuant to trackage rights on the BNSF Railroad between Daggett and Riverside and BNSF will continue to control the interlocker for the remaining at-grade crossing of Union Pacific's track over the BNSF track between Old Colton Yard and New Colton Yard, BNSF's business and operational decisions may also have a direct affect on Union Pacific's operations. Rates and services offered by the railroads, competing railroads, truck lines, and maritime shipping lines (including direct operators and brokers) may affect ultimate corridor volumes and benefits. It is understood by all parties that such variability shall be taken into account when comparing and evaluating Project outcomes, estimates, and benefits.

H. Project Reporting Requirements (Subject to Negotiation of Definitive Agreements):

1. Project Scope, Specifications, Schedule, and Costs Amendments

As part of the Project Baseline Agreement, the railroads will identify any issues, impacts, or changes to Project scope, specifications, schedule, or costs.

2. Quarterly Reporting

Thirty (30) calendar days after each calendar quarter, a very brief status report should be filed with SANBAG, to report progress made toward the implementation of the Project, in accordance with the Project scope, schedule, and costs identified in the baseline agreement. This includes, until its completion, the environmental phase of the Project. Its report shall include the identification and discussion of any significant issues that may impact implementation of the Project, including financial constraints and commitments, and any material deviations to Project scope or schedule.

Reporting shall also include budgets, actual expenditures, and forecasted cost for each funding source and for each phase as identified in the baseline agreement, including those to be considered for match consideration and State payment. The parties acknowledge these reports will form the basis of reporting to the Commission.

3. Completion of the Environmental Process

Upon completion of the environmental phase of the Project, the outcomes of this process shall be reported to SANBAG, for acceptance and delivery to the Commission. Such reporting shall include final findings, including those pertaining to the air quality impacts of diesel emissions and particulate matter, and any mitigation measures adopted to address such impacts. Both SANBAG and the railroads acknowledge Commission policy is to allocate TCIF funding only to projects that can demonstrate compliance with applicable environmental requirements. If environmental clearance is conditioned on the implementation of mitigation measures, as a condition of the Project moving forward, the railroads must commit, in writing, to the implementation of those mitigation measures (it being acknowledged that the railroads or SANBAG may elect to terminate the Project following review of the mitigation requirements).

4. Final Delivery Report and Final Audit

The railroads will cooperate with SANBAG and will furnish all information necessary to produce the Final Delivery Report and Final Audit as required by the Commission's Accountability Implementation Plan. The Final Delivery Report shall report on the scope of the completed Project, its final cost, duration, and performance outcomes as compared to those included in the executed Project Baseline Agreements. The Final Audit shall provide a finding on whether Project costs incurred and reimbursed are in compliance with the executed Project Baseline Agreements or approved amendments thereof, state and federal laws and regulations, contract provisions, and Commission guidelines, and whether Project deliverables (outputs) and outcomes are consistent with the Project scope, schedule and benefits described in the executed Project Baseline Agreements or approved amendments thereof.

The current version of the adopted Accountability Implementation Plan can be found at the Commission's website at:

http://www.catc.ca.gov/1baccount/Accountability_Implementation_Plan.pdf

The Parties acknowledge that the Commission may from time to time amend or supplement its Accountability Implementation Plan.

5. Five Years After Completion of Project (final report)

Five (5) years after completion of the Project, the railroads shall provide SANBAG with a final report on the achieved outcomes of the Project, at a minimum in response to the outcome identifiers and indices as identified above. Deviations from expected outcomes should be discussed.

EXHIBIT G

Description of Supplemental Funding Plan

- **The railroads' current estimated total Project construction cost, as described in Exhibit C** - \$202.0 million (2012 dollars)
- **State Contribution** – Up to 50% of the Project's eligible construction costs (not to exceed the amount programmed by the Commission), subject to the conditions precedent.
- **Supplemental Funding** – Except as otherwise provided in this Memorandum, the railroads would match the State Contribution provided for the Project, i.e., provide an amount equal to at least the State Contribution for the Project's eligible construction costs. In addition, provided the State contributes the State Contribution, the railroads will be responsible for providing or obtaining the funding for all other Project costs. All railroad funding will be apportioned between the railroads as described in Exhibits C and E. The railroads may seek reimbursement from sources other than the State Contribution for all or part of the Project costs required to be paid by the railroads. Such reimbursement or other funding could include, without limitation, contractual contribution from the owner / joint freight operator of the corridor, a tenant passenger or commuter operator, or state or federal non-TCIF grants. In this case, Caltrans and the railroads have applied for and received TIGER funding to pay for a portion of the costs not to be paid by the State Contribution. No amounts received for the Project from TCIF funding and / or any other additional State sources will be deemed to be railroad funding for purposes of determining whether the railroads have satisfied the Supplemental Fund Requirement, but all other payments toward, or reimbursements of, Project costs expended after the adoption of the Project into the TCIF program from any other source will be deemed to be railroad funding for purposes of determining whether the railroads have satisfied the Supplemental Funding Requirement. Expenditures for engineering, environmental permitting, and right-of-way acquisition may be counted towards the railroads' Supplemental Funding Requirement but are not eligible for TCIF reimbursement.

Exhibit H

Union Pacific Commuter Access Principles

Union Pacific offers the following information to guide commuter rail planners and agencies in working with Union Pacific to develop new rail passenger service. Commuter rail service can provide substantial benefits to the public, including reducing traffic congestion and avoiding expensive highway construction. At the same time, Union Pacific has a responsibility to the nation and to its customers to protect the public benefits of freight transportation - energy efficiency, lower emissions, cost-effective cargo transportation for shippers and consumers, and private investment in the nation's infrastructure.

Union Pacific will consider reasonable proposals for commuter rail service that appear to be viable and adequately funded. Commuter rail planners and agencies should recognize that agreements reached in the past, when railroads had excess track capacity and did not expect to grow, are not appropriate models for future agreements. Future agreements must balance the nation's desire for additional commuter services with Union Pacific's ongoing, critical role in carrying freight that otherwise would likely compete for space on the crowded and underfunded highway network.

Feasible separation of freight and passenger operation

- As in all our activities, safety must come first.
- Passenger safety is best protected by separating freight and passenger tracks by 50 feet or more. Despite UP's enormous progress in preventing freight train derailments, derailments will occur and could strike or be struck by passenger trains. Research demonstrates that most freight train derailments will remain within a 100-foot corridor.
- One way to achieve separation is to move the majority of freight trains out of urban corridors entirely. UP will consider publicly funded relocations of freight operations that preserve UP's customer service, competitive position, and access to current and future freight customers.

Where separation or relocation is not feasible, commuter trains must share our tracks. We intend to apply the following principles in negotiating proposals by commuter agencies for joint operations:

Safety

- Under federal law, all trains and tracks must in the future be equipped with interoperable Positive Train Control (PTC) systems if passenger trains are present. The commuter agency should fund PTC if UP would not otherwise install it on the affected track, or contribute the agency's share of equipment and wayside costs if UP would install PTC on the affected track.
- Commuter agencies should fund all other incremental safety requirements attributable to its service, including track quality upgrades, grade crossing warning signal improvements, new grade separations, and any required fencing.

- Passenger vehicles must, at a minimum, meet FRA crash standards.
- Passenger stations must meet Union Pacific and FRA design requirements to protect passengers from freight operations.

Service

- Passenger equipment must be reliable and suitable for mainline operations.
- Service to Union Pacific's freight customers must also be reliable and protected and should not be compromised by new commuter rail service. UP cannot agree to curfews or other restrictions that would impact the quality or reliability of our freight service.
- Commuter service design and infrastructure investment must protect UP's ability to serve existing customers and locate new freight customers on our lines.
- In order to preserve service quality for all types of customers, UP will retain dispatching and maintenance control over its lines. The parties must agree on standards for reliability.
- Passenger operations must provide the flexibility to accommodate efficient track maintenance.

Liability

- UP cannot accept exposure to any additional liability associated with allowing commuter service on our lines that would not exist "but for" those operations.
- Commuter agencies should be prepared to carry and provide evidence of insurance covering liability exposure up to \$200 million, the limit of liability under federal law. Union Pacific expects to be indemnified for or protected against any and all liability resulting from the presence of commuter service.

Capacity

- All projections call for rail freight growth to exceed rail capacity in the future. Commuter agencies should understand that existing capacity that UP funded—whether or not now used—is reserved for potential freight growth.
- Commuter agencies therefore must fund all incremental capacity to accommodate commuter operations, as reflected in a study of capacity requirements and a resulting capacity plan.
- The capacity plan must preserve the opportunity to expand freight service.
- Because new capacity consumes the least expensive capacity opportunities and usually makes the next increment of capacity more expensive, the capacity plan must include additional commuter agency investment at the outset that will leave UP cost-neutral when it needs to invest in additional freight capacity.
- Infrastructure requirements will be determined by UP or a UP-designated and qualified third party.
- On certain rail lines where freight growth is not expected, UP may allow commuter rail use of existing, unused capacity.

Compensation

- The commuter agency should be prepared to pay for all costs associated with developing the capacity plan, including UP's time and resources.
- The capacity plan should be based on UP's actual cost structures and operating conditions, not on idealized conditions or models.
- To the extent commuter agencies use UP assets and property, they must provide UP with a reasonable return on Union Pacific's investment.
- If UP's tax liabilities (income, franchise, sales and use, property, or any other tax) increase as a result of UP's participation in a passenger project, UP expects to be made whole.

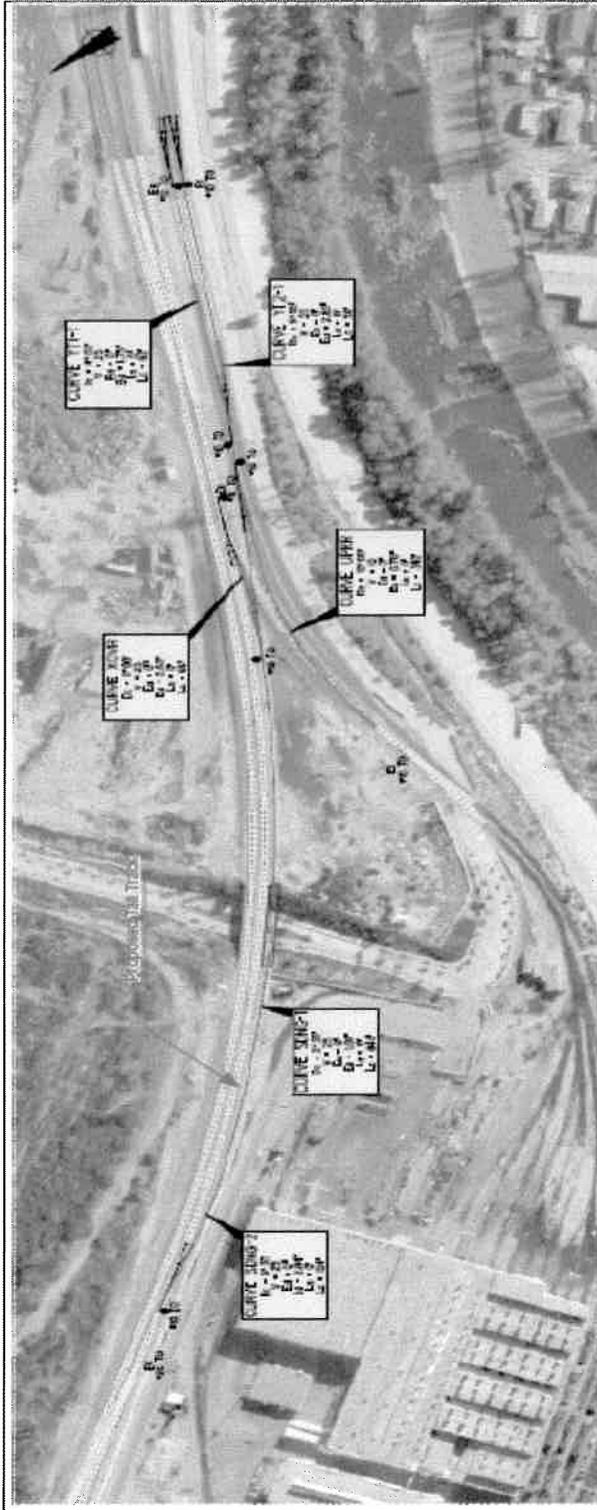
**Exhibit I
Cornfield**

Exhibit I
Cornfield



Exhibit J

Exhibit J
Taylor Yard



<p>CONCEPTUAL</p> <p>DEPT. OF TRANSPORTATION CALIFORNIA</p>	<p>DATE: _____</p> <p>SCALE: _____</p>	<p>SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY</p>	<p>METROLINK COMMUTER RAIL SYSTEM RIVER SUBDIVISION CP DAYTON DIAMOND REPLACEMENT STUDY CP TAYLOR SIDING TRACK PLAN</p>	<p>CONTRACT NO. _____</p>
				<p>PROJECT NO. RPX-02</p>
<p>DESIGNED BY: _____</p> <p>DRAWN BY: _____</p> <p>CHECKED BY: _____</p> <p>DATE: _____</p>				<p>REVISION: _____</p>

COOPERATIVE AGREEMENT
FOR RIGHT OF WAY ACQUISITION
FOR COLTON CROSSING RAIL GRADE-SEPARATION PROJECT

This Agreement is made effective as of June 1, 2011, by and between Union Pacific Railroad Company, a Delaware corporation ("**UPRR**"), BNSF Railway Company, a Delaware corporation ("**BNSF**"), and San Bernardino Associated Governments, a joint powers agency ("**SANBAG**") (UPRR, BNSF and SANBAG are each a "Party" and collectively the "Parties").

RECITALS

A. The Colton Crossing consists of two BNSF San Bernardino Subdivision mainline tracks that run north/south and cross two UPRR Yuma Subdivision mainline tracks that run east/west. The BNSF and UPRR tracks cross at grade and perpendicular to one another. The Parties propose undertaking the construction of a grade separation to elevate the UPRR mainline tracks and permit trains traveling on the BNSF tracks to pass beneath the UPRR tracks without conflict of movement as shown on Exhibit A (the "**Project**").

B. On November 7, 2006, California voters approved The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 as Proposition 1B (the "**Act**"). The Act provided for \$2 billion to be transferred to the Trade Corridors Improvement Fund (the "**TCIF**") for infrastructure improvements along corridors having a high volume of freight movement. On May 19, 2010, the California Transportation Commission unanimously voted to program ninety-one million three-hundred thousand dollars (\$91,300,000) in TCIF funds for the Project. As of part of this action, the California Transportation Commission designated SANBAG as the "Responsible Agency" to administer the TCIF funds.

C. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act ("**ARRA**"). Among other things, the ARRA created the Transportation Investment Generating Economic Recovery ("**TIGER**") program. In cooperation with the railroads, the California Department of Transportation ("**Caltrans**") applied for TIGER funding for the Project. On February 17, 2010, the Secretary of Transportation granted \$33.8 million in TIGER funds for the Project. The Federal Highway Administration and Caltrans executed the TIGER Grant Agreement for the Project on December 27, 2010.

D. Combining the TCIF funds, the TIGER grant, and funds pledged by UPRR and BNSF, per the Memorandum of Understanding among the Parties dated May 5, 2010 (the "**MOU**"), the Project is now fully funded, subject to the execution of definitive agreements.

E. UPRR and BNSF own or have the right to use and operate over the real property and rail facilities at and near the Colton Crossing. Construction of the Project will nonetheless require the acquisition of certain additional rights where the Project is to be located.

F. The Parties now desire to enter into this Agreement for purposes of defining their roles and responsibilities with respect to obtaining the right-of-way certification necessary for construction of the Project.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. UPRR's Commitments.

- (i) UPRR will fund one hundred percent (100%) of (A) all costs for real property rights that UPRR determines must be acquired by any of the Parties for construction of the Project, including any real property rights needed for utility relocations and including any overruns; and (B) other costs directly associated with the Right of Way phase of the Project, which are limited to the following: the costs described in Section 1(ii) below and the costs for utility relocations as provided herein.
- (ii) UPRR agrees that SANBAG is providing management, administrative general oversight services, including SANBAG staff salaries, overhead, other direct costs, and a fully loaded cost associated with consultants working on the Project for SANBAG, and agrees to reimburse SANBAG for actual costs incurred for these services, which are estimated at \$65,000. UPRR agrees that actual reimbursement to SANBAG could be higher or lower depending on the actual services that will be rendered.
- (iii) Upon completion of the Right of Way phase for the Project, UPRR will furnish SANBAG with a detailed statement of the total actual costs of UPRR required to complete those transactions and such statements of other costs reimbursed by UPRR as are provided to UPRR by the Party incurring such other costs.
- (iv) UPRR will acquire and furnish all additional real property rights along the UPRR route, if any, that is determined by UPRR to be necessary for construction of the Project. Any additional real property rights necessary for the Project will be acquired in accordance with applicable state and federal laws. Any acquisition and certification by UPRR for any real property rights needed by BNSF for any aspect of the Project handled or completed by BNSF, such as utility relocation or other work completed by BNSF, is subject to BNSF's notifying UPRR in a timely manner of the need for UPRR to acquire any such real property rights, as provided in Section 2(ii) below.
- (v) UPRR will certify legal and physical control of all real property rights (as delineated by UPRR in its right of way maps provided in connection with the Project) for construction of the Project. UPRR will further certify that it complied

with all requirements of applicable state and federal laws in relation to real estate transactions to which it was a party for purposes of the Project. UPRR acknowledges that its certification will follow the general guidelines set forth in Chapter 13 of the Caltrans Local Assistance Procedures Manual (LAPM) to the extent applicable to the Project and is subject to review and concurrence by SANBAG and Caltrans prior to advertisement for bids for the construction contract for the Project.

- (vi) UPRR will be responsible for the following final right-of-way engineering tasks which are typically carried out during and / or after completion of construction of the Project:
 - (A) Performing right-of-way monumentation;
 - (B) Filing a monumentation Record of Survey for the project location north of the UPRR track that is adjacent to the Caltrans property line along Interstate 10, between Rancho Avenue and Pennsylvania Avenue in the City of Colton; and
 - (C) Reconstructing access control fencing along the new right-of-way line.
- (vii) UPRR will apply to Caltrans, the City of Colton and BNSF for any necessary encroachment permits or other property rights authorizing UPRR's entry onto their respective properties in order to construct the Project. Any such permits or rights from BNSF shall be granted by BNSF and shall include terms acceptable to both UP and BNSF.
- (viii) If any existing utility facilities on or near UPRR's right of way conflict with construction of the Project, UPRR will make all necessary arrangements with the owners of the utilities for the protection, relocation, or removal of the facilities. Where the existing utilities are the subject of an agreement between UPRR and the owner of such utility, the cost for such measures will be governed by the terms of existing agreements with the utility companies.
- (ix) In any event, any costs incurred by UPRR made in compliance with the existing agreements and related to utility relocations will be Project costs, and UPRR shall receive credit towards UPRR's required contribution to the Project for any such utility relocation or acquisition costs incurred by UPRR. If UPRR funds any utility relocation when not required to do so under existing agreements, UPRR shall receive credit for such funding toward UPRR required contribution to the Project, unless prohibited by any applicable statute or regulation.

2. BNSF's Commitments.

- (i) To enable UPRR to meet its commitment under Clause 1(iv), BNSF will convey the easement contemplated in the construction and maintenance agreement. BNSF shall provide UPRR with documentation evidencing the sufficiency of

BNSF's interest in and to such right of way for construction and operation of the Project.

- (ii) BNSF will have notified UPRR by May 18, 2011 of any additional real property rights needed by BNSF for any utility relocation or other work on the Project to be completed by BNSF. If BNSF has not so notified UPRR of any such need by such date, then BNSF will be deemed not to need any such additional real property rights. Any additional property rights desired by BNSF for the Project must be reasonably necessary, as agreed by both BNSF and UPRR.
- (iii) BNSF has determined that no utility relocation work is needed for the portion of the Project on BNSF's right of way.

3. SANBAG Commitments.

- (i) As the responsible agency, will review all real property acquisition and utility relocation transactions to determine, using reasonable discretion, that they are required to construct the Project.
- (ii) Review and comment on the right-of-way certification information provided by UPRR and provide concurrence on the final right-of-way certification.
- (iii) To assist UPRR with any potential permitting issues with the City of Colton.
- (iv) To assist UPRR in matters relating to coordination with Caltrans management and staff, including reviews and approvals.

4. Additional Transactions. The Parties contemplate that specific transactions related to property rights will include:

- (i) A conveyance between UPRR and Caltrans for real property on the north side of UPRR's existing right of way.
- (ii) An aerial easement or easements to be acquired by UPRR from BNSF as contemplated in the Construction and Maintenance agreement.
- (iii) A landscaping mitigation agreement between UPRR and the City of Colton.
- (iv) Any other transactions as required.

These transactions will be performed through separate agreements.

5. Scope of Agreement. The Parties have executed this Agreement solely for the purposes expressed herein. Nothing in this Agreement obligates any party with respect to future agreements.

6. Funding. All costs incurred by UPRR or BNSF in relation to their obligations under this Agreement, including costs for work done by internal staff, will count toward their committed contributions as outlined in the MOU. No TIGER or TCIF funds will be used for right of way acquisition, certification, or utility relocation.

7. Right to Audit. UPRR and BNSF agree that SANBAG and any authorized representative, designated in writing to UPRR and BNSF, shall have the right at all reasonable times during normal business hours to examine all of UPRR's and BNSF's financial books and records with respect to this Agreement and any purchase and sale agreements entered into by UPRR pursuant to this Agreement. UPRR and BNSF agree to make available to SANBAG during regular business hours all such books and records at the locations where maintained by the respective railroad. UPRR and BNSF agree to retain all such books and records for a period of three (3) years from the later of: (a) the date on which this Agreement is terminated; or (b) the date on which such book or record was created.

8. Default. If any Party breaches or fails to comply with any of the covenants, terms, or conditions of this Agreement, any non-breaching Party may provide a written notice of default to the breaching Party. If the breaching Party has not cured such default within thirty (30) days following receipt of such notice, or such longer period as the non-breaching Party may allow, the non-breaching Party may terminate this Agreement and/or may exercise any remedy available at law or in equity. A Party would not be in breach if the obligation reasonably required more than 30 days to complete performance and the party commenced performance within the 30 day period and thereafter diligently pursued completion of performance.

9. Term. This Agreement shall become effective upon execution by the Parties and continue in full force and effect through completion of construction of the Project, which is anticipated to be on or about December 31, 2014. Notwithstanding any other provision herein, any Party may terminate this Agreement at any time prior to commencement of construction, with or without cause, by giving thirty (30) days written notice to the other Parties. In the event of a termination, each Party shall remain liable for any costs or other obligations it may have incurred under the terms of the Agreement prior to termination.

10. Miscellaneous.

(i) Governing Law. Except on subjects preempted by Federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California.

(ii) Headings. The Section headings in this Agreement are for convenience only and shall not be used for any purpose in the interpretation of this Agreement.

(iii) Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.

(iv) Exhibits. All of the exhibits attached to this Agreement are hereby incorporated

by this reference.

- (v) Relationship of the Parties. Each Party is and shall at all times be and remain independent from the other Parties hereto and, except to the extent otherwise expressly set forth in the definitive agreements, shall not be deemed an agent or fiduciary of any other Party. Nothing contained herein shall have the effect of creating a trust relationship, joint venture, or partnership between or among any of the Parties hereto. No Party shall have any right or power to obligate or bind any other Party in any manner whatsoever. This Agreement is not intended and shall not be construed to create any beneficiary rights in any individual or entity not a party hereto. None of the Parties hereto is a fiduciary of any other Party.
- (vi) Notices. Any notice required or authorized to be given hereunder or any other communications between the parties provided for under the terms of this Agreement shall be in writing, unless otherwise provided, and shall be served personally or by reputable express courier service or by facsimile transmission addressed to the relevant party at the address stated below or at any other address notified by that party to the other as its address for service. Any notice so given personally or by express courier service shall be deemed to have been served and received upon delivery, or attempted delivery, and any notice so given by facsimile transmission shall be deemed to have been served and received on dispatch. As proof of such service and receipt, it shall be sufficient to produce a receipt showing delivery, or attempted delivery, by personal service or by express courier service, or an activity report of the sender's facsimile machine showing the correct facsimile number of the party to whom notice is served and the correct number of pages transmitted. The parties' addresses for service are:

If to SANBAG: Deborah Barmack
 Executive Director
 San Bernardino Associated Governments
 1170 West Third Street, Second Floor
 San Bernardino, CA 92410-1715
 Phone: 909-884-8276

If to UPRR: Jerry Wilmoth
 Union Pacific Railroad Company
 General Manager, Network Infrastructure
 10031 Foothills Boulevard
 Roseville, CA 95747
 Phone: 916-789-6360

If to BNSF: Walt Smith

BNSF Railway Company
General Director, Engineering and Construction
740 Carnegie Drive
San Bernardino, CA 92408
Phone: 909-386-4910

- (vii) Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder will be deemed a waiver of any other or subsequent breach.
- (viii) No Presumption Against Drafting Party. This Agreement and the provisions contained therein shall not be construed or interpreted for or against any party because that party drafted or caused its legal representative to draft any of the Agreement's provisions.
- (ix) Assignment. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns. No party may assign its rights or obligations under this Agreement to a third party without the written consent of the other parties, except where assignment occurs as a result of a sale or transfer of all or substantially all of a party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.
- (x) No Third Party Beneficiaries. Enforcement of the terms of this Agreement shall be reserved to the Parties, and nothing contained in this Agreement shall provide any claim or right of action for enforcement to any other party.
- (xi) Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(Rest of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first written above.

UNION PACIFIC RAILROAD COMPANY

BNSF RAILWAY COMPANY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

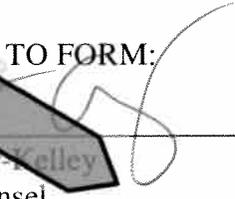
By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

By:  _____
Brad Mitzelfelt
President, Board of Directors

APPROVED AS TO FORM:

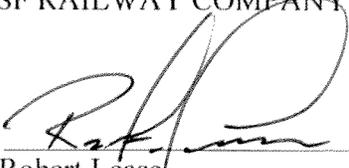
By:  _____
Penny Alexander-Kelley
SANBAG's Counsel

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

UNION PACIFIC RAILROAD COMPANY

BNSF RAILWAY COMPANY

By: _____
Lance Fritz
Executive Vice President-Operations
Union Pacific Railroad Company

By:  _____
Robert Lease
Vice President of Regional Operations
BNSF Railway Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
David M. Pickett
General Attorney
Union Pacific Railroad Company

By:  _____
David Rankin
Senior General Attorney
BNSF Railway Company

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By:  _____
Brad Mitzelfelt
President, Board of Directors
San Bernardino Associated Governments

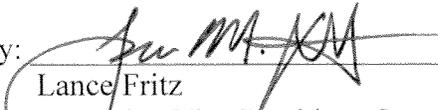
APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelly
SANBAG's Counsel

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

UNION PACIFIC RAILROAD COMPANY

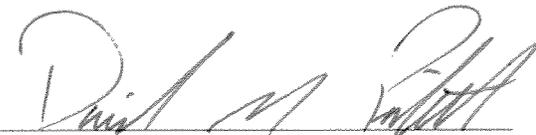
BNSF RAILWAY COMPANY

By: 
Lance Fritz
Executive Vice President-Operations
Union Pacific Railroad Company

By: _____
Robert Lease
Vice President of Regional Operations
BNSF Railway Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
David M. Pickett
General Attorney
Union Pacific Railroad Company

By: _____
David Rankin
Senior General Attorney
BNSF Railway Company

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

By: _____
Brad Mitzelfelt
President, Board of Directors
San Bernardino Associated Governments

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelly
SANBAG's Counsel

Exhibit A

The Project is located in Colton, California where Union Pacific Railroad's Alhambra and Yuma Subdivisions (MP 538.7) intersect with BNSF's San Bernardino Subdivision.



The Project would elevate Union Pacific's east / west tracks over the BNSF's north / south tracks. The planned project scope includes:

- Construct a structure, approximately 7,250 feet long, between Rancho Avenue (MP 538.5) and Mount Vernon Avenue (MP 539.7)
- Two mainline tracks and a maintenance road will be constructed on the structure
- Opening under the grade separation structure for the BNSF tracks would accommodate a potential third BNSF mainline track with 15 ft track centers
- One of the existing UPRR mainline tracks would be converted to become the Colton Yard lead / Yuma connector track with an at-grade crossing diamond at the junction with the BNSF
- Modify existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline 2 track
- Design provides for future connection between UPRR and BNSF tracks in the southwest quadrant

AGREEMENT
REGARDING PUBLIC BENEFITS RELATED TO
THE COLTON CROSSING RAIL GRADE-SEPARATION PROJECT

This agreement ("**Agreement**") is made effective the first day of June, 2011, by and among Union Pacific Railroad Company, a Delaware corporation ("**UPRR**"); BNSF Railway Company, a Delaware corporation ("**BNSF**"); and San Bernardino Associated Governments, a joint powers agency ("**SANBAG**"). (UPRR, BNSF, and SANBAG are each a "**Party**" and are collectively the "**Parties**". UPRR and BNSF are each a "**Railroad**" and collectively the "**Railroads**".)

RECITALS

A. The Colton Crossing consists of two BNSF San Bernardino Subdivision mainline tracks that run north/south and cross two UPRR Yuma Subdivision mainline tracks that run east/west. The BNSF and UPRR tracks cross at grade and perpendicular to one another. The Parties propose undertaking the construction of a grade separation to elevate the UPRR mainline tracks and permit trains traveling on the BNSF tracks to pass beneath the UPRR tracks without conflict of movement as generally described in Exhibit A (the "**Project**"). Grade separating the Colton Crossing will provide more fluid operations of both freight and passenger train traffic. Passenger train services that operate through the Colton Crossing are expected to have greater operational efficiency and improved reliability.

B. On November 7, 2006, California voters approved The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 as Proposition 1B (the "**Act**"). The Act provided for \$2 billion to be transferred to the Trade Corridors Improvement Fund (the "**TCIF**") for infrastructure improvements along corridors having a high volume of freight movement. On May 19, 2010, the California Transportation Commission (the "**Commission**") unanimously voted to program ninety-one million three-hundred thousand dollars (\$91,300,000) in TCIF funds for the Project. The Project Baseline Agreement dated May 7, 2010 and executed by Caltrans and SANBAG (the "**Baseline Agreement**") sets forth the terms and conditions for use of the TCIF funds and SANBAG's responsibilities as the project sponsor to administer the funds for the Project.

C. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 ("**ARRA**"). Among other things, the ARRA created the Transportation Investment Generating Economic Recovery ("**TIGER**") program. In cooperation with the Railroads, Caltrans applied for TIGER funding for the Project. On February 17, 2010, the Secretary of Transportation granted \$33.8 million in TIGER funds for the Project. The

Federal Highway Administration (“**FHWA**”) and Caltrans executed the TIGER grant agreement (“**Grant Agreement**”) for the Project on December 27, 2010. Caltrans, UPRR, and BNSF have executed a funding flowdown agreement (the “**Flowdown Agreement**”) that describes how Caltrans will use the TIGER funds to reimburse the Railroads for some of the costs incurred in constructing the Project.

D. Combining the TCIF funds, State Transportation Improvement Program funds, the TIGER grant, and funds pledged by UPRR and BNSF, per the Memorandum of Understanding among the Parties dated May 5, 2010 (the “**MOU**”), the Project is now fully funded, subject to the execution of definitive agreements.

E. One of the definitive agreements to be executed pursuant to Section 4(c) of the MOU is a public benefits agreement to describe the public benefits to be realized as a result of the Project and a plan for implementing those benefits. Exhibit “F” to the MOU summarizes the contemplated public benefits. The Parties now desire to enter into such a definitive agreement to document the public benefits related to construction of the Project.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

Section 1. Incorporation of Recitals.

The recitals set forth above are hereby incorporated into the terms of this Agreement.

Section 2. Project Performance Measures.

The Parties expect the Project to provide savings in travel time for trains and motor vehicles and a reduction in emissions (the “**Performance Benefits**”). A table that sets forth the specific performance measures for these benefits is attached as Exhibit B (the “**Performance Measures**”).

Section 3. Passenger Rail Benefits.

The following passenger rail benefits will accrue from the completion of the Project:

A. Passenger Rail Study

UPRR is agreeable to undertake the initial phase of a study for one (1) additional passenger station at a yet-to-be-determined mutually agreed location on UPRR’s Yuma Subdivision in between Colton and Indio. UPRR and the Riverside County Transportation Commission (“**RCTC**”) have entered into a formal understanding that outlines the requirements for the initiation and timing of the study. UPRR will make the final determination of what would be required on its property to mitigate the impact of any new station, and no service will commence before the Project and necessary improvements are completed and in service.

B. Additional Passenger Train Slots on the BNSF San Bernardino Subdivision.

BNSF and the RCTC will execute an agreement by which those parties will agree as follows:

(i) To allow RCTC to convert 4 non-revenue commuter train moves (i.e., 2 round trip trains) between the Riverside Downtown Station and San Bernardino on the San Bernardino Subdivision (SBS) to revenue train moves (for a total of 12 commuter revenue train moves) upon completion of the Project without at that time triggering the obligation under existing agreements to provide funding to BNSF for a proportion of its contribution to such Project, with such converted 4 commuter revenue train moves replacing 4 of the non-revenue commuter train moves permitted on the SBS under 2/14/1996 Letter Agreement between RCTC and BNSF, attached as Exhibit C, and to be operated in essentially the same operating windows and on the basic schedules that would be permitted for such nonrevenue train movements. Any other additional commuter train moves shall be subject to the requirements under existing agreements for RCTC to fund the Stage 4 improvements including, but not limited to, the Project.

(ii) Provided, the ability to operate any additional revenue train moves under the terms of subparagraph (i) of the above would be effective upon completion of an agreement to modify the indemnity and insurance requirements set forth in the SBS Shared Use Agreement between RCTC and BNSF in a manner consistent with the Perris Valley Memorandum of Understanding dated December 9, 2009 between BNSF and RCTC such that the modified indemnity and insurance requirements would apply to all commuter train moves on the SBS Subdivision. RCTC and BNSF are currently negotiating revisions to the SBS Shared Use Agreement. Should RCTC and BNSF enter into an amendment to the SBS Shared Use Agreement which modifies the insurance and indemnity provisions for all commuter train moves on the SBS Subdivision and agree in such amendment that such modified provisions satisfy the requirements of this paragraph (ii), then the requirements of this paragraph (ii) shall be satisfied even if such modified provisions vary from the Perris Valley Memorandum of Understanding.

C. Right of First Refusal to Purchase Right of Way in Redlands.

For a term of twenty (20) years, UPRR will give SANBAG the right of first refusal to purchase, for the benefit of Metrolink for railroad operations, a strip of Union Pacific's right of way in Redlands that will be approximately thirteen (13) feet wide and three-thousand three-hundred (3,300) feet long. The specific size of the property to be sold is yet to be determined. The property is generally located between Church Street and Grove Street, as reflected on Exhibit D. The formal terms of the understanding between the parties are set forth in the right of first refusal agreement attached as Exhibit E. The purchase and sale transaction will be completed through a separate agreement at the time when SANBAG elects to make the purchase. SANBAG will pay Union Pacific fair market value for the property, which will be determined through the protocols attached as Exhibit F, without regard for whatever price a third party may offer for the property.

D. Elimination of Union Pacific/Metrolink Interlocker.

Upon receiving authority from the Surface Transportation Board (“STB”), UPRR and BNSF will enter into a haulage and switching agreement between Colton and Riverside via Barstow to eliminate the need for the interlocker at the rail grade crossing between UPRR’s Riverside Industrial Lead and RCTC’s San Jacinto Branch Line. The effective date of the agreement will be the latter of the date when the CTC allocates the TCIF funding for the Project or when a connection between the Riverside Industrial Lead and the San Jacinto Branch Line has been constructed, subject to authority from the STB for UPRR to abandon service on the relevant portion of the Riverside Industrial Lead.

E. Higher Vertical Clearance of the Project Flyover.

UPRR has developed the plans for the Project in a manner that it believes provides adequate vertical clearance to allow for electrification of passenger trains operating on the BNSF San Bernardino Subdivision. The vertical clearance provided by the Project plans exceeds the clearance on the BNSF line at the adjacent I-10 Freeway overcrossing.

F. Limitation on Conveyance of Air Rights.

Metro’s Gold Line operates on an easement on UPRR’s property in an area commonly known as the “Cornfield” in the Chinatown area of Los Angeles. Metro wishes to prohibit the construction of any structures above its easement without its consent. By an instrument dated May 18, 2011, UPRR and Metro have amended the existing easement to prohibit UPRR from granting such construction rights to a third party without Metro’s prior concurrence and with the further understanding that Metro would have no obligation to acquiesce to such requests.

G. Taylor Yard Tail Track Easement.

By instrument dated May 25, 2011, UPRR has granted at no charge an easement to Metrolink for railroad purposes only for Metrolink to construct a new tail track adjacent to the mainline track in the Taylor Yard.

Section 4. Reporting Requirements.

Five years after the date when the Project opens for operation under normal conditions, UPRR and BNSF will provide SANBAG with a final report on the Performance Benefits. The report will be based on the Performance Measures. The Parties all agree to cooperate with providing information within their control that is reasonably necessary for UPRR and BNSF to prepare the annual report. UPRR and BNSF acknowledge that the report will become a public record that may be subject to public disclosure. No further reporting on Performance Benefits will be required after UPRR and BNSF submit the five-year report described in this Section. UPRR and BNSF will share equally in the cost of applying the Performance Measures and preparing the final report on the Performance Benefits.

Section 5. Project Benefits Estimate Conditional Statement.

The parties agree that all Project outcomes, estimates, and benefits can be affected by the behavior of several external variables over time. Such variables include, but are not limited to, population growth and disposable income; global, national, and State economic conditions and development patterns; global trade trends; governmental policies; environmental conditions and regulation; changes in customer supply and demand (including for merchandized products, agricultural products); fuel prices; and acts of God. As UPRR operates pursuant to trackage rights on the BNSF Railroad between Daggett and Riverside and BNSF will continue to control the interlocker for the remaining at-grade crossing of UPRR's track over the BNSF track between Old Colton Yard and New Colton Yard, BNSF's business and operational decisions may also have a direct affect on UPRR's operations. Rates and services offered by the railroads, competing railroads, truck lines, and maritime shipping lines (including direct operators and brokers) may affect ultimate corridor volumes and benefits. It is understood by all Parties that such variability shall be taken into account when comparing and evaluating Project outcomes, estimates, and benefits.

Section 6. Term.

This Agreement is effective as of the date first written above and will expire five years after the date when the Project opens for operation under normal conditions.

Section 7. Miscellaneous.

- A. Governing Law. Except on subjects preempted by Federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UPRR or BNSF because of their status as common carriers regulated by the federal government.
- B. Headings. The Section headings in this Agreement are for convenience only and shall not be used for any purpose in the interpretation of this Agreement.
- C. Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of the Agreement will not be affected but shall remain in full force and effect.
- D. Exhibits. All of the exhibits attached to this Agreement are hereby incorporated by this reference.
- E. Relationship of the Parties. Each Party is and will at all times be and remain independent from the other Parties and will not be deemed an agent or fiduciary of any other Party. Nothing contained herein will have the effect of creating a trust, joint venture, or partnership between or among any of the Parties. No Party has any right or power to obligate or bind any other Party in any manner whatsoever. This Agreement is not intended and shall not be construed to create any beneficiary rights in any individual or entity not a party hereto. None of the Parties is a fiduciary of any other Party.

F. Notices. Any communication, notice, or demand of any kind whatsoever which any Party may be required or may desire to give to or serve upon another must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to SANBAG: Deborah Barmack
Executive Director
1170 West Third Street, Second Floor
San Bernardino, CA 92410-1715
Telephone: (909) 884-8276

If to UPRR: Jerry Wilmoth
Union Pacific Railroad Company
General Manager, Network Infrastructure
10031 Foothills Boulevard
Roseville, CA 95747
Telephone: (916) 789-6360

With a copy to:

David Pickett
General Attorney
Union Pacific Railroad Company
10031 Foothills Boulevard
Roseville, CA 95747
Telephone: (916) 789-6400

If to BNSF: Dean Wise
Vice President Network Strategy
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
Telephone: (817) 593-3156

G. Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the Party to be bound thereby. No waiver by any Party of any breach hereunder will be deemed a waiver of any other or subsequent breach.

H. No Presumption Against Drafting Party. This Agreement and the provisions contained therein shall not be construed or interpreted for or against any Party because that Party drafted or caused its legal representative to draft any of the agreement's provisions.

I. Assignment. This Agreement will be binding upon and inure to the benefit of each of the Parties and to their respective transferees, successors, and assigns. No Party may assign its rights or obligations under this Agreement to a third party without the written consent of the other

Parties, except where assignment occurs as a result of a sale or transfer of all or substantially all of a Party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

J. Attorney's Fees. In the event of any litigation involving the parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or to seek a declaration of the rights of either party under this Agreement, the prevailing party shall be entitled to recover from the other such attorneys' fees and costs as may be reasonably incurred. The provisions of this Section will survive the entry of any judgment, and will not merge, or be deemed to have merged, into any judgment.

K. No Third Party Beneficiaries. Enforcement of the terms of this Agreement is reserved to the Parties, and nothing contained in this Agreement provides any claim or right of action for enforcement to any other party.

L. Conflicts. To the extent that the provisions of this Agreement conflict with any prior agreement between any of the Parties with respect to the Colton Crossing or the Project, including the MOU, the provisions of this Agreement will control.

M. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed will be deemed an original, but all of which taken together will constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first written above.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

UNION PACIFIC RAILROAD COMPANY

By: 
Brad Mitzelfelt
President, Board of Directors

By: _____
Name: _____
Title: _____

Approved as to Form:

Approved as to Form:

By: 
Penny Alexander-Kelley
SANBAG's Counsel 

By: _____
David M. Pickett
General Attorney
Union Pacific Railroad

BNSF RAILWAY COMPANY

By: _____
Robert Lease
Vice President of Regional Operations
BNSF Railway Company

Approved as to Form:

By: _____
David Rankin
Senior General Attorney
BNSF Railway Company

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date first written above.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

UNION PACIFIC RAILROAD COMPANY

By: 
Brad Mitzelfelt
President, Board of Directors
San Bernardino Associated Governments

By: _____
Lance M. Fritz
Executive Vice President Operations
Union Pacific Railroad Company

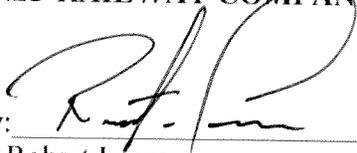
Approved as to Form:

Approved as to Form:

By: _____
Penny Alexander-Kelly
SANBAG's Counsel

By: _____
David M. Pickett
General Attorney
Union Pacific Railroad

BNSF RAILWAY COMPANY

By: 
Robert Lease
Vice President of Regional Operations
BNSF Railway Company

Approved as to Form:

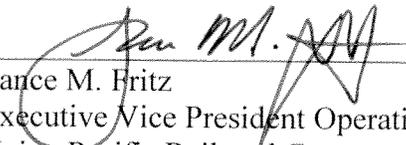
By: 
David Rankin
Senior General Attorney
BNSF Railway Company

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date first written above.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

UNION PACIFIC RAILROAD COMPANY

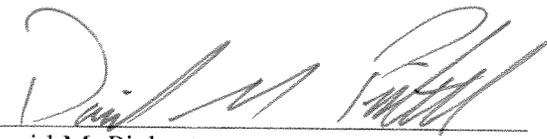
By: _____
Brad Mitzelfelt
President, Board of Directors
San Bernardino Associated Governments

By:  _____
Lance M. Fritz
Executive Vice President Operations
Union Pacific Railroad Company

Approved as to Form:

Approved as to Form:

By: _____
Penny Alexander-Kelly
SANBAG's Counsel

By:  _____
David M. Pickett
General Attorney
Union Pacific Railroad

BNSF RAILWAY COMPANY

By: _____
Robert Lease
Vice President of Regional Operations
BNSF Railway Company

Approved as to Form:

By: _____
David Rankin
Senior General Attorney
BNSF Railway Company

Exhibit A

The Project is located in Colton, California where Union Pacific Railroad's Alhambra and Yuma Subdivisions (MP 538.7) intersect with BNSF's San Bernardino Subdivision.



The Project would elevate Union Pacific's east / west tracks over the BNSF's north / south tracks. The planned project scope includes:

- Construct a structure, approximately 7,250 feet long, between Rancho Avenue (MP 538.5) and Mount Vernon Avenue (MP 539.7)
- Two mainline tracks and a maintenance road will be constructed on the structure
- Opening under the grade separation structure for the BNSF tracks would accommodate a potential third BNSF mainline track with 15 ft track centers
- One of the existing UPRR mainline tracks would be converted to become the Colton Yard lead / Yuma connector track with an at-grade crossing diamond at the junction with the BNSF
- Modify existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline 2 track
- Design provides for future connection between UPRR and BNSF tracks in the southwest quadrant

Exhibit B
Performance Measures

Measure	Description of Measure	Measurement Period	Basis of Measurement	Traffic Study
Travel Time Savings from Reduced Delay at Rail-Highway Crossings	Average reduction in delay for vehicles (auto and truck vehicle hours). Average reduction in time-in-queue for autos and trucks (hours).	Performed five years after the project opens for operation under normal conditions	Based on 2010 traffic analysis study of 25 intersection impacted with vehicle queues from gate down time as calculated from the RTC model	Traffic analysis for the Colton Crossing project estimates potential impacts and benefits of the project at rail/roadway at-grade crossings as well as at intersections adjacent to the proposed project. The intersections adjacent to the at-grade crossings are currently impacted by vehicle queues that form due to the gate down time. This is exacerbated by the Colton Crossing, which causes additional train delays and lower speeds and thus longer blockages of area roadways. The locations of possible impacts were determined in consultation with SANBAG, Caltrans, and other stakeholders. The following intersections are included in the study area:
Environmental Savings from Reduced Time-in queue at Rail-Highway Crossings	Average reduction in HC, CO, NOx, PM, CO2, emissions from vehicles, (autos and trucks)	Performed five years after the project opens for operation under normal conditions	Based on 2010 traffic analysis study of 25 intersection impacted with vehicle queues from gate down time as calculated from the RTC model	<p>1. Pennsylvania Ave / Laurel St, 2. 8th St / Laurel St, 3. La Cadena Dr Bordwell Ave / Laurel St, 4. Pennsylvania Ave / Olive St, 5. 7th St / Olive St, 6. La Cadena Dr / Olive St, 7. Pennsylvania Ave / E St, 8. 7th St / E St, 9. Pennsylvania Ave / H St, 10. 7th St / H St, 11. La Cadena Dr / H St, 12. Rancho Ave / Valley Blvd, 13. 3rd St / Valley Blvd, 14. Pennsylvania Ave / Valley Blvd, 15. 7th St / Valley Blvd, 16. La Cadena Dr / Valley Blvd, 17. 9th St / Valley Blvd, 18. Rancho Ave / I-10 WB Ramps, 19. Rancho Ave / I-10 EB Ramps, 20. 9th St / I-10 WB Off-Ramp, 21. 9th St / I-10 EB Ramps, 22. 9th St / L St, 23. 9th St / M St, 24. 9th St / N St, 25. 9th St / O St</p>

Measure	Description of Measure	Measurement Period	Basis of Measurement	RTC Rail Modeling
Travel Time Savings for Trains from Reduced Delay at the Colton Crossing	Train Volumes and Average Train Speeds (all trains both freight and passenger).	Performed five years after the project opens for operation under normal conditions	Compared to Rail Traffic Controller (RTC) modeling as part of 2010 Rail Operations Analysis	<p>Operations Analysis of the Colton Crossing Project</p> <p>Baseline data has been established through a Rail Traffic Controller (RTC) simulation model include detailed infrastructure configuration and train dispatcher logic.</p> <p>RTC modeling is the closest representation of actual operations. The program is computationally intensive, and allows for modeling and simulation of multiple traffic scenarios</p> <p>The geographic limits of the RTC model study area were established as follows:</p> <ul style="list-style-type: none"> • BNSF Cajon Subdivision: Summit (Cajon Pass) to San Bernardino • BNSF San Bernardino Subdivision: San Bernardino to Riverside • UP Yuma Subdivision: Beaumont to West Colton • UP Alhambra Subdivision: West Colton to Pomona • UP Los Angeles Subdivision: Riverside to Pomona <p>The results of the RTC model provide performance estimates based on the existing conditions and future conditions with construction of the flyover.</p>
Environmental Savings from Reduced Train Delay at Colton Crossing	Average reduction in HC, CO, NOx, PM, CO2, emissions from locomotives	Performed five years after the project opens for operation under normal conditions	Compared to Rail Traffic Controller (RTC) modeling as part of 2010 Rail Operations Analysis	

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

February 14, 1996

Mr. Douglas J. Babb
Senior Vice President and Chief of Staff
The Atchison, Topeka and Santa Fe
Railway Company
777 Main Street
Fort Worth, Texas 76102-5384

Gentlemen:

This letter agreement is to confirm our mutual concurrence in certain revisions to the letter agreement between Riverside County Transportation Commission ("RCTC") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), dated March 29, 1993. All terms in that agreement will remain unchanged and binding on Santa Fe and RCTC, except to the extent they are expressly modified herein.

RCTC and Santa Fe agree that their purpose and intent for entering into this letter agreement is to achieve the following:

- a. To help alleviate certain train movement problems that will be experienced near the Riverside Station on the San Bernardino Subdivision.
- b. To aid RCTC in funding for the construction of a south side passenger platform and other improvements at the Riverside Station, which improvements are described in more detail herein.
- c. To delete the requirement that RCTC build certain track improvements as described in paragraph 4 of the March 29, 1993 Letter Agreement between the Parties ("1993 Letter Agreement").
- d. To alter as set forth herein RCTC's current entitlement under the 1993 Letter Agreement to commuter rail train movements on the San Bernardino Subdivision between Riverside Station and San Bernardino.

Ex 9730

Mr. Douglas J. Babb
Senior Vice President and Chief of Staff
February 14, 1996
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e. To provide for the exchange of certain properties held by the Parties in Riverside and Highgrove.

In light of changed plans of both RCTC and Santa Fe, designed to assure safer, more efficient operations of commuter trains and freight trains over the San Bernardino Subdivision, RCTC and Santa Fe hereby agree to the following changes to the 1993 Letter Agreement:

1. Santa Fe and RCTC, within ten days following the date of this letter agreement, shall exchange two real estate parcels with one another. RCTC shall convey to Santa Fe by delivery to Santa Fe of an executed Grant Deed, identical in form to the Grant Deed set forth as Exhibit A hereto, a parcel of land owned by RCTC immediately north of the San Bernardino Subdivision at or near Highgrove, California. This parcel is described in detail in Attachment 1 to Exhibit A. Santa Fe shall convey to RCTC by delivery of an executed Grant Deed, identical in form to the Grant Deed set forth as Exhibit B hereto, a parcel of land owned by Santa Fe immediately south of the San Bernardino Subdivision tracks, generally between Third Street and Tenth Street in Riverside, California. This Grant Deed shall retain for Santa Fe a permanent easement to conduct rail freight service and engage in related rail service activities over and adjacent to the new tracks to be constructed on this parcel between about Mileposts 9.6 and 10.0 of the San Bernardino Subdivision. The easement described in the preceding sentence may only be used by Santa Fe in the following situations: (1) In the event of an emergency of short duration requiring immediate use of the easement, in which case Santa Fe shall provide notice to the Southern California Regional Rail Authority ("SCRRA") prior to or concurrent with such emergency use, or (2) To provide rail freight service to and from a commercial enterprise facility located on property immediately adjacent to such tracks, provided that such use is approved in advance by RCTC. This parcel is described in detail in Attachment 1 to Exhibit B. Each party shall convey to the other the property described in Exhibits A and B free and clear of any and all liens which secure the payment of money. Prior to conveying the property described in Exhibit B, Santa Fe shall obtain a release of such property from the liens of its General Mortgage and Adjustment Mortgage, and on the date of conveyance Santa Fe shall deliver to RCTC an executed Release of Mortgage Trustee releasing such property from the liens of these mortgages. On the date of conveyance of the real property parcels each party shall assign to the other party all contracts related to the real property to be conveyed, to the extent those contracts are related to such real property, and the other party hereby accepts such assignment of such contracts, effective on the date of conveyance of the real property parcels.

Santa Fe hereby waives its right, if any, to relocation assistance, moving expenses, goodwill or other payments to which it might otherwise be entitled, but for this waiver, under the

Mr. Douglas J. Babbi
Senior Vice President and Chief of Staff
February 14, 1996
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Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 United States Code Section 4601 et seq. and/or the California Relocation Assistance Law, as amended, Government Code Section 7260 et seq., or the Real Property Acquisition Relocation Assistance Rules and Regulations as adopted or hereafter amended by RCTC. Such waiver shall include, but is not limited to, any right (1) to relocation assistance payments, or (2) to compensation for fixtures or loss of use of the property conveyed.

2. Upon execution of this Letter Agreement, RCTC shall promptly commence the design and construction of, or arrange for the design and construction of, a south side rail passenger platform and other improvements at the Riverside Station (the "Improvements"). The Improvements are described in Exhibit "C," attached hereto and incorporated herein. Santa Fe shall be responsible for the first \$1.542 Million of the cost of the design and construction of the Improvements pursuant to its agreement with the Union Pacific Railroad Company. RCTC shall be responsible for all other costs related to the design and construction of the Improvements.

3. Santa Fe further agrees that the passenger platform shown in the Diagram attached to the 1993 Letter Agreement shall be the only passenger platform required at the Riverside Station until such time as the south side rail passenger platform at the Riverside Station is completed pursuant to this Agreement. Such south side rail passenger platform shall be completed as promptly as practicable under the circumstances. RCTC further agrees that the south side rail passenger platform shall be completed before operation of Stage 2 level commuter train service between Riverside and (Atwood) Fullerton.

4. Paragraph 4 of the letter agreement between Santa Fe and RCTC dated March 29, 1993 shall be deleted in its entirety and replaced by the following:

(a) Santa Fe and RCTC hereby acknowledge that certain capital improvements must be made to the San Bernardino Subdivision in addition to those described in the Capital Improvements Agreement. These improvements are as follows:

(1) Realignment of San Bernardino main line tracks in the vicinity of Third Street to Tenth Street in Riverside, California, estimated to cost about \$189,000.00.

(2) Construction of a new station track along the south side of the San Bernardino Subdivision main line tracks, between about Milepost 9.6 and 10.0, estimated to cost about \$1,130,000.00. The new station track will be constructed by Santa Fe at the sole cost of RCTC before operation of Stage 2 level commuter train service between Riverside and (Atwood) Fullerton.

Mr. Douglas J. Babb
Senior Vice President and Chief of Staff
February 14, 1995
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(b) Santa Fe, as soon as practicable, shall construct, or arrange for the construction of, such improvements as described in Paragraph 4(a)(1), including installation of all required signalling and all related signal modifications. RCTC promptly shall, to the extent that such costs have not already been paid, reimburse Santa Fe the reasonable cost of such construction up to but not exceeding \$189,000.00. Santa Fe shall pay all costs of such construction in excess of \$189,000.00.

(c) Santa Fe and RCTC agree that upon the construction of the Improvements, as defined in this letter agreement (including without limitation the construction of a south side station track at the Riverside Station), all capital improvements required for RCTC or the Agency to operate Stage 2 passenger service on the San Bernardino Subdivision under the Capital Improvement Agreement (San Bernardino Subdivision), as amended, between Santa Fe, RCTC and others, between Riverside and (Atwood) Fullerton shall be considered complete.

(d) Santa Fe also shall be relieved entirely from the requirement set forth in the Capital Improvements Agreement that, as part of its construction of the Low Case Level Facilities and Improvements, as defined in that agreement, Santa Fe shall install two power switches on the wye tracks at Highgrove and construct a station track at Highgrove. RCTC agrees that RCTC, SCRRA or their agents or contractors shall not, in the aggregate, operate any more than four roundtrip revenue producing and four roundtrip non-revenue producing Agency Trains daily over any portion of the San Bernardino Subdivision between Riverside and San Bernardino, California, and that neither RCTC, SCRRA nor any other agents or contractors shall operate any commuter rail service on to or off of the San Jacinto Subdivision via tracks at or near Highgrove, until after completion of installation of two power switches on the wye tracks at Highgrove and construction of a station track at Highgrove. The improvements identified in the preceding sentence shall be constructed by Santa Fe, following a written notice to do so from RCTC, and RCTC shall promptly reimburse Santa Fe the reasonable cost of such improvements and construction. As discussed in paragraph 5 of this letter agreement, RCTC agrees that trains operated to or from the San Jacinto Subdivision cannot be operated from or to the passenger loading/unloading platform on the north side of the San Bernardino Subdivision main line tracks in or near Riverside Station, California until after completion by Santa Fe of installation of two No. 24 rail cross-overs at or near Palmyrita. Operation from a south side rail passenger platform at the Riverside Station shall not require the installation of such cross-overs. The cross-overs, if necessary, shall be promptly installed by Santa Fe following written notice to do so from RCTC, and RCTC shall reimburse Santa Fe the reasonable cost of these turnouts and installation work.

(e) The additional improvements specified in this paragraph shall be completed in the manner described in the Capital Improvements Agreement, except that, to the extent that

Mr. Douglas J. Babb
Senior Vice President and Chief of Staff
February 14, 1996
Page 5

there are any inconsistencies between the provisions of this letter agreement and the provisions of the Capital Improvements Agreement, the provisions of this letter agreement shall control.

5. Paragraph 5 of the 1993 Letter Agreement is hereby restated to read as follows:

"5. Santa Fe agrees that, notwithstanding anything to the contrary in the Capital Improvements Agreement, the SBS Shared Use Agreement or in the Purchase Agreement, upon the completion of the Low Case Level Facilities and Improvements (as defined in the Capital Improvements Agreement) between San Bernardino and Riverside, RCTC or its operator shall be allowed to operate up to six (6) roundtrip trains between San Bernardino and Highgrove in both the morning and evening, as follows:

(a) up to two (2) roundtrip revenue producing trains in both the morning and evening, which trains shall have First Priority (as defined in the SBS Shared Use Agreement) over all Santa Fe Trains, including Expedited Freight Trains (as those terms are defined in the SBS Shared Use Agreement), in the manner described in Section 4.2(e)(i) of the SBS Shared Use Agreement;

(b) up to two (2) roundtrip revenue producing trains in both the morning and evening, which trains shall have equal priority with Expedited Freight Trains and First Priority over other Santa Fe Trains, in the manner described in Section 4.2(e)(ii) of the SBS Shared Use Agreement; and

(c) the two (2) remaining roundtrip trains shall be non-revenue deadhead moves to enable trains stored at the San Bernardino Yard area or on the San Jacinto Subdivision to reach the Highgrove, which trains shall have no special priority over Santa Fe Trains.

In addition to the above, Santa Fe agrees that, notwithstanding anything to the contrary in the Capital Improvements Agreement, the SBS Shared Use Agreement or in the Purchase Agreement, upon the completion of the Low Case Level Facilities and Improvements (as defined in the Capital Improvements Agreement) between San Bernardino and Riverside, and the completion of the Improvements

Mr. Douglas J. Babb
Senior Vice President and Chief of Staff
February 14, 1996
Page 6

as defined in this letter agreement (including without limitation the construction of a south side station track at Riverside Station), RCTC or its operator shall be allowed to operate up to eight (8) roundtrip trains between Highgrove and Riverside in both the morning and evening, as follows:

(a) up to two (2) roundtrip revenue producing trains in both the morning and the evening, which trains shall have First Priority (as defined in the SBS Shared Use Agreement) over all Santa Fe Trains, including Expedited Freight Trains (as those terms are defined in the SBS Shared Use Agreement), in the manner described in Section 4.2.(e)(i) of the SBS Shared Use Agreement;

(b) up to two (2) roundtrip revenue producing trains in both the morning and evening, which trains shall have equal priority with Expedited Freight Trains, in the manner described in Section 4.2.(e)(ii) of the SBS Shared Use Agreement; and

(c) the four (4) remaining roundtrip trains shall be non-revenue deadhead moves to enable trains stored at the San Bernardino Yard area or on the San Jacinto Subdivision to reach Riverside Station, which trains shall have no special priority over Santa Fe Trains, but Santa Fe and RCTC shall cooperate to achieve the goal that RCTC's trains reach Riverside Station in time sufficient for RCTC's scheduled outbound revenue service.

Santa Fe hereby agrees that (i) RCTC's operation of the foregoing roundtrip trains shall not be conditioned on the completion of any improvements not referenced or specified herein, (ii) in no event shall RCTC's operation of the foregoing roundtrip trains increase RCTC's obligation to pay maintenance expenses under the SBS Shared Use Agreement above the level specified for the Low Case Level of operations, and (iii) RCTC's storage of trains on the San Jacinto Subdivision (if any) shall not constitute Agency Rail Service under the San Jacinto Shared Use Agreement for purposes of the San Jacinto Maintenance Shift Date (as defined in the San Jacinto Shared Use Agreement). At such time as the Stage 3 Case Level of Capital Improvements (as defined in the Capital Improvements Agreement) are completed between San Bernardino and Riverside Station pursuant to the Capital Improvements Agreement, RCTC shall be entitled to operate three (3) First Priority daily roundtrip revenue producing trains between San Bernardino and Riverside Station with the priorities specified for such trains in the SBS Shared Use Agreement, all as set forth in the SBS Shared Use Agreement."

Mr. Douglas J. Babb
Senior Vice President and Chief of Staff
February 14, 1996
Page 7

6. RCTC shall, at RCTC's cost, construct or cause to be constructed an overhead pedestrian crossing at both the West Corona Station and La Sierra Station in Riverside County. The crossings shall be completed prior to operating Stage 2 passenger service between Riverside and Fullerton. Prior to operating Stage 2 passenger service between Riverside and Fullerton, RCTC shall not be required to construct such overhead pedestrian crossings.

7. Santa Fe agrees that it will endeavor (1) to dispatch eastbound passenger trains on the San Bernardino Subdivision to allow passenger boarding and alighting from the north side passenger platforms at the West Corona Station and La Sierra Station, and (2) to dispatch westbound passenger trains on the San Bernardino Subdivision to allow for passenger boarding and alighting from the south side passenger platform at the West Corona Station and La Sierra Station. Santa Fe agrees that it will in good faith use reasonable efforts to reach the goal that 95% of the commuter trains arriving at the West Corona Station and La Sierra Station comply with the requirements of this paragraph.

8. Except for the matters described in this Letter Agreement, the Purchase Agreement, the San Jacinto Shared Use Agreement, the SBS Shared Use Agreement, the Capital Improvements Agreement, and all amendments to such agreements, and the Letter Agreement are not modified and are in full force and effect.

If the foregoing accurately sets forth your understanding of our agreement on these matters, please acknowledge your agreement by signing, dating and returning to me one of the two original copies of this letter agreement.

Very truly yours,

RIVERSIDE COUNTY
TRANSPORTATION COMMISSION

By: 
Jack Reagan
Executive Director

THE FOREGOING IS ACCEPTED
AND AGREED TO BY

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY

Mr. Douglas J. Babb
Senior Vice President and Chief of Staff
February 14, 1996

Page 8

By: Douglas J. Babb
Douglas J. Babb
Senior Vice President and Chief of Staff

Dated: February 29, 1996

cc: Mr. Dennis W. Wilson, attorney for
The Atchison, Topeka and Santa Fe
Railway Company

Mr. Steven C. DeBaun, attorney for
Riverside County Transportation Commission

Mr. Lee F. Fox
Assistant Vice President --
Commuter Construction
The Atchison, Topeka and Santa Fe
Railway Company

EXHIBIT A

GRANT DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a county transportation commission existing under the authority of Section 130050 et seq. of The California Public Utilities Code ("Grantor"), hereby sells, transfers, grants and conveys to THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Grantee"), all of Grantor's right, title and interest in and to the real property and all improvements thereon that are described in Attachment 1 hereto.

IN WITNESS WHEREOF, Grantor has set its hand and seal this ____ day of March, 1996.

GRANTOR:

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

By:

Jack Reagan
Executive Director

ATTEST:

By: _____
Name: _____
Title: _____

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I, _____, a Notary Public in and for the County of Riverside, State of California, do hereby certify that Jack Reagan, Executive Director of Riverside County Transportation Commission, personally known to me to be the person holding this office with Riverside County Transportation Commission, appeared before me this day in person and acknowledged that he signed the Grant Deed dated this date as his free and voluntary act, and the free and voluntary act of Riverside County Transportation Commission.

GIVEN under my hand and notarial seal this _____ day of March, 1996.

Notary Public

twcc01/wp/dww/agrowww/actary

DESCRIPTION

~~REVEROYE~~ (SAN BERNARDINO COUNTY, CALIFORNIA)

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING ALL THAT CERTAIN PARCEL NO. 1 AS CONVEYED BY DEED TO RIVERSIDE COUNTY TRANSPORTATION COMMISSION, RECORDED DECEMBER 15, 1992, AS DOCUMENT NO. 92-314410, OFFICIAL RECORDS OF SAID SAN BERNARDINO COUNTY, MORE PARTICULARLY DESCRIBED IN SAID DOCUMENT AS FOLLOWS:

THAT PORTION OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING A PORTION OF THE LAND DESCRIBED IN THAT CERTAIN DEED RECORDED AUGUST 22, 1886, IN BOOK 45 OF DEEDS, PAGES 10 AND 11, RECORDS OF SAN BERNARDINO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 6, SAID POINT BEING 30 FEET WEST OF AND NORMAL TO THE CENTERLINE OF THE NORTH MAIN TRACK OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;

TRENCH ON AN AZIMUTH OF 268 DEGREES 06 MINUTES 36 SECONDS, ALONG SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 6, A DISTANCE OF 150.09 FEET TO A POINT 300 FEET WEST OF AND NORMAL TO SAID CENTERLINE OF THE NORTH MAIN TRACK;

TRENCH ON AN AZIMUTH OF 18 DEGREES 02 MINUTES 14 SECONDS, A DISTANCE OF 484.46 FEET TO A POINT 30 FEET WEST OF AND NORMAL TO SAID CENTERLINE OF THE NORTH MAIN TRACK;

TRENCH ON AN AZIMUTH OF 180 DEGREES 00 MINUTES 00 SECONDS, PARALLEL WITH SAID CENTERLINE OF THE NORTH MAIN TRACK, A DISTANCE OF 453.70 FEET TO THE POINT OF BEGINNING.

February 21, 1992

DESCRIPTION
EDGEWOOD (RIVERSIDE COUNTY, CALIFORNIA)

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING ALL THAT CERTAIN PARCEL NO. 1 AS CONVEYED BY DEED TO RIVERSIDE COUNTY TRANSPORTATION COMMISSION, RECORDED DECEMBER 13, 1992, AS DOCUMENT NO. 476997, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, MORE PARTICULARLY DESCRIBED IN SAID DOCUMENT AS FOLLOWS:

*THAT PORTION OF THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF THE LAND DESCRIBED IN THAT CERTAIN DEED RECORDED DECEMBER 11, 1986, IN BOOK 30 OF DEEDS, PAGE 533, RECORDS OF SAN BERNARDINO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 7, SAID POINT BEING 50 FEET WEST OF AND NORMAL TO THE CENTERLINE OF THE NORTH MAIN TRACK OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;

THENCE ON AN AZIMUTH OF 190 DEGREES 00 MINUTES 00 SECONDS, PARALLEL WITH SAID CENTERLINE OF THE NORTH MAIN TRACK, A DISTANCE OF 775.81 FEET TO THE POINT OF CURVATURE FOR A CURVE BEING CONCAVE TO THE NORTHWEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE, SAID CURVE HAVING A RADIUS OF 2245.70 FEET, AND ARC DISTANCE OF 825.45 FEET (CHORD AZIMUTH: 190 DEGREES 31 MINUTES 48 SECONDS, CHORD DISTANCE: 820.81 FEET) TO A POINT 200 FEET WEST OF AND NORMAL TO SAID CENTERLINE OF THE NORTH MAIN TRACK OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY EXTENDED SOUTH;

THENCE ON AN AZIMUTH OF 60 DEGREES 00 MINUTES 00 SECONDS, PARALLEL WITH SAID CENTERLINE OF THE NORTH MAIN TRACK, A DISTANCE OF 1577.85 FEET TO A POINT ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 7;

THENCE ON AN AZIMUTH OF 84 DEGREES 06 MINUTES 36 SECONDS, ALONG SAID NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 7, A DISTANCE OF 150.09 FEET TO THE POINT OF BEGINNING.

G:\RIVERSIDE\DEEDS\KALMAY\1992

EXHIBIT B

GRANT DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, ("Grantor") hereby sells, transfers, grants and conveys to RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a county transportation commission existing under the authority of Section 130050 et seq. of The California Public Utilities Code ("Grantee"), all of Grantor's right, title and interest in and to the real property and all improvements thereon that are described in Attachment 1 hereto, except that Santa Fe shall retain a permanent easement to conduct rail freight service and engage in related rail service activities over and adjacent to the new tracks to be constructed on this parcel between about Mileposts 9.6 and 10.0 of the San Bernardino Subdivision. The easement described in the preceding sentence may only be used by Grantor in the following situations: (1) In the event of an emergency of short duration requiring immediate use of the easement, in which case Grantor shall provide notice to the Southern California Regional Rail Authority ("SCRRA") prior to or concurrent with such emergency use, or (2) To provide rail freight service to and from a commercial enterprise facility located on property immediately adjacent to such tracks, provided that such use is approved in advance by Grantee.

IN WITNESS WHEREOF, Grantor has set its hand and seal this ___ day of February, 1996.

GRANTOR:

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By:

Douglas J. Babb
Senior Vice President and
Chief of Staff

ATTEST:

By: _____
Name: _____
Title: _____

[SEAL]

L:\WCNT\WPAD\WWW\MISC\RCTC\1.EXE

STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I, _____, a Notary Public in and for the County of Cook, State of Illinois, do hereby certify that Douglas J. Babb, Senior Vice President and Chief of Staff of The Atchison, Topeka and Santa Fe Railway Company, personally known to me to be the person holding this office with The Atchison, Topeka and Santa Fe Railway Company, appeared before me this day in person and acknowledged that he signed the Grant Deed dated this date as his free and voluntary act, and the free and voluntary act of The Atchison, Topeka and Santa Fe Railway Company.

GIVEN under my hand and notarial seal this _____ day of March, 1996.

 Notary Public

twcoatiwpldhwlegremsnotnotary

RIVERSIDE STATION GROUNDS

A PARCEL OF LAND SITUATED IN THE CITY OF RIVERSIDE, RIVERSIDE COUNTY, STATE OF CALIFORNIA, BEING PART OF THAT PARCEL OF LAND DESCRIBED IN DEED DATED MAY 29, 1886 IN BOOK 46 AT PAGE 537, IN THE OFFICE OF THE COUNTY RECORDER, LYING BETWEEN THE CENTERLINE OF RIGHT-OF-WAY OF TENTH STREET AND THE NORTH RIGHT-OF-WAY LINE OF THIRD STREET IN THE CITY OF RIVERSIDE, RIVERSIDE COUNTY, CALIFORNIA, PARTICULARLY DESCRIBED IN SAID DEED AS FOLLOWS:

"COMMENCING AT THE INTERSECTION OF THE EAST LINE OF THE JURUPA RANCHO WITH THE SOUTH LINE OF WHITE'S ADDITION TO THE CITY OF RIVERSIDE, ACCORDING TO MAP OF WEDGE ADDITION TO RIVERSIDE FILED IN THE RECORDERS OFFICE IN SAN BERNARDINO COUNTY IN BOOK 3 OF MAPS, ON MAY 3RD, 1884, RUNNING THENCE EASTERLY ON THE SOUTH LINE OF SAID WHITE'S ADDITION, TO A POINT 50 FEET EAST FROM THE CENTERLINE OF LOCATION OF THE RIVERSIDE, SANTA ANA & LOS ANGELES RAILWAY, MEASURED AT RIGHT ANGLES THERETO RUNNING THENCE NORTHERLY 50 FEET FROM AND PARALLEL TO SAID CENTERLINE OF RAILROAD A DISTANCE OF 30.5 FEET MORE OR LESS TO THE NORTH LINE OF LOT NO. 18 IN BLOCK 16 IN AFORESAID WHITES ADDITION RUNNING THENCE EASTERLY ON SAID NORTH LINE OF LOT NO. 18, TO A POINT 80 FEET EAST, FROM THE EAST LINE OF THE JURUPA RANCHO, MEASURED AT RIGHT ANGLES THERETO, RUNNING THENCE NORTHERLY, 80 FEET FROM AND PARALLEL TO THE EAST LINE OF SAID JURUPA RANCHO, BEING ON THE WEST LINE OF PACHAPPA AVENUE A DISTANCE OF 1040 FEET MORE OR LESS TO THE NORTH LINE OF EIGHTH STREET IN SAID WHITE'S ADDITION, RUNNING THENCE EASTERLY ON SAID NORTH LINE OF EIGHTH STREET IN SAID WHITE'S ADDITION, RUNNING THENCE EASTERLY ON SAID NORTH LINE OF EIGHTH STREET A DISTANCE OF SIXTY FEET RUNNING THENCE NORTHERLY 100 FEET EAST FROM AND PARALLEL TO THE EAST LINE OF JURUPA RANCHO A DISTANCE OF 330 FEET TO THE SOUTH LINE OF SEVENTH STREET, RUNNING THENCE WESTERLY ON THE SOUTH LINE OF SEVENTH STREET AFORESAID A DISTANCE OF 60 FEET TO A POINT 80 FEET EAST FROM THE EAST LINE OF THE JURUPA RANCHO MEASURED AT RIGHT ANGLES THERETO, RUNNING THENCE NORTHERLY 80 FEET EAST FROM AND PARALLEL TO THE EAST LINE OF SAID JURUPA RANCHO BEING ON THE WEST LINE OF PACHAPPA AVENUE A DISTANCE OF 1633.5 FEET MORE OR LESS TO THE NORTH LINE OF THIRD STREET IN THE CITY OF RIVERSIDE RUNNING THENCE WESTERLY ON SAID NORTH LINE OF THIRD STREET, A DISTANCE OF 80 FEET TO THE EAST LINE OF SAID JURUPA RANCHO RUNNING THENCE SOUTHERLY ON SAID EAST LINE OF THE JURUPA RANCHO A DISTANCE OF 3372.5 FEET MORE OR LESS TO POINT OF COMMENCEMENT."

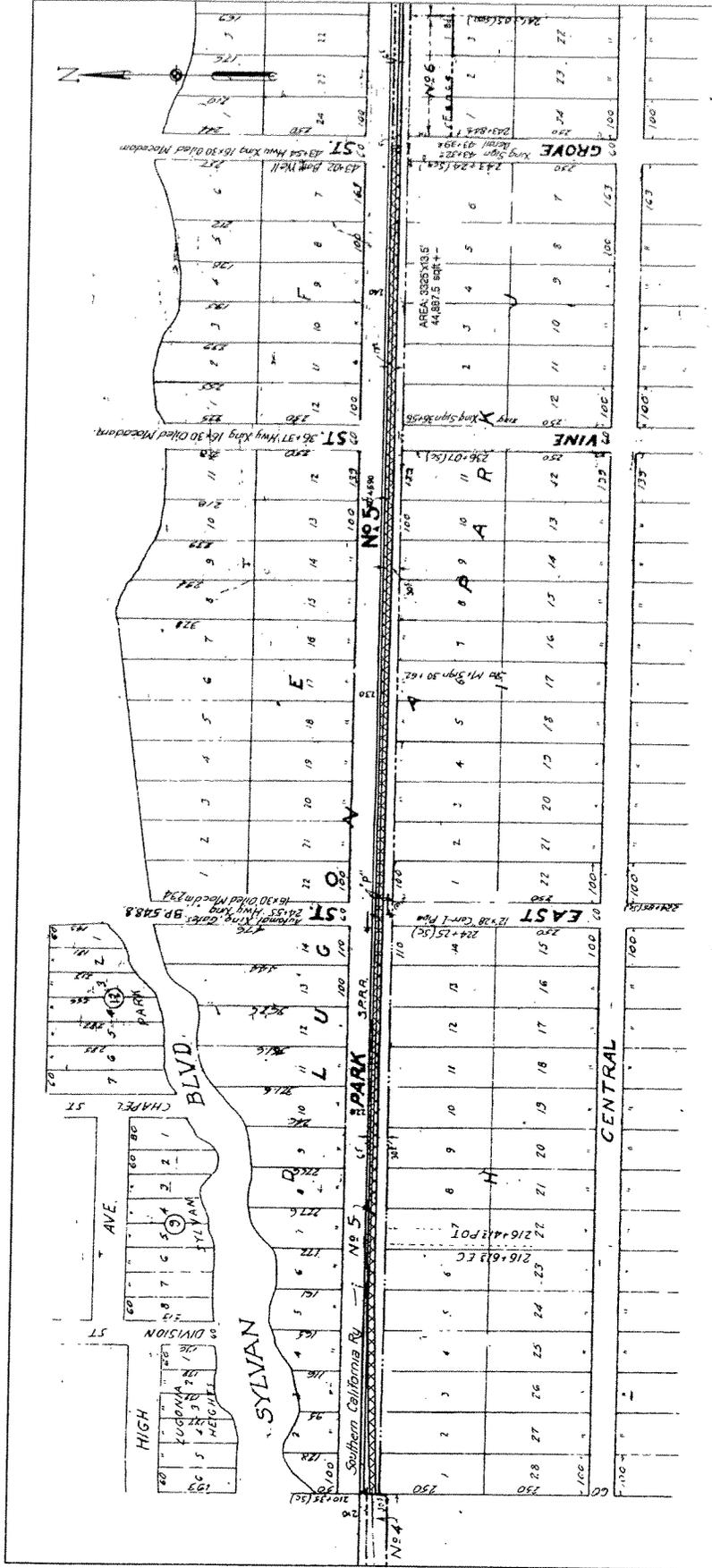
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** TOTAL PAGE 334

EXHIBIT "C"

The Improvements

1. A 600-foot rail passenger platform to be constructed on the south side of the San Bernardino Subdivision mainline tracks through Riverside, California.
2. A pedestrian overcrossing of the San Bernardino main line to allow pedestrian travel between the north side and south side rail passenger platforms at the Riverside Station.
3. A south side train storage facility at the Riverside Station. The facility shall have capacity to store at least four commuter trains of six passenger cars and one locomotive each.
4. A station track for the south side rail passenger platform. The station track shall include power connectors at each end that connect the track to the San Bernardino Subdivision main line tracks.
5. All signals and powered turnouts needed to serve the passenger platform described in No. 1, above, and the station track described in No. 4, above.



UNION PACIFIC RAILROAD CO.
 PROPOSED SALE
 EASTERNE, SAN BERNARDINO COUNTY, CA
 M.P. 549+- SF RECLANDS BRANCH
 SP CA V 34 / 2
 REAL ESTATE DEPARTMENT OMAHA NE
 FILE #2655-75 DATE: 1-18-2011 D.A.

SCALE: 1" = 200'
 LEGEND
 U.P.R.R. RIGHT OF WAY
 SALE AREA SHOWN

**RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:**

San Bernardino Associated Governments
Attn: Deborah Barmack, Executive Director
1170 West Third Street, Second Floor
San Bernardino, CA 92410-1715

SPACE ABOVE FOR RECORDER'S USE ONLY

**MEMORANDUM OF
RIGHT OF FIRST REFUSAL**

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL is executed this ____ day of _____, 2011, by **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest by merger with Union Pacific Railroad Company, a Utah corporation) (hereinafter, "Union Pacific").

By Agreement Regarding Public Benefits Related to The Colton Crossing Rail Grade-Separation Project dated May 22, 2011, Union Pacific agreed to give **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a joint powers agency ("SANBAG") the first right of refusal to purchase, for the benefit of Southern California Regional Rail Authority ("Metrolink"), a strip of Union Pacific's right of way in Redlands, San Bernardino County, California, that is approximately thirteen and one-half feet (13.5') wide and three thousand three hundred feet (3,300') long, generally located between Church Street and Grove Street, as more particularly described in **Exhibit "A"** attached hereto and hereby made a part hereof (hereinafter, the "ROFF Parcel"), upon the following terms and conditions:

(a) SANBAG shall have, for a period of twenty (20) years from and after the date of this Memorandum (hereafter, the "Refusal Period"), a right of first refusal to purchase the ROFF Parcel upon the terms and conditions set forth in subparagraphs (b) and (c) below.

(b) If, within the Refusal Period, Union Pacific receives a bona fide offer from a prospective buyer to purchase the ROFF Parcel and Union Pacific desires to accept such offer, Union Pacific shall furnish SANBAG with a copy of the proposed contract and notify SANBAG of the intention of Union Pacific to accept the same. SANBAG shall have the right to elect to purchase the ROFF Parcel and accept such contract by giving Union Pacific written notice thereof within ninety (90) days after receipt by SANBAG of such contract, and by delivering to Union Pacific at the same time the full amount of any earnest money specified in such contract, EXCEPT that SANBAG will pay Union Pacific fair market value

for the ROFF Parcel determined through the appraisal protocols attached hereto as Exhibit "B" and hereby made a part hereof, without regard for whatever price the third party may have offered for the ROFF Parcel. If SANBAG elects to not purchase the ROFF Parcel within such ninety (90) day time period, SANBAG's right of first refusal on the ROFF Parcel shall terminate and be without any further force and effect, and Union Pacific may enter into such contract with the third party, except that if the transaction with the third party is not consummated according to the terms of such contract, then the provisions of this Memorandum shall be reinstated.

(c) Union Pacific may, at its election and at any time or times during the Refusal Period, prepare and submit to SANBAG the offer of Union Pacific to SANBAG for the sale of the ROFF Parcel, together with a copy of the proposed contract, which contract may contain the condition precedent that the terms and conditions thereof are subject to approval in accordance with the Management Policy Statement of Union Pacific. In the event SANBAG fails to furnish to Union Pacific, within ninety (90) days after receipt of such proposed contract, the written acceptance of SANBAG of the terms of such contract, together with the full amount of any earnest money specified in such contract, then, notwithstanding the foregoing provisions of this Memorandum, Union Pacific may enter into with a third party such contract or a contract with terms more favorable to Union Pacific and/or containing conditions precedent in favor of the purchaser and/or containing provisions for the payment of a real estate commission by Union Pacific, and SANBAG shall have no right of first refusal with respect thereto.

This Memorandum of Right of First Refusal is executed by Union Pacific and recorded in the Official Records of San Bernardino County, California, for the purpose of providing record notice of SANBAG's right of first refusal to purchase the ROFF Parcel, upon the terms and conditions set forth herein.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Barbara Holder
Assistant Secretary

By: Lawrence E. Wozrek
Name: Lawrence E. Wozrek
Title: Assistant Vice President - Law

(Seal)



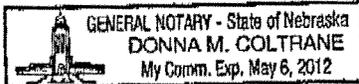
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On _____, 2011, before me, Donna M. Coltrane, a Notary Public in and for said County and State, personally appeared Lawrence E. Wzorek and Barbara Holder, Assistant Vice President - Law and Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Donna M. Coltrane
Notary Public

(SEAL)



Union Pacific Railroad Company

San Bernardino County, California

Exhibit "A"

All right, title and interest in and to that part of the 13.5 feet wide right of way known as the Redlands Branch of the Southern Pacific Transportation Company, predecessor to the Union Pacific Railroad Company, beginning at a point on the east line of Grove Street and extending westerly to the northerly extension of west line of Lot 1, Block H, Map of Lugonia Park, as per Map recorded in Book 4 of Maps, Page 50, in the office of the Recorder of San Bernardino County, State of California.

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE.

LD 0265575
May 3, 2011

EXHIBIT "B"

Basis of Valuation:

The definition of market value shall be the same as that found in dictionary(s) of real estate appraisal commonly accepted by the appraisal industry: i.e., The Appraisal Foundation, Right-of-Way Association, Federal Highway (Works) Administration aka FHWA or 'Yellow Book', etc.

Definitions:

Fair Market Value. (a) The highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for doing so, each dealing with each other with full knowledge of all types of uses and purposes for which the property is reasonably adaptable and available. (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by the method of valuation that is just and equitable. California Code of Civil Procedures 1263.320

Highest and Best Use. The reasonable and probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible and results in the highest value. The four criteria the Highest and Best Use must meet are: legal permissibility, physical possibility, financial feasibility, and maximum productivity. Alternatively, the probable use of land or improved property - specific with respect to the user and timing of the use - that is adequately supported and results in the highest present value. Dictionary of Real Estate Appraisal, 5th Edition, Chicago: Appraisal Institute, 2010, pg 93.

Principal of Substitution. The Principal of Substitution states that when several similar or commensurate commodities, goods or services are available, the one with the lowest price attracts the greatest demand and widest distribution. The Principal assumes rational, prudent market behavior with no undue costs due to delay. According to the Principal of Substitution, a buyer will not pay more for one property than for another that is equally desirable. The Appraisal of Real Estate, pg 39

Application of Principal of Substitution. Where an existing right-of-way is sought for a new use, an approach to value may be the Principal of Substitution - that is the cost of acquisition of equivalent right-of-way through adjacent areas. The Appraisal of Real Estate, pg 494-498

The Across-the-Fence Method (ATF). Appraisal industry standard for valuing property having highest and best use for transportation corridor purposes. The ATF method has precedence in practices of buyers and sellers in the marketplace when properties and rights were being assembled to create the country's first railroad transportation corridors. Interstate Commerce Commission manual and how railroad land agents manage land valuation is referenced in detail with Engineering News-Record March 14, 1918. Today, the ATF method is used by State and Federal agencies to assess railroad properties, by buyers-sellers-lessees-lessors of rights-of-way, by utility companies and the ATF method has been endorsed

by leading appraisal industry organizations as the preferred way to evaluate corridors. The value of land within each district or zone is established by obtaining sales of adjoining-adjacent-nearby lands within a reasonable time of the date of valuation and within a reasonable distance on either side of the corridor being appraised. The Across the Fence sales are more appropriately called market indicators because that is what they do – provide an indication of the market value adjacent land within which the subject property exists. Access, size, shape, time and location are not given consideration except in comparison to the across the fence lands, the premise being Principal of Substitution – to replace the subject right-of-way (transportation corridor) as of the date of value the logical substitute property accounting for the subject property location would be assembling across the fence land.

Appraiser interpretation

Performance of the Appraiser:

The performance of the Appraiser will be based on certain assumptions and subject to certain conditions listed as follows:

- a) The Appraiser is to assume the Subject Property is owned in fee simple title (clear and uncontested).
- b) The Appraiser is to assume that no contamination or environmental conditions exist.
- c) The Appraiser is to value the Subject Property as of the date of last inspection undertaken for the Appraisal Report.
- d) The Appraiser shall estimate value for all the Subject Property land and improvements, such as Buildings, Earthworks, Drainage Structures and Other Corridor Improvements. Value estimates for railroad tracks, bridges and other railroad infrastructure is excluded from the Appraisal Report.
- e) The Appraiser shall render an opinion on the market value of the Subject Property consistent with the Subject Property highest and best use as a transportation corridor (including but not limited to freight rail, passenger rail, transit, utility pipeline, hiking/biking trail, energy transmission and/or communications uses).

The Appraiser shall inspect the Subject Property; gather, verify and document data used to estimate the market values; and include such data in an appraisal report. The appraisal shall be conducted in accordance with acceptable appraisal practices and include supporting data, exhibits and photographs as are necessary to support the opinions of the Appraiser.

Exhibit F

Protocols for Valuation of Redlands Property Right of First Refusal

Basis of Valuation:

The definition of market value shall be the same as that found in dictionary(s) of real estate appraisal commonly accepted by the appraisal industry: i.e., The Appraisal Foundation, Right-of-Way Association, Federal Highway (Works) Administration aka FHWA or ‘Yellow Book’, etc.

Definitions:

Fair Market Value. (a) The highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for doing so, each dealing with each other with full knowledge of all types of uses and purposes for which the property is reasonably adaptable and available. (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by the method of valuation that is just and equitable. California Code of Civil Procedures 1263.320

Highest and Best Use. The reasonable and probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible and results in the highest value. The four criteria the Highest and Best Use must meet are: legal permissibility, physical possibility, financial feasibility, and maximum productivity. Alternatively, the probable use of land or improved property - specific with respect to the user and timing of the use - that is adequately supported and results in the highest present value. Dictionary of Real Estate Appraisal, 5th Edition, Chicago: Appraisal Institute, 2010, pg 93.

Principal of Substitution. The Principal of Substitution states that when several similar or commensurate commodities, goods or services are available, the one with the lowest price attracts the greatest demand and widest distribution. The Principal assumes rational, prudent market behavior with no undue costs due to delay. According to the Principal of Substitution, a buyer will not pay more for one property than for another that is equally desirable. The Appraisal of Real Estate, pg 39

Application of Principal of Substitution. Where an existing right-of-way is sought for a new use, an approach to value may be the Principal of Substitution – that is the cost of acquisition of equivalent right-of-way through adjacent areas. The Appraisal of Real Estate, pg 494-498

The Across-the-Fence Method (ATF). Appraisal industry standard for valuing property having highest and best use for transportation corridor purposes. The ATF method has precedence in practices of buyers and sellers in the marketplace when properties and rights were being assembled to create the country’s first railroad transportation corridors. Interstate Commerce Commission manual and how railroad land agents manage land valuation is referenced in detail with Engineering

News-Record March 14, 1918. Today, the ATF method is used by State and Federal agencies to assess railroad properties, by buyers-sellers-lessees-lessors of rights-of-way, by utility companies and the ATF method has been endorsed by leading appraisal industry organizations as the preferred way to evaluate corridors. The value of land within each district or zone is established by obtaining sales of adjoining-adjacent-nearby lands within a reasonable time of the date of valuation and within a reasonable distance on either side of the corridor being appraised. The Across the Fence sales are more appropriately called market indicators because that is what they do – provide an indication of the market value adjacent land within which the subject property exists. Access, size, shape, time and location are not given consideration except in comparison to the across the fence lands, the premise being Principal of Substitution – to replace the subject right-of-way (transportation corridor) as of the date of value the logical substitute property accounting for the subject property location would be assembling across the fence land. Appraiser interpretation

Performance of the Appraiser:

The performance of the Appraiser will be based on certain assumptions and subject to certain conditions listed as follows:

- a) The Appraiser is to assume the Subject Property is owned in fee simple title (clear and uncontested).
- b) The Appraiser is to assume that no contamination or environmental conditions exist.
- c) The Appraiser is to value the Subject Property as of the date of last inspection undertaken for the Appraisal Report.
- d) The Appraiser shall estimate value for all the Subject Property land and improvements, such as Buildings, Earthworks, Drainage Structures and Other Corridor Improvements. Value estimates for railroad tracks, bridges and other railroad infrastructure is excluded from the Appraisal Report.
- e) The Appraiser shall render an opinion on the market value of the Subject Property consistent with the Subject Property highest and best use as a transportation corridor (including but not limited to freight rail, passenger rail, transit, utility pipeline, hiking/biking trail, energy transmission and/or communications uses).

The Appraiser shall inspect the Subject Property; gather, verify and document data used to estimate the market values; and include such data in an appraisal report. The appraisal shall be conducted in accordance with acceptable appraisal practices and include supporting data, exhibits and photographs as are necessary to support the opinions of the Appraiser.

CONSTRUCTION AND MAINTENANCE AGREEMENT
FOR THE COLTON CROSSING RAIL GRADE-SEPARATION PROJECT

Union Pacific Mile Post 538.7 – Alhambra/Yuma Subdivision
BNSF Mile Post 3.2 - San Bernardino Subdivision

This agreement ("**Agreement**") is made effective the first day of June, 2011, by and among Union Pacific Railroad Company, a Delaware corporation ("**UPRR**"); BNSF Railway Company, a Delaware corporation ("**BNSF**"); and San Bernardino Associated Governments, a joint powers agency ("**SANBAG**"). (UPRR, BNSF, and SANBAG are each a "**Party**" and collectively the "**Parties**". UPRR and BNSF is each a "**Railroad**" and are collectively the "**Railroads**".)

RECITALS

A. The Colton Crossing consists of two BNSF San Bernardino Subdivision mainline tracks that run north/south and cross two UPRR Yuma Subdivision mainline tracks that run east/west. The BNSF and UPRR tracks cross at grade and perpendicular to one another. The Parties propose undertaking the construction of a grade separation to elevate the UPRR mainline tracks and permit trains traveling on the BNSF tracks to pass beneath the UPRR tracks without conflict of movement as generally described in Exhibit A (the "**Project**").

B. On November 7, 2006, California voters approved The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 as Proposition 1B (the "**Act**"). The Act provided for \$2 billion to be transferred to the Trade Corridors Improvement Fund (the "**TCIF**") for infrastructure improvements along corridors having a high volume of freight movement. On May 19, 2010, the California Transportation Commission (the "**Commission**") unanimously voted to program ninety-one million three-hundred thousand dollars (\$91,300,000) in TCIF funds for the Project. The Project Baseline Agreement dated May 7, 2010 and executed by Caltrans and SANBAG (the "**Baseline Agreement**") sets forth the terms and conditions for use of the TCIF funds and SANBAG's responsibilities as the project sponsor to administer the funds for the Project.

C. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 ("**ARRA**"). Among other things, the ARRA created the Transportation Investment Generating Economic Recovery ("**TIGER**") program. In cooperation with the railroads, Caltrans applied for TIGER funding for the Project. On February 17, 2010, the Secretary of Transportation granted \$33.8 million in TIGER funds for the Project. The Federal Highway Administration ("**FHWA**") and the California Department of Transportation

(“**Caltrans**”) executed the TIGER grant agreement (“**Grant Agreement**”) for the Project on December 27, 2010. Caltrans, UPRR, and BNSF have executed a funding flowdown agreement (the “**Flowdown Agreement**”) that describes how Caltrans will use the TIGER funds to reimburse the railroads for some of the costs incurred in constructing the Project.

D. Combining the TCIF funds, State Transportation Improvement Program (“**STIP**”) funds, the TIGER grant, and funds pledged by UPRR and BNSF, per the Memorandum of Understanding among the Parties dated May 5, 2010 (the “**MOU**”), the Project is now fully funded, subject to the execution of definitive agreements.

E. The Parties have executed a Cooperative Agreement for Engineering Design for Colton Crossing Rail-Grade Separation Project (the “**Design Agreement**”).

F. The Parties have executed a Cooperative Agreement for Right of Way Acquisition for Colton Crossing Rail-Grade Separation Project (“**Right of Way Agreement**”). UPRR will certify the right of way before construction.

G. The Parties have executed an Agreement Regarding Implementation of Public Benefits Related to the Colton Crossing Rail-Grade Separation Project (“**Public Benefits Agreement**”).

H. Effective June 1, 2011, UPRR and BNSF have executed an amendment to the October 19, 1909 Colton Crossing Agreement, UP Document Audit Number 4338, BNSF Contract No. 7910 (“**Colton Crossing Agreement**”).

I. BNSF operates over the UPRR right of way at the Colton Crossing in accordance with the Colton Crossing Agreement. The grade-separated structure to be built as part of the Project will extend onto BNSF’s property beyond the northern edge of UPRR’s property. Concurrent with the execution and delivery of this Agreement, BNSF will convey to UPRR a perpetual aerial and structural easement on and above that part of the BNSF right of way required for the Project in the form and on the terms set forth in Exhibit B (the “**Easement**”).

J. Together, the Design Agreement, Right of Way Agreement, Public Benefits Agreement, the June 1, 2011 amendment to the 1909 Colton Crossing Agreement, the Easement, and this Agreement serve as the definitive agreements required by Section 4 of the MOU.

K. Caltrans has published the California Environmental Quality Act (“**CEQA**”) and the FHWA has published the National Environmental Policy Act (“**NEPA**”) documents for public review. The Parties expect the environmental review process to be completed in time for construction to begin on schedule.

L. The Parties have been working collaboratively on other requirements that must be met prior to construction. SANBAG has been administering the use of state STIP funds allocated for use on the Project to pay the costs of some of the preliminary Project work.

M. The Parties now desire to enter into an agreement to describe their rights and obligations with respect to construction, maintenance, and operation of the Project.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

Section 1. Incorporation of Recitals.

The recitals set forth above are hereby incorporated into the terms of this Agreement.

Section 2. Project Design and Construction.

A. Design. The construction plans and specifications for the Project are being developed under the terms of the Design Agreement. The final 100% plans and specifications, including construction phasing, signed by UPRR and approved in writing by the Parties and any subsequent Change Orders (defined below) (collectively the “**Plans**”) are hereby made part of this Agreement by reference. The general layout and profile of the Project are shown on the detailed print attached as Exhibit C. The Project will be built in accordance with the Plans.

B. Change Orders.

(i) UPRR and BNSF may use their own staff or a contractor to perform any services related to change orders or other design or construction phasing issues after expiration or termination of the Design Agreement or otherwise not covered by the Design Agreement (“**Change Orders**”). All actual costs incurred by UPRR or BNSF in relation to Change Orders will count toward that Railroad’s contribution as outlined in Exhibit G. Any review work that SANBAG performs in relation to Change Orders will be reimbursable to SANBAG as Project costs.

(ii) The Railroads will coordinate with one another regarding all requests for Change Orders and must agree in writing upon any requested Changes Orders in order for any such changes to become effective or be implemented in construction of the Project. The Railroads will not unreasonably withhold or delay approval of a request for a Change Order. All Change Orders must be necessary to achieve the purpose of the Project. Any Change Order involving an increase in cost in excess of one hundred fifty thousand dollars (\$150,000) must be approved by SANBAG’s Director of Project Development or his designee. Such approval will not be unreasonably withheld or delayed. The Parties will submit disputed requests for Change Orders to the Coordination Committee for discussion of resolution options.

(iii) All Change Orders will be reported to the Coordination Committee on a quarterly basis.

C. Construction Coordination Committee.

The Parties will establish a construction coordination committee (the “**Coordination Committee**”) consisting of at least two (2) representatives of each Party. The Coordination Committee will be a forum for the parties to share information, discuss matters submitted by one Party to another Party for review or approval, and discuss possible resolutions of any issues among the Parties with respect to this Agreement. The Coordination Committee will meet (in person or telephonically) throughout the construction of the Project. The meetings will be held

once per month and also as necessary to address issues between the Parties that require prompt resolution. No less frequently than quarterly, the Coordination Committee will review the status of Project costs. The Coordination Committee will dissolve upon issuance of certificates of final acceptance pursuant to Section 2(G)(3).

D. Division of Construction.

(i) Construction Lead. UPRR will serve as the lead Party for construction. BNSF or its designated contractors will perform the track and signal work related to its property, including all work associated with the flange-bearing (one-way low-speed or "OWLS") diamond at the existing grade crossing, which is reflected on Exhibit D (the "**BNSF Work**"). UPRR or its designated contractors will construct all elements of the Project other than the BNSF Work.

(ii) Construction Engineering. Each Railroad is responsible for construction engineering for those parts of the Project it is responsible to construct, including, but not limited to, construction management, inspection, construction surveying, laboratory and field testing, preparation and processing of field reports, records, estimates, and final reports. All work and submittals shall be completed in accordance with the applicable Railroad's standards or AREMA guidelines, whichever is higher. Work submittals must contain the information required to comply with a state audit.

F. Construction Schedule.

(i) Schedule. The Parties will begin construction in accordance with the construction phasing in the Plans as soon as practicable after completion of design, environmental review, right of way certification, development of a utility relocation plan, required permitting, allocation of TCIF funding, and obligation of TIGER funding. The Parties expect construction to begin in September 2011 and to be completed in March 2014, as reflected in the proposed schedule attached as Exhibit E. These dates are for planning purposes only and are subject to adjustment as circumstances require. The Parties acknowledge that pursuant to the TCIF Guidelines, construction on the Project must commence by December 31, 2013 or the TCIF funding for the Project may terminate. The Parties also acknowledge that under section 9(a)(2) of the Grant Agreement, the FHWA reserves the right to terminate TIGER funding if construction does not begin on or before January 1, 2012. Pursuant to Federal law, TIGER funding must be obligated on or before September 30, 2011, and once obligated, it will be available for liquidation and adjustment only through September 30, 2016.

(ii) Construction Award. UPRR and BNSF may advertise for bids anytime after the effective date of this Agreement, but construction contracts may not be awarded until after the Commission allocates the TCIF funds.

(iii) Force Majeure. The Parties will be excused from meeting the construction schedule set forth in Exhibit E during force majeure events, including acts of terrorism, riots, insurrection or war, strikes or lockouts by third parties providing labor, material or services under contract to a party, delays caused by another party to this Agreement, third-party litigation or court order, derailments, wrecks or freight embargoes, inability to procure critical materials, unforeseen delays in obtaining any required permits or approvals,

unforeseen physical conditions or catastrophic railroad emergencies anywhere within the UPRR or BNSF rail system, and earthquake, flood, tornado or other phenomena of nature beyond the power of a party reasonably able to foresee or to make preparation in defense against, but not including rain, windstorm or other natural phenomena of normal intensity based on U.S. Weather Bureau reports for the particular locality and for the particular season of the year in which the work is being prosecuted. The Parties will work in good faith to mitigate the effects of such events in order to keep the Project on schedule. The Parties acknowledge that notwithstanding a force majeure event they do not have discretion to independently revise the deadlines associated with the TCIF and TIGER funding described in Section 3.

G. Construction Forces. UPRR and BNSF may use their own employees or a contractor to perform any part of the Project construction for which they are responsible.

H. Construction Access. Prior to allowing a contractor to enter either Railroad's property, the Railroad who has hired the contractor must require the contractor to:

(i) Execute a Contractor's Right of Entry Agreement applicable to both Railroads using the form attached as Exhibit F.

(ii) Obtain and maintain the insurance required in the Contractor's Right of Entry Agreement; and

(iii) Provide such insurance policies, certificates, binders and/or endorsements to each Railroad. All insurance correspondence, binders, policies, certificates and/or endorsements must be sent to:

Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UPRR Folder No. 2666-07

Mark Ude
BNSF Railway
Assistant Vice President
Corporate Real Estate
2500 Lou Menk Drive
Fort Worth, TX 76131

I. Railroad Right of Entry. BNSF and UPRR hereby grant access to one another's property in and about the Project area for purposes of constructing the Project on the following conditions:

(i) Each Railroad is responsible for the activities of its own employees while on and about the Project construction site.

(ii) The host Railroad has the absolute right to cause the guest Railroad's activities on the host Railroad's property to cease if, in the opinion of the host Railroad, 1) the guest Railroad's activities create a hazard to property, people, or railroad operations; or 2) the guest Railroad's personnel perform work on the host Railroad's property in a manner that is contrary to the Plans. The work stoppage will continue until all necessary actions are taken by the guest Railroad to rectify the situation to the satisfaction of the host Railroad.

(iii) Employees of each Railroad will comply with all applicable laws while on the other Railroad's property.

(iv) While on the other Railroad's property, the guest Railroad's employees must comply with the then-current safety requirements of the host Railroad as found at www.Contractorientation.com and www.eRailsafe.com and follow all instructions given by the construction manager or host Railroad representatives.

(v) Each Railroad must give at least five (5) days notice to the other Railroad in advance of commencing any activity or permitting others to commence any activity during which any person or equipment will be within twenty-five (25) feet of any track on the other Railroad's property or will be near enough to any such track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of the track. No work of any kind may be performed, and no person, equipment, machinery, tools, materials, vehicles, or things may be located, operated, placed, or stored within twenty-five (25) feet of any track on the other Railroad's property at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. If, under the terms of this Section, the host Railroad performs any flagging or provides other special protective or safety measures, the guest Railroad will not be relieved of any of its responsibilities or liabilities set forth in this Agreement.

J. Inspection Access. SANBAG may have reason to visit the construction site from time to time for purposes of inspection or other interests in the Project. Before entering either Railroad's property or other areas involved in the construction site, employees, contractors, agents, and other representatives of SANBAG must give notice to the construction manager on site. Except when emergency conditions warrant immediate access, inspections for purposes related to environmental compliance require at least 24 hours notice; inspections for all other purposes will be scheduled through the Coordination Committee. SANBAG will provide the Coordination Committee and construction manager with a list of the names and titles of personnel who are authorized to access the construction site. Upon arrival, SANBAG representatives must check in with the on-site construction manager. While on site, SANBAG representatives must comply with the then-current safety requirements of the applicable Railroad as found at www.Contractorientation.com and www.eRailsafe.com and follow all instructions given by the construction manager or Railroad representatives. The Parties will require Caltrans to execute a separate agreement adopting these same requirements and the terms of indemnity set forth in Section 8(C) and made applicable to Caltrans as a condition of allowing Caltrans employees, contractors, agents, or other representatives on the Project construction site for purposes of inspection.

K. Construction Grade Crossings. UPRR and BNSF will each provide one temporary grade crossing over their tracks in the locations set forth in the Plans to facilitate construction of the Project. Any change in the location of a crossing or the addition of another crossing must be approved in writing by the Railroad over whose tracks the relocated or additional crossing will be built. The Railroads will work together in good faith regarding any requests related to placement of temporary crossings. A flagman will be required during use of a temporary grade crossing. When not in use, grade crossings will be barricaded. Such crossings will not be for public use and will be removed when construction is complete.

L. Environmental Compliance.

(i) UPRR will comply with all of the commitments and conditions set forth in the CEQA and NEPA documents, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to UPRR's responsibilities. BNSF will comply with all of the commitments and conditions set forth in the CEQA and NEPA documents, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to the BNSF Work.

(ii) SANBAG will be responsible for monitoring the Railroads' compliance with CEQA and NEPA requirements during construction. The Parties will use the Coordination Committee to develop protocols for communication and enforcement related to environmental compliance.

(iii) If unanticipated cultural, archaeological, paleontological, or other protected resources are discovered during construction, all work in the immediate area of the discovery will stop until a qualified professional can evaluate the nature and significance of the discovery and a plan is approved for its removal or protection.

(iv) If at any time SANBAG's Director of Project Development or his designee shall be of the opinion that any part of the construction work is being or is about to be done without due regard for the environmental compliance described in this Section, the Railroads will immediately suspend the specific work in question until suitable, adequate, and proper measures are put in place. Suspension of the part of the work in question will not limit the ability of the Railroads to continue other work on the Project that can reasonably be done while the environmental issues are resolved.

(v) If work stops for any reason, the Parties will still be obligated to implement all applicable commitments and conditions included in the Project environmental documentation, permits, agreements, and approvals that are in effect at the time that work stops, to the extent they apply to each Party's responsibilities in this Agreement, in order to keep the Project in environmental compliance until the affected work resumes.

M. Utility Relocation. Protection and relocation of utilities that may be affected by the Project will be handled under the terms of the Right of Way Agreement.

N. Completion and Acceptance.

(i) UPRR and BNSF will each issue a notice of substantial completion to all other Parties within thirty (30) days of substantially completing its respective work on the Project. Substantial completion will occur when the Project is able to be placed in service in accordance with applicable laws and regulations, subject only to minor punch list items that do not materially affect the utility of the Project. Upon receipt of both Railroads' notices of completion, the Parties will conduct a joint inspection of the Project at a mutually agreeable time. All punch list action items needing correction, repair, or replacement must be completed within sixty (60) days of the date of the joint inspection or upon such other schedule as agreed in writing among the Parties at the time of inspection.

(ii) The Parties will each issue a certificate of final acceptance of UPRR's and BNSF's work:

- (a) within thirty (30) days after the joint inspection, or;
- (b) if necessary corrective punch list action items are noted during the joint inspection, final acceptance will be issued within thirty (30) days after corrections are completed to all Parties' reasonable satisfaction.

(iii) The Project will be deemed completed and the responsibilities for operation and maintenance of the various components of the Project will be allocated as described herein upon the issuance of certificates of final acceptance by the Parties. The Parties' issuance of such acceptance shall mean only that the Project as constructed meets their respective expectations and shall not be deemed to mean that any Party certifies that the Project is structurally sound or appropriate or that any plans, specifications, construction, or other matter related to the Project meets applicable regulations, laws, statutes, or local ordinances or building codes.

O. Final Delivery Report. Under the terms of the Baseline Agreement, SANBAG must submit a final delivery report to the Commission regarding such things as the scope of the completed project, its final cost and duration, and its performance outcomes as compared to the data projected in the Baseline Agreement (the "**Final Delivery Report**"). SANBAG must submit the Final Delivery Report within 180 days after the Parties issue their certificates of final acceptance for the Project. To assist SANBAG prepare the Final Delivery Report, the Railroads agree to provide timely responses to requests for information that SANBAG requires to complete the report. The Parties agree that the terms of the Public Benefits Agreement control the performance outcomes and the measurement of those outcomes and that those requirements are unaffected by the requirement to submit a Final Delivery Report.

P. Changes to Scope of Project. Any material change to the Project's final approved budget, funding plan, scope, or schedule as reflected in Exhibit C, Exhibit E, and Exhibit G will require prior approval of the Parties and may require an amendment to the Baseline Agreement by the Commission.

Section 3. Project Funding.

A. Cost Estimate. The estimated cost to construct the Project is two hundred two million dollars (\$202,000,000). This amount is an estimate only, and actual costs may be different.

B. Funding Plan. Construction of the Project will be funded in accordance with the funding plan attached as Exhibit G (the “**Funding Plan**”). By this reference, and subject to the terms of this Agreement, the MOU, the Baseline Agreement, and the Flowdown Agreement, UPRR and BNSF commit to paying their portion of the funding shown on the Funding Plan. It is understood by the Parties that SANBAG is not required to provide, is not providing, and will not provide any funding for the Project. UPRR will bear any costs in excess of TIGER funding, TCIF funding, and the BNSF contribution that are associated directly with the Project and receive any savings achieved in Supplemental Funding.

C. TIGER Funds. After the FHWA fully obligates the TIGER funds, the Parties will meet and confer regarding next steps in construction of the Project. UPRR may elect to terminate the Project if the FHWA obligates less than the thirty-three million eight-hundred thousand dollars (\$33,800,000) that it has awarded for the Project. UPRR must make this election within six months after any formal action by the FHWA that obligates less than the full amount of the TIGER award.

D. TCIF Funds.

(i) Administration of TCIF Funds. SANBAG will administer the TCIF funds for the Project pursuant to the terms of the Baseline Agreement and the additional terms described in this Agreement.

(ii) Allocation of TCIF Funds.

(a) TCIF funds in an amount not to exceed ninety-one million three-hundred thousand dollars (\$91,300,000) will become available when the Commission allocates them. After the Commission allocates the TCIF funds, the Parties will meet and confer regarding next steps in construction of the Project. UPRR may elect to terminate the Project if the Commission allocates less than the ninety-one million three-hundred thousand dollars (\$91,300,000) that it has programmed for the Project. UPRR must make this election within six months after the date, if any, when the Commission delivers and allocates less than the full amount of TCIF funds that it has programmed for the Project.

(b) As a condition to SANBAG disbursing TCIF funds, the Legislature must appropriate and the Commission must allocate TCIF funds in an amount sufficient to cover requested disbursements.

(c) Parties will comply with the TCIF Guidelines approved by the Commission and in effect at the time that the Commission allocates the TCIF funds, a copy of which is attached as Exhibit H, to the extent that the TCIF Guidelines are applicable to the Parties' respective obligations under this Agreement.

(d) To the extent applicable to each respective Party, the Parties will comply with the requirements of the Master Agreement Administating Agency-State Agreements for State-Funded Projects entered into on April 20, 2011 by SANBAG and Caltrans attached as Exhibit I; and the associated Program Supplement that will be executed once the TCIF funds are allocated by the CTC.

(e) TCIF funds will not be eligible for any portion on the Project work performed in advance of the effective date of the executed Program Supplement for the Project.

(iii) Supplemental Funding.

(a) Pursuant to statute and the TCIF Guidelines, TCIF funds may be used to pay for up to fifty percent (50%) of the eligible construction costs of the Project in an amount not to exceed the funds allocated for the Project by the Commission. Other sources must be used to provide matching funds and any additional funds required to pay for the Project (together the “**Supplemental Funding**”.) Credit for Supplemental Funding is not limited to paying for the categories of eligible costs for TCIF reimbursements described in Section 3(D)(4) but may apply toward any cost incurred by the Railroads on the Project. Funding from any source other than the State of California may be used as Supplemental Funding. All TIGER funds used to pay for the Project qualify as Supplemental Funding. All costs incurred and payments made by UPRR, including, without limitation, all actual costs that UPRR incurs for administration, construction management, force account and contract labor and services, equipment, and materials used in relation to constructing the Project, that are not funded by the State of California, will apply as Supplemental Funding.

(b) All costs incurred and payments made by BNSF, that are not funded by the State of California, will apply as Supplemental Funding, including, without limitation, all actual costs that BNSF incurs for administration, construction management, force account and contract labor and services, equipment, and materials used in relation to constructing the Project. Actual costs include applicable sales and use taxes and then-current federally approved additive rates, which include overhead and indirect costs. For purposes of this Agreement, actual costs for materials provided by BNSF will be BNSF’s then-current unit charge-out price at the time of installation plus applicable additives. BNSF must submit its final documentation of claimed costs to SANBAG within 120 days after BNSF issues its certificate of completion of the Project.

(c) The Parties intend for TCIF funds to be paid on a one-to-one basis with Supplemental Funding up to the full amount of the funds allocated by the Commission.

(d) Each Railroad will provide to SANBAG such documentation as is reasonably necessary to show costs that it has incurred that count toward the Supplemental Funding requirement and as required to comply with a state audit. SANBAG and the Railroads will work together cooperatively to determine the adequacy of the documentation for these purposes.

(e) Expenditures for engineering, environmental permitting, and right-of-way acquisition incurred since adoption of the Project into the TCIF program on May 19, 2010 count towards the railroads' contribution to the Project and qualify as Supplemental Funding.

(f) Expenditures that do not qualify as Supplemental Funding for matching TCIF funds are: (i) amounts incurred or paid prior to adoption of the Project into the TCIF program, and (ii) any payments or contributions by the State of California or any agency or department thereof to the cost of the Project, or to reimburse railroads for any such cost.

(iv) TCIF Reimbursable Costs.

(a) TCIF funds may only be used to reimburse already paid eligible construction costs for improvements reflected in the Plans. Eligible construction costs, including the costs of acquiring materials to be incorporated into the improvements to be constructed as part of the Project, will be determined in accordance with the provisions of 23 C.F.R. Part 140.900. Such eligible costs include, without limitation, all actual costs that UPRR incurs for administration, construction management, force account and contract labor and services, equipment, and materials used in relation to constructing the Project. Actual costs include applicable sales and use taxes and then-current federally approved additive rates, which include overhead and indirect costs. For purposes of this Agreement, actual costs for materials provided by UPRR will be UPRR's then-current unit charge-out price at the time of installation plus applicable additives.

(b) Amounts received for the salvage, reuse, or recycling of any materials in connection with the Project will be applied to reduce the overall cost of the Project.

(c) The costs of procuring materials under existing contracts will either be reimbursed using TCIF funds or apply to the applicable procuring Party's matching funds.

(d) BNSF will not seek reimbursement of its costs through TCIF funding.

(e) Any cost increases resulting from any material changes to the Project's approved scope, specifications, schedule, or construction budget will be the responsibility of parties other than SANBAG, unless such cost increases result from a change in the Project scope requested by SANBAG; provided that in no event will TCIF funds be required to pay for more than fifty percent (50%) of the Project's eligible construction costs or the amount allocated by the Commission. Likewise, reductions to the Project's approved scope, benefits, specifications, schedule, or budget may result in a reduction in the amount to be paid with TCIF funds. BNSF's obligation is limited to its Supplemental Funding commitment set forth in the Funding Plan.

(v) Payment of Costs Using TCIF Funds.

(a) No more frequently than once per month, UPRR will submit electronic invoices to SANBAG for reimbursement or documentation of UPRR's contribution to

Supplemental Funding. SANBAG will forward invoices to Caltrans within fifteen (15) days of the date of the underlying UPRR invoice and issue reimbursement funds to UPRR within fifteen (15) days of receiving payment from Caltrans. If SANBAG disputes a bill, SANBAG will request reimbursement from Caltrans for the undisputed amount within fifteen (15) days of the date of the invoice and, within fifteen (15) days of the date of the invoice, notify UPRR of the disputed amount and request supporting documentation to verify the accuracy of the invoice. SANBAG will thereafter request reimbursement from Caltrans for any remaining portions of the invoice within fifteen (15) days of receipt of documentation adequate to justify the disputed expenditures. UPRR must submit its final billing to SANBAG within 180 days after UPRR issues its certificate of completion of the Project. The Parties will not use offset accounting practices for billing and payments.

(b) SANBAG will use TCIF funds to reimburse all costs authorized under state law, including management and administrative costs, up to the amount of the TCIF funds awarded for the Project.

(c) UPRR and BNSF will follow and will require their contractors to follow an accounting system that properly accumulates and segregates incurred costs by line item. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP). In addition, the accounting system must enable the determination of incurred costs at interim points of completion, and provide support for the railroads' expenditures to be counted as matching or reimbursable payments.

(d) Within 120 days after BNSF issues its certificate of final acceptance, BNSF will reimburse UPRR any remaining difference between the costs that BNSF incurred and previously claimed as Supplemental Funding and the amount of the BNSF contribution shown in Exhibit G. Thereafter, and after UPRR has submitted its final billing to SANBAG, UPRR and SANBAG will review the accounting of TCIF funding used on the Project and make any reimbursements necessary to achieve the intent set forth in Section 3(D). Any reimbursement to Supplemental Funding made through this process will be made payable to UPRR.

E. SANBAG's Costs. SANBAG is providing management, administrative general oversight services, and environmental monitoring, including SANBAG staff salaries, overhead, other direct costs, and applicable additives associated with consultants working on the Project for SANBAG. SANBAG estimates that these costs will total approximately three hundred thousand dollars (\$300,000), but actual costs may be different depending on the services that are rendered. UPRR will reimburse SANBAG for these costs as part of UPRR's contribution to the Supplemental Funding.

F. Economy in Project Costs. UPRR and BNSF will use reasonable efforts to reduce or minimize Project costs, including providing the benefit of reduced materials prices resulting from the railroads' bulk purchase of materials.

G. Procurement. All procurement transactions for materials and supplies using TCIF funds will be conducted in accordance with 23 CFR Part 140.908. All procurement transactions for services using TCIF funds will be conducted in accordance with the then-current procurement

practices of UPRR and BNSF, (which the Railroads represent will be substantially consistent with procurement practices followed on other recent Railroad projects involving California state funds,) and shall be consistent with all applicable laws and regulations.

H. No Rights to Goods or Services. The Parties intend for the Project to both benefit the public and to become a permanent part of the Railroads' working capital. Caltrans and SANBAG will not receive and will not be entitled to any specific goods or services from the Railroads or their affiliates in return for any payments by Caltrans or SANBAG to the Railroads in connection with this Agreement.

I. Financial Services. The Parties will use the services of an independent professional with construction management experience to manage the Project funding, including receiving, reviewing, and forwarding invoices; tracking payment of TIGER and TCIF funds; tracking payment of Supplemental Funding; and keeping records of funding transactions. The service provider will also be responsible for reporting compliance with TIGER requirements. UPRR will select the service provider, subject to written approval of the selection by the other Parties. UPRR will pay for the costs of the service provider as part of UPRR's contribution to the Supplemental Funding.

Section 4. Record Keeping and Audits.

A. UPRR and BNSF shall maintain for a period not less than three years from the date that SANBAG submits the Final Delivery Report to the Commission and shall require their contractors and subcontractors to maintain for a period not less than three years from the date of payment of the final invoice under any contracts and subcontracts, each of the following:

1. Adequate books, records, and supporting documents to verify the amounts and uses of all disbursements of funds in conjunction with the Project;
2. Records sufficient to identify the application of funding, together with supporting documentation, including, without limitation, paid invoices; and
3. All other records necessary to disclose the amount and disposition of funding hereunder, including the following: (a) the nature of such expenditures; (b) the total cost of each undertaking for which funds were disbursed hereunder; (c) the amount, if any, of funds supplied by other sources for the construction of the Project; and (d) any other books, records, and documents reasonably necessary to maintain a complete verification of UPRR's and BNSF's obligations hereunder.

B. If any litigation or claim involving this Agreement has been filed before the expiration of the three-year period described in Section 4(A) or any audit permitted hereunder has commenced before the expiration of the three-year period described in Section 4(A), UPRR and BNSF shall maintain the records required by Section 4(A): (1) in the case of any litigation or claim, until completion of the action and resolution of all issues which arise from it, or until the end of such 4-year period, whichever is later; and (2) in the case of any audit, until completion of the audit or until the end of such three-year period, whichever is later. Except as may be required by court

order or in the context of litigation, in no case do the terms of this Agreement require UPRR or BNSF to maintain records longer than six years after payment of the final invoice.

C. The records and materials described in Section 4(A) will be available for review and audit by Caltrans and SANBAG or their agents or designee, during normal business hours and upon at least seven (7) days advance written notice. Upon reasonable notice, Caltrans and SANBAG likewise will have authority to interview any knowledgeable officer or employee of UPRR or BNSF or any of their contractors or subcontractors regarding transactions related to TCIF funding for the Project. UPRR and BNSF will reasonably cooperate with any audit conducted by Caltrans or SANBAG and will provide full access to all relevant materials. Nothing herein is meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise provided by law, including, without limitation, protection provided by attorney-client privilege or the attorney work-product doctrine.

D. In the event of an audit, SANBAG will provide the preliminary audit, findings, and recommendations to the Railroads. The Railroads will review the preliminary audit findings and recommendations, and provide written comments within 60 days of receipt. Any audit dispute not resolved by the Parties is subject to dispute resolution as described in Section 11. Any TCIF funds provided to the Railroads that have been found ineligible by the audit shall be refunded within 60 days of the final audit or dispute resolution findings, whichever is later.

Section 5. Ownership of Facilities.

Improvements made in relation to the Project will be owned by the Party upon whose property they are located, except that 1) UPRR will own the entire grade-separation structure, including those portions of the structure located on or above BNSF's property, 2) BNSF will own the remaining at-grade rail-to-rail crossing structure, 3) BNSF will own the BNSF signals located on UPRR's property; and 4) UPRR will own the westbound signal being installed on BNSF property in the northwest quadrant of the Colton Crossing as part of the Project. Each Railroad will own that part of the connector track located in the northwest quadrant of the Colton Crossing that is located on the respective Railroad's property. If a conflict exists between the terms of this Section and the Colton Crossing Agreement, the Riverside/Daggett Trackage Rights Agreement dated August 13, 1915, UP Document Audit No. 2308, BNSF Contract No. CL13510 (the "**Trackage Rights Agreement**"), the Easement, or any amendments to these documents, the terms of these other documents will prevail over the terms of this Section.

Section 6. Maintenance.

A. UPRR and BNSF will maintain in service the track and other improvements built as part of the Project for a minimum of twenty (20) years after completion of construction (the "**Operating Term**") under the terms set forth in Sections 6(B)-(E). Should any of the improvements built as part of the Project be damaged or destroyed during the Operating Term, UPRR and BNSF will restore and repair such damage and destruction under the terms set forth in Sections 6(B)-(E).

B. UPRR, at its expense, shall maintain, repair, and renew the grade-separated structure built as part of the Project, including the superstructure, substructure, piers, abutments, walls, approaches, and all backfill, grading, and drainage required by reason of the structure.

C. Except as provided in Sections 6(D)-(E), UPRR, at its expense, shall maintain, repair, and renew the track, signals, and other railroad-related facilities on its property, including such facilities located within the aerial easement described in Section 2(C) of this Agreement.

D. Except as provided in Sections 6(B)-(C) and 6(E), BNSF, at its expense, shall maintain, repair, and renew the track, signals, and other railroad-related facilities on its property. By separate agreement, UPRR will provide BNSF with private grade crossings over UPRR Track 112 (as long as this track is in place) and the connector track in the southeast quadrant of the Colton Crossing in order for BNSF to access the facilities that it must maintain under this section.

E. Notwithstanding any other provision of this Agreement, maintenance, repair, and renewal of the at-grade rail crossing, the northwest connector track, and related signals that remain at the Colton Crossing after construction of the Project will continue to be governed by the Colton Crossing Agreement and any amendments to it.

F. UPRR is in discussions with the City of Colton with the intent of entering an agreement for the city to assume responsibility for graffiti abatement on the grade-separated structure to be built as part of the Project.

G. Cooperation. UPRR and BNSF will reasonably cooperate with each other in scheduling and performing their respective obligations under this Section. UPRR and BNSF will require that all of their representatives and contractors comply with all applicable laws, regulations, and railroad safety rules while working on or about one another's property.

H. Flagging. Each railroad must notify the other railroad at least forty-eight (48) hours prior to entering the other railroad's property for any purpose or performing any work at, above, or below grade during which any person, material, or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that an equipment extension (such as, but not limited to, a crane boom) may reach to within twenty-five (25) feet of any track. No activity of any kind that meets this description may be performed at any time unless and until a railroad flagman is present and any additional safety measures required by the railroad whose tracks are being protected have been met.

I. SANBAG shall not be responsible for any cost associated with the work, maintenance, or repair described in this Section 6.

J. If a conflict exists between the terms of this Section 6 and the Colton Crossing Agreement, the Trackage Rights Agreement, the Easement, or any amendments to these documents, the terms of these other documents will prevail over the terms of this Section 6.

Section 7. Operations.

A. Railroad Operations During Construction.

1. The Parties intend to have freight and passenger rail service continue during construction. UPRR and BNSF will consult with each other to coordinate scheduling of construction work that could affect rail operations. To the extent reasonably possible, the construction schedule will limit the time during which trains operate over temporary trackage and limit any adverse impacts to passenger and freight railroad operations. UPRR and BNSF will endeavor to give at least thirty (30) days written notice of the need for an absolute window on the other Railroad's main line during construction.

2. UPRR and BNSF will each be responsible for giving notice to passenger service providers that operate on its own respective lines concerning any changes in passenger service on its lines that may be required during construction.

3. During construction of the Project, operations at the Colton Crossing will continue to be governed by the Colton Crossing Agreement and any amendments to it.

B. Railroad Operations After Construction. After construction of the Project, operation of the at-grade rail crossing that remains at the Colton Crossing will continue to be governed by the Colton Crossing Agreement and any amendments to it.

Section 8. Indemnity.

A. Indemnification by UPRR. Except as provided in Section 8(C), UPRR shall indemnify, defend, and hold harmless BNSF and SANBAG and their boards, officers, agents, employees, assigns, and successors in interest from and against all fines, claims, lawsuits, judgments, awards, liabilities, losses, damages, and expenses, including but not limited to attorney fees (both in-house and outside counsel) and costs (including all actual litigation costs incurred by the indemnified party, including but not limited to costs of experts and consultants) (collectively "**Claims**") for injury or death to all persons, including a Party's employees and representatives, and for loss or damage to property belonging to any person or entity, including the Parties, that is incurred on or before the date that SANBAG submits the Final Delivery Report to the extent caused by any negligent acts or omissions or intentional misconduct of UPRR or others acting in its behalf in connection with construction activities related to the Project. Nothing in this Agreement limits the ability of UPRR to tender the defense of Claims to a third party, including contractors working on the Project under the terms of the right of entry agreement described in Section 2(H).

B. Indemnification by BNSF. Except as provided in Section 8(C), BNSF shall indemnify, defend, and hold harmless UPRR and SANBAG and their boards, officers, agents, employees, assigns, and successors in interest from and against all Claims for injury or death to all persons, including a Party's employees and representatives, and for loss or damage to property belonging to any person or entity, including the Parties, that is incurred on or before the date that SANBAG submits the Final Delivery Report to the extent caused by any negligent acts or omissions or intentional misconduct of BNSF or others acting in its behalf in connection with construction

activities related to the Project. Nothing in this Agreement limits the ability of BNSF to tender the defense of Claims to a third party, including contractors working on the Project under the terms of the right of entry agreement described in Section 2(H).

C. Indemnification by SANBAG. SANBAG shall indemnify, defend, and hold harmless UPRR and BNSF and their boards, officers, agents, employees, assigns, and successors in interest from and against all Claims for injury or death to all persons, including a Party's employees and representatives, and for loss or damage to property belonging to any person or entity, including the Parties, that is incurred on or before the date that SANBAG submits the Final Delivery Report to the extent caused by any negligent acts or omissions or intentional misconduct of SANBAG or others acting in its behalf in connection with construction activities related to the Project. Notwithstanding any other provision of this Agreement, SANBAG will indemnify, defend, and hold harmless UPRR and BNSF from and against all Claims for injury or death or loss or damage to property made by employees, contractors, agents, and other representatives of SANBAG who enter the construction site under the terms of Section 2(I), whether caused by the acts and omissions of the indemnified Parties or their boards, officers, agents, employees, or contractors or otherwise. To the extent that it may lawfully do so, as among the Parties, SANBAG waives any and all defenses under workers' compensation and industrial insurance acts and the California Tort Claims Act to so indemnify the other Parties. Nothing in this Agreement limits the ability of SANBAG to tender the defense of Claims to a third party.

D. Choice of Counsel. When defending another Party against Claims, the indemnitor shall retain counsel reasonably satisfactory to the indemnitee in the indemnitee's discretion. An indemnitor shall not settle any Claims in a manner that would impose any expense, penalty, obligation, or limitation on an indemnitee without the indemnitee's prior written consent. The indemnitee shall have the right, but not the obligation, to defend any Claim. An indemnitee's election to defend shall not affect an indemnitor's obligation to indemnify and hold harmless the indemnitee from and against all Claims to the extent set forth in this Agreement.

E. Indemnification During Maintenance and Operations. Obligations of UPRR and BNSF in relation to indemnifying one another during maintenance and operations of the Project after construction is complete will be governed by the terms of the Colton Crossing Agreement and any amendments to it, the Trackage Rights Agreement and any amendments to it, the Easement, and any other agreements that may exist between the Railroads now or in the future on this subject.

F. Between the beginning of construction and the issuance of certificates of completion by all Parties, any conflict between the indemnification terms in this Agreement and the indemnification terms in the Easement will be resolved by application of the indemnification terms in this Agreement.

Section 9. Default and Remedies.

The Parties acknowledge that in the event of a default or breach of any of the terms of this Agreement, damages may not be an adequate remedy, and the non-defaulting Party may seek the entry of decrees for specific performance in favor of such party. A defaulting Party will have

thirty (30) days to cure any default following receipt of written notice from another Party. If such cure can reasonably be expected to take more than 30 days, the defaulting Party will be deemed to have effectuated a cure if it commences such cure within 30 days of notice and proceeds to complete all activities necessary and does in fact complete such cure using due diligence; provided, however, this sentence will not apply to the payment of any fees or expenses pursuant to this Agreement. The Parties agree that their remedies under this Agreement will be limited to actual direct damages and specific performance and specifically exclude consequential, exemplary, or punitive damages. Nonpayment of any fees or expenses pursuant to this Agreement which continues beyond the cure period will be a material default. Notwithstanding the foregoing, if a bona fide dispute exists with respect to the amount of any fee or expense, the Party obligated to pay such fee or expense shall pay the undisputed portion thereof at the time and in the manner required, and such Party will not be deemed to be in default with respect to the nonpayment of the disputed portion of such fee or expense until such time as the dispute has been resolved, at which time the additional amount (if any) which is to be paid by such Party will be promptly paid.

Section 10. Term.

This Agreement is effective as of the date first written above and will expire at the end of the Operating Term. After expiration of this Agreement, maintenance, operation, and other issues related to the Project will be governed by the terms of the Colton Crossing Agreement and any amendments to it, the Trackage Rights Agreement and any amendments to it, the Easement and any amendments to it, and any other agreements that may exist between the Railroads now or in the future on this subject.

Section 11. Miscellaneous.

- A. Governing Law. Except on subjects preempted by Federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California.
- B. Headings. The Section headings in this Agreement are for convenience only and shall not be used for any purpose in the interpretation of this Agreement.
- C. Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of the Agreement will not be affected but shall remain in full force and effect.
- D. Exhibits. All of the exhibits attached to this Agreement are hereby incorporated by this reference.
- E. Dispute Resolution. In the event of a dispute between Parties arising under the terms of this Agreement, the Parties will first attempt to resolve the dispute through direct discussions or through the Coordination Committee. If the Parties are unable to resolve the dispute informally, they will participate in mediation. Any Party may initiate mediation at any time prior to resolution of a dispute by sending a written request for mediation to the other Parties. The Parties will jointly select a mediator. If they cannot all agree on a mediator, the mediator will be selected randomly from among the Parties' preferred choices. The Parties to the dispute will

share equally in the cost of mediation. The Parties will participate in mediation in good faith. Absent agreement among the Parties or a court order, neither a dispute nor the mediation process will relieve the Parties from continuing with construction of the Project or complying with the terms of this Agreement. By participating in mediation, the Parties will not waive any rights, causes of action, or defenses that may otherwise exist. No opinions or conclusions expressed by a mediator will be binding upon any Party. A Party may not file a civil complaint arising under this Agreement until the conclusion of the mediation process or forty-five (45) days after any Party first presents a written request for mediation related to the dispute in question, whichever comes first.

F. Relationship of the Parties. Each Party is and will at all times be and remain independent from the other Parties and will not be deemed an agent or fiduciary of any other Party. Nothing contained herein will have the effect of creating a trust, joint venture, or partnership between or among any of the Parties. No Party has any right or power to obligate or bind any other Party in any manner whatsoever. None of the Parties is a fiduciary of any other Party.

G. Notices. Any communication, notice, or demand of any kind whatsoever which any Party may be required or may desire to give to or serve upon another must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to SANBAG: Deborah Barmack
 Executive Director
 1170 West Third Street, Second Floor
 San Bernardino, CA 92410-1715
 Telephone: (909) 884-8276

If to UPRR: Jerry Wilmoth
 Union Pacific Railroad Company
 General Manager, Network Infrastructure
 10031 Foothills Boulevard
 Roseville, CA 95747
 Telephone: (916) 789-6360

With a copy to:

David Pickett
General Attorney
Union Pacific Railroad Company
10031 Foothills Boulevard
Roseville, CA 95747
Telephone: (916) 789-6400

If to BNSF: Dean Wise
Vice President Network Strategy
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
Telephone: (817) 593-3156

H. Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the Party to be bound thereby. No waiver by any Party of any breach hereunder will be deemed a waiver of any other or subsequent breach.

I. No Presumption Against Drafting Party. This Agreement and the provisions contained therein shall not be construed or interpreted for or against any Party because that Party drafted or caused its legal representative to draft any of the agreement's provisions.

J. Assignment. This Agreement will be binding upon and inure to the benefit of each of the Parties and to their respective transferees, successors, and assigns. No Party may assign its rights or obligations under this Agreement to a third party without the written consent of the other Parties, except where assignment occurs as a result of a sale or transfer of all or substantially all of a Party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

K. Attorney's Fees. In the event of any litigation involving the parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or to seek a declaration of the rights of either party under this Agreement, the prevailing party shall be entitled to recover from the other such attorneys' fees and costs as may be reasonably incurred. The provisions of this Section will survive the entry of any judgment, and will not merge, or be deemed to have merged, into any judgment.

L. No Third Party Beneficiaries. Enforcement of the terms of this Agreement is reserved to the Parties, and nothing contained in this Agreement provides any claim or right of action for enforcement to any other party.

M. Conflicts. To the extent that the provisions of this Agreement conflict with any other agreement between any of the Parties with respect to the Colton Crossing or the Project, the provisions of this Agreement will control.

N. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed will be deemed an original, but all of which taken together will constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first written above.

UNION PACIFIC RAILROAD COMPANY

BNSF RAILWAY COMPANY

By: _____

By: _____

Name: _____

Robert Lease
Vice President of Regional Operations
BNSF Railway Company

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

David M. Pickett
General Attorney
Union Pacific Railroad Company

By: _____

David Rankin
Senior General Attorney
BNSF Railway Company

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

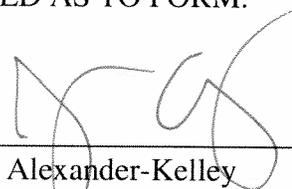




Brad Mitzelfelt
President, Board of Directors

APPROVED AS TO FORM:

By: _____


Penny Alexander-Kelley
SANBAG's Counsel

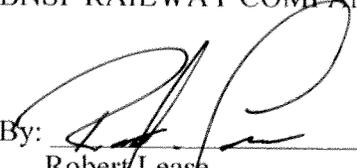


IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

UNION PACIFIC RAILROAD COMPANY

BNSF RAILWAY COMPANY

By: _____
Lance M. Fritz
Executive Vice President Operations
Union Pacific Railroad Company

By:  _____
Robert Lease
Vice President of Regional Operations
BNSF Railway Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
David M. Pickett
General Attorney
Union Pacific Railroad Company

By:  _____
David Rankin
Senior General Attorney
BNSF Railway Company

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

By:  _____
Brad Mitzelfelt
President, Board of Directors
San Bernardino Associated Governments

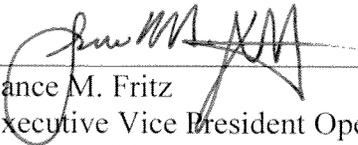
APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelly
SANBAG's Counsel

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

UNION PACIFIC RAILROAD COMPANY

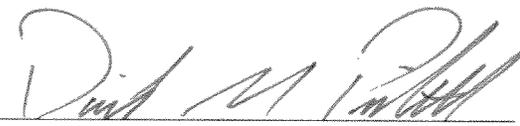
BNSF RAILWAY COMPANY

By: 
Lance M. Fritz
Executive Vice President Operations
Union Pacific Railroad Company

By: _____
Robert Lease
Vice President of Regional Operations
BNSF Railway Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
David M. Pickett
General Attorney
Union Pacific Railroad Company

By: _____
David Rankin
Senior General Attorney
BNSF Railway Company

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

By: _____
Brad Mitzelfelt
President, Board of Directors
San Bernardino Associated Governments

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelly
SANBAG's Counsel

Exhibit A

The Project is located in Colton, California where Union Pacific Railroad's Alhambra and Yuma Subdivisions (MP 538.7) intersect with BNSF's San Bernardino Subdivision.



The Project would elevate Union Pacific's east / west tracks over the BNSF's north / south tracks. The planned project scope includes:

- Construct a structure, approximately 7,250 feet long, between Rancho Avenue (MP 538.5) and Mount Vernon Avenue (MP 539.7)
- Two mainline tracks and a maintenance road will be constructed on the structure
- Opening under the grade separation structure for the BNSF tracks would accommodate a potential third BNSF mainline track with 15 ft track centers
- One of the existing UPRR mainline tracks would be converted to become the Colton Yard lead / Yuma connector track with an at-grade crossing diamond at the junction with the BNSF
- Modify existing northwest quadrant connection between UPRR and BNSF tracks to connect to UPRR's existing mainline 2 track
- Design provides for future connection between UPRR and BNSF tracks in the southwest quadrant

After Recordation Return to:

Union Pacific Railroad Company
Attn: Senior Manager Acquisitions
1400 Douglas Street, STOP 1690
Omaha, NE 68179-1690

Space Above For Recorder's Use Only

EASEMENT DEED

THIS EASEMENT DEED is entered into by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Grantor"), with offices located at 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, its successors and assigns, whose address is 1400 Douglas Street, Omaha NE 68179 ("Grantee").

For purposes of this Easement Deed, the following terms shall have the meanings set forth below:

Aerial Easement. The easement to be conveyed pursuant to the Easement Deed in and to the Aerial Easement Premises.

Aerial Easement Premises. The air space beginning at a horizontal plane with an elevation of 1004.50 feet and ending at a horizontal plane with an elevation of 1039.00 feet over the Property legally described and as depicted in more detail on **Exhibits A-1 and A-2**.

Easement Premises. A reference to the term "Easement Premises" in this Easement Deed shall mean a collective reference to both the "Aerial Easement Premises" and the "Footing Easement Premises".

Flyover. The Grantee overpass containing one or more railroad tracks, a maintenance road and such other additional facilities as Grantee may elect to install, so long as they are constructed and installed within the Aerial Easement Premises.

Footing Easement. The easement to be conveyed pursuant to the Easement Deed in and to the Footing Easement Premises.

Footing Easement Premises. The surface and such portions of the subsurface necessary for support and continuing in the air space and ending at a horizontal plane with an

elevation of 1004.50 feet, over the Property legally described on and as depicted in more detail on **Exhibits A-1** and **A-2**.

Property. The property legally described and further depicted on **Exhibits A-1** and **A-2**.

Structure. The footings and other structural support elements for the Flyover to be constructed within the Footing Easement Premises.

UP Facilities. The Flyover, the Structure, track and related improvements within the Easement Premises.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby REMISE, RELEASE AND QUITCLAIM without warranty of any kind, to Grantee:

a perpetual, exclusive easement (the "Easement Interest") in and to the Easement Premises for the purpose of constructing, maintaining, repairing, replacing and operating (i) the Flyover within the Aerial Easement Premises, (ii) the Structure within the Footing Easement Premises, and (iii) operating Grantee's railroad over said Structure and all railroad purposes incidental or related thereto and for no other purpose.

Grantee must maintain the UP Facilities only in the location as shown and depicted on the prints attached hereto as **Exhibits A-1** and **A-2** and made a part hereof, which shall remain fixed regardless of future improvements to the Property, which shall be designed and constructed to accommodate the perpetual existence of the UP Facilities, in accordance with the terms and conditions of this Easement Deed.

This grant of Easement Interest is made upon, and subject and subordinate to, the terms and conditions hereinafter contained, and Grantee, by its acceptance of such grant, accepts such conditions and limitations to its Easement Interest and agrees to the observance and performance thereof.

1. To the extent of Grantor's existing right in the Property, Grantor reserves the right to construct at any and all times and to install, maintain, repair, renew, replace, alter, remove, relocate, use and operate railroad tracks, ballast and associated improvements, fiber optic or signal lines and facilities, pipe, telephone, cable and electric pole and wire lines (collectively, "Lines"), over, under and across the Property and to use or allow the use of the Property by third parties (including, but not limited to, short line operators) in any manner; provided, however that Grantor shall not materially interfere with Grantee's initial construction of the Structure as contemplated in that certain Construction and Maintenance Agreement for the Colton Crossing Rail Grade Separation Project among, Grantor, Grantee and San Bernardino Associated Governments, dated effective June 3, 2011 (the "CMA") or with Grantee's use of the Easement Premises permitted hereunder; and provided, further, that Grantor shall not grant any new rights to any third party after the effective date of this Easement Deed that interfere with Grantee's sole and exclusive use of the Easement Premises, and that Grantor shall make any future grants

affecting the Easement Premises subject to Grantee's prior rights. Grantee will be responsible for contacting Grantor and/or the companies owning the Lines to notify them of any Grantee work that may damage these Lines or facilities and/or interfere with their service. Grantee must also mark all Lines shown on the plans or marked in the field in order to verify their locations. Grantee must also use all reasonable methods when working pursuant to this Easement Deed in the Grantor right-of-way or on the Property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist; provided however, that Grantor will reasonably cooperate with Grantee in identifying Lines known to or granted by Grantor at any time over, under or across the Property. In addition to the liability terms contained elsewhere in this Easement Deed, **GRANTEE INDEMNIFIES, DEFENDS AND HOLDS HARMLESS GRANTOR 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 GRANTEE OR ITS CONTRACTORS, SUBCONTRACTORS, AGENTS AND/OR EMPLOYEES UNDER THIS EASEMENT DEED THAT CAUSE OR IN ANY WAY CONTRIBUTE TO (1) ANY DAMAGE TO OR DESTRUCTION OF ANY LINES BY GRANTEE, AND/OR ITS CONTRACTORS, SUBCONTRACTORS, AGENTS AND/OR EMPLOYEES, ON THE PROPERTY OR WITHIN GRANTOR'S RIGHT-OF-WAY, (2) ANY INJURY TO OR DEATH OF ANY PERSON OR PROPERTY RELATED TO OR CONNECTED WITH SUCH DAMAGE OR DESTRUCTION, 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 LINE CAUSED BY SUCH DAMAGE OR DESTRUCTION.**

2. The granting of the Easement Interest by this Easement Deed does not grant any interest in any timber, oil, gas, gravel, or other minerals in, on or under the Easement Premises and, subject to Section 1 above, is granted subject to all existing rights as of the date of this Easement Deed of any nature whatsoever whether of record or not affecting the Easement Premises.

3. In connection with the construction of the UP Facilities, Grantor and Grantee agreed on plans and specifications (the "Plans and Specifications"), which are incorporated herein by this reference, and were designed by Grantee to provide adequate drainage for the UP Facilities and associated changes to Grantor's track and related improvements on or about the Easement Premises. Grantee shall, without charge or assessment therefor against Grantor or its Property, perform all necessary work and furnish all material and labor necessary to maintain the UP Facilities and Easement Premises in good condition and repair in compliance with the Plans and Specifications and all applicable laws and ordinances, including any necessary permits. Grantee shall fully pay for all materials installed on the Easement Premises by or at the request of Grantee and shall pay in full all persons who perform labor thereupon at the request of Grantee. Grantee shall not permit any mechanics' or materialmen's liens of any kind or nature to be enforced against the Easement Premises or any property of Grantor for any work done or materials furnished thereon at Grantee's request.

4. Grantee agrees that Grantor and its Property shall not be subjected to any tax or charge or assessment arising from the existence of the UP Facilities on Grantor's property or any cost or expense of Grantor arising from or directly attributable to any work by Grantee in constructing, maintaining, repairing or replacing the UP Facilities under this Easement Deed. Should Grantor or Grantor's Property legally be subjected to any such tax, charge, assessment, cost or expense due to the UP Facilities, Grantee agrees to pay Grantor, as additional compensation for the rights granted in this instrument, an amount of money equal to any such charge or assessment paid by Grantor.

5. Grantor does not warrant title to the Easement Premises under this Agreement and does not undertake to defend Grantee in the peaceable enjoyment thereof and no covenant of quiet enjoyment is made. The grant of the Easement Interest by this Easement Deed shall be subject to the continuing lien of all existing liens and encumbrances and superior rights, if any, in and to the Easement Premises. Grantee has been allowed to make an inspection of the Property and the Easement Premises. Subject to the foregoing, GRANTOR grants GRANTEE the exclusive possession of the Easement Premises, in perpetuity. **GRANTEE IS ACQUIRING ITS INTEREST IN THE PROPERTY UNDER THE EASEMENT DEED IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING THE EASEMENT PREMISES,** including, but not limited to the physical condition of the Easement Premises; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Easement Premises with Environmental Laws or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Easement Premises; the presence of any Hazardous Substances, wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, emanating from, emanating to, or in proximity to the Easement Premises; the condition or existence of any above ground or underground structures or improvements, including tanks and transformers in, on or under the Easement Premises; the condition of title to the Easement Premises, and the leases, easements, permits, orders, or other written agreements, affecting the Easement Premises (collectively, the "Condition of the Easement Premises"). Grantee represents and warrants to Grantor that, except as may be set forth in other agreements between Grantor and Grantee, if any, Grantee has not relied and will not rely on, and Grantor is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Easement Premises or relating thereto. **EXCEPT AS MAY BE SET FORTH IN OTHER WRITTEN AGREEMENTS BETWEEN GRANTOR AND GRANTEE, IF ANY, GRANTOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS EASEMENT DEED AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. EXCEPT AS MAY BE SET FORTH IN OTHER WRITTEN AGREEMENTS BETWEEN GRANTOR AND GRANTEE, IF ANY, GRANTEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EASEMENT PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.** Except as may be set forth in other written

agreements between Grantor and Grantee, if any, Grantee assumes the risk that Hazardous Substances or other adverse matters may affect the Easement Premises that were not revealed by Grantee's inspection.

6. Except in the event of emergency, if Grantee's activities in the Easement Premises ever require maintenance, repair or replacement work on the UP Facilities or surrounding areas on Grantor's property, Grantee or its contractors shall have the right to access Grantor's property such purposes, provided for any such work (a) at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (b) vertically within 23'-3 1/2" above the top of the rail, or (c) with heavy tools, equipment or machinery over the top of the Grantor's rail and not within the Aerial Easement Premises, Grantee must provide advance notice to Grantor and such work shall be subject to Grantor's prior written approval, which Grantor shall not unreasonably withhold or delay. Any such approval shall be conditioned upon Grantee or its contractor complying with the safety, liability and contractor requirements contained in the CMA, or, if such CMA has expired, in Grantor's right of entry form for contractors, to the extent consistent with the provisions of this Easement Deed.

7. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") 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, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, CLAIMS OF NATURAL RESOURCES DAMAGE, (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- (i) **GRANTEE'S OCCUPATION AND USE OF THE EASEMENT PREMISES UNDER THIS EASEMENT DEED, OR**
- (ii) **ANY ACT OR OMISSION HEREUNDER OF GRANTEE OR GRANTEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY CONCURRENT NEGLIGENCE OF ANY INDEMNITEE.

TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE FURTHER AGREES, WITH RESPECT TO GRANTEE'S EXERCISE OF ITS RIGHTS HEREUNDER, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF GRANTEE OR ANY OF ITS AGENTS, INVITEES, CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

(b) Upon timely, written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Easement Deed for which Grantee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Grantor shall have no right or authority to settle or compromise any claims for which Grantee has assumed the defense and indemnity.

(c) Insurance. Grantee and Grantor are both self insured for all purposes of this Easement Deed.

8. Grantee shall not, under any circumstances, be deemed to have abandoned its Easement Interest granted by this Easement Deed by non-use; Grantee's Easement Interest hereunder may only be relinquished by written notice from Grantee's chief Real Estate officer to Grantor.

9. This Easement Deed and the provisions contained herein shall run with the land and inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

10. (a) Grantee shall comply with all Environmental Laws. Grantee shall not maintain a treatment, storage, transfer or disposal facility, solid waste management unit, or underground storage tank, as defined by Environmental Laws on the Easement Premises. Grantee shall not release or suffer the release of oil or Hazardous Substances on or about the Easement Premises or exacerbate the presence or release of oil or Hazardous Substances on or about the Easement Premises existing on the date hereof. "Environmental Laws" shall mean any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, as amended ("RCRA"), the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Toxic Substances Control Act, and any similar or

comparable state or local law. "Hazardous Substances" shall mean any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

(b) Grantee shall give Grantor timely notice to Grantor's Resource Operations Center at (800) 832-5452 of any release by Grantee of a Hazardous Substance on or from the Easement Premises by Grantee on or about the Easement Premises, violation of Environmental Laws by Grantee, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Easement Premises. Grantee shall use the best efforts to promptly respond to any such release by Grantee on or from the Easement Premises. Grantee also shall give Grantor timely notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

(c) In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws by Grantee arising in any way with respect to Grantee's work on the UP Facilities, 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 Easement Interest or Grantor's right-of-way.

11. Any and all notices given in connection with this Easement Deed shall be deemed adequately given only if in writing and (i) personally delivered, or (ii) sent by a nationally-recognized overnight courier service, or (iii) sent by certified United States mail, postage prepaid, return receipt requested, to the party or parties for whom such notices are intended. A written notice shall be deemed received (i) when delivered in person, (ii) on the next business day immediately following the day sent by overnight courier, and (iii) on the third (3rd) business day following the day sent by certified mail. A written notice shall also be deemed received on (i) the date delivery shall have been refused at the address required by this Easement Deed, or (ii) with respect to notices sent by United States mail but not delivered, the date as of which the postal service shall have indicated such notice to be undeliverable at the address required by this Easement Deed. Any and all notices referred to in this Easement Deed or which any party desires to give to another shall be addressed as follows, unless a party changes its address for notice by proper written notice to the other party:

If to Grantor: BNSF Railway Company
 Attn: Director of Real Estate
 2500 Lou Menk Drive
 Fort Worth, Texas 76131
 (Phone) 817-352-6461
 (Fax) 817-352-7797

With a copy to [?]: Ed C. Gallagher
3700 Globeville Road
Denver, Colorado 80216
(Phone) 303-480-6393
(Fax) 303-480-7463

If to Grantee: Union Pacific Railroad Company
Attn: General Manager, Real Estate
1400 Douglas Street, STOP 1690
Omaha, Nebraska 68179-1690
(Phone) 402-544-8600
(Fax) 402-501-0341)

With a copy to: Union Pacific Railroad Company
Attn: Real Estate Attorney
Law Department
1400 Douglas Street, STOP 1580
Omaha, Nebraska 68179-1580
(Phone) 402-544-2242
(Fax) 402-501-0129

IN WITNESS WHEREOF, the parties have caused this instrument to be signed by their duly authorized officers as of the ____ day of _____, 2011.

BNSF RAILWAY COMPANY

By: _____
Name: _____
Title: _____

UNION PACIFIC RAILROAD COMPANY

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On _____, 201__, before me, _____, a Notary Public in and for said County and State, personally appeared _____, _____, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

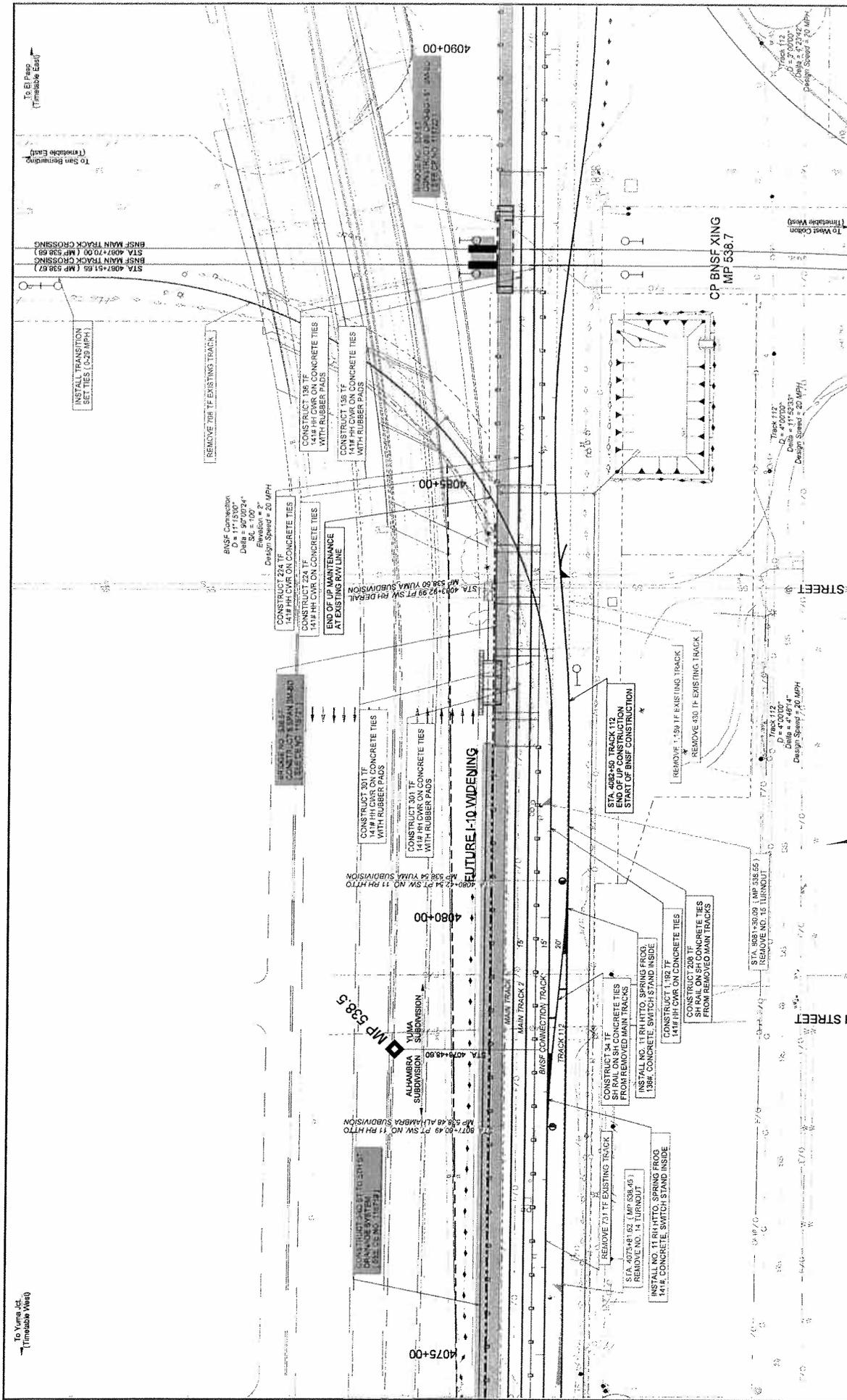
STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 201__, before me, _____, a Notary Public in and for said County and State, personally appeared _____, of BNSF RAILWAY COMPANY, a _____ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

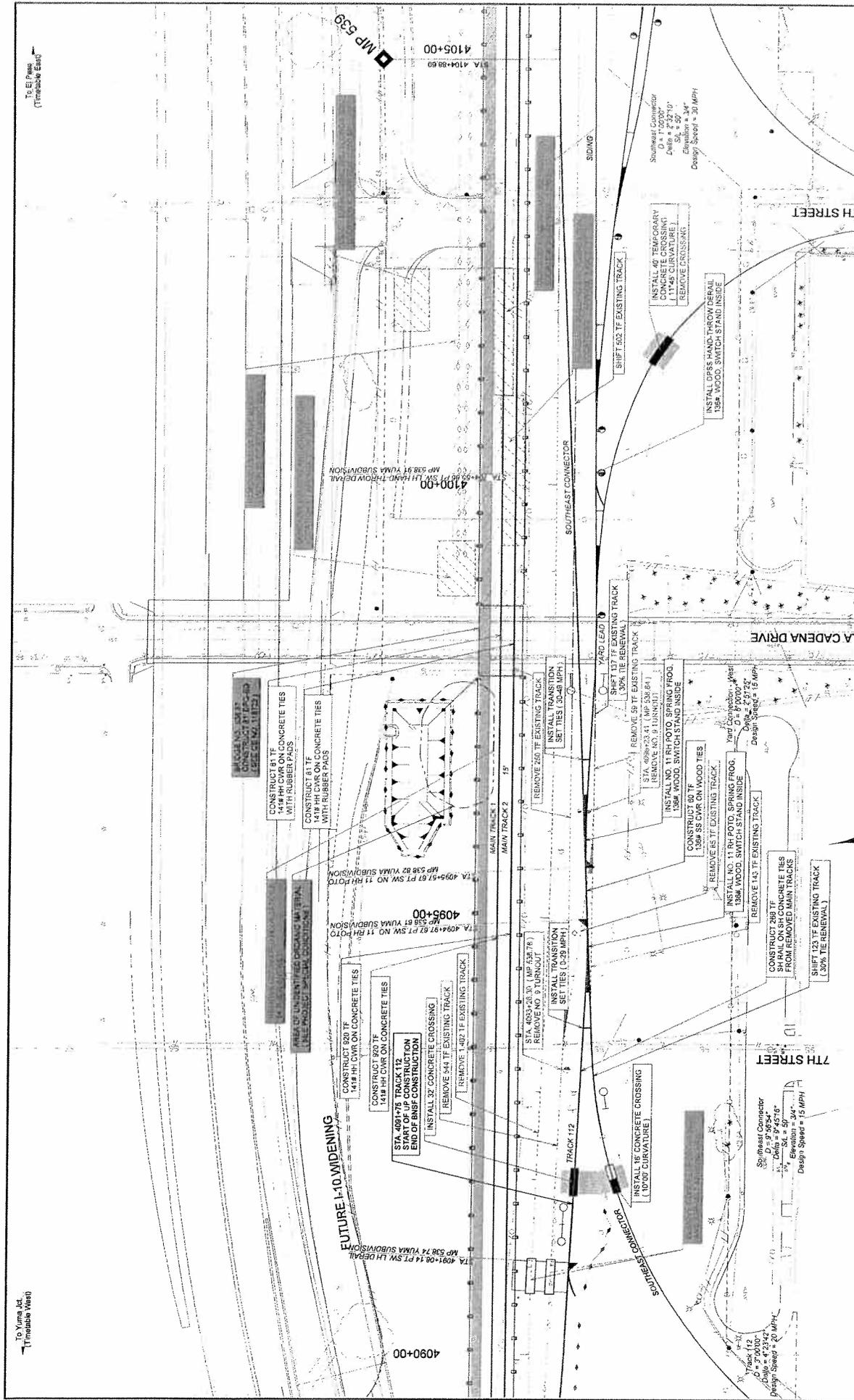
WITNESS my hand and official seal.

Notary Public

(SEAL)



DRAWN BY: VAL CHECKED BY: BND DATE: 15 MAY 2011 SHEET NO.: 4 of 12		Office of Assistant Vice President Engineering Design ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS COLTON, CA	
FEDERAL PROJECT NUMBER TO FSP# 6020(004)		CONSTRUCTION AND MAINTENANCE AGREEMENT FOR THE COLTON CROSSING RAIL GRADE SEPARATION PROJECT EXHIBIT C - WORK BY UPPER FORCES	



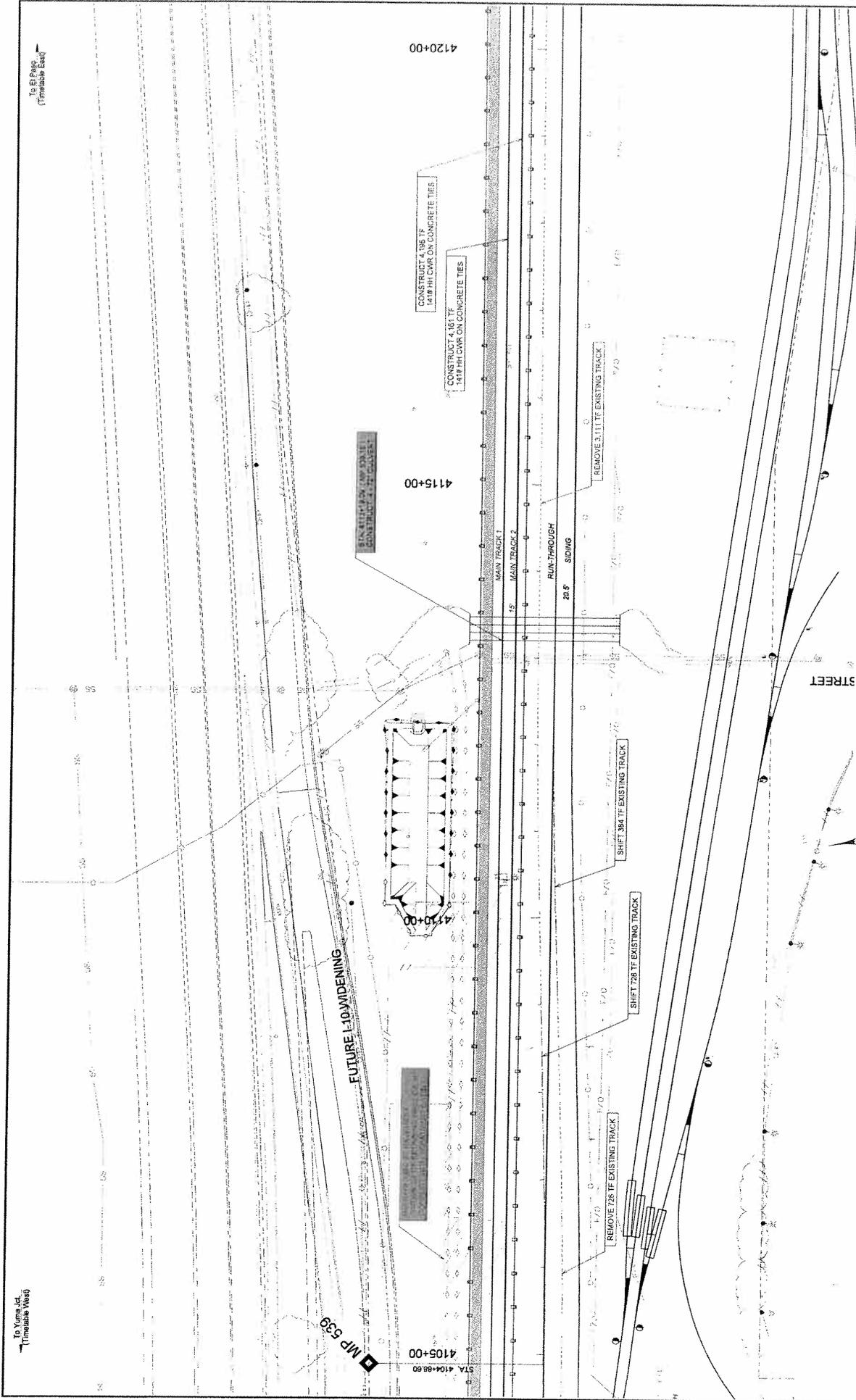
To El Paso
(Traverse East)

To Yuma Jct.
(Traverse West)

UNION PACIFIC RAILROAD	
Office of Assistant Vice President Engineering Design	ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS COLTON, CA
DRAWN BY: MALJ	CREATED BY: BND
DATE: 19 MAY 2011	DATE: 19 MAY 2011
SHEET NUMBER: 5	OF 12

FEDERAL PROJECT NUMBER: FO/FSP1-6020(004)

CONSTRUCTION AND MAINTENANCE SUBMITTAL
FOR THE COLTON CROSSING RAIL GRADE SEPARATION PROJECT
EXHIBIT C - WORK BY UPRR FORCES

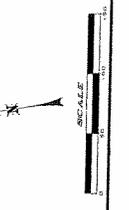


To Yuma Jct.
(Timetable West)

To El Paso
(Timetable East)

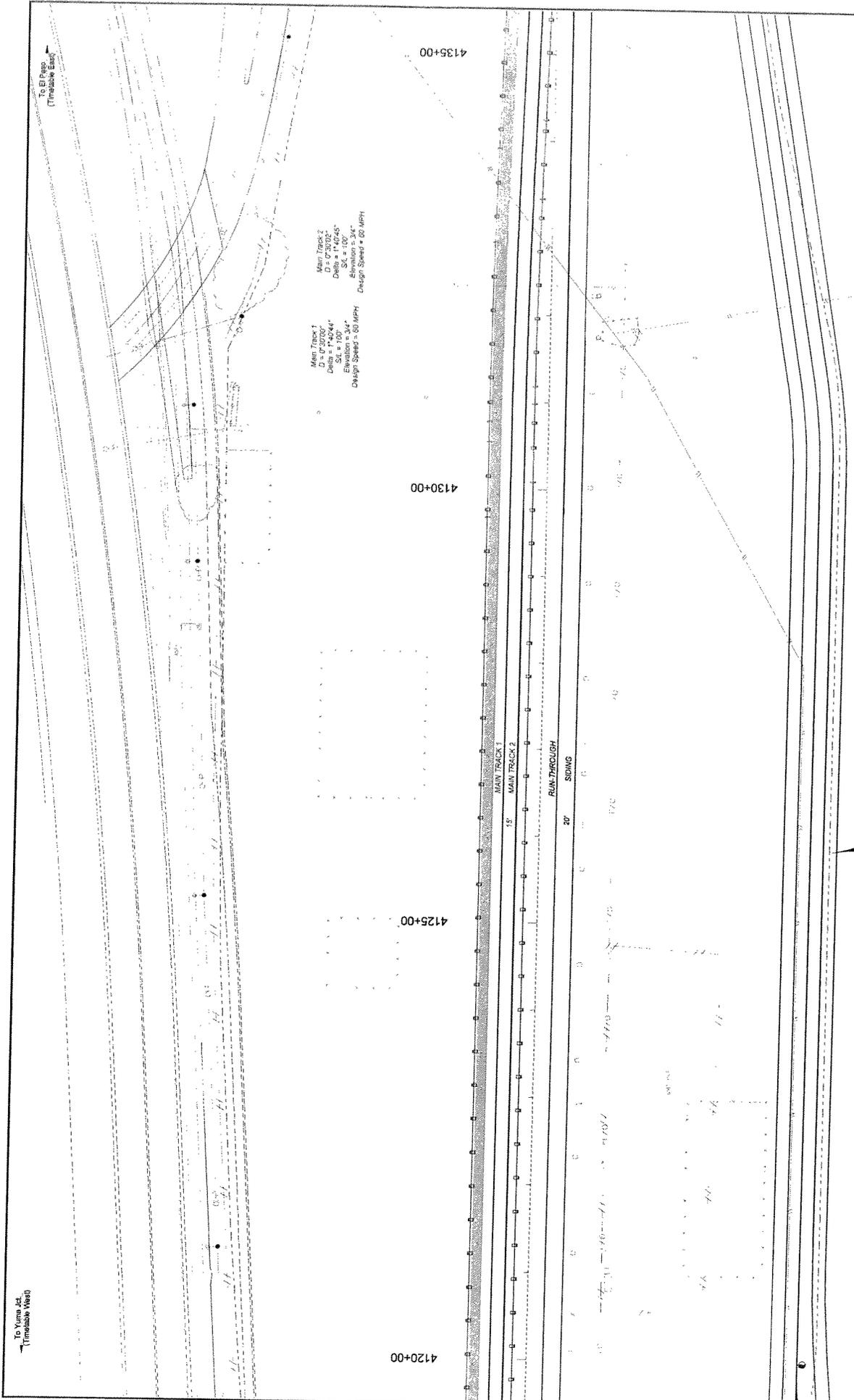
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DESIGNED BY: MAJ	DATE: 19 MAY 2011	OFFICE OF ASSISTANT VICE PRESIDENT ENGINEERING DESIGN	ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS
DRAWN BY: MAJ	DATE: 19 MAY 2011	COLTON, CA	COLTON, CA
CHECKED BY: MAJ	DATE: 19 MAY 2011	CONSTRUCTION AND MAINTENANCE AGREEMENT FOR THE COLTON CROSSING RAIL GRADE SEPARATION PROJECT	
SHEET NUMBER: 6	OF 12	EXHIBIT C - WORK BY UPRR FORCES	

FEDERAL PROJECT NUMBER T0FESP4-6020(004)



To View All
Timeable Views

To View All
Timeable Views



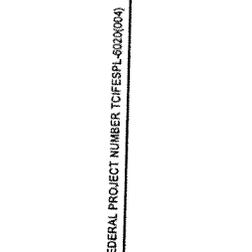
Main Track 1
 $D = 9^{\circ}20'00''$
 $DA = 1^{\circ}40'44''$
 $DB = 1^{\circ}40'44''$
 $SA = 100'$
 $Elevation = 34'$
 $Design Speed = 60 MPH$

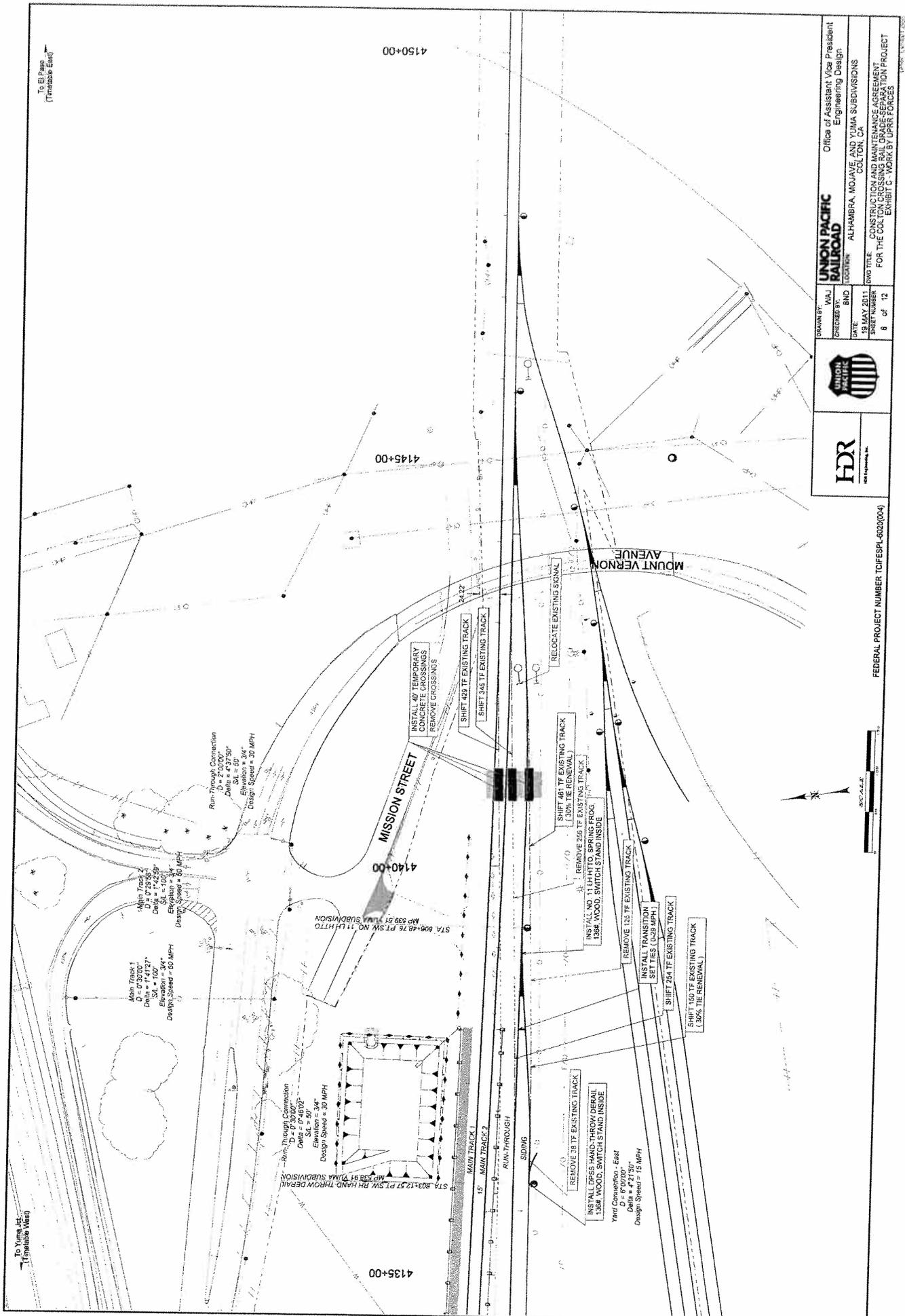
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 $DA = 1^{\circ}40'44''$
 $DB = 1^{\circ}40'44''$
 $SA = 100'$
 $Elevation = 34'$
 $Design Speed = 60 MPH$

UPRR.tbl
 PLOTING.tbl
 UPRR_EXHIBIT.dgn
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				UNION PACIFIC RAILROAD Office of Assistant Vice President Engineering Design	
DRAWN BY: MAJ CHECKED BY: BND	LOCATION: ALHAMBRA, MOJAVE, AND YUMA SUBDIVISIONS COLTON, CA	DATE: 19 MAY 2011	SHEET NUMBER: 7 of 12	CONSTRUCTION AND MAINTENANCE AGREEMENT BETWEEN THE UPRR AND THE STATE OF CALIFORNIA FOR THE COLTON EXHIBIT C - PARK ET UPRR FORCES	

FEDERAL PROJECT NUMBER: TC-FESPR-60200004

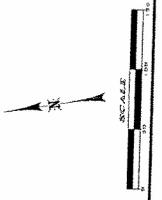




To Union Pac.
(Printable View)

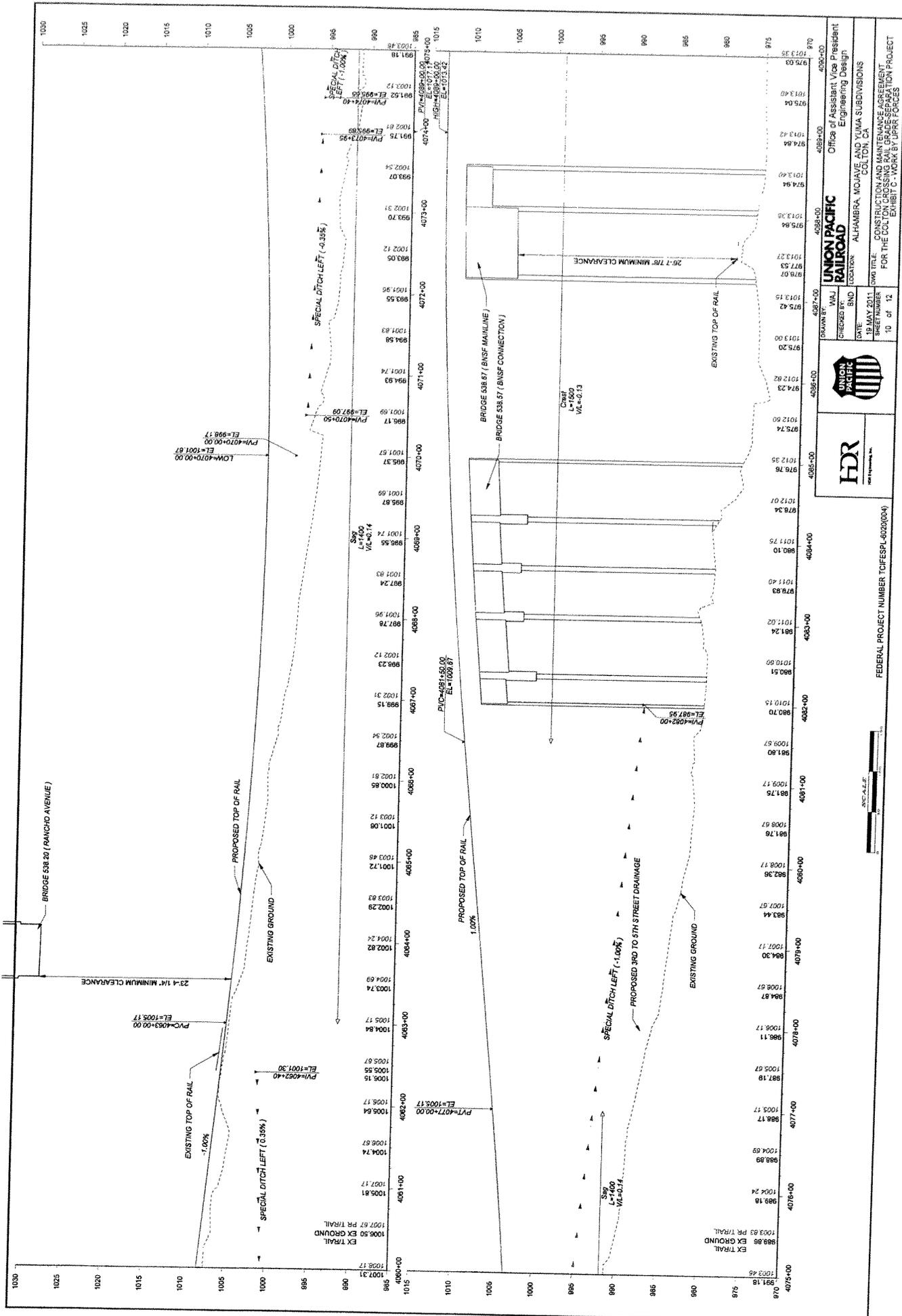
To B. Page
(Printable View)

	UNION PACIFIC RAILROAD Office of Assistant Vice President Engineering Design
	ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS COLTON, CA
	CONSTRUCTION AND MAINTENANCE AGREEMENT FOR THE COLTON SIGNALING AND GRADE SEPARATION PROJECT EXHIBIT C - YUMA ST. UPPER FORCES
DRAWN BY: WAJ CHECKED BY: BND DATE: 19 MAY 2011 SHEET NUMBER: 8 of 12	FEDERAL PROJECT NUMBER TO: ESR-1-6020(004)



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C11217-Exhibit C



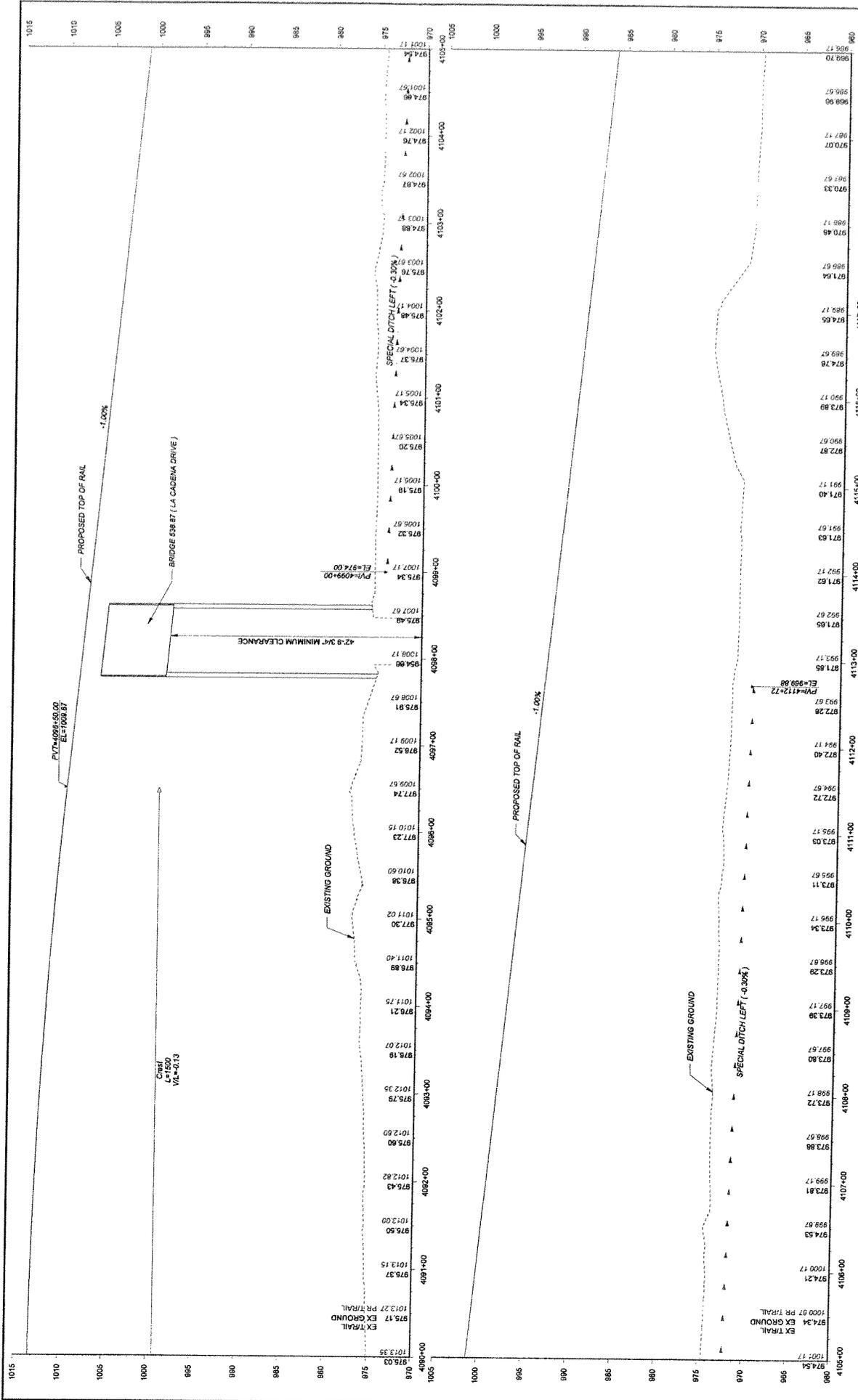
DRAWN BY: W.J. CHECKED BY: S.N.D. DATE: 19 MAY 2011 SHEET NUMBER: 10 of 12	OFFICE: ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS LOCATION: CLTON, CA	FEDERAL PROJECT NUMBER: CPESPL-0202(04)	

UNION PACIFIC RAILROAD
 Office of Assistant Vice President
 Engineering Design
 ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS
 CLTON, CA

CONSTRUCTION AND MAINTENANCE AGREEMENT
 FOR THE CLTON CROSSING RAIL GRADE SEPARATION PROJECT
 EXHIBIT C - WORK BY UPRR FORCES

SCALE: 1" = 40'

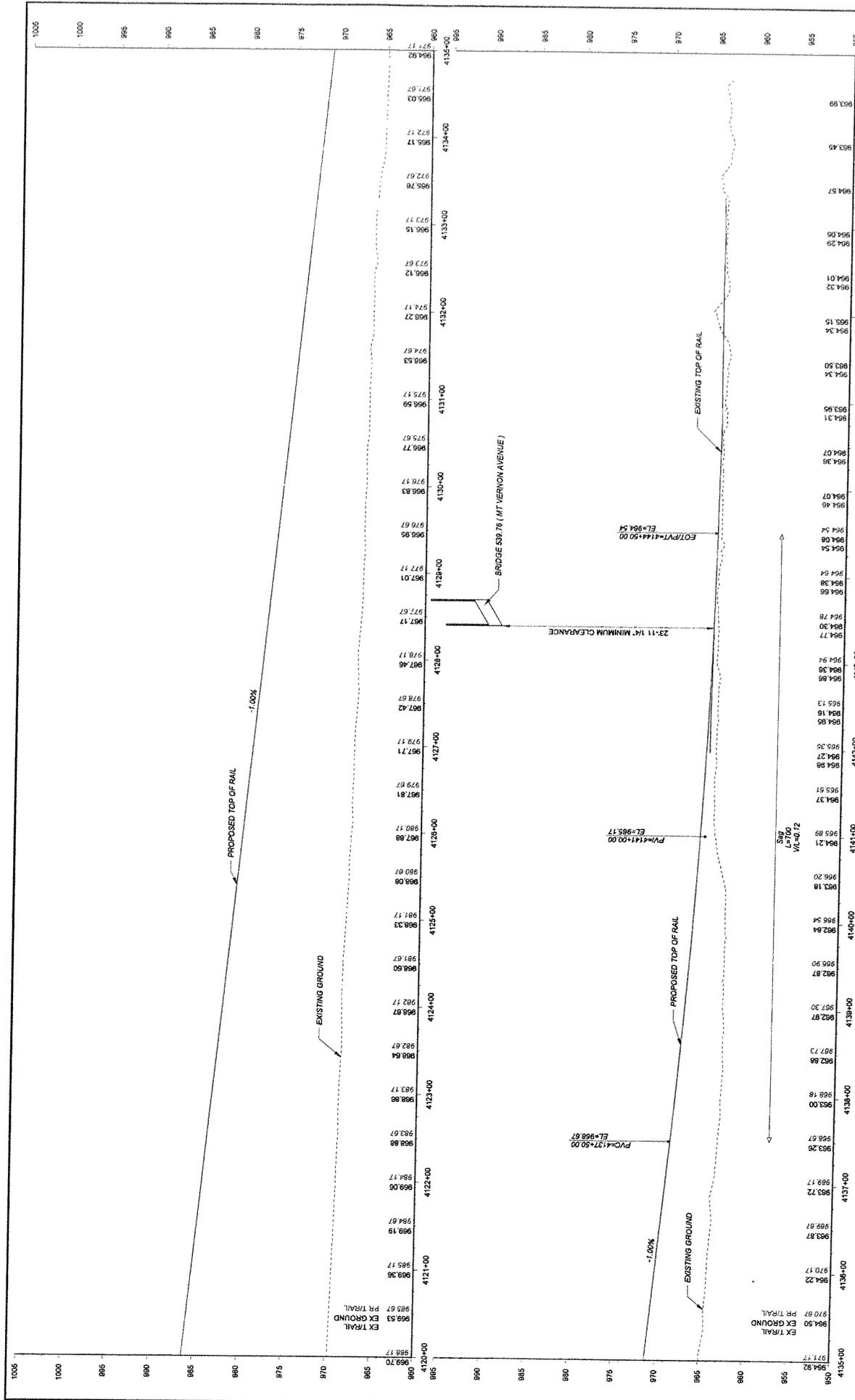
C11217-Exhibit C



 HDR Engineering, Inc.		 UNION PACIFIC RAILROAD	
DRAWN BY: VAL CHECKED BY: BND DATE: 19 MAY 2011 SHEET NUMBER: 11 of 12	OFFICE OF ASSISTANT VICE PRESIDENT ENGINEERING DESIGN	LOCATION: ALHAMBRA, MOJAVE AND TULSA SUBDIVISIONS DRAW TITLE: CONSTRUCTION AND MAINTENANCE AGREEMENT FOR THE COITON CROSSING RAIL BRIDGE RECONSTRUCTION PROJECT EXHIBIT C - WORK BY UPPER FORCES	FEDERAL PROJECT NUMBER: C01FSP1-9020004

C11217-Exhibit C

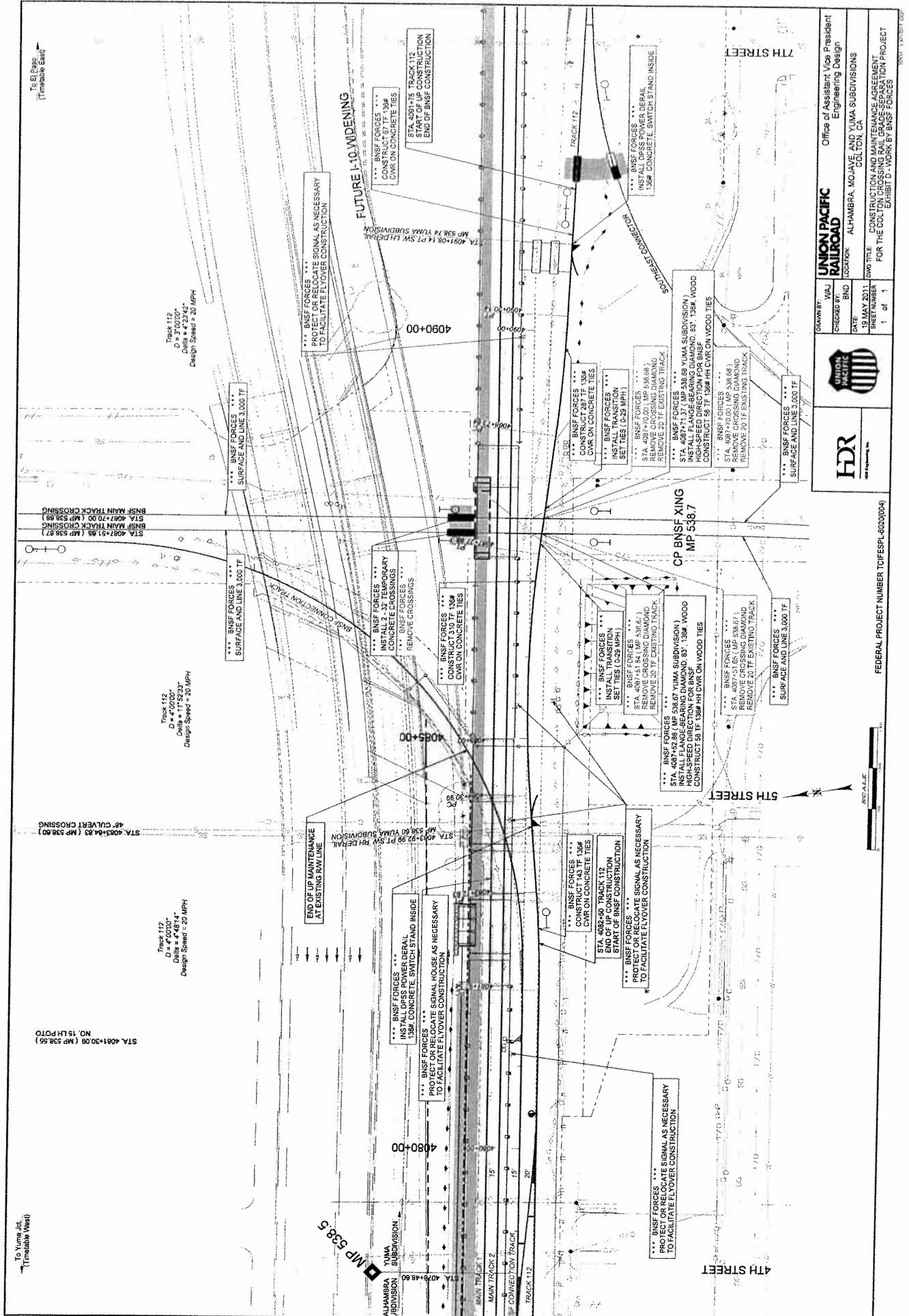
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 HDR Engineering, Inc.		 UNION PACIFIC RAILROAD	
OFFICE OF ASSISTANT VICE PRESIDENT Engineering Design		ALHAMBRA, MOUNTAIN VIEW, YUMA SUBDIVISIONS COLTON, CA	
DRAWN BY: VAL	CHECKED BY: BND	DATE: 19 MAY 2011	SHEET NUMBER: 12 of 12
FEDERAL PROJECT NUMBER TOIFESP1-6020(004)			

C11217-Exhibit C

UPRR EXHIBIT C
 PLATTING FOR
 UPRR EXHIBIT C
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To El Paso
(Timetable East)

To Yuma Jct.
(Timetable West)

STA 4081+30.08 (MP 538.55)
NO. 15 LH POTO

STA 4083+83.03 (MP 538.85)
48' CULVERT CROSSING

STA 4087+51.88 (MP 538.87)
BNSF MAIN TRACK CROSSING

To El Paso
(Timetable East)

To Yuma Jct.
(Timetable West)

STA 4081+30.08 (MP 538.55)
NO. 15 LH POTO

STA 4083+83.03 (MP 538.85)
48' CULVERT CROSSING

STA 4087+51.88 (MP 538.87)
BNSF MAIN TRACK CROSSING

Track 112
D = 4'00"00"
Delta = 1'12"33"
Design Speed = 20 MPH

Track 112
D = 4'00"00"
Delta = 4'23"42"
Design Speed = 20 MPH

MP 538.5
YUMA SUBDIVISION
ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS

FUTURE 1-10 WIDENING
... BNSF FORCES ...
CONSTRUCT 10 FT 150#
CONCRETE TIES

... BNSF FORCES ...
INSTALL DPSS POWER DERAIL
135# CONCRETE SWITCH STAND INSIDE
... BNSF FORCES ...
PROTECT OR RELOCATE SIGNAL HOUSE AS NECESSARY
TO FACILITATE FLYOVER CONSTRUCTION

... BNSF FORCES ...
CONSTRUCT 310 FT 150#
CONCRETE TIES
... BNSF FORCES ...
REMOVE CROSSINGS

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

... BNSF FORCES ...
CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

... BNSF FORCES ...
CONSTRUCT 310 FT 150#
CONCRETE TIES
... BNSF FORCES ...
REMOVE CROSSINGS

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

... BNSF FORCES ...
CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

... BNSF FORCES ...
CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

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CONSTRUCT 310 FT 150#
CONCRETE TIES
... BNSF FORCES ...
REMOVE CROSSINGS

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CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

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CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

... BNSF FORCES ...
CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

... BNSF FORCES ...
CONSTRUCT 310 FT 150#
CONCRETE TIES
... BNSF FORCES ...
REMOVE CROSSINGS

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

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CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

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CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

... BNSF FORCES ...
CONSTRUCT 310 FT 150#
CONCRETE TIES
... BNSF FORCES ...
REMOVE CROSSINGS

... BNSF FORCES ...
CONSTRUCT 287 FT 135#
CONCRETE CROSSINGS
INSTALL TRANSITION
SET TIES (0-28 MPH)

... BNSF FORCES ...
CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

... BNSF FORCES ...
CONSTRUCT 58 FT 135#
CONCRETE CROSSING DIAMOND
REMOVE 20 FT EXISTING TRACK

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5/23/2011 10:06:14 AM
BNSF Exhibit.dgn

		DRAWN BY: WAL CHECKED BY: BND DATE: 19 MAY 2011 SHEET NUMBER: 1 of 1	Office of Assistant Vice President Engineering Design ALHAMBRA, MOJAVE AND YUMA SUBDIVISIONS COLTON, CA
		FEDERAL PROJECT NUMBER TOIFESP-6020(054)	

EXHIBIT E

Estimated Project Schedule Summary

Begin Preliminary Engineering and Environmental	Underway
Complete Preliminary Engineering / Technical Studies	June 2010
Begin Design – Track & Structures	June 2010
Begin Design – Signal	August 2010
Circulate Draft Environmental Document	November 2010
Complete Environmental Clearance	February 2011
Begin ROW Acquisition	February 2011
Begin Utility Relocation	March 2011
Execute Public Benefits Agreement	March 2011
Execute Construction & Maintenance Agreement	March 2011
End Permitting / NEPA	June 2011
Final Design Complete	June 2011
Right-of-Way Certification	June 2011
Advertise Construction Contract	July 2011
Award Construction Contract	September 2011
Begin Construction	September 2011
End Construction	March 2014

EXHIBIT "F"

OVERPASS/UNDERPASS CONTRACTOR'S RIGHT OF ENTRY

Agreement
Among
BNSF RAILWAY COMPANY,
UNION PACIFIC RAILROAD COMPANY
and the
CONTRACTOR

BNSF RAILWAY COMPANY
UNION PACIFIC RAILROAD COMPANY
BNSF File: _____
UPRR File: _____

Project: _____

Gentlemen:

_____ (the "Contractor"), BNSF RAILWAY COMPANY ("BNSF"), and UNION PACIFIC RAILROAD COMPANY ("UPRR") hereby enter into this agreement (this "Agreement") for the performance of certain work in connection with the following project: _____ (the "Project"). Performance of such work will necessarily require the Contractor to enter BNSF right of way and property (the "BNSF Property") and UPRR right of way and property (the "UPRR Property"). The BNSF Property and the UPRR Property are hereinafter collectively referred to as the "Railway Properties". No work will be commenced within the Railway Properties until the Contractor (a) executes and delivers to both Union Pacific Railroad Company, Attn: Joel Adams, 2015 South Willow Avenue Bloomington, CA 92316, Telephone No.: (916) 789-5484, E-mail address: joeladams@up.com and [] (collectively the "Project Representatives") this Agreement in the form hereof, and (b) provides to the Project Representatives insurance of the coverage and limits specified in this 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 the Project Representatives certifying that the signatory is empowered to execute this Agreement on behalf of the Contractor. Notwithstanding anything to the contrary contained in this Agreement, in the event of a conflict between (i) the provisions of this Agreement and (ii) that certain Construction and Maintenance Agreement for the Colton Crossing Rail Grade-Separation Project dated June 3, 2011 by and among UPRR, BNSF and San Bernardino Associated Governments (the "Construction and Maintenance Agreement"), the provisions of the Construction and Maintenance Agreement shall control.

Accordingly, in consideration of BNSF and UPRR (collectively, the "Railways") granting permission to the Contractor to enter upon the Railway Properties and as an inducement for such entry, the Contractor has agreed and does hereby agree with the Railways as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

The Contractor hereby waives, releases, indemnifies, defends and holds harmless the Railways for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including the Railways' and the Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from the Contractor's or any of the Contractor's subcontractors' acts or omissions or any work performed on or about the Railway Properties. **THE LIABILITY ASSUMED BY THE 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 ANY OF BNSF, UPRR, OR THEIR AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT (i) WITH RESPECT TO THE CONTRACTOR'S INDEMNITY OF BNSF, TO THE EXTENT THAT SUCH**

CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF, OR (ii) WITH RESPECT TO THE CONTRACTOR'S INDEMNITY OF UPRR, TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF UPRR.

THE INDEMNIFICATION OBLIGATION ASSUMED BY THE CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST EITHER BNSF OR UPRR 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.

The Contractor further agrees, at its expense, in the name and on behalf of BNSF and/or UPRR, that the Contractor will adjust and settle all claims made against either BNSF or UPRR, and will appear and defend any suits or actions of law or in equity brought against BNSF or UPRR (as requested in their sole discretion) on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by the Contractor under this Agreement for which either BNSF or UPRR is liable or are alleged to be liable. BNSF and UPRR will give notice to the Contractor, in writing, of the receipt or dependency of such claims and thereupon the Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against either BNSF or UPRR, BNSF or UPRR (as applicable) may forward summons and complaint or other process in connection therewith to the Contractor, and the Contractor, at the discretion of the party against which the claim is made, must defend, adjust, or settle such suits and protect, indemnify, and save harmless BNSF and UPRR from and against all damages, judgments, decrees, attorneys' 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 the Contractor to indemnify the Railways to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR THE CONTRACTOR TO INDEMNIFY THE RAILWAYS FOR THE ACTS OF NEGLIGENCE OF BNSF AND/OR UPRR.**

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 later of the date this Agreement is accepted by: (a) BNSF and (b) UP, as evidenced on the last page of this Agreement, until (i) the completion of the Project set forth herein and (ii) full and complete payment to the Railways of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

The Contractor must, 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 1998 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 must also contain the following endorsements, which must be indicated on the certificate of insurance:

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

It is agreed that any workers' compensation exclusion does not apply to **Railroads** payments related to the Federal Employers Liability Act or a Wage Continuation Program of the **Railroads** or similar programs, and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

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 must 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 the **Railroads**.
- ◆ Additional insured endorsement in favor or and acceptable to the **Railroads**.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by the **Railroads**.

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

- ◆ The 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 the **Railroads**.

D. Railroad Protective Liability insurance naming the **Railroads** 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 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ 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 Project Representatives prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, the Contractor may participate in BNSF's and UPRR's Blanket Railroad Protective Liability Insurance Policies, to the extent the same are available to the Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

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

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

Prior to commencing the Work, the Contractor must furnish to the Project Representatives certificate(s) of insurance acceptable to the **Railroads** including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify the **Railroads** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from any **Railroad**, a certified duplicate original of any required policy must be furnished. In addition to providing the Project Representatives with the certificate(s) of insurance as required above, the Contractor must also send the certificate(s) to the following address (and to any other address provided by the requesting **Railroad**):

Ebix BPO
PO Box 12010 BN
Hemet, CA 92546-8010
Fax number: (951) 652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company acceptable to the **Railroads** 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.

The Contractor represents that this **Agreement** has been thoroughly reviewed by the Contractor's insurance agent(s)/broker(s), who have been instructed by the Contractor to procure the insurance coverage required by this **Agreement**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. Not more frequently than once every five years, the **Railroads** 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 the Contractor, the Contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming each **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify the **Railroads** to the same extent and under the same terms and conditions as the Contractor is required to release, defend and indemnify the **Railroads** herein.

Failure to provide evidence as required by this section will entitle, but not require, (a) BNSF to terminate this *Agreement* with respect to the BNSF Property and (b) UPRR to terminate this *Agreement* with respect to the UPRR Property, immediately with. Acceptance of a certificate that does not comply with this section will not operate as a waiver of the Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by the Contractor will not be deemed to release or diminish the liability of the Contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by the *Railroads* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroads* shall mean "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY", "Union Pacific Railroad Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "A" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in this Agreement, and the Contractor Requirements set forth on Exhibit "A" attached to this Agreement, including, but not be limited to, payment of all costs incurred for any damages to the Railways' roadbeds, 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

The Contractor is responsible for and hereby indemnifies and holds harmless the Railways (including their affiliated railway companies, and their tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects either BNSF's or UPRR's ability to fully utilize its equipment and to meet customer service and contract obligations. The 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 the Contractor, or subcontractors, or by the Railways performing work under this Agreement. The Railways agree that they will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, the Contractor will be billed the current freight train hour rate per train as determined from each of BNSF's or UPRR's records, as applicable. 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 the Railways and their customer(s). Under these arrangements, if the Railways do not meet their contract service commitments, the Railways may suffer loss of performance or incentive pay and/or be subject to penalty payments. The Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by the Railways which are attributable to a train delay caused by the Contractor or its subcontractors.

The contractual relationship between the Railways and their customers is proprietary and confidential. In the event of a train delay covered by this Agreement, the Railways will share information relevant to any train delay to the extent consistent with the Railways' 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.**

The Contractor and its subcontractors must give the Project Representatives weeks advance notice of the times and dates for proposed work windows. The Project Representatives and the Contractor will establish mutually agreeable work windows for the Project. BNSF shall have the right at any time to revise or change the work windows due to train operations or service obligations on the BNSF Property, and

UPRR shall have the right at any time to revise or change the work windows due to train operations or service obligations on the UPRR Property. The Railways 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 the Contractor's expenses for the Project.

The Contractor and subcontractors must plan, schedule, coordinate and conduct all of the 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 Project Representatives three original copies of this letter, which, upon execution by the Railways, will constitute an agreement between the parties.

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__.

Union Pacific Railroad Company

By: _____

Name: _____

Title: _____

Accepted and effective this _____ day of 20__.

CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** _____ (the "Contractor") must cooperate with **BNSF RAILWAY COMPANY** ("BNSF") and/or **UNION PACIFIC RAILROAD COMPANY** ("UPRR"), hereinafter referred to collectively as the "Railways", where work is over or under on or adjacent to BNSF Property and/or right-of-way (the "BNSF Property") and/or UPRR Property and/or right-of-way (the "UPRR Property"), hereafter referred to collectively as the "Railway Properties", during the construction of _____ (the "Project").
- **1.01.02** The Contractor must execute and deliver to the Railways three copies of the Overpass/Underpass Contractor's Right of Entry Agreement (the "Agreement") obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of the Agreement. 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 the Railway Properties.
- **1.01.04** The Contractor's right to enter the Railway Properties is subject to the absolute right of BNSF to cause the Contractor's work on the BNSF Property and UPRR to cause the Contractor's work on the UPRR Property, to cease if, in the opinion of BNSF with respect to the BNSF Property and UPRR with respect to the UPRR Property, Contractor's activities create a hazard to the BNSF Property or UPRR Property and/or employees and/or operations of BNSF or UPRR. The Railways will have the right to stop construction work on that portion of the Project located on their property if any of the following events take place: (a) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by the Railways; (b) Contractor (or any of its subcontractors), in BNSF's and/or UPRR's opinion (as applicable), prosecutes the Project work in a manner which is hazardous to the applicable Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (c) the insurance described in the Agreement is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of UPRR or BNSF, as applicable, or until additional insurance has been delivered to and accepted by BNSF or UPRR, as applicable. In the event of a breach of the Agreement, BNSF may immediately terminate the Agreement with respect to the BNSF Property, and UPRR may immediately terminate the Agreement with respect to the UPRR Property. Any such work stoppage under this provision will not give rise to any liability on the part of the Railways. The Railways right to stop the work is in addition to any other rights the Railways may have including, but not limited to, actions or suits for damages or lost profits. In the event that the Railways desire to stop construction work on the Project as provided herein, the Railways agree to immediately notify the following individual in writing:

- **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 the Railways for, from and against

all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railways which arise out of the Contractor's work under this Agreement.

- **1.01.06** The Contractor must notify both Union Pacific Railroad Company, Attn: Joel Adams, 2015 South Willow Avenue Bloomington, CA 92316, Telephone No.: (916) 789-5484, E-mail address: joeladams@up.com and [_____](collectively the "Project Representatives") at least thirty (30) calendar days before commencing any work on the Railway Properties.
- **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 Railways five sets of working drawings showing details of construction affecting the Railway Properties 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. The Contractor must not begin work until notified by the Railways that the 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 the Railways' 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 the Railways' trains, the Railways 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 Railways.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter the Railway Properties without first having completed the Railways' 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 the Railways' 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 Railways' Engineering Contractor Safety Orientation before entering the Railway Properties. The Contractor is responsible for the cost of the Railways' Engineering Contractor Safety Orientation. The Contractor must renew the Railways' Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Project Representatives.

1.03 Railway Requirements

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

- **1.03.02** The Contractor must notify the Project Representatives in writing and provide blasting plans to the Project Representatives for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on the Railway Properties.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' 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: **[Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]**
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" 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 Railways and to any applicable governmental authorities and must not be undertaken until approved in writing by the Railways, and any applicable governmental authorities. No extra compensation will be allowed in the event the Contractor's work is delayed pending such approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, the Railways will have the option of installing tell-tales or other protective devices BNSF and/or UPRR deem necessary for the protection of their respective operations. The cost of tell-tales or protective devices will be borne by the Railway electing to install such devices.
- **1.03.07** The details of construction affecting the Railway Properties and tracks not included in the contract plans must be submitted to the BNSF for approval with respect to the BNSF Property and UPRR for approval with respect to the UPRR Property, before work is undertaken and this work must not be undertaken until approved by the applicable Railway.
- **1.03.08** UPRR and BNSF will provide temporary grade crossings over their tracks as may be needed from time to time to facilitate construction of the Project. A flagman will be required during use of a temporary grade crossing. When not in use, grade crossings will be barricaded. Such crossings will not be for public use and will be removed when construction is complete. In the event that the Contractor requires any additional temporary grade crossings in connection with the Contractor's work on the Project, the Contractor will coordinate with BNSF or UP, as applicable, and the Contractor shall be responsible (at its sole cost and expense) for the installation, maintenance, protection and removal of such crossings, as well as any other requirements of BNSF or UP in connection therewith, including without limitation, the provision of flagger services.
- **1.03.09** Discharge, release or spill on the Railway Properties of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Project Representatives, and BNSF'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 the Railway Properties 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 Properties all of the Contractor's tools, equipment, implements and other materials, whether brought upon said property by the Contractor or any subcontractor, employee or agent of the Contractor or of any subcontractor, and must cause the Railway Properties to be left in a condition acceptable to the Project Representatives.

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 the Project Representatives 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 the Railways prior to commencement of any work on the Railway Properties. 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 Railways and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **[Note to Drafter: when appropriate insert e-RailSafe language as follows:**

The Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on the Railway Properties under the Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to the Railways. The Contractor shall be subject to periodic audit to ensure compliance.

The Contractor shall not permit any of its employees, subcontractors or agents to perform services on the Railway Properties who are not approved under e-RAILSAFE program standards. BNSF, with respect to the BNSF Property, and UPRR, with respect to the UPRR Property, shall have the right to deny entry onto their respective premises to any of the 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 for the e-RAILSAFE program or who pose a threat, in BNSF's and/or UPRR's reasonable opinion, to the safety or security of their respective operations.

The Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give the Project Representatives a minimum of thirty (30) calendar days advance written notice when flagging services will be required so that the Project Representatives 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 Contractor and the Project Representatives that such services are no longer necessary, the Contractor must give the Project Representatives five (5) working days advance written notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by the Project Representatives, flaggers will be required and furnished when the 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 Project Representatives, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of the Project Representatives, track or other 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 the Railways' 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 Railways before moving heavy or cumbersome objects or equipment which might result in making their respective tracks impassable.
- **1.05.03** Flagging services will be performed by qualified flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect the Railway Properties and operations, if deemed necessary by the Project Representatives.
- **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 Railways will be borne by the Contractor to the extent applicable. All other costs for flagger services incurred by BNSF or UPRR shall be deemed "Project costs" as described in that certain Construction and Maintenance Agreement for the Colton Crossing Rail Grade-Separation Project dated June 3, 2011, by and among UPRR, BNSF and San Bernardino Associated Governments. 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 BNSF's and/or UPRR's 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 train traffic on this route is _____ freight trains per 24-hour period at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

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 the Contractor within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on the Railway Properties, 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 Railways' flaggers, 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 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 Project Representatives. When authority is provided, every Contractor employee must know: (a) who the flaggers are, and how to contact the flaggers; (b) limits of the authority; (c) the method of communication to stop and resume work; and (d) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify a flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **1.06.04** When the Contractor employees are required to work on the Railway Properties after normal working hours or on weekends, the Project Representatives must be given written notice. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of the 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 Properties and subsequently released to the custody of a representative of the Contractor's management team. Future access to the Railway Properties by that employee will be denied.
- **1.06.06** Any damage to the Railway Properties, or any hazard noticed on passing trains must be reported immediately to the Project Representatives. 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 Project Representatives and BNSF's Resource Operations Center at 1-800-832-5452. Local emergency numbers are to be obtained from the Project Representatives 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 the Railway Properties.
- **1.06.08** All personnel protective equipment ("PPE") used on the Railway Properties must meet applicable OSHA and ANSI specifications. Current PPE 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 Project Representatives are 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 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 PROJECT REPRESENTATIVES.**
- **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 the Railway Properties 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 the Railway Properties could cause damage to buried cables resulting in delay to the Railways' 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 the Project Representatives. 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 BNSF with respect to BNSF Property and UPRR with respect to UPRR Property 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 Properties 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 the Railways' 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 the 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 the Railway Properties, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, the Contractor must immediately: (a) notify the Project Representatives; (b) notify BNSF's Resource Operations Center at 1-800-832-5452; (c) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (d) 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 Railways are 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 the Contractor's invitees while on the Railway Properties must be reported immediately to the Project Representatives. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by fax to the Project Representatives (and a copy of the form should also be faxed to BNSF at 1-817-352-7595) no later than the close of shift on the date of the injury.

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 IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time:
County: _____ 3. Temperature: _____ 4. Weather
(if non-Railway location)
5. Social Security #
6. Name (last, first, mi)
7. Address: Street: _____ City: _____ St. _____ Zip:
8. Date of Birth: _____ and/or Age _____ Gender:
(if available)
9. (a) Injury: _____ (b) Body Part:
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment
13. Dr. Name _____ 30. Date:
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip:
15. Hospital Name:
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip:
17. Diagnosis:

Exhibit G

Funding Plan (costs in millions of dollars)

	TIGER Funds	State STIP	State TCIF	Union Pacific	BNSF	Local Funds	TOTAL	
Project Approval / Environmental Documentation		\$3.7	-			\$0	\$3.7	1.8%
Plans, Specifications and Estimates		-	-	\$10.9	\$0.7	\$0	\$11.6	5.8%
Right-of-Way (Capital and Support)	\$4.9	-	-	\$19.3	-	\$0	\$26.7	13.2%
Construction (Capital and Support)	\$28.9	-	\$91.3	\$30.5	\$11.8	\$0	\$160.0	79.2%
TOTAL	\$33.8	\$3.7	\$91.3	\$60.7	\$12.5	\$0	\$202.0	
	16.7%	1.8%	45.2%	30.1%	6.2%	0%		100.0%

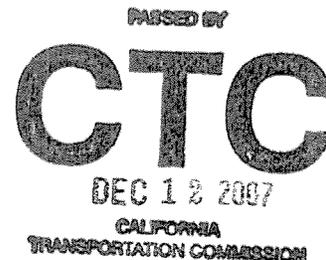
Due to rounding, the total amount may deviate slightly from the actual total. The figures provided in this table reflect estimates of the costs of the various components of the Project. These figures are provided for planning purposes only and are not meant to limit how funds from a specific source may be used on the Project or how the total funding may be allocated among the various costs.

Notes:

- Estimated construction costs are in 2012 dollars
- TCIF funds and Railroad funding subject to receipt of TIGER funding and terms of this memorandum
- BNSF and Union Pacific's contribution can be offset by other grants they receive, as long as with the addition of the grant funds the ratio of funds on the Project is still in compliance with the TCIF requirements.
- BNSF will contribute the full amount of its \$12.5 million commitment without respect to the percentage of the Project costs that this amount represents or any savings that may be achieved if the actual cost of constructing the Project is less than the estimated costs.

CALIFORNIA TRANSPORTATION COMMISSION

Adoption of Program Guidelines for the
Trade Corridors Improvement Fund (TCIF)



RESOLUTION TCIF-G-0708-001

- 1.1 WHEREAS the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 was approved by voters as Proposition 1B on November 7, 2006, and
- 1.2 WHEREAS the Bond Act provided that \$2 billion to be transferred to the Trade Corridors Improvement Fund (TCIF) for allocation by the California Transportation Commission, upon appropriation in the annual Budget Act by the Legislature, for infrastructure improvements along corridors that have a high volume of freight movement, and
- 1.3 WHEREAS the TCIF program is subject to the provisions of Government Code Section 8879.23(c)(1), as added by Proposition 1B, and to Section 8879.50, as enacted through implementing legislation in 2007 (SB 88 and AB 193) designating the Commission as the administrative agency responsible for programming TCIF and the agency authorized to adopt guidelines for the program, and
- 1.4 WHEREAS a draft of proposed TCIF guidelines prepared by Commission staff was made available to the Department of Transportation and regional agencies on November 6, 2007, and the Commission heard comment on that draft at its November 7, 2007 meeting, and
- 1.5 WHEREAS Commission staff prepared revisions to the draft TCIF guidelines, responding to comments received at the November 7, 2007 meeting, and subsequently
- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission adopts the attached TCIF program guidelines as amended on November 27, 2007, and
- 2.2 BE IT FURTHER RESOLVED that these guidelines are to identify the Commission's policy and expectations for the TCIF program and thus to provide guidance to the Department, regional agencies and project applicants and proponents in carrying out their responsibilities under this program, and
- 2.3 BE IT FURTHER RESOLVED that these guidelines do not preclude any project nomination or any project selection that is consistent with the Bond Act, and
- 2.4 BE IT FURTHER RESOLVED that the Commission directs staff to post these guidelines on the Commission's website and requests that the Department assist Commission staff in making copies available to regional agencies and project applicants and proponents.

Attachment

CALIFORNIA TRANSPORTATION COMMISSION

Trade Corridors Improvement Fund (TCIF) Program Guidelines

Adopted November 27, 2007

General Program Policy

1. Authority and purpose of guidelines. The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B on November 7, 2006, provided for \$2 billion to be transferred to the Trade Corridors Improvement Fund (TCIF) for infrastructure improvements along corridors that have a high volume of freight movement. The funds are available, upon appropriation by the Legislature, for allocation by the California Transportation Commission.

The TCIF program is subject to the provisions of Government Code Section 8879.23(c)(1), as added by Proposition 1B, and to Section 8879.50, as enacted through implementing legislation in 2007 (SB 88 and AB 193). The implementing legislation designated the Commission as the administrative agency responsible for programming TCIF and the agency authorized to adopt guidelines for the program.

The purpose of these guidelines is to identify the Commission's policy and expectations for the TCIF program and thus to provide guidance to the Department of Transportation (Caltrans), regional agencies, and project applicants and proponents in carrying out their responsibilities under the program. These guidelines are not intended to preclude any project nomination or any project selection that is consistent with the Bond Act.

2. Statutory program eligibility. Proposition 1B calls for the Commission to determine corridor and project eligibility, consulting:
 - the goods movement action plan (GMAP) submitted to the Commission by the Secretary of the Business, Transportation and Housing Agency and the Secretary for Environmental Protection;
 - trade infrastructure and goods movement plans adopted by regional transportation planning agencies;
 - adopted regional transportation plans required by state and federal law; and
 - the statewide port master plans prepared by the California Marine and Intermodal Transportation System Advisory Council (Cal-MITSAC).

Under Proposition 1B, eligible projects may include, but are not limited to:

- highway capacity improvements,
- freight rail system improvements,
- port capacity and efficiency projects,
- truck corridor improvements,
- improvements that maximize state access to federal border infrastructure funds, and
- airport ground access improvements.

3. Statutory programming mandates. Proposition 1B mandates that the Commission program and allocate TCIF in a manner that:
 - addresses the state's most urgent needs,
 - balances the demands of various ports,
 - provides reasonable geographic balance between regions, and
 - places emphasis on projects that improve trade corridor mobility while reducing emissions of diesel particulate and other pollutant emissions.

The Commission is also mandated to consider the following factors:

- Velocity: the speed by which large cargo would travel from the port through the distribution system.
 - Throughput: the volume of cargo that would move from the port through the distribution system.
 - Reliability: a reasonably consistent and predictable cargo travel time between points on any given day or time.
 - Congestion reduction: the reduction in recurrent daily hours of delay to be achieved.
4. Statutory mandate for supplemental funding. Proposition 1B mandates that the Commission allocate TCIF to projects that have identified and committed supplemental funding from appropriate local, federal, or private sources. The Commission is to determine the appropriate amount of supplemental funding for each project based on a project-by-project review and an assessment of the project's benefit to the state and the program. Except for border access improvements receiving federal border infrastructure funding, the supplemental funding shall be at least equal to the TCIF contribution, and the Commission may give funding priority to projects with higher levels of committed supplemental funding.
 5. Program Schedule. The Commission intends to implement the TCIF program on the following schedule:

CTC adopts TCIF guidelines	November 27, 2007
TCIF project nominations due	January 17, 2008
Hearings	Week of February 18, 2008
CTC issues staff recommendations	March 13, 2008
CTC adopts the initial TCIF program of projects	April 10, 2008

Project Nominations

6. Eligible applicants and projects. The Commission will accept project nominations from Caltrans, regional agencies, and other public agencies, including counties, cities, and port authorities. Project proposals from railroads or other private entities should be submitted by a public agency sponsor. A nomination may identify an entity other than the nominating agency to be the project implementing agency. The implementing agency is the agency responsible for carrying out the work and completing the project.

After consulting the GMAP, Cal-MITSAC and regional transportation plans, the Commission has determined that the following corridors have a high volume of freight movement and are eligible for funding under this program:

- Bay Area Corridor
- Central Valley Corridor
- Los Angeles/Inland Empire Corridor
- San Diego/Border Corridor

The Commission acknowledges that other regions of the state may have goods movement infrastructure needs along corridors that have a high volume of freight movement that would be eligible for funding through the TCIF. The Commission would anticipate those regions would nominate their projects for consideration.

Under statute, the applicant agency must provide a project funding plan through construction that demonstrates that the supplemental funding in the plan (local, federal or private sources) is reasonably expected to be available and sufficient to complete the project. The Commission expects that TCIF project funding will be limited to the costs of construction.

The investment of public funding must be tied to public benefit as demonstrated through a public/private benefit assessment. TCIF should not supplant revenues otherwise available through existing private sector revenue streams.

The useful life of a TCIF project shall not be less than the required useful life for capital assets pursuant to the State General Obligation Bond Law, specifically subdivision (a) of Section 16727 of the Government Code. That section generally requires that projects have an expected useful life of 15 years or more.

7. Project nominations. Project nominations and their supporting documentation will form the primary basis for the Commission's TCIF program of projects. Each project nomination should include:

- A cover letter with signature authorizing and approving the nomination.
- A programming request form (Appendix A) together with a map of the project location that describes the project scope, useful life, cost, funding plan, delivery milestones, and major project benefits. Cost estimates should be escalated to the year of proposed implementation. The project delivery milestones should include the start and completion dates for environmental clearance, land acquisition, design, construction bid award, construction completion, and project closeout.
- A brief narrative that provides:
 - Project background and a purpose and need statement.
 - A concise description of the project scope and anticipated benefits (outcomes and outputs) proposed for TCIF funding.

- A specific description of non-TCIF funding (source and amount) to be applied to the project and the basis for concluding that the non-TCIF funding is expected to be available.
 - A description of the project delivery plan, including a description of the known risks that could impact the successful implementation of the project and a description of the response plan for the known risks. The risks considered should include, but not be limited to, risks associated with deliverability and engineering issues, community involvement, and funding commitments.
 - A description of the transportation corridor and the function of the proposed project within the corridor.
 - A description and quantification of improvements in trade corridor mobility, including measures of velocity, throughput, reliability and congestion reduction for freight movement in the corridor.
 - A description and quantification of the local and corridor effects of the project on diesel particulate and other pollutant emissions.
 - A description of the corridor plan or other coordinated management strategy being implemented by the applicant agency and other jurisdictions within the corridor to preserve corridor mobility.
- Documentation supporting the benefits and cost estimates cited in the nomination. This should be no more than 10 pages in length, citing or excerpting, as appropriate, the project study report, environmental document, regional transportation plan, and other studies that provide quantitative measures of the project's costs and benefits, including both trade corridor mobility benefits and emission reduction benefits. Where investment of TCIF is proposed to improve private infrastructure, this documentation should include an assessment of public and private benefits to show that the share of public benefit is commensurate with the share of public funding.
 - Documentation for rail investments that acknowledges and describes how the private railroads, regional agencies and appropriate state agencies will come to agreement on public and private investment levels and resulting benefits.
 - Documentation supporting the availability of supplemental funding identified as part of the project funding plan. Local, federal or private funds to be expended after the adoption of the project into the TCIF program may be used for the 1:1 funding match, with the exception of Grade Separation projects where non-state funds expended since the approval of Proposition 1B may be counted for the match. The project funding plan may include other state funds but those funds may not be counted for the match. For these purposes SHOPP, STIP and TCRP are state funds which are not eligible for match, local gas tax subvention funds, and user fees will be treated as local funds, and Section 190 Grade Separation Fund revenues, RSTP and CMAQ are regarded as federal funds.

8. Submittal of project nominations. For the initial TCIF program of projects, the Commission will consider only projects for which a nomination and supporting documentation are received in the Commission office by (date to be determined), in hard copy. A nomination from a regional agency or port authority will include the signature of the Chief Executive Officer or other authorized officer of the agency. A nomination from Caltrans will include the signature of the Director of Transportation or a person authorized by the Director to submit the nomination. A nomination from a city, county, or other public agency will include the signature from an officer authorized by the city council, board of supervisors, or other agency board. Where the project is to be implemented by an agency other than the nominating agency, the nomination will also include the signature of the Chief Executive Officer or other authorized officer of the implementing agency.

The Commission requests that each project nomination include five copies of the cover letter, the project fact sheet, and the narrative description, together with two copies of all supporting documentation. All nomination materials should be addressed or delivered to:

John Barna, Executive Director
California Transportation Commission
Mail Station 52, Room 2222
1120 N Street
Sacramento, CA 95814

Project Selection and Programming

9. Program of projects based on nominations. The Commission will develop its TCIF program of projects primarily on the basis of the nominations received by the nomination due date.
10. Project nomination scoring. The Commission staff will screen and evaluate project nominations according to the following screening and evaluation criteria. The Commission will take into consideration the methods by which the corridor agencies have determined the relative priority of their nominations.

<u>Screening Criteria:</u> Screening criteria determine whether the nomination is evaluated further.
1. Eligibility:
<ul style="list-style-type: none">• Project is included in GMAP, Cal-MITSAC, trade infrastructure and goods movement plans adopted by regional transportation planning agencies, or an adopted regional transportation plan
<ul style="list-style-type: none">• Project can demonstrate a 1:1 funding match (local, federal or private funds)

2. Deliverability: Project will begin construction by December 31, 2013.
3. Air Quality: Project contributes to corridor or air basin emission reduction of particulates and other pollutants
4. Economic/Jobs Growth: Project will stimulate economic activity, enhance trade value, and preserve/create jobs

Evaluation Criteria: Evaluation criteria are outcome oriented and customizable to each corridor. Evaluation criteria are grouped into three categories. The Commission may give priority to projects with higher levels of committed supplemental funding.
1. Freight System (Goods Movement) Factors:
<ul style="list-style-type: none"> • Throughput: Project provides for increased volume of freight traffic through capacity expansion or operational efficiency
<ul style="list-style-type: none"> • Velocity: Project increases the speed of freight traffic moving through the distribution system
<ul style="list-style-type: none"> • Reliability: Project reduces the variability and unpredictability of travel time
2. Transportation System (Priorities) Factors:
<ul style="list-style-type: none"> • Safety: Project increases the safety of the public, industry workers, and traffic
<ul style="list-style-type: none"> • Congestion Reduction/Mitigation: Project reduces daily hours of delay on the system and improves access to freight facilities
<ul style="list-style-type: none"> • Key Transportation Bottleneck Relief: Project relieves key freight system bottlenecks where forecasts of freight traffic growth rates indicate infrastructure or system needs are inadequate to meet demand
<ul style="list-style-type: none"> • Multi-modal Strategy: Project employs or supports multi-modal strategies to increase port and transportation system throughput while reducing truck vehicle miles/hour traveled (VMT/VHT)
<ul style="list-style-type: none"> • Interregional Benefits: Project links regions/corridors to serve statewide or national trade corridor needs
3. Community Impact Factors:
<ul style="list-style-type: none"> • Air Quality Impact: Project reduces local and regional emissions of diesel particulate, CO₂, NO_x, and other pollutants.
<ul style="list-style-type: none"> • Community Impact Mitigation: Project reduces negative impacts on communities (noise, localized congestions, safety, etc.)
<ul style="list-style-type: none"> • Economic/Jobs Growth: Project stimulates local economic activity, enhances trade value, and preserves/creates jobs

Where a project is proposed to improve private infrastructure, the Commission's evaluation will examine the public/private benefit assessment of the project.

11. Program adoption. The Commission recognizes that statewide goods movement needs far exceed the amount that Proposition 1B authorizes for the TCIF program, that other sources of funding may and should be explored for meeting those needs, and that delivery challenges may limit the funding of identified projects by December 2013. The Commission also supports the funding strategy proposed by Caltrans and the corridor agencies to increase TCIF funding by approximately \$500 million from the State Highway Account (SHA) to fund state-level priorities that are critical to goods movement. Additionally, the Commission anticipates that it will initially program about 20% more than the resulting \$2.5 billion available from the TCIF and the SHA. This overprogramming assumes that new revenue sources (additional federal funding, user fees, tolls, etc.) will become available and will be dedicated to funding the adopted program. The Commission anticipates reviewing the programming and delivery status of all projects in 2010 on a schedule coordinated with development of the 2010 STIP. The Commission may also adopt amendments to the program to recognize the availability of other funds or changes in project delivery. The Commission may, if it finds it necessary or appropriate, advise potential applicants to submit new or revised nominations.

12. Corridor-based programming targets. The Commission supports a corridor-based programming approach to the TCIF, which recognizes and complements the goods movement planning work already done within the major trade corridors. The Commission also recognizes and supports the key role that the state has to play in project identification and supports integrating statewide goods movement priorities into the corridor approach.

To promote this corridor-based approach, the Commission has developed the following geographic programming ranges, in consultation with the Department and corridor regional agencies. The targets are neither minimums nor maximums. They do not constrain what any agency may propose or what the Commission may approve for programming and allocation within any particular corridor.

TCIF Corridor Programming Ranges (Range, in \$ millions)		
	Low	High
Los Angeles/Inland Empire Corridor	\$1,500	\$1,700
San Diego/International Border Corridor	250	400
San Francisco Bay/Central Valley Corridor	640	840
Other Corridors	60	80
Administration Fees	40	40
Total	\$2,490	\$3,060

Project Delivery

13. Project baseline agreements. Within three months after the adoption of a project into the TCIF program of projects, the Commission, Caltrans and the implementing agency, together with the regional agency and any entity committed to providing supplemental funding for the project, will execute a project baseline agreement, which will set forth the project scope, benefits, delivery schedule, and the project budget and funding plan. The funding plan will identify the source of supplemental funding. For investments in rail projects, the Commission expects a memorandum of understanding to be in place by the time of execution of the project baseline agreements between the private railroads, appropriate regional agencies, and appropriate state agencies that details how and when public and private funding would be made available. In addition, the Commission expects the memorandum of understanding would stipulate what public benefits (i.e., additional passenger rail capacity and investments in grade separations) would accrue to the affected regions and by when those benefits would be realized. The Commission may delete a project for which no project baseline agreement is executed, and the Commission will not consider approval of a project allocation prior to the execution of a project baseline agreement.
14. Quarterly delivery reports: As a part of the project baseline agreement, the Commission will require the implementing agency to submit quarterly reports on the activities and progress made toward implementation of the project, including those project development activities taking place prior to a TCIF allocation and including the commitment status of supplemental funding identified in the project baseline agreement.

As mandated by Government Code Section 8879.50, the Commission shall forward these reports, on a semiannual basis, to the Department of Finance. The purpose of the reports is to ensure that the project is being executed in a timely fashion and is within the scope and budget identified when the decision was made to fund the project. If it is anticipated that project costs will exceed the approved project budget, the implementing agency will provide a plan to the Commission for achieving the benefits of the project by either downscoping the project to remain within budget or by identifying an alternative funding source to meet the cost increase. The Commission may either approve the corrective plan or direct the implementing agency to modify its plan. Where a project allocation has not yet been made, the Commission may amend the program of projects to delete the project.
15. Amendments to program of projects. The Commission may approve an amendment of the TCIF program in conjunction with its review of a project corrective plan as described in Section 14. The implementing agency may also request and the Commission may approve an amendment of the program at any time. An amendment need only appear on the agenda published 10 days in advance of the Commission meeting. It does not require the 30-day notice that applies to a STIP amendment.
16. Allocations from the TCIF. The Commission will consider the allocation of funds from the TCIF for a project or project component when it receives an allocation request and

recommendation from Caltrans, in the same manner as for the STIP. The recommendation will include a determination of the availability of appropriated TCIF and the availability of all identified and committed supplemental funding. The Commission will approve the allocation if the funds are available, the allocation is necessary to implement the project as included in the adopted TCIF program, and the project has the required environmental clearance.

17. Final delivery report. Within six months of the project becoming operable, the implementing agency will provide a final delivery report to the Commission on the scope of the completed project, its final costs as compared to the approved project budget, its duration as compared to the project schedule in the project baseline agreement, and performance outcomes derived from the project as compared to those described in the project baseline agreement. The Commission shall forward this report to the Department of Finance as required by Government Code Section 8879.50.

The implementing agency will also provide a supplement to the final delivery report at the completion of the project to reflect final project expenditures at the conclusion of all project activities. For the purpose of this section, a project becomes operable at the end of the construction phase when the construction contract is accepted. Project completion occurs at the conclusion of all remaining project activities, after acceptance of the construction contract.

18. Audit of project expenditures and outcomes. The Department of Transportation will ensure that project expenditures and outcomes are audited. For each TCIF project, the Commission expects the Department to provide a semi-final audit report within 6 months after the final delivery report, and a final audit report within 6 months after the final delivery report supplement. The Commission may also require interim audits at any time during the performance of the project.

Audits will be performed in accordance with Generally Accepted Government Auditing Standards promulgated by the United States Government Accountability Office. Audits will provide a finding on the following:

- Whether project costs incurred and reimbursed are in compliance with the executed project baseline agreement or approved amendments thereof; state and federal laws and regulations; contract provisions; and Commission guidelines.
- Whether project deliverables and outcomes are consistent with the project scope, schedule and benefits described in the executed project baseline agreement or approved amendments thereof.

PROJECT PROGRAMMING REQUEST

DTP-0001 (REV. 2/10)

General Instructions

<input type="checkbox"/> New Project		<input checked="" type="checkbox"/> Amendment (Existing Project)		Date:	10/13/10
Caltrans District	EA	PPNO	MPO ID	TCRP No.	
75	47700K	0150D	SCAG		
County	Route/Corridor	PM Bk	PM Ahd	Project Sponsor/Lead Agency	
SBD	10	R21.8	R23.5	San Bernardino Associated Governments (SANBAG)	
				MPO	Element
				SCAG	RAIL
Project Mgr/Contact		Phone		E-mail Address	
Garry Cohoe		909-884-8276		gcohoe@sanbag.ca.gov	
Project Title					
Colton Crossing RR-Grade Separation					
Location, Project Limits, Description, Scope of Work, Legislative Description					
(TCIF #79): Construct grade separation structure to elevate two UPRR mainline tracks which currently cross two BNSF mainline tracks at grade in Colton, California to eliminate east west train delay caused by north south train traffic or vice versa					
Component	Implementing Agency				Reimbursements
PA&ED	SANBAG				
PS&E	SANBAG				
Right of Way	BNSF				
Construction	BNSF				
Legislative Districts					
Assembly:	62		Senate:	32	
Congressional:	42				
Purpose and Need					
Eliminate a bottleneck in the regional rail network that exists where BNSP mainlines cross UPRR mainlines in the City of Colton, otherwise known as the Colton Crossing. The specific project objectives include improving regional rail mobility and efficiency by eliminating the conflicting train movements at the crossing, discouraging a shift in goods movement from rail to truck because of conflicting train movements that cause delays and inefficiencies in rail traffic through the Colton Crossing, thus reducing the congestions impact that truck traffic has on the region's roads and freeways and facilitating regional passenger rail service by minimizing delays at the Crossing, thus improving the operation and efficiency of passenger rail service.					
Project Benefits					
The project will provide capacity for future freight rail traffic increases, minimize air and noise impacts created by train delays and waiting, improve safety, reduce travel time, and improve access of NAFTA rail freight traffic to and from Mexico, So California and the Ports of LA and LB					
Project Milestone				Existing	Proposed
Project Study Report Approved					12/31/05
Begin Environmental (PA&ED) Phase				01/01/07	
Circulate Draft Environmental Document		Document Type	ND/FONSI	11/01/10	
Draft Project Report				06/29/10	
End Environmental Phase (PA&ED Milestone)				02/01/11	
Begin Design (PS&E) Phase				06/01/10	
End Design Phase (Ready to List for Advertisement Milestone)				06/21/11	
Begin Right of Way Phase				02/01/11	
End Right of Way Phase (Right of Way Certification Milestone)				06/01/11	
Begin Construction Phase (Contract Award Milestone)				09/27/11	
End Construction Phase (Construction Contract Acceptance Milestone)				03/31/14	
Begin Closeout Phase				03/31/14	
End Closeout Phase (Closeout Report)				12/31/14	

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

PROJECT PROGRAMMING REQUEST

DTP-0001 (REV. 2/10)

Date: 10/13/10

County	CT District	PPNO	TCRP Project No.	EA
SBD	75	0150D		47700K
Project Title: Colton Crossing RR-Grade Separation				

Existing Total Project Cost									Implementing Agency
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)	3,689							3,689	SANBAG
PS&E	9,740							9,740	SANBAG
R/W SUP (CT)									
CON SUP (CT)									
R/W		1,082						1,082	BNSF
CON					183,789			183,789	BNSF
TOTAL	13,429	1,082			183,789			198,300	

Proposed Total Project Cost									Implementing Agency
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	
E&P (PA&ED)	3,689							3,689	
PS&E	11,600							11,600	
R/W SUP (CT)									
CON SUP (CT)									
R/W		26,700						26,700	
CON		160,005						160,005	
TOTAL	15,289	186,705						201,994	

Fund No. 1:	State Bond - Trade Corridor Program (TCIF)								Program Code
Existing Funding									20.XX.723.000
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	Funding Agency
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON					97,305			97,305	
TOTAL					97,305			97,305	
Proposed Funding									Notes
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON		91,305						91,305	
TOTAL		91,305						91,305	

Fund No. 2:	IIP - Public Transportation Account (PTA)								Program Code
Existing Funding									30.20.020.721
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	Funding Agency
E&P (PA&ED)	3,689							3,689	Caltrans
PS&E									\$2189 PAED voted 10/12/06
R/W SUP (CT)									\$1500 PAED voted 09/05/07
CON SUP (CT)									
R/W									
CON									
TOTAL	3,689							3,689	
Proposed Funding									Notes
E&P (PA&ED)	3,689							3,689	
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
TOTAL	3,689							3,689	

PROJECT PROGRAMMING REQUEST

DTP-0001 (REV. 2/10)

Date: 10/13/10

County	CT District	PPNO	TCRP Project No.	EA
SBD	75	0150D		47700K
Project Title: Colton Crossing RR-Grade Separation				

Fund No. 3:	Local Funds - Private Funds (PVT)								Program Code
Existing Funding									LOCAL FUNDS
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	Funding Agency
E&P (PA&ED)									
PS&E	9,740							9,740	
R/W SUP (CT)									
CON SUP (CT)									
R/W		1,082						1,082	
CON					86,484			86,484	
TOTAL	9,740	1,082			86,484			97,306	
Proposed Funding									Notes
E&P (PA&ED)									UP Railroads
PS&E	10,900							10,900	
R/W SUP (CT)									
CON SUP (CT)									
R/W		19,300						19,300	
CON		30,500						30,500	
TOTAL	10,900	49,800						60,700	

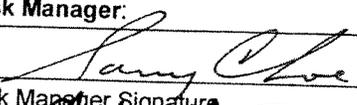
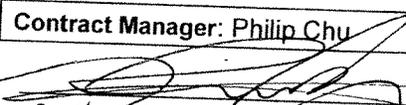
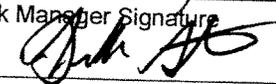
Fund No. 4:	BNSF								Program Code
Existing Funding									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	Funding Agency
E&P (PA&ED)									BNSF
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
TOTAL									
Proposed Funding									Notes
E&P (PA&ED)									BNSF
PS&E	700							700	
R/W SUP (CT)									
CON SUP (CT)									
R/W		2,500						2,500	
CON		9,300						9,300	
TOTAL	700	11,800						12,500	

Fund No. 5:	ARRA TIGER								Program Code
Existing Funding									
Component	Prior	10/11	11/12	12/13	13/14	14/15	15/16+	Total	Funding Agency
E&P (PA&ED)									
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
TOTAL									
Proposed Funding									Notes
E&P (PA&ED)									ARRA TIGER
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W		4,900						4,900	
CON		28,900						28,900	
TOTAL		33,800						33,800	

SANBAG Contract No. C11187
by and between Caltrans and SANBAG
for Master Agreement for State Funded Projects

FOR ACCOUNTING PURPOSES ONLY						
<input type="checkbox"/> Payable	Vendor Contract # _____		Retention:		<input checked="" type="checkbox"/> Original	
<input checked="" type="checkbox"/> Receivable	Vendor ID <u>CALTRANS</u>		<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No		<input type="checkbox"/> Amendment	
Notes: This is a State Master Agreement for State Funded Project (specific dollar amount will be according to each Program Supplement Agreement)						
Original Contract:		\$ _____	Previous Amendments		\$ _____	
Contingency / Allowance Amount		\$ _____	Previous Amendments		\$ _____	
			Contingency / Allowance Total:		\$ _____	
			Current Amendment:		\$ _____	
			Current Amendment Contingency / Allowance:		\$ _____	
Contingency Amount requires specific authorization by Task Manager prior to release.						
Contract TOTAL ▶					\$ <u>0</u>	
* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.						
▼ Include funding allocation for the original contract or the amendment						
Main Task/Project	Level 1	Level 2	Cost Code/Object	Grant ID/Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amndmnt Amt
_____	_____	_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	_____	_____	\$ _____
Original Board Approved Contract Date: _____				Contract Start: _____	Contract End: _____	
New Amend. Approval (Board) Date: _____				Amend. Start: _____	Amend. End: _____	
Allocate the Total Contract Amount or Current Amendment amount between Approved Budget Authority in the current year and Future Fiscal Year(s) Unbudgeted Obligation .						
Approved Budget Authority ▶		Fiscal Year: _____		Future Fiscal Year(s) – Unbudgeted Obligation ▶		\$ <u>0</u>
		\$ <u>0</u>				
<input type="checkbox"/> Budget authority for this contract currently exists in Task No. _____ (C-Task may be used here.).						
<input type="checkbox"/> A budget amendment is required. A Budget Amendment Request is attached.						

CONTRACT MANAGEMENT	
Check all applicable boxes:	
<input checked="" type="checkbox"/> Intergovernmental	<input type="checkbox"/> Private
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Underutilized DBE (UDBE)
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State/Local Funds

Task Manager:		Contract Manager: Philip Chu	
	4/20/11		3/29/11
Task Manager Signature	Date	Contract Manager Signature	Date
	4/20/11		
Chief Financial Officer Signature	Date		

C11187
Finance will not process any payments without budget authority and properly executed contracts.
Form 28 10/10 Contract Summary Sheet

MASTER AGREEMENT
ADMINISTERING AGENCY-STATE AGREEMENT FOR
STATE-FUNDED PROJECTS

08 San Bernardino Associated Governments

District Administering Agency

Agreement No. 003315

This AGREEMENT, is entered into effective this _____ day of _____, 20____, by and between the San Bernardino Associated Governments hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Legislature of the State of California has enacted legislation by which certain State funds are made available for use on local transportation related projects of public entities qualified to act as recipients of these state funds; and
2. WHEREAS, ADMINISTERING AGENCY has applied to the California Transportation Commission (CTC) and/or STATE for funding from either the State Transportation Improvement Program (STIP), or other State-funded programs (herein referred to as STATE FUNDS), as defined in the Local Assistance Program Guidelines (LAPG), for use on local authorized transportation related projects as a local administered project(s), hereinafter referred to as "PROJECT"; and
3. WHEREAS, said PROJECT will not receive any federal funds; and
4. WHEREAS, before STATE FUNDS will be made available for PROJECT, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving STATE FUNDS for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific Program Supplement to this AGREEMENT for state funded projects, hereinafter referred to as "PROGRAM SUPPLEMENT", has been fully executed by both STATE and ADMINISTERING AGENCY.
2. The State approved project-specific allocation letter designate the party responsible for implementing PROJECT, type of work and location of PROJECT.
3. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive STATE FUNDS from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these STATE FUNDS that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.
4. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future allocations, encumbrances and invoice payments for any on-going or future STATE FUNDED PROJECT performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.
5. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of STATE FUNDS encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
6. STATE FUNDS will not participate in any portion of PROJECT work performed in advance of the effective date of the executed PROGRAM SUPPLEMENT for said PROJECT.
7. Projects allocated with STATE FUNDS from the STIP will be administered in accordance with the current CTC STIP Guidelines, as adopted or amended and in accordance with Chapter 23 of the Local Assistance Program Guidelines (LAPG) published by STATE.
8. Projects allocated with STATE FUNDS not programmed in the STIP will be administered in accordance with the applicable chapter of the LAPG and/or any other instructions published by STATE.
9. ADMINISTERING AGENCY's eligible costs for preliminary engineering work includes all preliminary work directly related to PROJECT up to contract award for construction, including, but not limited to, environmental studies and permits (E&P), preliminary surveys and reports, laboratory work, soil investigations, the preparation of plans, specifications and estimates (PS&E),

- advertising for bids, awarding of a contract and project development contract administration.
10. ADMINISTERING AGENCY's eligible costs for construction engineering includes actual inspection and supervision of PROJECT construction work; construction staking; laboratory and field testing; and the preparation and processing of field reports, records, estimates, final reports, and allowable expenses of employees/consultants engaged in such activities.
 11. Unless the PARTIES agree otherwise in writing, ADMINISTERING AGENCY's employees or its sub-contractor engineering consultant shall be responsible for all PROJECT engineering work.
 12. ADMINISTERING AGENCY shall not proceed with final design of PROJECT until final environmental approval of PROJECT. Final design entails the design work necessary to complete the PS&E and other work necessary for a construction contract but not required earlier for environmental clearance of that PROJECT.
 13. If PROJECT is not on STATE-owned right-of-way, PROJECT shall be constructed in accordance with Chapter 11 of the Local Assistance Procedures Manual (LAPM) that describes minimum statewide design standards for local agency streets and roads. The design standards for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current Local Assistance Procedures Manual.
 14. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its' contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.
 15. When PROJECT is not on the State Highway System (SHS) but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.
 16. The Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.
 17. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a

- full-time employee to be in responsible charge of each PROJECT.
18. Unless otherwise provided in the PROGRAM SUPPLEMENT, ADMINISTERING AGENCY shall advertise, award, and administer the PROJECT construction contract or contracts.
 19. The cost of maintenance, security, or protection performed by ADMINISTERING AGENCY or contractor forces during any temporary suspension of PROJECT or at any other time may not be charged to the PROJECT.
 20. ADMINISTERING AGENCY shall submit PROJECT-specific award information, using Exhibit 23-A of the LAPG, to STATE's District Local Assistance Engineer, within sixty (60) days after contract award. A copy of Exhibit 23-A shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY to: Department of Transportation, Division of Accounting Local Programs Accounting Branch, MS #33, PO Box 942874, Sacramento, California 94274-0001.
 21. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within 180 days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance Chapters 17 and 19 of the Local Assistance Procedures Manual.
 22. ADMINISTERING AGENCY shall comply with the Americans with Disabilities Act (ADA) of 1990 that prohibits discrimination on the basis of disability and all applicable regulations and guidelines issued pursuant to the ADA.
 23. The Governor and the Legislature of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM, attached hereto as Exhibit A and further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of work connected with PROJECT shall incorporate Exhibit A (with third party's name replacing ADMINISTERING AGENCY) as parts of such agreement.
 24. ADMINISTERING AGENCY shall include in all subcontracts awarded when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code sections 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective at the date of contract award by the ADMINISTERING AGENCY.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a STATE FUNDED PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights-of-way are available for construction purposes or will be available by the time of award of the construction contract.
2. The furnishing of rights of way by ADMINISTERING AGENCY as provided for herein includes, and is limited to, the following, unless the PROGRAM SUPPLEMENT provides otherwise.
 - (a) Expenditures to purchase all real property required for PROJECT free and clear of liens, conflicting easements, obstructions and encumbrances, after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.
 - (b) The cost of furnishing of right-of-way as provided for herein includes, in addition to real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to owners of remainder real property not actually taken but injuriously affected by PROJECT.
 - (c) The cost of relocation payments and services provided to owners and occupants pursuant to Government Code sections 7260-7277 when PROJECT displaces an individual, family, business, farm operation or nonprofit organization.
 - (d) The cost of demolition and/or the sale of all improvements on the right-of-way after credit is recorded for sale proceeds used to offset PROJECT costs.
 - (e) The cost of all unavoidable utility relocation, protection or removal.
 - (f) The cost of all necessary hazardous material and hazardous waste treatment, encapsulation or removal and protective storage for which ADMINISTERING AGENCY accepts responsibility and where the actual generator cannot be identified and recovery made.
3. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right-of-way for a PROJECT, including, but not limited to, being clear as certified or if said right-of-way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights-of-way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.
2. Upon ADMINISTERING AGENCY's acceptance of the completed construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future STATE FUNDED PROJECTS of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.
3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the CTC.
2. STATE'S financial commitment of STATE FUNDS will occur only upon the execution of this AGREEMENT, the execution of each project-specific PROGRAM SUPPLEMENT and/or STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed duplicate invoices in arrears for reimbursement of allowable PROJECT costs on a monthly or quarterly progress basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the STATE FUNDS are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future allocations and invoice payments for any on-going or future STATE FUNDED project performed by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with Chapter 5 of the LAPM.
6. Invoices must have at least one copy of supporting backup documentation for allowable costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursements of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. An indirect cost allocation plan and related documentation are to be provided to STATE (Caltrans Audits & Investigations) annually for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect cost incurred within each fiscal year being claimed for reimbursement. The indirect cost allocation plan must be prepared in accordance with the requirements set forth in Office of Management and Budget Circular A-87 and Chapter 4 of the Local Assistance Procedures Manual.
9. STATE will withhold the greater of either two (2) percent of the total of all STATE FUNDS encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.
10. The estimated total cost of PROJECT, the amount of STATE FUNDS obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES with an allocation letter and finance letter. STATE FUNDING may be increased to cover PROJECT cost increases only if such additional funds are available and the CTC and/or STATE concurs with that increase in the form of an allocation and finance letter.

11. When such additional STATE FUNDS are not available, ADMINISTERING AGENCY agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.
12. ADMINISTERING AGENCY shall use its own non STATE FUNDS to finance the local share of eligible costs and all PROJECT expenditures or contract items ruled ineligible for financing with STATE FUNDS. STATE shall make the final determination of ADMINISTERING AGENCY's cost eligibility for STATE FUNDED financing with respect to claimed PROJECT costs.
13. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.
14. STATE FUNDS allocated from the STIP are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.
15. STATE FUNDS encumbered for PROJECT are available for liquidation only for five (5) years from the beginning of the State fiscal year when those funds were appropriated in the State Budget. STATE FUNDS not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance in accordance with Government Code section 16304. The exact date of fund reversion will be reflected in the STATE signed PROJECT finance letter.
16. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid to rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand.
17. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
18. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. ADMINISTERING AGENCY agrees to comply with the provisions set

forth in 23 CFR Parts 140, 645 and 646 when contracting with railroad and utility companies.

19. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under OMB Circular A-87, 48 CFR, Chapter 1, Part 31, 23 CFR Parts 140, 645 and 646 or 49 CFR, Part 18, are subject to repayment by ADMINISTERING AGENCY to STATE.

20. Upon written demand by STATE, any overpayment to ADMINISTERING AGENCY of amounts invoiced to STATE shall be returned to STATE.

21. Should ADMINISTERING AGENCY fail to refund any moneys due STATE as provided herein or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty (30) days of demand, or within such other period as may be agreed to in writing between the PARTIES hereto, STATE, acting through the State Controller, the State Treasurer, the CTC or any other public entity or agency, may intercept, withhold and demand the transfer of an amount equal to the amount paid by or owed to STATE for each PROJECT, from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may also withhold approval of future STATE FUNDED projects proposed by ADMINISTERING AGENCY.

22. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 21, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

23. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover STATE FUNDS improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V

AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records when determined to be necessary or appropriate and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of Article V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance and costs of ADMINISTERING AGENCY's contracts with third parties pursuant to Government Code section 8546.7, ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above-referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to ADMINISTERING AGENCY under any PROGRAM SUPPLEMENT. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions and ADMINISTERING AGENCY shall furnish copies thereof if requested.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of OMB Circular A-133 if it receives a total of \$500,000 or more in STATE FUNDS in a single fiscal year. The STATE FUNDS received under PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY'S annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with OMB Circular A-133.
6. ADMINISTERING AGENCY shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. All contracts awarded by ADMINISTERING AGENCY intended or used as local match credit must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of Article IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING, RECORDS RETENTION AND REPORTS and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.
8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner that is required of all other PROJECT expenditures.
9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES.

ARTICLE VI - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all PROJECT funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and other California laws.
2. ADMINISTERING AGENCY shall conform to all applicable State and Federal statutes and regulations, and the Local Assistance Program Guidelines and Local Assistance Procedures Manual as published by STATE and incorporated herein, including all subsequent approved revisions thereto applicable to PROJECT unless otherwise designated in the project-specific executed PROJECT SUPPLEMENT.
3. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
4. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE.
5. Each project-specific PROGRAM SUPPLEMENT shall separately establish the terms and funding limits for each described PROJECT funded under this AGREEMENT and that PROGRAM SUPPLEMENT. No STATE FUNDS are obligated against this AGREEMENT.
6. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT, and ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
7. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the PROJECT work actually performed, or in STATE's discretion, to deduct from the price of PROGRAM SUPPLEMENT consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
8. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.
9. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE that may have an impact upon the outcome of this AGREEMENT or any individual PROJECT encompassed within a PROGRAM SUPPLEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of a PROJECT undertaken pursuant to this AGREEMENT.

10. ADMINISTERING AGENCY hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of any PROJECT initiated under this AGREEMENT.
11. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its sole discretion, to terminate this AGREEMENT without liability, to pay only for PROJECT work actually performed, or to deduct from a PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
12. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer, who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.
13. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse the ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT and each PROGRAM SUPPLEMENT.
14. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under or in connection with any work, authority or jurisdiction of ADMINISTERING AGENCY arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims and suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.
15. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.
16. In the event of (a) ADMINISTERING AGENCY failing to timely proceed with effective PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT; (b) failing to maintain any applicable bonding requirements; and (c) otherwise materially violating the terms and conditions of this AGREEMENT and/or any PROGRAM SUPPLEMENT, STATE reserves the right to terminate funding for that PROJECT upon thirty (30) days' written notice to ADMINISTERING AGENCY.
17. No termination notice shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if the default is not reasonably susceptible of cure within said thirty (30) day period the ADMINISTERING

AGENCY proceeds thereafter to complete that cure in a manner and time line acceptable to STATE.

18. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT and the applicable PROGRAM SUPPLEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY for the reasons stated in paragraph sixteen (16) of ARTICLE VI, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE-approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of any PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

19. In the case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT and/or Cooperative Agreement, the terms stated in that PROGRAM SUPPLEMENT and/or Cooperative Agreement shall prevail over those in this AGREEMENT.

20. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

21. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officer.



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____

Chief, Office of Project Implementation
Division of Local Assistance

Date _____

San Bernardino Associated Governments

Deborah Robinson Barmack
By Deborah Robinson Barmack
Executive Director

San Bernardino Associated Governments
Representative Name & Title
(Authorized Governing Body Representative)

Date 5/10/11
APPROVED AS TO LEGAL FORM:

[Signature]
SANBAG Legal Counsel
Date: 4-22-11

EXHIBIT A - FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, age, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.
2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 1290-0 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.
4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.
5. Remedies for Willful Violation:
 - (a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code section 1426 which has become final or has obtained an injunction under Labor Code section 1429.
 - (b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due

or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.