

## AGENDA

### Board of Directors Meeting December 1, 2021

**\*\*\*\*\*Start Time: 10:00 a.m. (CLOSED SESSION)\*\*\*\*\***  
**1170 W. 3rd Street, San Bernardino, CA 92410, 2<sup>nd</sup> Fl. (The Super Chief)**

**\*\*\*\*Convene Regular Meeting at 10:30 a.m.\*\*\*\***

#### LOCATION

**San Bernardino County Transportation Authority  
Santa Fe Depot – First Floor Lobby Board Room  
1170 W. 3rd Street, San Bernardino, CA**

#### Board of Directors

**President**

Curt Hagman, Supervisor  
*County of San Bernardino*

**Vice-President**

Art Bishop, Council Member  
*Town of Apple Valley*

Daniel Ramos, Mayor Pro Tem  
*City of Adelanto*

Paul Courtney, Mayor  
*City of Barstow*

Rick Herrick, Mayor  
*City of Big Bear Lake*

Eunice Ulloa, Mayor  
*City of Chino*

Ray Marquez, Vice Mayor  
*City of Chino Hills*

Frank Navarro, Mayor  
*City of Colton*

Acquanetta Warren, Mayor  
*City of Fontana*

Darcy McNaboe, Mayor  
*City of Grand Terrace*

Cameron Gregg, Mayor  
*City of Hesperia*

Larry McCallon, Mayor Pro Tem  
*City of Highland*

Rhodes "Dusty" Rigby, Council Member  
*City of Loma Linda*

John Dutrey, Mayor  
*City of Montclair*

Edward Paget, Vice Mayor  
*City of Needles*

Alan Wapner, Mayor Pro Tem  
*City of Ontario*

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

Paul Barich, Mayor  
*City of Redlands*

Deborah Robertson, Mayor  
*City of Rialto*

John Valdivia, Mayor  
*City of San Bernardino*

Joel Klink, Council Member  
*City of Twenty-nine Palms*

Carlos A. Garcia, Council Member  
*City of Upland*

Debra Jones, Mayor  
*City of Victorville*

David Avila, Council Member  
*City of Yucaipa*

Rick Denison, Council Member  
*Town of Yucca Valley*

Paul Cook, Supervisor  
*County of San Bernardino*

Janice Rutherford, Supervisor  
*County of San Bernardino*

Dawn Rowe, Supervisor  
*County of San Bernardino*

Joe Baca, Jr., Supervisor  
*County of San Bernardino*

Michael Beauchamp, Caltrans  
*Ex-Officio Member*

Ray Wolfe, *Executive Director*

Julianna Tillquist, *General Counsel*

**San Bernardino County Transportation Authority  
San Bernardino Council of Governments**

**AGENDA**

**Board of Directors  
December 1, 2021**

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

**CLOSED SESSION**

**1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8 -- 1 Property

Property: A Portion of the Redlands Subdivision between Judson Street and Grove Street, Redlands (APN 0170-221-53-0000)

Agency Negotiator: Ryan Aschenbrenner, Right of Way Manager

Negotiating Parties: Donald Clemetson and Jeanette Clemetson, Trustees of the Donald T. Clemetson Survivors Trust, dated August 20, 2003; Roy Cunha; Robert McGuire, Jr.; Jim A. Ahmad (Invision Community Builders, LLC)

Under Negotiation: Price and terms of payment

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

Pursuant to Government Code Section 54956.9(d)(1)--10 cases

- a. SBCTA--*In re: Lumbermen's Mutual Casualty Company, In Liquidation*  
Office of Special Deputy Receiver, Docket No. 12 CH 24227  
Circuit Court of Cook County, Illinois
- b. SANBAG--*Maebell Dorsey, an individual and Trustee v. Renovate America, Inc., SBCTA, et al.*  
San Bernardino Superior Court Case No. CIVDS 1925774
- c. SBCTA--*Daniel Hayler, Leticia Hayler v SBCTA*  
U.S. District Court, Central District of California, Case No. 5:19-cv-02469-CJC-SP
- d. SANBAG--*Roberto Elizarraras v. Renovate America, Inc., SBCTA, et al.*  
San Bernardino Superior Court Case No. CIVDS 2013260
- e. SANBAG--*Pete Espinoza v. Renovate America, Inc., SBCTA, et al.*  
San Bernardino Superior Court Case No. CIVDS 2015834
- f. SBCTA--*Pulice Construction, Inc. v. SBCTA, et al.*  
San Bernardino Superior Court Case No. CIVDS 2020473
- g. SANBAG--*In re: Renovate America, Inc., et al.*  
U.S. Bankruptcy Court for the District of Delaware, Case No. 20-13172 (LSS)
- h. SBCTA--*Jose Jauregui v. San Bernardino County Transportation Authority*  
San Bernardino Superior Court, Case No. CIVSB 2102648
- i. SBCTA--*Southern California Edison Company v. Riverside County Transportation Commission*  
California Court of Appeal, Fourth District, Case No. E069462
- j. SBCTA--*Los Angeles County Metropolitan Transportation Authority v. Southern California Gas Company*  
California Court of Appeal, Second District, Case No. B288686

**\*\* Convene Regular Meeting at 10:30 a.m. \*\***  
**1170 W. 3<sup>rd</sup> Street, 1<sup>st</sup> Floor Lobby Board Room, San Bernardino**

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

**CALL TO ORDER**

(Meeting Chaired by Curt Hagman)

- i. Pledge of Allegiance
- ii. Attendance
- iii. Announcements  
Calendar of Events
- iv. Agenda Notices/Modifications

Pg. 14

**Possible Conflict of Interest Issues**

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

**1. Information Relative to Possible Conflict of Interest**

Pg. 15

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

**This item is prepared monthly for review by Board and Committee members.**

**CONSENT CALENDAR**

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

**Consent - Administrative Matters**

**2. 2022 Board of Directors and Policy Committee Meeting Schedule**

Pg. 19

Approve the 2022 Board of Directors and Policy Committee meeting schedules.

**Presenter: Raymond Wolfe**

**The individual policy committee schedules were reviewed by the respective policy committees during the month of October with the exception of the Mountain/Desert Policy Committee.**

## **Consent - Project Delivery**

### **3. San Bernardino Valley Coordinated Traffic Signal System - Amendments to Iteris Inc. Pg. 34 Contract No. 16-1001515**

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

A. Approve Amendment No. 3 to Contract No. 16-1001515 with Iteris, Inc. (Iteris) to increase the Contract not-to-exceed amount by \$1,000,000 to \$4,227,021.72 and extend the expiration date from January 3, 2022 to January 3, 2023.

B. Waive the five (5) year maximum contract term as defined in the Contracting and Procurement Policy No. 11000 since Amendment No. 3 would extend the Contract beyond five years.

C. Authorize the Executive Director, or his designee, to execute Contract Task Order (CTO) No. 5 for Contract No. 16-1001515 with Iteris to implement the Haven Avenue Corridor Technological Enhancement Pilot Project in an amount not-to-exceed \$1,000,000 after execution of Amendment No. 3.

D. Authorize the Executive Director, or his designee, to execute Amendment No. 5 to CTO No. 2 for Contract No. 16-1001515 with Iteris to extend the task order completion date by one (1) year to January 3, 2023 after execution of Amendment No. 3.

**Presenter: Timothy Byrne**

**This item was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 10, 2021. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item, the draft amendment and the CTO.**

### **4. Revision to Landscape Policy No. 34502 Pg. 57**

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

Approve revisions to Policy No. 34502 to remove obsolete terms and funding sources, and to include landscaping terms in alignment with the Board's objectives.

**Presenter: Paula Beauchamp**

**This item was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 10, 2021.**

### **5. Request for Proposals for Final Design Services for Interstate 10 Corridor Freight and Express Lane Project - Contract 2 Pg. 64**

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

Authorize the release of Request for Proposals No. 22-1002722 for preparation of Plans, Specifications, and Estimates for the Interstate 10 Corridor Freight and Express Lane Project - Contract 2.

**Presenter: Sal Chavez**

**This item was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 10, 2021. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft RFP.**



## **Consent - Transit**

### **6. Purchase & Sale Agreements for Upland Surplus Properties**

Pg. 80

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

A. Authorize the Executive Director, or his designee, to execute Purchase and Sale Agreement 22-1002709 for the sale of Assessor's Parcel Numbers 1046-605-02 and 1046-605-03 in the City of Upland to Euclid Housing, LP, a California limited partnership, pursuant to negotiations with WPH Holdings, LLC, a California limited liability company, for a negotiated sale amount of \$832,000, upon approval as to form by counsel.

B. Authorize the Executive Director, or his designee, to execute Purchase and Sale Agreement 22-1002710 for the sale of Assessor's Parcel Number 1046-605-01 in the City of Upland to Stowell Villas, LP, a California limited partnership, pursuant to negotiations with WPH Holdings, LLC, a California limited liability company, for a negotiated sale amount of \$768,000, upon approval as to form by counsel.

**Presenter: Ryan Aschenbrenner**

**This item was reviewed and unanimously recommended for approval by the Transit Committee on November 10, 2021. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreements. Since approval by the Transit Committee, the staff report and recommendation have been updated to reflect the single-purpose limited partnerships WPH Holdings, LLC has established for the purchases of the Upland Surplus Properties.**

### **7. Defer Shortway Subdivision Quiet Zone Project**

Pg. 122

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

A. Defer the Shortway Subdivision Quiet Zone Project (Project) until the Southern California Regional Rail Authority identifies a schedule for the maintenance and rehabilitation work to be completed.

B. De-allocate the remaining estimated balance of \$3,240,000 of unexpended Local Valley Transportation Funds currently allocated to the Project.

**Presenter: Victor Lopez**

**This item was reviewed and unanimously recommended for approval by the Transit Committee on November 10, 2021. SBCTA General Counsel has reviewed this item.**

### **8. Amendment No. 1 to Contract No. 21-1002621 with Nossaman, LLP for Legal Advisement Services for the Brightline West Lease and Revised Cucamonga Station Agreement**

Pg. 124

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

A. Allocate \$200,000 of Valley Local Transportation Funds to Task 0313, Transit Right of Way Management, to support the development of the Brightline West lease and revised Cucamonga Station Agreement.

B. Approve Amendment No. 1 to Contract No. 21-1002621 with Nossaman, LLP for legal advisement services related to the Brightline West lease and revised Cucamonga Station Agreement, increasing the contract amount by \$200,000, for a new not-to-exceed amount of \$250,000, to be funded with Local Transportation Funds – Rail, contingent upon the submission of certificates of insurance demonstrating compliance with contract requirements.

**Presenter: Carrie Schindler**

**This item was reviewed and unanimously recommended for approval by the Transit Committee on November 10, 2021. SBCTA General Counsel, Procurement Manager, and Risk Manager have reviewed this item and the draft amendment.**

## **Consent Calendar Items Pulled for Discussion**

Items removed from the Consent Calendar shall be taken under this item in the order they were presented on the agenda.

## **DISCUSSION ITEMS**

### **Discussion - Administrative Matters**

#### **9. Board Member Appointments**

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A. Approve the re-appointment of Mayor John Dutrey, City of Montclair, to the Gold Line Phase II Joint Powers Authority to serve as the primary member for an additional two-year term expiring December 31, 2023.

B. Approve the re-appointment of Supervisor Janice Rutherford to the Sam and Alfreda L. Maloof Foundation for Arts and Crafts for an additional two year term expiring December 31, 2023.

C. Note the Presidential re-appointment of Mayor Frank Navarro, City of Colton; Mayor Acquanetta Warren, City of Fontana; and Mayor L. Dennis Michael, City of Rancho Cucamonga, to the Transit Committee for additional two-year terms expiring December 31, 2023.

D. Note the Presidential re-appointment of Mayor Acquanetta Warren, City of Fontana; Council Member David Avila, City of Yucaipa; and Vice Mayor Ed Paget, City of Needles, to the Southern California Association of Governments (SCAG) Community, Economic and Human Development Committee for additional two-year terms expiring December 31, 2023.

E. Note the Presidential re-appointment of Council Member Cynthia Moran, City of Chino Hills; Mayor John Valdivia, City of San Bernardino; and Council Member Rick Denison, Town of Yucca Valley, to the SCAG Energy and Environment Committee for additional two-year terms expiring December 31, 2023.

F. Note the Presidential re-appointment of Mayor John Dutrey, City of Montclair, to the SCAG Transportation Committee for a two-year term expiring December 31, 2023.

G. Approve the re-appointment of Mayor Pro Tem Alan Wapner, City of Ontario, to serve as a member of the Southern California Association of Governments (SCAG) Regional Council representing San Bernardino County Transportation Authority for a two-year term expiring December 31, 2023.

**Presenter: Marleana Roman**

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

### **Discussion - Project Delivery**

#### **10. Award On-Call Construction Management Contracts**

Pg. 132

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

A. Award Contract No. 22-1002663 with Anser Advisory Management, LLC, for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and

B. Award Contract No. 22-1002705 with Kleinfelder Construction Services, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and

### Agenda Item 10 (cont.)

C. Award Contract No. 22-1002706 with SYRUSA Engineering, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and

D. Award Contract No. 22-1002707 with TRC Engineers, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and

E. Award Contract No. 22-1002708 with WSP USA, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and

F. Approve a total expenditure authority for an amount not-to-exceed \$5,000,000, each for Contract Nos. 22-1002663, 22-1002705, 22-1002706, 22-1002707 and 22-1002708; for contract terms of five (5) years; and

G. Approve exception to the Procurement and Special Risk Assessment Policy No. 11000 and authorize the Executive Director, or his designee, to extend the contract duration by one (1) year beyond the contract terms of five (5) years to Contract Nos. 22-1002663, 22-1002705, 22-1002706, 22-1002707 and 22-1002708, if necessary.

**Presenter: Khalid Bazmi**

**This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft contracts.**

### Discussion - Regional/Subregional Planning

#### **11. Transportation Development Act Article 3 Award Extension Request: Orange Blossom Trail III** Pg. 136

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

Approve an additional deadline extension for the Transportation Development Act Article 3 Award for the City of Redlands Orange Blossom Trail III award from 12/31/2021 to 12/31/2023.

**Presenter: Ginger Koblasz**

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

### Discussion - Transit

#### **12. San Bernardino County Transportation Authority/Southern California Regional Rail Authority Acknowledgement Agreement for Rail Right-of-Way & Union Pacific Railroad Billing Dispute Settlement Agreement** Pg. 140

That the Board, acting as the San Bernardino County Transportation Authority;

A. Approve Contract No. 22-1002751 an Acknowledgement Agreement for Rail Right-of-Way between the San Bernardino County Transportation Authority (SBCTA) and Southern California Regional Rail Authority (SCRRA) to memorialize SCRRA's role in overseeing and administering certain agreements on behalf of SBCTA with respect to the provision of commuter rail service in San Bernardino County.

### Agenda Item 12 (cont.)

B. Approve Contract No. 22-1002752, a Union Pacific Railroad (UPRR) Billing Dispute Settlement Agreement between UPRR Company, SCRRA, Los Angeles County Metropolitan Transportation Authority, and SBCTA; SBCTA's part in this agreement is limited to acknowledging and agreeing to those provisions related to the Baldwin Park Branch Shared Use Agreement.

**Presenter: Carrie Schindler**

**This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreements.**

### **13. Release of Request for Proposals No. 22-1002700 for Arrow Maintenance Facility Hydrogen Fuel Upgrade Project: Hydrogen Fuel System** Pg. 377

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to release Request for Proposals No. 22-1002700 for the Arrow Maintenance Facility Hydrogen Fuel Upgrade Project: Hydrogen Fuel System, subject to final review by SBCTA General Counsel, Procurement Manager and Risk Manager.

B. Waive the Vendor Protest requirements of Policy No. 11007 for the RFP, approve the protest procedures in Section 34 of the Design Build Request for Proposals as deemed appropriate and in the best interests of SBCTA, and in accordance with applicable State and Federal law.

**Presenter: Carrie Schindler**

**This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Procurement Manager, and Risk Manager have reviewed this item and the draft RFP.**

### **Discussion - Legislative/Public Outreach**

### **14. Public Employees' Pension Reform Act of 2013 and Impact on Transit Funding** Pg. 394

Receive an update on recent decisions by the US Department of Labor on Public Employees' Pension Reform Act of 2013 (PEPRA) and potential impacts on transit funding.

**Presenter: Otis Greer**

**This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel has reviewed this item.**

### **Discussion - Transportation Programming and Fund Administration**

### **15. 2021 Update to the 10-Year Delivery Plan** Pg. 426

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

Approve the 2021 Update to the 10-Year Delivery Plan.

**Presenter: Andrea Zureick**

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

## **Public Comment**

Brief Comments from the General Public

## **Comments from Board Members**

Brief Comments from Board Members

## **Executive Director's Comments**

Brief Comments from the Executive Director

## **ADJOURNMENT**

## **Additional Information**

Attendance

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Acronym List

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## **Agency Reports**

Mobile Source Air Pollution Reduction Review Committee Agency Report

Pg. 449

## **Committee Membership**

Representatives on SCAG Committees

Pg. 452

Appointments to External Agencies

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Committee Membership

Pg. 455

## **Mission Statement**

Mission Statement

Pg. 460

## Meeting Procedures and Rules of Conduct

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

**Accessibility** - The meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk can be reached by phone at (909) 884-8276 or via email at [clerkoftheboard@gosbcta.com](mailto:clerkoftheboard@gosbcta.com) and office is located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA.

**Agendas** – All agendas are posted at [www.gosbcta.com/board/meetings-agendas/](http://www.gosbcta.com/board/meetings-agendas/) at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed online at that web address. Agendas are also posted at 1170 W. 3<sup>rd</sup> Street, 1st Floor, San Bernardino at least 72 hours in advance of the meeting.

**Agenda Actions** – Items listed on both the “Consent Calendar” and “Discussion” contain recommended actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors or unanimous vote of members present as provided in the Ralph M. Brown Act Government Code Sec. 54954.2(b).

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

**Public Testimony on an Item** – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a “Request to Speak” form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for each item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations. Members of the public requesting information be distributed to the Board of Directors must provide 40 copies of such information in advance of the meeting, except for noticed public hearings. Information provided as public testimony is not read into the record by the Clerk.

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

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

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

**Disruptive or Prohibited Conduct** – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive or prohibited conduct includes without limitation addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, bringing into the meeting any type of object that could be used as a weapon, including without limitation sticks affixed to signs, or otherwise preventing the Board from conducting its meeting in an orderly manner. Your cooperation is appreciated!

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

### **Attendance.**

- The Chair of the Board or a Policy Committee (Chair) has the option of taking attendance by Roll Call or Self-Introductions. If attendance is taken by Roll Call, the Clerk of the Board will call out by jurisdiction or supervisorial district. The Member or Alternate will respond by stating his/her name. If attendance is by Self-Introduction, the Member or Alternate will state his/her name and jurisdiction or supervisorial district.
- A Member/Alternate, who arrives after attendance is taken, shall announce his/her name prior to voting on any item.
- A Member/Alternate, who wishes to leave the meeting after attendance is taken but before remaining items are voted on, shall announce his/her name and that he/she is leaving the meeting.

### **Basic Agenda Item Discussion.**

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.
- The “aye” votes in favor of the motion shall be made collectively. Any Member who wishes to oppose or abstain from voting on the motion, shall individually and orally state the Member’s “nay” vote or abstention. Members present who do not individually and orally state their “nay” vote or abstention shall be deemed, and reported to the public, to have voted “aye” on the motion.

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

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

### **Amendment or Substitute Motion.**

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



**Call for the Question.**

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

**The Chair.**

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

**Courtesy and Decorum.**

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

*Adopted By SANBAG Board of Directors January 2008  
Revised March 2014  
Revised May 4, 2016*



# Important Dates to Remember...

## December 2021

**SBCTA Meetings – Cancelled:** Mountain/Desert Committee

**SBCTA Meetings – Scheduled:**

General Policy Committee	Dec 8	9:00 am	SBCTA Lobby, 1st Floor
Legislative Policy Committee	Dec 8	9:30 am	SBCTA Lobby, 1st Floor
Transit Committee	Dec 9	9:00 am	SBCTA Lobby, 1st Floor
Metro Valley Study Session	Dec 9	9:45 am	SBCTA Lobby, 1st Floor
I-10/I-15 Corridor Joint Sub-Committee	Dec 9	10:00 am	SBCTA Lobby, 1st Floor
Mountain/Desert Committee	CANCELLED	---	Mojave Desert AQMD

**Other Meetings/Events:**

None			
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**SBCTA Offices will be CLOSED:**

- **December 23, 2021 – December 31, 2021, for the Holidays**

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

## ***Minute Action***

### AGENDA ITEM: 1

***Date:*** December 1, 2021

***Subject:***

Information Relative to Possible Conflict of Interest

***Recommendation:***

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

***Background:***

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

<b>Item No.</b>	<b>Contract No.</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
3	16-1001515-03	Iteris, Inc. <i>Ramin Massoumi</i>	Crosstown Electrical & Data, Inc. Miovision Technologies, Inc. National Data & Surveying Services, Inc.
6	22-1002709	Euclid Housing, LP / WPH Holdings, LLC <i>Fariba Atighehchi</i>	None
	22-1002710	Stowell Villas, LP / WPH Holdings, LLC <i>Fariba Atighehchi</i>	None
8	21-1002621-01	Nossaman, LLP <i>Bernadette Duran-Brown</i>	None
10	22-1002663	Anser Advisory Management, LLC / National Capital Improvement Corp <i>Lucas Rathe, PE</i>	AIX Consulting, Inc. CL Surveying and Mapping, Inc. CMTS, LLC Danken Construction Engineering Group Dynamic Engineering Services, Inc. ECORP Consulting, Inc. Kleinfelder Construction Services, Inc. Leighton Consulting, Inc.

*Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority*

## Board of Directors Agenda Item

December 1, 2021

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Item No.	Contract No.	Principals & Agents	Subcontractors
10 cont.			PPM Group, Inc. PreScience Corporation Reddy Engineering Services, Inc. RT Engineering and Associates, Inc. Twining, Inc. Wallace and Associates Consulting, Inc. ZT Consulting Group, Inc.
	22-1002705	Kleinfelder Construction Services, Inc. <i>Marc McIntyre, PE</i>	WSP USA, Inc. TRC Engineers, Inc. Anser Advisory MNS Engineers, Inc. Fountainhead Consulting Corporation SYRUSA Engineering, Inc. Analyzer International, Inc. AIX Consulting, Inc. Dynamic Engineering Services, Inc. PPM Group, Inc. Reddy Engineering Services, Inc. SafeworkCM ZT Consulting Group, Inc. Aragon Geotechnical, Inc. Guida Surveying, Inc.
	22-1002706	SYRUSA Engineering, Inc. <i>Jose Corona, PE</i>	David Evans and Associates, Inc. Dynamic Engineering Services, Inc. ECORP Consulting, Inc. Hernandez, Kroone & Associates HDR Construction Control Corporation HNTB Corporation Kleinfelder Construction Services, Inc. Leighton Consulting, Inc. Mott Macdonald RT Engineering and Associates, Inc.

San Bernardino Council of Governments

San Bernardino County Transportation Authority

Item No.	Contract No.	Principals & Agents	Subcontractors
10 cont.			Southstar Engineering & Consulting TRC Engineers, Inc. WSP USA, Inc. ZT Consulting Group, Inc.
	22-1002707	TRC Engineers, Inc. <i>Steve Quezada</i>	ABBA Project Management Arcadis U.S., Inc. Atkins North America Inc. ARE/Project Management
			CALIWORKS, LLC David Evans and Associates, Inc. Dynamic Engineering Services, Inc. EPIC Land Solutions, Inc. EXP U.S. Services, Inc. FCG Consultants Ghirardelli Associates, Inc. Guida Surveying, Inc. Kleinfelder, Inc. Kleinfelder Construction Services, Inc. Leatherman Bioconsulting Leighton Consulting, Inc. Meadows Consulting MNS Engineers, Inc. Ninyo & Moore PPM Group, Inc. RailPros, Inc. Reddy Engineering Services, Inc. SYRUSA Engineering, Inc. WSP USA ZT Consulting Group, Inc.

## Board of Directors Agenda Item

December 1, 2021

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Item No.	Contract No.	Principals & Agents	Subcontractors
	22-1002708	WSP USA, Inc. <i>Ken Loncharich</i>	B&R (DBE/SBE) David Evans and Associates, Inc. Dynamic Engineering Services, Inc. FCG (SBE) Guida (SBE) Kleinfelder Construction Services KZAB (DBE/SBE) Leighton Group NV5 SYRUSA Engineering, Inc. (WBE/SBE) TRC Engineers, Inc. ZT Consulting Group, Inc. (SBE)
12	22-1002752	Union Pacific Railroad Company	None

**Financial Impact:**

This item has no direct impact on the budget.

**Reviewed By:**

This item is prepared monthly for review by Board and Committee members.

**Responsible Staff:**

Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

San Bernardino Council of Governments  
San Bernardino County Transportation Authority

## ***Minute Action***

### AGENDA ITEM: 2

***Date:*** *December 1, 2021*

***Subject:***

2022 Board of Directors and Policy Committee Meeting Schedule

***Recommendation:***

Approve the 2022 Board of Directors and Policy Committee meeting schedules.

***Background:***

The San Bernardino County Transportation Authority's (SBCTA) proposed 2022 Master Meeting Calendar is presented to the Board for approval to develop meeting dates and times that work with the Board of Directors and Policy Committee members' schedules and where possible, avoid potential conflicts with other meetings, allowing for better member participation. The regular meeting of the Board of Directors is held the first (1<sup>st</sup>) Wednesday of each month at 10:00 AM. The proposed calendar conforms to the regular meeting schedule of the Board of Directors with the exception noted below:

- Mountain/Desert Committee – The regular meeting date is the 3<sup>rd</sup> Friday of each month at 9:30 AM in Victorville. The proposed calendar conforms to this schedule with one exceptions. Due to the Mobility 21 Summit, it is recommended the August meeting date be moved to the 2<sup>nd</sup> Friday, August 12, 2022, at 9:30 AM.

Although a monthly schedule is adopted, it is acknowledged that when there are not sufficient business items to require a meeting, the meeting will be cancelled. It has also been the practice to modify the meeting date and time when the SBCTA Board meeting has been rescheduled due to conflicts with other meetings or holiday schedules. SBCTA staff, however, has been directed to make every effort to minimize deviation from the regular schedule to insure continuity of meetings and participation.

A 2022 meeting schedule is attached with proposed changes. The Board of Directors Metro Valley Study Session and all policy committees are dark in July. As a result, we will not schedule an August Board meeting unless absolutely critical. Committee members and staff are urged to calendar these meetings for the coming year. Advance confirmation of meetings or cancellation notices are part of SBCTA's standard procedures for meeting preparation.

The proposed 2022 Board of Directors dates are as follows:

**Board of Directors**

January 5, 2022	May 4, 2022	September 7, 2022
February 2, 2022	June 1, 2022	October 5, 2022
March 2, 2022	July 6, 2022	November 2, 2022
April 6, 2022	August 3, 2022 – <b>(DARK)</b>	December 7, 2022

*Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority*

The proposed 2022 Policy Committee dates are as follows:

**General Policy Committee**

January 12, 2022	May 11, 2022	September 14, 2022
February 9, 2022	June 8, 2022	October 12, 2022
March 9, 2022	July 13, 2022 ( <b>DARK</b> )	November 9, 2022
April 13, 2022	August 10, 2022	December 14, 2022

**Legislative Policy Committee**

January 12, 2022	May 11, 2022	September 14, 2022
February 9, 2022	June 8, 2022	October 12, 2022
March 9, 2022	July 13, 2022 ( <b>DARK</b> )	November 9, 2022
April 13, 2022	August 10, 2022	December 14, 2022

**Transit Committee**

January 13, 2022	May 12, 2022	September 15, 2022*
February 10, 2022	June 9, 2022	October 13, 2022
March 10, 2022	July 14, 2022 ( <b>DARK</b> )	November 10, 2022
April 14, 2022	August 11, 2022	December 15, 2022*

*\*This date falls on the 3<sup>rd</sup> Thursday of the month.*

**Metro Valley Study Session**

January 13, 2022	May 12, 2022	September 15, 2022*
February 10, 2022	June 9, 2022	October 13, 2022
March 10, 2022	July 14, 2022 ( <b>DARK</b> )	November 10, 2022
April 14, 2022	August 11, 2022	December 15, 2022*

*\*This date falls on the 3<sup>rd</sup> Thursday of the month.*

**Mountain/Desert Policy Committee**

January 21, 2022	May 20, 2022	September 16, 2022
February 18, 2022	June 17, 2022	October 21, 2022
March 18, 2022	July 15, 2022 ( <b>Dark</b> )	November 18, 2022
April 15, 2022	August 12, 2022*	December 16, 2022

*\*This meeting was moved to the 2<sup>nd</sup> Friday due to a conflict with M21 Summit.*

It is important to note, we do not have any information on when League of California Cities Mayors & Council Members Executive Forum will take place.

***Financial Impact:***

This item has no financial impact on the Fiscal Year 2021/2022 Budget.

***Reviewed By:***

The individual policy committee schedules were reviewed by the respective policy committees during the month of October with the exception of the Mountain/Desert Policy Committee.

***Responsible Staff:***

Raymond Wolfe, Executive Director  
San Bernardino Council of Governments  
San Bernardino County Transportation Authority



Board of Directors Agenda Item  
December 1, 2021  
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Approved  
Board of Directors  
Date: December 1, 2021  
Witnessed By:

San Bernardino Council of Governments  
San Bernardino County Transportation Authority

# SBCTA / SBCOG 2022 Master Calendar

~ January 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1 New Year's Day Holiday
2	3	4	5 Board	6 City/County Manager's TAC  SCAG Regional Council	7  Orthodox Christmas	8
9	10	11	12 General Policy Committee  Legislative Policy Committee	13 Transit Committee  Metro Valley Study Session  I-10/I-15 Joint Sub-Committee	14  Orthodox New Year	15
16	17 Martin Luther King Day Holiday	18	19  LAFCO Hearing  US Conference of Mayors	20  League of California Cities New Mayors & Council Members Academy  US Conference of Mayors	21 Mt/Desert Policy Committee  League of California Cities New Mayors & Council Members Academy  US Conference of Mayors	22
23	24	25	26	27  League of California Cities New Mayors & Council Members Academy	28  League of California Cities New Mayors & Council Members Academy	29
30	31					

Board of Directors meetings start at 10:00 a.m.  
General Policy Committee starts at 9:00 a.m.  
Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ February 2022 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 Board	3 City/County Manager's TAC SCAG Regional Council	4	5
6	7	8	9 General Policy Committee Legislative Policy Committee	10 Transit Committee Metro Valley Study Session I-10/I-15 Joint Sub-Committee	11	12 NACo Legislative Conference
13 NACo Legislative Conference	14 NACo Legislative Conference	15 NACo Legislative Conference	16 LAFCO Hearing NACo Legislative Conference	17	18 Mt/Desert Policy Committee	19
20	21 Presidents' Day Holiday	22	23	24	25	26
27	28					

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
General Policy Committee starts at 9:00 a.m.  
Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ March 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 Board	3 City/County Manager's TAC SCAG Regional Council	4	5
6	7	8	9 General Policy Committee Legislative Policy Committee	10 Transit Committee Metro Valley Study Session I-10/I-15 Joint Sub-Committee	11	12
13 Daylight Savings Time Begins	14	15	16 LAFCO Hearing	17	18 Mt/Desert Policy Committee	19
20	21	22	23	24	25	26
27	28	29	30	31 Cesar Chavez Day		

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
General Policy Committee starts at 9:00 a.m.  
Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ April 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
<b>NOTES:</b> *City/County Manager's TAC cancelled due to City/County Conference.					1	2 Ramadan
3 Ramadan	4 Ramadan	5 Ramadan	6 Board Ramadan	7 *City/County Manager's TAC (Cancelled) SCAG Regional Council City/County Conference Ramadan	8 City/County Conference Ramadan	9 Ramadan
10 Ramadan	11 Ramadan	12 Ramadan	13 General Policy Committee Legislative Policy Committee Ramadan	14 Transit Committee Metro Valley Study Session I-10/I-15 Joint Sub-Committee Ramadan	15 Mt/Desert Policy Committee Good Friday Passover Ramadan	16 Passover Ramadan
17 Easter Passover Ramadan	18 Passover Ramadan	19 Passover Ramadan	20 LAFCO Hearing Passover Ramadan	21 Passover Ramadan	22 Passover Ramadan	23 Passover Ramadan
24 Ramadan	25 Ramadan	26 Ramadan	27 Ramadan	28 Ramadan	29 Laylat al-Qadr Ramadan	30 Ramadan

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
 General Policy Committee starts at 9:00 a.m.  
 Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
 Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
 I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ May 2022 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1  Ramadan	2  Ramadan	3	4  Board	5  City/County Manager's TAC  SCAG Regional Council  SCAG General Assembly (Tentative)	6  SCAG General Assembly (Tentative)	7
8	9	10	11  General Policy Committee  Legislative Policy Committee	12  Transit Committee  Metro Valley Study Session  I-10/I-15 Joint Sub-Committee	13	14
15	16	17	18  LAFCO Hearing	19	20  Mt/Desert Policy Committee	21
22	23	24	25	26	27	28
29	30  Memorial Day Holiday	31				

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
General Policy Committee starts at 9:00 a.m.  
Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ June 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
<b>NOTES:</b>  <b>**It is important to note we do not have any information on when the League of CA Cities Mayors &amp; Council Members Executive Forum will take place.</b>			<b>1</b> Board	<b>2</b> City/County Manager's TAC SCAG Regional Council	<b>3</b>	<b>4</b>  Shavuot
<b>5</b>  Shavuot	<b>6</b>  Shavuot	<b>7</b>	<b>8</b> General Policy Committee Legislative Policy Committee	<b>9</b> Transit Committee Metro Valley Study Session I-10/I-15 Joint Sub-Committee	<b>10</b>	<b>11</b>
<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>  LAFCO Hearing	<b>16</b>	<b>17</b> Mt/Desert Policy Committee	<b>18</b>
<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>
<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>		

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
General Policy Committee starts at 9:00 a.m.  
Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ July 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
<b>NOTES:</b> *No policy committee meetings.					1	2
3	4 Independence Day Holiday	5	6 Board	7 *City/County Manager's TAC (DARK)  SCAG Regional Council	8	9 Eid al-Adha
10 Eid al-Adha	11 Eid al-Adha	12 Eid al-Adha	13 *General Policy Committee (DARK)  *Legislative Policy Committee (DARK) Eid al-Adha	14 *Transit Committee (DARK)  *Metro Valley Study Session (DARK)  *I-10/I-15 Joint Sub-Committee (DARK)	15 *Mt/Desert Policy Committee (DARK)	16
17	18	19	20 LAFCO Hearing	21 NACo Annual Meeting	22 NACo Annual Meeting	23 NACo Annual Meeting
24 NACo Annual Meeting	25	26	27	28	29	30 Muharram
31						

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
 General Policy Committee starts at 9:00 a.m.  
 Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
 Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
 I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.



# SBCTA / SBCOG 2022 Master Calendar

~ August 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3 *Board (DARK)	4 City/County Manager's TAC SCAG Regional Council	5	6
7	8	9	10 General Policy Committee Legislative Policy Committee	11 Transit Committee Metro Valley Study Session I-10/I-15 Joint Sub-Committee	12 **Mt/Desert Policy Committee	13
14	15	16	17 LAFCO Hearing	18 Janmashtami	19 Mobility 21 Summit Janmashtami	20
21	22	23	24	25	26	27
28	29	30	31	NOTES: *No Board Meeting. **Mt/Desert Policy Committee moved to 2 <sup>nd</sup> week due to conflict with Mobility 21 Summit.		

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
 General Policy Committee starts at 9:00 a.m.  
 Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
 Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
 I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ September 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
<b>NOTES:</b> *This date falls on the 3 <sup>rd</sup> Thursday of the month.				<b>1</b> City/County Manager's TAC SCAG Regional Council	<b>2</b>	<b>3</b>
<b>4</b>	<b>5</b> Labor Day Holiday	<b>6</b>	<b>7</b> Board League of CA Cities Annual Conference	<b>8</b> League of CA Cities Annual Conference	<b>9</b> League of CA Cities Annual Conference	<b>10</b>
<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b> General Policy Committee Legislative Policy Committee	<b>15</b> *Transit Committee *Metro Valley Study Session *I-10/I-15 Joint Sub-Committee	<b>16</b> Mt/Desert Policy Committee	<b>17</b>
<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b> LAFCO Hearing	<b>22</b>	<b>23</b>	<b>24</b>
<b>25</b> Rosh Hashanah	<b>26</b> Rosh Hashanah Navratri	<b>27</b> Rosh Hashanah Navratri	<b>28</b> Navratri	<b>29</b> Navratri	<b>30</b> Navratri	

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
 General Policy Committee starts at 9:00 a.m.  
 Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
 Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
 I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ October 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1 Navratri
2 Navratri	3 Navratri	4 Navratri Yom Kippur	5 Board Navratri Yom Kippur	6 City/County Manager's TAC SCAG Regional Council	7	8 Prophet Muhammad's Birthday
9 Sukkot	10 Columbus Day Holiday Sukkot	11 Sukkot	12 General Policy Committee Legislative Policy Committee Sukkot	13 Transit Committee Metro Valley Study Session I-10/I-15 Joint Sub-Committee Sukkot	14 Sukkot	15 Sukkot
16 Shemini Atzeret Sukkot	17 Shemini Atzeret Simchat Torah	18 Shemini Atzeret Simchat Torah	19 LAFCO Hearing	20	21 Mt/Desert Policy Committee	22
23	24 Diwali	25	26	27	28	29
30	31 Halloween					

Board of Directors meetings start at 10:00 a.m.  
General Policy Committee starts at 9:00 a.m.  
Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

# SBCTA / SBCOG 2022 Master Calendar

~ November 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 Board	3 City/County Manager's TAC SCAG Regional Council	4	5
6 Daylight Savings Time Ends	7	8	9 General Policy Committee Legislative Policy Committee	10 Transit Committee Metro Valley Study Session I-10/I-15 Joint Sub-Committee	11 Veteran's Day Holiday	12
13	14 CSAC Annual Meeting	15 CSAC Annual Meeting	16 LAFCO Hearing CSAC Annual Meeting	17 CSAC Annual Meeting	18 Mt/Desert Policy Committee CSAC Annual Meeting	19
20	21	22	23	24 Thanksgiving Day Holiday	25 Thanksgiving Day After	26
27	28	29	30			

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
General Policy Committee starts at 9:00 a.m.  
Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

# SBCTA / SBCOG 2022 Master Calendar

~ December 2022 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
<b>NOTES:</b> *This date falls on the 3 <sup>rd</sup> Thursday of the month.				<b>1</b> City/County Manager's TAC SCAG Regional Council	<b>2</b>	<b>3</b>
<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b> Board	<b>8</b>	<b>9</b>	<b>10</b>
<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b> General Policy Committee Legislative Policy Committee	<b>15</b> *Transit Committee *Metro Valley Study Session *I-10/I-15 Joint Sub-Committee	<b>16</b> Mt/Desert Policy Committee	<b>17</b>
<b>18</b> Hanukkah	<b>19</b> Hanukkah	<b>20</b> Hanukkah	<b>21</b> LAFCO Hearing Hanukkah	<b>22</b> Hanukkah	<b>23</b> Christmas Eve (Observed) Holiday Hanukkah	<b>24</b> Christmas Eve Hanukkah
<b>25</b> Christmas Day Hanukkah	<b>26</b> Christmas Day (Observed) Holiday Hanukkah Kwanzaa	<b>27</b> Kwanzaa	<b>28</b> Kwanzaa	<b>29</b> Kwanzaa	<b>30</b> New Years Eve (Observed) Holiday Kwanzaa	<b>31</b> New Years Eve Kwanzaa

Attachment: 2022 Master Meeting Calendar (7991 : 2022 Meeting Calendar)

Board of Directors meetings start at 10:00 a.m.  
 General Policy Committee starts at 9:00 a.m.  
 Mountain/Desert Committee starts at 9:30 a.m.

Legislative Policy Committee starts at 9:30 a.m.  
 Transit Committee starts at 9:00 a.m.

Metro Valley Study Session starts at 9:30 a.m.  
 I-10/I-15 Joint Sub-Committee starts at 9:45 a.m.

## ***Minute Action***

### AGENDA ITEM: 3

***Date: December 1, 2021***

***Subject:***

San Bernardino Valley Coordinated Traffic Signal System - Amendments to Iteris Inc. Contract No. 16-1001515

***Recommendation:***

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

- A. Approve Amendment No. 3 to Contract No. 16-1001515 with Iteris, Inc. (Iteris) to increase the Contract not-to-exceed amount by \$1,000,000 to \$4,227,021.72 and extend the expiration date from January 3, 2022 to January 3, 2023.
- B. Waive the five (5) year maximum contract term as defined in the Contracting and Procurement Policy No. 11000 since Amendment No. 3 would extend the Contract beyond five years.
- C. Authorize the Executive Director, or his designee, to execute Contract Task Order (CTO) No. 5 for Contract No. 16-1001515 with Iteris to implement the Haven Avenue Corridor Technological Enhancement Pilot Project in an amount not-to-exceed \$1,000,000 after execution of Amendment No. 3.
- D. Authorize the Executive Director, or his designee, to execute Amendment No. 5 to CTO No. 2 for Contract No. 16-1001515 with Iteris to extend the task order completion date by one (1) year to January 3, 2023 after execution of Amendment No. 3.

***Background:***

On January 4, 2017, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) awarded Contract No. 16-1001515 (Contract) to Iteris, Inc. (Iteris) as a Contract Task Order (CTO) for the continuing operation and maintenance of the San Bernardino Valley Coordinated Traffic Signal System (SBVCTSS).

On December 16, 2019, the Contract was amended to exercise the first of two one-year options, extending the expiration date from January 31, 2020 to January 31, 2021. On January 8, 2021, the Contract was amended to exercise the second one-year option, extending the Contract expiration date from January 31, 2021 to January 3, 2022.

In July 2021, the Board provided direction on the next steps for the SBVCTSS. Action included a requirement for the Board to approve a proposed competitive process for allocation of additional Measure I Traffic Management System (TMS) funds for the program. Establishment of an Emerging Technology Ad Hoc Committee was recommended that could provide input into the competitive process and scope of work for additional SBVCTSS investment. In October 2021, the Board established the Emerging Technology Ad Hoc Committee to consider and evaluate opportunities for technology deployment throughout the San Bernardino Valley. Future SBVCTSS efforts will be vetted through the Emerging Technology Ad Hoc Committee and since the committee is in its infancy, it is desirable to retain the services of Iteris until a new vendor is procured and direction on the future of the SBVCTSS can be provided.

*Entity: San Bernardino County Transportation Authority*

Also, in July 2021, the Board allocated \$1,000,000 to the Haven Avenue Corridor Technology Enhancement Pilot Project and up to \$250,000 annually to continue support of the existing SBVCTSS. Under the Contract, Iteris has been providing annual support to San Bernardino Valley jurisdictions since 2017 and it is desirable to continue this support until a new vendor is procured.

To date, four (4) CTOs have been approved and issued under the Contract with their current status as follows:

- CTO No. 1: Coordination Master Plans issued March 31, 2017, for \$479,999. Work was completed for \$479,318.20.
- CTO No. 2: On-Call System Support Services issued February 10, 2017, for \$100,000. Amendment No. 1 issued August 15, 2018, for an additional \$200,000. Amendment No. 2 issued February 11, 2019, for an additional \$200,000. Amendment No. 3 issued September 22, 2020, extending the CTO completion date to January 31, 2021. Amendment No. 4 issued January 19, 2021, for an additional \$737,022.72 and extending the CTO completion date to January 3, 2022. Total authorized amount to date: \$1,237,022.72. Work is ongoing, amount billed as of September 31, 2021: \$657,604.78.
- CTO No. 3: Semi-Annual Assessment issued March 31, 2017, for \$300,000. Work was completed for \$228,189.19.
- CTO No. 4: Update Coordination Timing Plans issued March 29, 2018, for \$1,100,000. Amendment No. 1 authorized September 28, 2020, for \$110,000. Total authorized amount to date: \$1,210,000. Work was completed for \$1,184,956.15.

Out of the total CTO authorized amount of \$3,227,021.72, a total of \$2,550,068.32, has been expended as of September 31, 2021, with a balance of \$676,953.40.

One of the remaining task orders that is currently underway is the Haven Avenue Corridor Technology Enhancement Pilot Project (Pilot Project). Iteris has been coordinating with the Cities of Ontario and Rancho Cucamonga (Cities), conducting detailed field inventory, and is scheduled to complete the Intelligent Transportation System (ITS) upgrade design, Asset Management System (AMS) software implementation for 13 intersections in the City of Ontario, Signal Performance Measure (SPM) software implementation for 33 intersections (13 in the City of Ontario and 20 in the City of Rancho Cucamonga), and Traffic Signal Synchronization at 39 intersections along Haven Avenue from Ontario Ranch Road in the City of Ontario to Wilson Avenue in the City of Rancho Cucamonga, including six California Department of Transportation (Caltrans) freeway on and off ramp intersections. AMS and SPM software will assist the Cities in monitoring their traffic communication network and signal operational performance, respectively. However, both software packages are new to the Cities and extending the Contract for one (1) additional year will facilitate training and continual support which in turn will benefit both Cities' staff in learning and using both software to their full capabilities.

For the Haven Avenue traffic signal synchronization task, even though new timing is anticipated to be implemented by December 2021, it is beneficial for Iteris to monitor and further fine tune the new timings for a few months beginning in January 2022, to continue to account for traffic pattern shifts as traffic settles into post Covid-19 pandemic conditions.

The ITS upgrade design is scheduled to complete by January 2022, and it is advantageous for SBCTA to retain the services of Iteris to manage and oversee the implementation of the upgrades for the following reasons:

- The need to develop a complete Invitation for Bids (IFB) package, including project specifications, is no longer necessary.
- Implementation can commence as soon as design plans are approved.
- Some equipment (e.g. signal cabinet) has a very long acquisition lead time and using this turn-key method can allow equipment to be ordered before design plans are approved, thus preventing implementation delay.
- Vendor markup on equipment costs will be eliminated, thus saving overall project cost.
- Design support during implementation due to unforeseen circumstances (e.g. underground utility conflicts) can be resolved in a timely manner.
- The on-going construction of the Interstate 10 Express Lane Project, which will upgrade both traffic signals at the Haven Avenue ramps, would require close coordination between the Express Lane contractor and the Iteris Haven Avenue project team for potential design/implementation modifications. Iteris management of the implementation will facilitate coordination so changes can be expedited to ensure timely completion of this project.

In addition to the Pilot Project, there are a few SBVCTSS support tasks that are either in progress or outstanding. One example is the I-10 University Street Signal Coordination Timing which can only be implemented after the construction of the Project which is not anticipated to be complete until March 2022.

Per Policy No. 11000, V.C.3.a, amendments can be done to increase the contract not-to-exceed amount and to extend the contract term based on factors outside of the consultant's control and not anticipated during the initial cost proposal. Based on direction from the Board regarding allocation for funds and additional scope to cover the implementation of the Pilot Project, as well as the outstanding on-call system support tasks, staff is recommending Amendment No. 3 to Contract No. 16-1001515 with Iteris to allow for the Emerging Technology Ad Hoc Committee to vet the future direction of the SBVCTSS program. Amendment No. 3 will extend the Contract by one (1) year and to increase the Contract not-to-exceed amount by \$1,000,000 to \$4,227,021.72. Since this will extend the Contract beyond five (5) years, staff is requesting waiver of the five-year maximum contract term as defined in the Contracting and Procurement Policy No. 11000.



## Board of Directors Agenda Item

December 1, 2021

Page 4

Staff is recommending CTO No. 5 in an amount not-to-exceed \$1,000,000, be authorized for Iteris to implement the Pilot Project which includes the ITS upgrade, design support during implementation, training and continual support on AMS and SPM software, and monitoring and fine-tuning the new timings after the traffic signal synchronization task is completed.

Staff is also recommending Amendment No. 5 to CTO No. 2 to extend the CTO completion date by one (1) year to January 3, 2023 to continue support of on-call tasks and any new system support that this requested by local jurisdictions for the next year, utilizing the balance amount available including the authorized contingency, as appropriate, in the Contract.

***Financial Impact:***

This item is consistent with the Fiscal Year 2021/2022 Budget under Task No. 0860 Arterial Projects, Sub-Task No. 0701 Valley Signal Coordination.

***Reviewed By:***

This item was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 10, 2021. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item, the draft amendment and the CTO.

***Responsible Staff:***

Timothy Byrne, Director of Toll Program

---

Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

## Contract Summary Sheet

3.a

## General Contract Information

Contract No: 16-1001515 Amendment No.: 3

Contract Class: Payable Department: Project Delivery

Vendor No.: 01105 Vendor Name: Iteris, Inc.

Description: SBVCTSS

List Any Related Contract Nos.:

Dollar Amount							
Original Contract		\$	3,227,021.72	Original Contingency		\$	235,400.00
Prior Amendments				Prior Amendments		\$	-
Current Amendment		\$	1,000,000.00	Current Amendment		\$	-
Total/Revised Contract Value		\$	4,227,021.72	Total Contingency Value		\$	235,400.00
	Total Dollar Authority (Contract Value and Contingency)					\$	4,462,421.72

## Contract Authorization

Board of Directors Date: 12/01/2021 Board Item # 8141

## Contract Management (Internal Purposes Only)

Other Contracts

Sole Source? No

No Budget Adjustment

Local

Design

## Accounts Payable

Estimated Start Date: 01/04/2017 Expiration Date: 01/03/2022 Revised Expiration Date: 01/03/2023

NHS: No

QMP/QAP: No

Prevailing Wage: No

Total Contract Funding:

Total Contingency:

Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	\$		\$	
GL	4180	40	0860	0701	52001	41100000	620	MSI-TMS	2,628,000.00		
GL	2830	40	0860	0701	52001	44214007	620	MSRC	1,000,000.00		
GL	6010	40	0860	0701	52001			Local (Various Cities)	599,021.72		235,400.00
GL									-		-
GL									-		-
GL									-		-
GL									-		-
GL									-		-
GL									-		-

Heng Chow

Paula Beauchamp

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes:

Attachment: CSS\_16-1001515 Amendment 3 (8141 : SBVCTSS - 16-1001515 Iteris Contract Amendment 3, CTO 5 and CTO 2 Amendment 5)

**AMENDMENT NO. 3 TO CONTRACT NO. 16-1001515**

**BY AND BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**ITERIS, INC.**

**FOR**

**SAN BERNARDINO VALLEY COORDINATED TRAFFIC SIGNALS SYSTEMS (SBVCTSS)  
UPDATE COORDINATION TIMING PLANS, SEMI-ANNUAL ASSESSMENTS AND ON-CALL  
SYSTEM SUPPORT**

This AMENDMENT No. 3 to Contract No. 16-1001515 is made by and between the San Bernardino County Transportation Authority ("SBCTA") and Iteris, Inc. ("CONSULTANT"). SBCTA and CONSULTANT are each a "Party" and collectively the "Parties" herein.

**RECITALS:**

- A. The Parties entered into Contract No. 16-1001515 on January 18, 2017, setting forth the terms and conditions for SBVCTSS update coordination timing plans, semi-annual assessment and on-call system support ("Contract"); and
- B. The Parties entered into Amendment No. 1 on December 16, 2019, exercising the first of two year options to extend the Contract expiration date to January 31, 2021; and
- C. The Parties entered into Amendment No. 2 on January 8, 2021, exercising the second of two year options to extend the Contract expiration date to January 3, 2022; and
- D. SBCTA and CONSULTANT desire to further amend the Contract to increase the Contract not-to-exceed amount to \$4,227,021.72; and extend the contract expiration date to January 3, 2023.

**NOW, THEREFORE,** the Parties agree to amend the Contract as follows:

1. Article 4., Performance Period, is removed and replaced in its entirety to read as follows:

**"ARTICLE 4. PERFORMANCE PERIOD**

- 4.1 This Contract shall go into effect on January 4, 2017; contingent upon approval by SBCTA's Awarding Authority, and CONSULTANT shall commence work after written notification to proceed by SBCTA's Procurement Analyst. The Contract shall end on January 3, 2023, unless extended by written amendment.

4.2 CONSULTANT is advised that any recommendation for contract award is not binding on SBCTA until the Contract is fully executed and approved by SBCTA's Awarding Authority.

4.3 Intentionally Omitted.”

2. Article 5.17 is removed and replaced in its entirety to read as follows:

“The total amount payable by SBCTA for all CTO’s resulting from this Contract shall not exceed Four Million Two Hundred Twenty-Seven Thousand Twenty-One Dollars and Seventy-Two Cents (\$4,227,021.72). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Contract through CTOs.”

3. Except as amended by this Amendment No. 3, all other provisions of the Contract and amendments thereto shall remain in full force and effect and are incorporated herein by this reference.

4. The Recitals set forth above are incorporated herein by this reference.

5. This Amendment No. 3 is effective upon execution by SBCTA.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No.3 below.

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**CONSULTANT**

By: \_\_\_\_\_  
Curt Hagman  
President, Board of Directors

By: \_\_\_\_\_  
Ramin Massourni  
Senior Vice President and General Manager

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Khristine Arakaki  
Assistant Secretary

By: \_\_\_\_\_  
Juanda L. Daniel  
Assistant General Counsel

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

CONCURRENCE:

By: \_\_\_\_\_  
Jeffery Hill  
Procurement Manager



## Contract Task Order

3.c

Except as otherwise expressly provided herein, Consultant hereby agrees to perform the work described below in accordance with all of the terms and conditions of the Master Contract referenced below. The Consultant shall furnish the necessary facilities, professional, technical and supporting personnel required by this Contract Task Order (CTO) as described below.

Consultant Name: Iteris, Inc. Contract No.: 16-1001515  
CTO No.: 5  
Amendment No.: 0

Period of Performance: CTO Start Date: 12/1/2021 CTO Completion Date: 1/3/2023

### Scope of Work Description – Attachment A

### CTO Pricing – Attachment B

☐ Lump Sum ☒ Time and Materials

Original CTO Amount: \$ 1,000,000 Not to Exceed CTO Amount: \$ 1,000,000.00  
Amendment # 0 to CTO # 5: Not to Exceed Amendment Amount: \$ 0  
Cumulative Amount of All Amendments: \$ 0  
REVISED TOTAL CTO AMOUNT (Amount includes all Amendments): \$ 1,000,000.00  
Funding String For This CTO: 4180.40.0860.0701.52001.41100000

<u>Subcontractors:</u>	<u>DBE</u>	<u>Amount</u>	<u>Cumulative Amount</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

Consultant hereby acknowledges receipt and acceptance of the Contract Task Order.  
Authorized to sign:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

San Bernardino County Transportation Authority

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

Contract Expires: 1/31/22 Pending Amendment No. 3

Available Authority: \$74,469.89

## SCOPE OF WORK

### **Task 1: ITS / Communication Upgrade Construction and Integration**

In order to prevent delays in equipment delivery due to long lead time caused by the pandemic, Iteris, Inc., (Iteris) will order all project equipment upon receipt of the 90% review comments. After the design has been successfully completed and the equipment has been procured, Iteris and its subcontractor will schedule a pre-construction meeting with both Cities to go over the details and schedule of construction. The equipment will be procured by Iteris and will be installed and integrated with the assistance of our subcontractor. Iteris' in-house experts will expand on existing or generate new Virtual Local Area Networks (VLANs) for the communications network, and also configure switches, controllers, Internet Protocol (IP) cameras, VDS, etc. for deployment. In addition to the preparation of equipment installation, Iteris staff will also be present in the field not only for construction management (review shop drawings, respond to RFIs, quality management, etc.), but also to implement signal hardware, provide integration support, and troubleshooting. We will ensure that both cities are satisfied with the equipment upgrades before finalizing the project.

### **Task 2: Design Support and Construction Documentation**

It is imperative to document the condition of all equipment that are affected during construction. Iteris will work closely with our subcontractor to ensure City standards and guidelines are adhered to. If design changes are necessary due to unforeseen circumstances, SBCTA and the appropriate agency will be notified and approval requested prior to proceeding. All manufacture warranties will be provided to the cities prior to acceptance of the project. Upon completion of construction, Iteris will conduct field site visits throughout the entire corridor to take pictures and document that all improvements are completed to the City's satisfaction. While performing the field site visits, any deviations in the design plans will be noted and incorporated into the as-builts (record drawings).

## Attachment B

**COST ESTIMATE**

Below are the ITS and communication upgrade construction cost estimates for Haven Avenue Technological Enhancement:

City of Ontario	Unit	Qty	Unit Price	Cost
Video detection system (VDS) at Conkurs, Guasti & Riverside	ea	3	\$ 40,000	\$ 120,000
CCTV upgrade at Guasti, Inland Empire & Philadelphia	ea	3	\$ 10,000	\$ 30,000
Traffic signal controller upgrade at Creekside	ea	1	\$ 5,000	\$ 5,000
Traffic signal cabinet upgrade at Conkurs, Creekside, Riverside & Inland Empire	ea	4	\$ 35,000	\$ 140,000
Fiber optic cable in existing conduit from Philadelphia to Francis	LF	3300	\$ 15	\$ 49,500
Fiber optic cable in existing conduit from Creekside to Riverside to Mill Creek	LF	3900	\$ 15	\$ 58,500
Center-to-center communication between Ontario and Caltrans	LS	1	\$ 15,000	\$ 15,000
Center-to-center communication between Ontario and Rancho Cucamonga	LS	1	\$ 41,000	\$ 41,000
Design Support During Construction	LS	1	\$ 47,000	\$ 47,000
			Subtotal:	\$ 506,000
			20% Contingencies:	\$ 101,200
			<b>Total Cost Estimates (Ontario):</b>	<b>\$ 607,200</b>
City of Rancho Cucamonga	Unit	Qty	Unit Price	Cost
Video detection system (VDS) at Amber, Banyan, Lemon & Alta Loma	ea	4	\$ 40,000	\$ 160,000
CCTV upgrade at Amber, Banyan & Alta Loma	ea	3	\$ 10,000	\$ 30,000
Center-to-center communication between Ontario and Rancho Cucamonga	LS	1	\$ 41,000	\$ 41,000
Reimbursement of Asset Management System (procured by City)	LS	1	\$ 50,000	\$ 50,000
Design Support During Construction	LS	1	\$ 47,000	\$ 47,000
			Subtotal:	\$ 328,000
			20% Contingencies:	\$ 65,600
			<b>Total Cost Estimates (Rancho Cucamonga):</b>	<b>\$ 393,600</b>
			<b>TOTAL COST ESTIMATES:</b>	<b>\$1,000,800</b>

Attachment: CTO 5 A &amp; B (8141 : SBVCTSS - 16-1001515 Iteris Contract Amendment 3, CTO 5 and CTO 2 Amendment 5)



## Contract Task Order

3.e

Except as otherwise expressly provided herein, Consultant hereby agrees to perform the work described below in accordance with all of the terms and conditions of the Master Contract referenced below. The Consultant shall furnish the necessary facilities, professional, technical and supporting personnel required by this Contract Task Order (CTO) as described below.

Consultant Name: Iteris, Inc. Contract No.: 16-1001515  
CTO No.: 2  
Amendment No.: 5

Period of Performance: CTO Start Date: 3/15/2017 CTO Completion Date: 1/3/2023

**Scope of Work Description** – *No change to Scope of Work items is requested by this amendment*

**CTO Pricing** – *No change to the amendment price is requested by this amendment*

☐ Lump Sum ☒ Time and Materials

Original CTO Amount: \$ <u>100,000</u>	Not to Exceed CTO Amount:	\$ <u>100,000.00</u>
Amendment # <u>5</u> to CTO # <u>2</u> :	Not to Exceed Amendment Amount:	\$ <u>0</u>
	Cumulative Amount of All Amendments:	\$ <u>1,137,022.72</u>
REVISED TOTAL CTO AMOUNT (Amount includes all Amendments):		\$ <u>1,237,022.72</u>
	Funding String For This CTO:	<u>4180.40.0860.0701.52001.41100000</u>

<u>Subcontractors:</u>	<u>DBE</u>	<u>Amount</u>	<u>Cumulative Amount</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

Consultant hereby acknowledges receipt and acceptance of the Contract Task Order.  
Authorized to sign:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

San Bernardino County Transportation Authority

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

Contract Expires: 1/31/22 Pending Amendment No. 3

Available Authority: \$74,469.89





949.270.9400  
iteris.com

1700 Carnegie Avenue, Suite 100  
Santa Ana, CA 92705

October 11, 2021

Mr. Tim Byrne  
San Bernardino County Transportation Authority  
1170 West Third Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410

**RE: SBVCTSS 16-1001515 – Request for Contract Extension**

Dear Tim,

Iteris, Inc. (Iteris) has been pleased to provide traffic engineering services to SBCTA for the San Bernardino Valley Coordinated Traffic Signal Synchronization (SBVCTSS) Program Project. As you are aware, our current contract 16-1001515 is going to expire on January 3, 2022. However, as Iteris is currently working on a few task orders that are anticipated to extend past January 2022, we are therefore respectfully requesting SBCTA to further extend our contract for one more year to January 2023.

Two notable task orders that are in progress and would require time extension are:

1. I-10 and University Avenue Signal Coordination Timing

The scope for this task order includes preparation and implementation of signal coordination timing at both reconstructed eastbound and westbound I-10 freeway on/off ramps at University Avenue and at University / Citrus intersection, as part of the I-10/University Interchange Improvement Project, also led by SBCTA. However, we were told recently by SBCTA that the construction of that project is scheduled to complete around March 2022. Because implementation of new coordination timing cannot be done until construction is complete, an extension of the current task order and our overall contract is therefore necessary.

2. Haven Avenue Corridor Technological Enhancement Pilot Project

Our current scope for this task order includes the following tasks:

- Intelligent Transportation System (ITS) upgrade design –
  - Video detection system (VDS) upgrade at seven intersections (4 in Rancho Cucamonga and 3 in Ontario)
  - CCTV upgrade at six intersections (3 in Rancho Cucamonga and 3 in Ontario)
  - Traffic signal controller upgrade at Haven/Creekside in Ontario
  - Traffic signal cabinet upgrade at four intersections in Ontario
  - Fiber optic communication design in Ontario
  - Center-to-center communication design between Ontario and Caltrans
  - Center-to-center communication design between Ontario and Rancho Cucamonga
- Asset Management System (AMS) software implementation for 13 intersections in Ontario
- Signal Performance Measure (SPM) software implementation for 33 intersections (13 in Ontario and 20 in Rancho Cucamonga)
- Traffic Signal Synchronization at 39 intersections along Haven Avenue from Ontario Ranch Road (Ontario) to Wilson Avenue (Rancho Cucamonga), including six Caltrans freeway on/off ramp intersections



949.270.9400  
iteris.com

1700 Carnegie Avenue, Suite 100  
Santa Ana, CA 92705

AMS and SPM software can help the cities monitor their traffic communication network and signal operational performance, respectively. However, both software packages are new to the Cities and therefore extending our contract for one additional year will facilitate training and continual support which in turn will benefit both Cities' staff in learning and using both software to their full capabilities.

Iteris has successfully implemented similar ITS / communication upgrades and signal coordination timings along many corridors using the same turn-key delivery method to save time and money. An example is the recently completed Main Street Regional Traffic Signal Synchronization Project (RTSSP) in Orange County --- a \$3.6 million project with ITS design, construction and signal timing coordination for a 12-mile corridor of 64 intersections spanning four agencies. It was completed in 18 months despite unexpected delay caused by the unprecedented COVID-19 pandemic, with a construction saving of over \$163,000.

The following provides the scope of work (SOW) for the turn-key delivery method led by Iteris.

## SCOPE OF WORK

### Task 1: ITS / Communication Upgrade Construction and Integration

In order to prevent delays in equipment delivery due to long lead time caused by the pandemic, Iteris will order all project equipment upon receipt of the 90% review comments. After the design has been successfully completed and the equipment has been procured, Iteris and its subcontractor will schedule a pre-construction meeting with both Cities to go over the details and schedule of construction. The equipment will be procured by Iteris and will be installed and integrated with the assistance of our subcontractor. Iteris' in-house experts will expand on existing or generate new Virtual Local Area Networks (VLANs) for the communications network, and also configure switches, controllers, Internet Protocol (IP) cameras, VDS, etc. for deployment. In addition to the preparation of equipment installation, Iteris staff will also be present in the field not only for construction management (review shop drawings, respond to RFIs, quality management, etc.), but also to implement signal hardware, provide integration support, and troubleshooting. We will ensure that both cities are satisfied with the equipment upgrades before finalizing the project.

### Task 2: Design Support and Construction Documentation

It is imperative to document the condition of all equipment that are affected during construction. Iteris will work closely with our subcontractor to ensure City standards and guidelines are adhered to. If design changes are necessary due to unforeseen circumstances, SBCTA and the appropriate agency will be notified and approval requested prior to proceeding. All manufacture warranties will be provided to the cities prior to acceptance of the project. Upon completion of construction, Iteris will conduct field site visits throughout the entire corridor to take pictures and document that all improvements are completed to the City's satisfaction. While performing the field site visits, any deviations in the design plans will be noted and incorporated into the as-builts (record drawings).

## COST ESTIMATE

Below are the ITS and communication upgrade construction cost estimates for Haven Avenue Technological Enhancement:



949.270.9400  
iteris.com

1700 Carnegie Avenue, Suite 100  
Santa Ana, CA 92705

City of Ontario	Unit	Qty	Unit Price	Cost
Video detection system (VDS) at Concurs, Guasti & Riverside	ea	3	\$ 40,000	\$ 120,000
CCTV upgrade at Guasti, Inland Empire & Philadelphia	ea	3	\$ 10,000	\$ 30,000
Traffic signal controller upgrade at Creekside	ea	1	\$ 5,000	\$ 5,000
Traffic signal cabinet upgrade at Concurs, Creekside, Riverside & Inland Empire	ea	4	\$ 35,000	\$ 140,000
Fiber optic cable in existing conduit from Philadelphia to Francis	LF	3300	\$ 15	\$ 49,500
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Design Support During Construction	LS	1	\$ 47,000	\$ 47,000
			Subtotal:	\$ 506,000
			20% Contingencies:	\$ 101,200
<b>Total Cost Estimates (Ontario):</b>				<b>\$ 607,200</b>
City of Rancho Cucamonga	Unit	Qty	Unit Price	Cost
Video detection system (VDS) at Amber, Banyan, Lemon & Alta Loma	ea	4	\$ 40,000	\$ 160,000
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Design Support During Construction	LS	1	\$ 47,000	\$ 47,000
			Subtotal:	\$ 328,000
			20% Contingencies:	\$ 65,600
<b>Total Cost Estimates (Rancho Cucamonga):</b>				<b>\$ 393,600</b>
<b>TOTAL COST ESTIMATES:</b>				<b>\$1,000,800</b>

Thank you very much for the opportunity to assist SBCTA in a continual effort to improve mobility within the San Bernardino Valley region. Please feel free to call me at 949-270-9633 should you have any questions.

Sincerely,  
Iteris, Inc.

Bernard K. Li, EE, TE, PTOE  
Vice President  
Consulting Solutions

**cta**San Bernardino County  
Transportation Authority

3.g

RFP/IFB #: \_\_\_\_\_

Date: 10/8/2021Project Title: SBVCTSS**Contract # & Amendment # 16-1001515 CTO#5**

In accordance with **SBCTA Policy 11000, Contract and Procurement Policy**, an ICE is required for all procurement actions with the exception of agreements between SBCTA and sole-source vendors such as California Highway Patrol, Southern California Edison, and any of the railroads.

Use this form for small (less than \$50,000) or simple procurements. The ICE must be completed prior to requesting quotes from prospective vendors, contractors, and consultants.

**Please X which of the statements apply.**

<input type="checkbox"/>	I performed market research for the pricing of the products and/or services being procured through one or more of the following sources: <input type="checkbox"/> Internet <input type="checkbox"/> Trade Show <input type="checkbox"/> Catalog <input type="checkbox"/> Other Contracts
<input type="checkbox"/>	I contacted other agencies that may have procurement knowledge/experience for the product or service being procured to determine the prices they paid.
<input type="checkbox"/>	I reviewed/compared SBCTA historical or established labor rates or product pricing in order to determine my estimate for this procurement.
<input checked="" type="checkbox"/>	Other (explain): ICE per July 7, 2021 Board Agenda #8 (Attachment 1)

The ICE for this project/action is \$ 1,150,000

Provide a brief explanation of your analysis that is the basis of your estimate.

In July 7, 2021 SBCTA Board meeting, Board allocated \$1M of Measure I TMS funds to the Haven Avenue corridor pilot project based on the ICE of \$1,150,000. The ICE was based on a combination of short-term measures for potential implementation in the project, per the attached agenda.

**Attach all backup documents to this form, i.e., e-mails, screen prints or catalog pages.**

Heng Chow

Project Manager (Print)

Project Manager Signature

# Attachment 1

## *Minute Action*

AGENDA ITEM: 8

**Date:** July 7, 2021

**Subject:**

San Bernardino Valley Coordinated Traffic Signal System Program Next Steps

**Recommendation:**

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

A. Direct staff to continue to maintain the San Bernardino Valley Coordinated Traffic Signal System (SBVCTSS) program through continued consultant support for up to \$250,000 annually for the next five years using Measure I Valley Traffic Management Systems (TMS) program funding.

B. Allocate \$1,000,000 of Measure I Valley TMS program funds to a Haven Avenue corridor pilot project.

C. Allocate \$3,000,000 and \$2,000,000 of Measure I Valley TMS program funds to be made available to East Valley and West Valley jurisdictions, respectively, through a competitive grant process to be developed by staff for implementation of a regional coordinated approach to SBVCTSS program improvements upon future Board of Directors approval.

**Background:**

Starting in 2002, with the San Bernardino Valley Traffic Signal Coordination System Master Plan, San Bernardino County Transportation Authority (SBCTA), in conjunction with the Valley cities and the County of San Bernardino (local agencies), implemented signal coordination on major arterial corridors on a valley-wide scale with an investment of over \$15 million. Implementation of signal coordination occurred in various phases designated as Tiers 1, 2, 3 and 4, and included approximately 1,250 signalized intersections controlled by sixteen (16) separate local agencies and the California Department of Transportation (Caltrans). Both Tiers 1 - 2 Project, completed in 2008, and Tiers 3 - 4 Project, completed in 2012, at system turn-on, showed significant improvements in arterial travel times and reductions in vehicle stops and delays.

In July 2011, the SBCTA Board of Directors (Board) approved the Memorandum of Understanding (MOU) No. C11223 between SBCTA and the local agencies providing direction for the operation and maintenance of the San Bernardino Valley Coordinated Traffic Signal System (SBVCTSS). After implementation by SBCTA, local agencies were responsible for the continued maintenance of the SBVCTSS as noted in the MOU which expired on September 30, 2016.

In January 2015, an assessment of the SBVCTSS was completed and found that many of the systems were not being fully maintained. The assessment yielded results in various jurisdictions varying from 21% to 87% of the traffic signals within the jurisdictions on-line and communicating with the respective central systems, therefore operating as anticipated. Overall, 44% of the SBVCTSS signals were on-line. Maintenance issues included communication breaks due to failed communication modems, disconnected telephone lines, damaged signal interconnect conduit/cables, failed system controllers replaced with

*Entity: San Bernardino County Transportation Authority*

non-compatible signal controllers, weak radio signals and wireless systems that required additional configuration and integration. Many local agencies did not have the technical resources to maintain the SBVCTSS.

Due to the reduction in system benefits caused by maintenance issues, in April 2015, during Transportation Technical Advisory Committee (TTAC) and City Managers Technical Advisory Committee (TAC) meetings and discussions, a survey was presented to the local agencies providing ongoing maintenance and operations options. The goal was to develop a strategy that could be further developed into guidelines and be recommended for adoption by the Board. Based on these discussions, a five-year plan was developed for maintaining the traffic signal coordination system so as to continue to provide benefits to the traveling public. In September 2015, this plan was presented and adopted by the Board, and staff were directed to proceed with the implementation of the five-year plan. The components of the plan included:

- A. Updated coordinated timing - \$4,600,000 (cost to be split 50/50 with local agencies)
- B. On-going maintenance of signal coordination equipment and timing - \$5,225,000
- C. Assessment of Systems and On-Call Systems Support services - \$1,000,000

Total cost for five years - \$10,825,000.

After the September 2015 meeting, staff determined it would be beneficial to divide the SBVCTSS program into sub-regions and develop Master Plans for each that would produce signal timing parameters specific to each sub-region while also providing uniformity across the entire system. This aspect of work was discussed and approved by the TTAC Ad Hoc Committee Members. Staff estimated the added cost for developing the Master Plans to be \$480,000 increasing the total estimated cost for five years to \$11,305,000.

To implement the recommended Master Plan, SBCTA entered into Cooperative Agreements with 15 of the 16 San Bernardino Valley jurisdictions, with the City of Redlands opting out of the program. In addition, in January 2017, the Board approved Contract No. 16-1001515 with Iteris, Inc. (Iteris) for preparation of updated Coordination Timing Plans (CTP), providing semi-annual assessments and providing On-Call System Support services on the SBVCTSS for a total not-to-exceed amount of \$3,462,421.72, including contingency.

Iteris performed six semi-annual assessments that resulted between 40-50% of the signals on-line and running CTP. The primary reasons that intersections in the system were not on-line and running CTP included communication device failures, such as failed modems, disconnected phone lines, damaged interconnect, weak radio signals, incorrect equipment configurations or lack of maintenance due to availability of staff resources or lack of technical knowledge. When these results were presented to the Metro Valley Study Session (MVSS) in June 2019, the study session directed staff to re-evaluate the Signal Synchronization Program (SSP) and present options to MVSS for continued direction of the program.

While various options exist for the SSP, the key is to ensure a consistent funding source exists for program implementation. The benefits to a regional system are well documented, and when initially implemented, the benefits of the Tier 1 - 2 and Tier 3 - 4 SBVCTSS program implementation were readily apparent and well documented in the final implementation reports.



In order to ensure optimal efficiency of the existing and future system, maintenance is critical, particularly if state-of-the-practice technology and equipment has not been deployed during implementation. Reliance upon cities to maintain the system within their jurisdiction has been met with mixed results due to staff resource availability and lack of technical knowledge. Therefore, a future SBVCTSS program must consider maintenance to develop a strategy to ensure the system is maintained properly.

Several options exist for the SSP regarding SBCTA participation and include the following, which are all contingent upon available program funding:

- Provide for continued maintenance and spot upgrades of the existing system as warranted.
- Implement technology to assist in maintaining the existing system.
- Develop an integrated maintenance program for the Valley, i.e. implementation of a single Traffic Management Center from which the entire system could be managed and maintained.
- Prioritize all Valley corridors for investment of available funds.
- Focus on implementation of state-of-the-practice technology to minimize maintenance needs along the existing signal system corridors to provide the greatest benefit to the traveling public.
- Train staff at local agencies to maintain the existing system.
- Continue to provide On-Call System Support services as warranted.
- Develop program parameters and guidelines that would prioritize funding for a program as grant funding is secured.
- Consider implementing a program in Victor Valley.

After the initial SBVCTSS program was implemented primarily with Congestion Management and Air Quality (CMAQ) funding, subsequent funding has come from three sources: grant funding provided by the Mobile Source Air Pollution Reduction Review Committee (MSRC) through the South Coast Air Quality Management District (SCAQMD), local jurisdiction contributions and the Measure I Valley TMS program. While the TMS Program is a source for SSP, it also supports commuter assistance programs, Freeway Service Patrol and other transportation projects benefitting the environment. As TMS funds are limited, they are insufficient to fully fund a comprehensive Valley SSP. Unfortunately, grant funding is not eligible to be used for system maintenance, therefore, Measure I funds must be used for maintenance if SBCTA involvement in the SBVCTSS program continues. In addition, as the MSRC is developing their upcoming annual work plan, their focus continues to be on freight improvements, therefore, grant funding through MSRC for SSP is not anticipated to be available in the near future.

As funding was limited during the original SBVCTSS program implementation, significant investment was not made to upgrade system hardware. State-of-the-practice communication  
 San Bernardino County Transportation Authority

infrastructure for signal coordination continues to be fiber optic communication. Wireless infrastructure currently does not provide the reliability that fiber provides and fiber is expected to continue to provide reliability as the gold standard for signal system communication well into the future. In addition, signal controllers were not upgraded with SBVCTSS program implementation. Due to the number of intersections in the SBVCTSS and the distance that system corridors cover, it was not feasible to upgrade system components and original implementation focused on utilizing existing infrastructure to coordinate signals. In order to upgrade the complete system with fiber optic communications, it is estimated that approximately 227 miles of fiber would have to be placed for the key system corridors at a cost of approximately \$232,000 per mile for a total of approximately \$53,000,000. In addition, it is estimated that approximately 75% of the system controllers (approximately 740) and approximately 25% of system cabinets (approximately 250) would require replacement at a cost of approximately \$7,200,000. Upon implementation of an upgraded communication system and installation of new controllers and approximately 10 local central signal systems, approximately \$5,000,000 to \$7,000,000 would be needed to retune the key system corridors. Due to funding constraints, it is not possible to fully upgrade the system with the state-of-the-practice communication infrastructure and controller equipment. As a result, a piecemeal approach to upgrading the system is necessary.

As noted, Contract No. 16-1001515 with Iteris includes On-Call System Support services to assist local jurisdictions in maintaining the implemented SBVCTSS program. While that contract expires in January 2022, it would be cost-effective to maintain support for local jurisdictions to troubleshoot issues encountered with the existing system. An investment of up to \$200,000 per year would provide the ability to continue to diagnose technical issues on behalf of local jurisdictions who lack sufficient resources. Assessments of the existing system could be performed at a cost of \$50,000 per year to identify how the existing system is performing.

An effort was undertaken to evaluate the potential for implementation of the practice pilot project along the top priority corridors within the Valley to maximize corridor benefits. Drawing from the experience with the system to date, success requires an investment from local agencies to ensure that benefits associated with the program are sustained. The Cities of Rancho Cucamonga and Ontario have invested significantly in signal system infrastructure. To showcase continued benefits of signal synchronization, in December 2019 the Board directed staff to partner with the Cities of Rancho Cucamonga and Ontario to develop parameters and guidelines to implement, monitor and maintain a state-of-the-practice signal synchronization corridor that could be the baseline for broader application throughout the Valley.

Through coordination with the Cities of Rancho Cucamonga and Ontario, Haven Avenue was identified as an ideal candidate as the City of Rancho Cucamonga is currently planning on installing fiber optic communication lines on Haven Avenue between the City of Ontario border and north of State Route 210 (SR 210). Haven Avenue is a heavily traveled corridor serving the heart of the City of Rancho Cucamonga and is a gateway into the City of Ontario and the Ontario International Airport. The corridor is approximately 10.3 miles long and currently includes 39 signalized intersections. Currently, only five signalized intersections along the corridor are not connected via fiber optic communication lines.



Iteris, in cooperation with staff from the Cities of Rancho Cucamonga and Ontario, developed a thorough evaluation of Haven Avenue, including potential deployment of technology throughout the corridor and the ability to maintain a state-of-the-practice multijurisdictional system. Recommendations have been identified for partnering potential with SBCTA to implement, monitor, and maintain a state-of-the-practice signal synchronization corridor that would showcase system success, which could lead to broader application throughout the Valley. Recommendations were categorized as short-term, mid-term and long-term implementation options as outlined in Table 1, with projected element costs categorized as Low (\$0-\$100,000), Moderate (\$100,000 - \$500,000) and High (>\$500,000).

**Table 1 Smart Travel Management Projects for the Haven Avenue Corridor**

	<b>Project Description</b>	<b>Cost</b>
<b>Short-Term</b>	Complete <b>fiber optic communications</b> deployment in the Haven Avenue corridor. Ensure all traffic signals/intersections in the corridor are fully connected and in coordination with the traffic signal central system. Enable and ensure connection of other intelligent transportation management field elements – primarily closed-circuit television (CCTV) cameras – to the fiber optic communications infrastructure.	<b>High</b> <ul style="list-style-type: none"> <li>• It appears 5 corridor intersections are not connected to central system via fiber</li> </ul>
	Implement off the shelf <b>network monitoring and management tools</b> on the local agency fiber optic communications network to automatically and continuously monitor network equipment, as well as field traffic management devices (i.e., traffic signal controllers, CCTV cameras, detection [in-pavement and video], signs, etc.).	<b>Low</b> <ul style="list-style-type: none"> <li>• \$8,000 initial purchase</li> <li>• \$3,000 <b>annual</b></li> </ul>
	Perform an <b>inventory of detection and detection placement</b> at signalized intersections on Haven Avenue, and verify that quantity of detection and placement of in-pavement detection is optimal for traffic operations. Ensure optimal configuration for video detection zones, and determine if additional detection might be warranted. <b>Develop a detection maintenance strategy</b> with a plan for rapid response to detect outages.	<b>Low</b> <ul style="list-style-type: none"> <li>• \$20,000 inventory and evaluation</li> <li>• \$15,000 detection maintenance strategy</li> </ul>
	Determine feasibility of <b>additional CCTV camera deployment along the Haven Avenue corridor</b> . Investigate the feasibility of placement of pan/tilt/zoom CCTV cameras at Haven Avenue freeway interchanges and enable <b>shared monitoring and control of those cameras with Caltrans</b> .	<b>Moderate</b> <ul style="list-style-type: none"> <li>• \$20,000 CCTV study</li> <li>• \$10,000-50,000 per new CCTV site</li> <li>• Deployment with Caltrans TBD</li> </ul>
	Enable and ensure that video <b>images from video detection systems along Haven Avenue are available for viewing in a central location</b> at city facilities (i.e., city hall, roadway maintenance yards, etc.). Assumes fiber optic communications already in place.	<b>Low-Moderate</b> <ul style="list-style-type: none"> <li>• \$4,000 per intersection</li> </ul>
	<b>Implement an Automated Traffic Signal Performance Measures (ATSPM) platform</b> for traffic signals along Haven Avenue. Deploy as a multi-agency platform – Ontario/Rancho Cucamonga. Enable and allow cities and SBCTA access to the platform.	<b>Moderate</b> <ul style="list-style-type: none"> <li>• \$800 - \$1,000 per intersection to set-up</li> <li>• \$800 - \$1,000 per intersection <b>annual</b></li> <li>• \$5,000 training</li> </ul>

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	Project Description	Cost
	Implement/expand <b>corridor- and regional-level performance measurement program</b> that reports corridor-level and regional-level travel trends, travel times, choke points, congestion hot spots, and other travel-related factors. This would be an expansion of the capabilities SBCTA currently has with the ClearGuide platform. Develop a routine reporting regimen that provides comprehensive and summary information and data on corridor-level and regional travel trends. Coordinate with the Automated Traffic Signal Performance Measures (ATSPM) platform deployed for Haven Avenue. Produce and disseminate comprehensive reports that include data and visual depictions of travel trends.	<b>High</b> <ul style="list-style-type: none"> <li>• \$125,000 - \$200,000 <b>annual</b></li> <li>• \$5,000 to establish initial reporting metrics and report formats, some customized reports, and establish regimen</li> </ul>
	Evaluate feasibility and rationality of implementing <b>Adaptive Traffic Signal Control</b> in the Haven Avenue Corridor. Utilize ATSPM data and information as one input into the feasibility analysis. Consider utilizing the higher level (regional) corridor performance measurement program operated by SBCTA in the feasibility analysis.	<b>Moderate</b> <ul style="list-style-type: none"> <li>• \$50,000 study</li> <li>• \$250,000 adaptive control system</li> <li>• \$15,000 <b>annual</b></li> <li>• \$25,000 detection</li> </ul>
	Study feasibility and rationality of implementing <b>arterial Changeable Message Signs (CMS)</b> in the Haven Avenue Corridor. Investigate the feasibility of placement of arterial CMS on Haven Avenue at approaches to freeway interchanges (SR-60, I-10, SR-210), and enable shared monitoring and control of those cameras with Caltrans. In peak periods, the signs could be controlled by Caltrans and populated with travel time and incident information. Outside peak periods, the cities could place other messages of interest to residents on those signs.	<b>High</b> <ul style="list-style-type: none"> <li>• \$20,000 CMS feasibility study and recommendations</li> <li>• \$200,000 per CMS site</li> <li>• Deployment with Caltrans TBD</li> </ul>
	Support Omnitrans in the deployment of <b>roadside transit traveler information systems</b> (next bus arrival signs) at transit stops along Haven Avenue. Assist with permitting, plan reviews, and acquisition of electric power (if necessary).	<b>Low</b> <ul style="list-style-type: none"> <li>• \$25,000 per sign site</li> <li>• In-vehicle technology believed to be in place</li> </ul>
<b>Medium-Term</b>	Support Omnitrans in the deployment of <b>Transit Signal Priority (TSP)</b> in conjunction with Omnitrans' West Valley Connector (WVC) Bus Rapid Transit (BRT) project. The initial intersection in the Haven Avenue corridor to receive TSP treatment would be the intersection of Haven Avenue and Inland Empire Boulevard, serving east/west BRT service on Inland Empire Boulevard. Subsequent expansion of the WVC BRT service would implement TSP in a 2.3 mile long segment of Haven Avenue, between from Inland Empire Boulevard to Foothill Boulevard.	<b>Moderate</b> <ul style="list-style-type: none"> <li>• \$10,000 per intersection (PLUS design, construction, integration)</li> <li>• \$1,500 - \$4,000 per vehicle</li> </ul>
<b>Long-Term</b>	Plan a <b>pilot Connected Vehicle (CV) corridor project</b> for the Haven Avenue Corridor. Initiate stakeholder coordination to determine which CV application(s) is (are) desired for early deployment and testing. Consult lead stakeholders for other local CV pilot deployments in Anaheim (city of Anaheim) and Riverside (UC Riverside CE-CERT Research) to obtain lessons learned. Seek out CV education opportunities and other material from the USDOT and Federal Highway Administration (FHWA).	<b>Moderate-High</b> <ul style="list-style-type: none"> <li>• \$30,000 feasibility study</li> <li>• \$75,000 implementation plan</li> <li>• Design, construction, and integration TBD</li> </ul>

Note: Cost categories – Low: \$0-\$100K, Moderate \$100K-\$500K, High >\$500K

As noted in Table 1, various options have been identified for potential implementation in the Haven Avenue corridor. Most of these initiatives could be implemented independent from one another and benefit the corridor. **Implementation of the short-term measures from Table 1 could**

San Bernardino County Transportation Authority

cost up to \$1,150,000 with ongoing annual costs of up to \$200,000. Implementing adaptive traffic signal control along Haven Avenue would further improve operations and cost up to \$350,000. These improvements would still allow each agency to manage their signals with information readily available for the entire Haven Avenue corridor available to each jurisdiction to streamline maintenance and provide operational capabilities to each city to manage the corridor as appropriate during special events, emergency events, etc., if necessary agreements are in place.

While SBCTA may not be positioned to fully fund a pilot project at this juncture without a dedicated funding source for a SSP, SBCTA could work with the Cities of Rancho Cucamonga and Ontario to implement technology solutions throughout the corridor. As ultimate responsibility to maintain the SBVCTSS program lies with respective jurisdictions, it is difficult to develop clear roles and responsibilities for SBCTA since local intersections are owned, operated and maintained by local jurisdictions. It would seem that SBCTA's primary role in a revamped program would be from a funding perspective and based on funding needs, a prioritized focus of investment would achieve the greatest benefits. While SBCTA could champion individual pilot projects and broader Valley-wide implementation, success of the system lies with local jurisdiction maintenance of the system.

Development of a central traffic management and control center could be a role that SBCTA leads. A centralized traffic management center would assist in maintaining and operating the system. However, as SBCTA does not currently own, operate or maintain any signals, it would prove challenging from an operational and legal perspective to take on an operation and maintenance role for local Valley signals. To be effective, such a center would require buy-in and funding support from all, or at least most, of the Valley jurisdictions. Participating jurisdictions would have to allow the central system, likely manned by consultant staff, to access and operate local signals as necessary to maintain system benefits and react to incidents or special events. While the cost to implement a center would not be unmanageable, the complexities associated with implementation and operation of a centralized traffic management center lead to a recommendation to not consider such a system at this point. The perceived complexities stem from implementation and maintenance of the existing system. While each jurisdiction signed an agreement to provide electronic access to their signal systems for maintenance and assessment purposes, at least five jurisdictions never allowed such access to our consultant and one city opted out of the SBVCTSS maintenance program entirely.

Based on experience with the development and implementation of Tiers 1 – 4, funding further implementation may not be in the best interests of SBCTA without assurances that the investment will be well maintained. To date, SBCTA has developed two programs to incentivize local jurisdictions to maintain the initial investment and the system continues to operate with approximately 50% of the signals being on-line and operating as anticipated.

In an attempt to maintain current system benefits, staff recommends that SBCTA continue to provide consultant support to local jurisdictions on an as-needed basis in an amount not-to-exceed \$250,000 annually over the next five years and allocate \$1,000,000 to implement appropriate technology solutions in the Haven Avenue corridor. As a priority East Valley corridor has not been identified as a strong candidate for a pilot project, staff recommends development of a grant program that will make \$3,000,000 available for East Valley jurisdictions

and \$2,000,000 available to West Valley jurisdictions through a competitive application process subject to local jurisdiction financial contributions and mechanisms to ensure system maintenance. Based on comments from the Metro Valley Study Session, criteria for the grant program will be developed that ensures a regional coordinated approach to future SBVCTSS improvements for approval at a future Board meeting. Performance of the Haven Avenue corridor and other corridors that are allocated funding will be measured as a basis for educating the Board prior to determining the long-term direction of the SBVCTSS program.

***Financial Impact:***

This item is consistent with the Fiscal Year 2021/2022 Budget under Task No. 0860 Arterial Projects, Sub-Task No. 0701 Valley Signal Coordination.

***Reviewed By:***

This item was reviewed at the Board of Directors Metro Valley Study Session on June 10, 2021. After discussion of the item, a motion was made to modify the staff recommendation to require Board approval of the proposed competitive process for allocation of West Valley and East Valley Measure I TMS funds. The staff recommendation, as modified, was recommended for approval (18-0-0) with a quorum of the Board present.

***Responsible Staff:***

Timothy Byrne, Director of Toll Program

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Approved  
 Board of Directors  
 Date: July 7, 2021  
 Witnessed By:

## ***Minute Action***

### AGENDA ITEM: 4

***Date:*** December 1, 2021

***Subject:***

Revision to Landscape Policy No. 34502

***Recommendation:***

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

Approve revisions to Policy No. 34502 to remove obsolete terms and funding sources, and to include landscaping terms in alignment with the Board's objectives.

***Background:***

Policy No. 34502, Measure I Major Projects Program, Landscape, was adopted by the Board of Directors (Board) on March 1, 1995, and revised on January 4, 2017, to update the agency name from San Bernardino Associated Governments to San Bernardino County Transportation Authority (SBCTA), consistent with Senate Bill 1305. The current version includes definitions, cost per acre, and funding sources that are obsolete. The proposed revisions include landscaping design factors discussed by the Board and is intended to foster long-lasting landscaping elements and preserve the investment made by SBCTA and member agencies.

The State Route (SR) 210 landscaping west of Sierra Way, except the Pepper Avenue interchange, was completed and turned over to the California Department of Transportation (Caltrans) for maintenance by 2015. The landscaping on SR 210 east of Sierra Way was either in plant establishment or in the extended landscaping maintenance phase. SBCTA successfully planted and completed its extended maintenance on SR 210 and turned over the planted inventory to Caltrans. Unfortunately, a long-lasting drought combined with increased plant inventory, and established Caltrans maintenance resources, led to degradation of SBCTA's landscaping investment on the State Highway System. Consequently, new landscaping projects in the planning stage utilized high efficiency irrigation systems, drought-tolerant plant material, hardscape, and inert ground covering materials.

On April 1, 2015, Governor Jerry Brown issued an Executive Order to mandate a 25% water use reduction across the state in response to the worst drought in California's recorded history. In response, Caltrans asked SBCTA to postpone its Interstate 215 (I-215) Corridor Landscaping Project until the Executive Order was released. To preserve its investment, the Board approved a landscape approach at the September 2015 Board meeting. The approach includes the development of plans that include a greater amount of hardscape and inert materials, drought-tolerant and low maintenance plants, drip irrigation for plants, and bubblers for trees along with smart controllers to optimize water usage. The inert ground cover would include mulch, rock blanket, various sizes and colors of gravel, and large boulders. A one-year plant establishment will be followed by four years of extended landscape maintenance.

At the January 2017 Board meeting, a landscaping concept by Caltrans for the I-215 between Orange Show Road and 5<sup>th</sup> Street in the City of San Bernardino, was approved with the above-noted landscaping elements. This landscaping concept has since been incorporated throughout the corridor and on some full interchange projects on I-10 and I-15. Staff has analyzed the overall costs and determined that depending on the types of inert material, the costs may be equal

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or slightly higher than plantings; however, the maintenance cost is lower, overall making this concept of highway planting either equal in cost or more cost-effective.

In July 2021, Governor Gavin Newsom signed the Executive Order calling on all Californians to voluntarily reduce their water use by 15% compared to 2020 levels, through simple actions such as reducing landscape irrigation and other measures. In part, the purpose of this order is to protect water reserves should drought conditions continue. Due to continued droughts, an imbalance between added highway planting inventory, and static Caltrans maintenance resources, staff has updated Policy No. 34502 to delete obsolete terms and funding sources, and to include landscaping terms in alignment with the Board objective of providing long-term beautification on SBCTA's projects and preservation of SBCTA's landscaping investments.

***Financial Impact:***

This item is consistent with the Fiscal Year 2021/2022 Budget.

***Reviewed By:***

This item was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 10, 2021.

***Responsible Staff:***

Paula Beauchamp, Director of Project Delivery and Toll Operations

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Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

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San Bernardino County Transportation Authority

San Bernardino County Transportation Authority	<b>Policy</b>	34502
Adopted by the Board of Directors	March 1, 1995	Revised
		12/01/21
<b>Measure I Major Projects Program, Landscape</b>	Revision No.	2

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## I. PURPOSE

SBCTA delivers a variety of transportation projects both on the State Highway System and/or within local jurisdiction(s) some of which contain landscaping elements. The purpose of this policy is to formally establish guidance pertaining to project landscaping design, plant establishment, and maintenance, through project development.

## II. POLICY

There are several Caltrans and Local Agency policies, procedures, and guidance governing landscaping practices on or near the State Highway System. In addition, various environmental measures or regulatory permits may include requirements that affect the landscape design and must be implemented. During the course of project development local agency staff will be invited to provide input and participate in the discussion of landscape design. The criteria for landscaping design varies depending on the entity who is responsible for long term maintenance and regulatory permit requirements, if any.

For projects to be constructed by SBCTA and maintained long-term by Caltrans or a local agency the design requirements are as follows:

- Maximize hardscape over plantings.
- Incorporate drought tolerant plants and plants that require low water usage and minimal maintenance.
- Use concentrated irrigation systems that minimize the propagation of weeds and conserve water.
- Consider recycled water usage if available.
- Provide one year of plant establishment followed immediately by 4 years maximum of extended maintenance or as identified in an agreement.
- Through the environmental phase the environmental document should align with the above criteria and address replacement planting, if possible. Jointly agreed upon environmental commitments related to landscaping design may be included in the Environmental Commitment Record.
- Through the design Caltrans maintenance staff should be involved to provide input regarding its ability to safely access and routinely maintain the number and type of plants included in the landscaping plan after the project is turned over from SBCTA to Caltrans for maintenance.
- Work collaboratively with Caltrans and local agencies, if requested, to develop corridor master plans to incorporate the above design requirements,
- Set landscape design elements to phase in drought tolerant plants and vegetation control to meet long-term water conservation goals.



- For projects or portions of projects which will be maintained by a local agency and on the state right of way, the local agency staff will be invited to provide input and participate in the discussion of landscape design. In addition, if the local agency requests that additional planting or landscaping elements are included within the state right of way, it must enter into a Landscape Maintenance Agreement with Caltrans during the design phase of the project. In addition, the local agency must enter into a cooperative agreement with SBCTA to address any cost implications of their request including, but not limited to: additional landscaping costs, water connections and water costs, plant establishment, and maintenance. SBCTA staff can facilitate these discussions. Without an executed Landscaping Maintenance Agreement and cooperative agreement with SBCTA the landscaping design will meet the above noted requirements.
- For projects which are on the local agency right of way and to be maintained by the local agency, the local agency staff will be invited to provide input and participate in the discussion of landscape design. The design may meet the above noted requirements and include six months of plant establishment, unless the local agency declines. If landscaping design requests from the local agency exceed these requirements then the local agency will enter into a cooperative agreement during the design phase to address its responsibility for payment for costs including, but not limited to: additional landscaping costs, water connections and water supply, plant establishment, and maintenance.

Adopted by Board of Directors: March 1, 1995

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#### REVISION HISTORY

Revision No.	Revisions	Adopted
0	Adopted.	03/01/95
1	Revised to be consistent with SB1305. Change approved by the Board on January 4, 2017, Agenda Item 6.	01/04/17
2	Revised to remove obsolete or non-applicable terms and incorporating Board direction regarding landscaping design.	12/01/21

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San Bernardino County Transportation Authority	<b>Policy</b>	34502
Adopted by the Board of Directors	March 1, 1995	Revised 012/041/217
<b>Measure I Major Projects Program, Landscape</b>	Revision No.	24

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## I. PURPOSE

The Measure I Ordinance provides that seven major freeway improvements are to be implemented through the use of the new sales tax revenues. In provisions for the Major Project Program, the ordinance is silent regarding landscaping. SBCTA delivers a variety of transportation projects both on the State Highway System and/or within local jurisdiction(s) some of which contain landscaping elements. Project scopes are discussed in only the most general terms, e.g., "construct six lane freeway" or "widen one lane each direction." In the development of each project, however, a large number of very specific decisions must be made affecting scope, all of which have an impact on cost. Among these is the extent of landscaping to be provided with each project. Practical and political realities dictate that a measure of landscape support be provided in the Major Project Program. Due to the absolute necessity of resisting further cost increases, however, staff have maintained that only minimal landscaping can be provided. The purpose of this policy is to formally establish guidance pertaining to project SBCTA's position relative to landscaping design, plant establishment, and maintenance, and to provide additional specificity to guide staff in the course of through project development activity.

## II. DEFINITIONS

**Warranted Planting:** Planting for the purpose of re-vegetation, erosion control and/or other functional requirement; standard highway planting on new highway projects where adjacent properties are developed at the time the roadway construction contract is accepted; and standard highway planting on existing highways where adjacent properties were developed on or before June 30, 1987.

**Standard Highway Planting:** The level of functional and/or landscape planting required to make the right of way compatible with the surrounding environment up to a maximum of \$21,500 per acre (January, 1990 base).

## III. POLICY

There are several Caltrans and Local Agency policies, and procedures, and guidance governing landscaping practices on or near the State Highway System. In addition, various environmental measures or regulatory permits may include requirements that affect the landscape design and must be implemented. During the course of project development local agency staff will be invited to provide input and participate in the discussion of landscape design. The criteria for landscaping design varies depending on the entity who is responsible for long term maintenance and regulatory permit requirements, if any.

For projects to be constructed by SBCTA and maintained long-term by Caltrans or a local agency the

design requirements are as follows:

that impinge on local agency actions regarding landscaping, the key points of which are summarized below:

- Unless required as a mitigation in an approved environmental document, there is no local agency responsibility to provide landscaping on new facilities. Maximize hardscape over plantings.
- Incorporate drought tolerant plants and plants that require low water usage and minimal maintenance.
- Use concentrated irrigation systems that minimize the propagation of weeds and conserve water.
- Consider recycled water usage if available.
- Provide one year of plant establishment followed immediately by 4 years maximum of extended maintenance or as identified in an ~~cooperative~~ agreement.
- Through the environmental phase the environmental document should align with the above criteria and address replacement planting, if possible. Jointly agreed upon environmental commitments related to landscaping design may be included in the Environmental Commitment Record.
- Through the design Caltrans maintenance staff should be involved to provide input regarding its ability to safely access and routinely maintain the number and type of plants included in the landscaping plan after the project is turned over from SBCTA to Caltrans for maintenance.
- Work collaboratively with Caltrans and local agencies, if requested, to develop corridor master plans to incorporate the above design requirements.
- Set landscape design elements to phase in drought tolerant plants and vegetation control to meet long-term water conservation goals. if requested

Set landscape design elements to phase in drought tolerant plans and vegetation control to meet long term water conservation goals

- On retrofit construction by a local agency that destroys existing planting, the only requirement for the local agency is a moral one.  
If the local agency does not provide landscaping, Caltrans will eventually provide "standard highway planting (\$21,500 per/acre)." Caltrans' goal is that landscaping be provided within two years, although attainment of that goal may be constrained by funding considerations.
- For projects or portions of projects which will be maintained by a local agency and on the state right of way, the local agency staff will be invited to provide input and participate in the discussion of landscape design. In addition, if the local agency requests that additional planting or landscaping elements are included within the state right of way, it must enter into a Landscape Maintenance Agreement with Caltrans during the design phase of the project. In addition, the local agency must enter into a cooperative agreement with SBCTA to address any cost implications of their request including, but not limited to: additional landscaping costs, water connections and water costs, plant establishment, and maintenance. SBCTA staff can facilitate these discussions. Without an executed Landscaping Maintenance Agreement and cooperative agreement with SBCTA the landscaping design will meet the above noted requirements.
- For projects which are on the local agency right of way and to be maintained by the local agency, ~~landscape design~~ the local agency staff will be invited to provide input and participate in the discussion of landscape design. The design may meet the above noted requirements and include six months of plant establishment, unless the local agency declines. If landscaping design requests from the local agency exceed these requirements then the local agency will enter into a cooperative agreement during the design phase to address its responsibility for payment for costs including, but not limited to: additional landscaping costs, water connections and water supply, plant establishment, and maintenance. When others provide warranted, standard planting, they must provide four years of plant establishment, including all utility costs; in this situation, Caltrans will provide maintenance.

- When others provide unwarranted planting (i.e., planting in unwarranted areas), or planting in excess of standard highway planting, they must provide the four year plant establishment period plus twenty years of maintenance. [Note: Caltrans has estimated that the cost of three years of maintenance equals the initial capital cost to install the landscaping.]

The following policies are to be used by SBCTA in managing the development of the Measure I Major Projects landscaping:

1. As appropriate, provide financial and staff support for the preparation of landscape master plans for each Major Project;
2. As appropriate, provide financial support for the preparation of ISTE A TEA and other grant applications, such as AB 471;
  - provide the 3 year plant establishment period for ISTE A TEA grants for warranted, standard highway planting only if necessary to improve the application;
  - establishment and maintenance for unwarranted planting or planting that exceeds standard highway planting must be provided by others.
3. If grants are not received or not available, support Caltrans programming of landscaping for Measure I Major Projects;
  - support development of landscape projects that are consistent with locally supported master plans;
  - support participation with Caltrans in funding landscape projects to accelerate implementation;
  - support staff efforts to negotiate an agreement with Caltrans that does not require SBCTA to participate in plant establishment or maintenance for STIP programmed landscaping.
4. To the extent possible, restrict Measure I financial support for landscaping to a maximum of \$21,500 per landscaped acre. Negotiate with Caltrans to minimize or avoid all other associated costs, including establishment, maintenance, and engineering.

Adopted by Board of Directors: March 1, 1995

#### REVISION HISTORY

Revision No.	Revisions	Adopted
0	Adopted.	03/01/95
1	Revised to be consistent with SB1305. Change approved by the Board on January 4, 2017, Agenda Item 6.	01/04/17
2	<u>Revised to remove obsolete or non-applicable terms and incorporating Board direction regarding landscaping design.</u>	<u>12/01/21</u>

## ***Minute Action***

### AGENDA ITEM: 5

***Date:*** December 1, 2021

***Subject:***

Request for Proposals for Final Design Services for Interstate 10 Corridor Freight and Express Lane Project - Contract 2

***Recommendation:***

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

Authorize the release of Request for Proposals No. 22-1002722 for preparation of Plans, Specifications, and Estimates for the Interstate 10 Corridor Freight and Express Lane Project - Contract 2.

***Background:***

San Bernardino County Transportation Authority (SBCTA) requests approval for the release of a Request for Proposals (RFP) for Plans, Specifications and Estimates (PS&E) services on the Interstate 10 (I-10) Corridor Freight and Express Lane Project - Contract 2 (Project). This Project would provide one express lane in each direction in the median of I-10 from Interstate 15 (I-15) to Pepper Avenue, in the City of Colton.

A Project Study Report/Project Development Study (PSR/PDS) was completed for the I-10 Corridor Project in 2014, and the Project Approval and Environmental Document (PA/ED) for adding one to two express lanes from the Los Angeles/San Bernardino County line to Ford Street in the City of Redlands, was approved in May 2017. The first ten miles of the Project are currently under construction as Contract 1, and are scheduled to open in 2023. In 2018, traffic and revenue studies as well as cash flow analyses for the I-10 and I-15 corridors were undertaken to determine the next steps for both corridors, with the results indicating that further phasing on both I-10 and I-15 would be required. Recently developed cost updates in 2021 confirmed the need for phasing, and on October 6, 2021, the SBCTA Board of Directors (Board) directed staff to explore a single express lane strategy for the next segment on the I-10 Corridor Project to be consistent with the State's Guideline Principles for Transportation Investment. The next project on I-10 is delineated as I-10 Corridor Freight and Express Lane Project - Contract 2, and would construct the next 11 miles of the approved I-10 Corridor Project.

Based on funding projections, and to minimize concurrent public impacts, it was determined to target the start of construction for the Project in 2026 as the I-10 Corridor Contract 1 Project will near completion in mid-2026. As a result, there is sufficient time to complete final design and right-of-way (ROW) clearance on this Project before going out to bid. As such, the Project will be delivered as a design-bid-build project.

The scope of this RFP is to provide the final design for adding generally one express lane in the median, including the associated toll infrastructure. The Project will include both the design of pavement, structure widenings, auxiliary lanes, and minor ramp improvements, as well as toll gantries, signage, striping, and other improvements required for implementing the tolling systems on the added express lanes. The Project will require coordination with the SBCTA Toll System Provider relative to the incorporation of the toll collection system. The scope of services

*Entity: San Bernardino County Transportation Authority*

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will also include ROW engineering services which will consist primarily of coordination with a ROW consultant for preparing needed mapping and exhibits for acquisitions, railroad agreements, and utility relocations. It is anticipated that the design work will take about three years to complete, resulting in a final design package to advertise for construction in mid-2025.

Staff recommends the release of this RFP to maintain the Project delivery schedule with the plan to bring a design contract based on this RFP to the Board for approval in mid-2022.

***Financial Impact:***

This item is consistent with the Fiscal Year 2021/2022 Budget for Task No. 0820 Freeway Projects, Sub-Task No. 0821 I-10 Corridor Project - Contract 2.

***Reviewed By:***

This item was reviewed and recommended for approval (18-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 10, 2021. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft RFP.

***Responsible Staff:***

Sal Chavez, Project Delivery Manager

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Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

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San Bernardino County Transportation Authority

## ATTACHMENT A - SCOPE OF WORK

### RFP No. 22-1002722

The San Bernardino County Transportation Authority ("SBCTA") is seeking professional services for the preparation of Plans, Specifications and Estimate (PS&E) for the Interstate 10 (I-10) Corridor Freight and Express Lane Project - Contract 2 ("Project") which would extend from Interstate 15 (I-15) to Pepper Avenue in San Bernardino County. SBCTA Sales Tax Measure I funds and federal funds will be used to cover the cost of the preparation of the final design phase. Funding for the next phases are currently not finalized, but state and/or federal funds could be utilized. As such, the final plans and specifications should comply with applicable state and federal requirements.

The project proposes to add generally one express lane in the median in each direction through this corridor segment. At I-15, one express lane will be added in each direction, connecting to the existing express lane in each direction currently being constructed by SBCTA. The express lane will continue to Pepper Avenue, then transition back to the existing general purpose lanes at Pepper Avenue. In addition, auxiliary lanes and other operational improvements are planned through this corridor. The environmental document and project report for an extended corridor were approved in May, 2017. The geometrics approved in those documents will provide the initial basis for this final design, but the final lane configuration and location of ingress and egress locations shall be based on operational analysis conducted under this design contract. Importantly, the Contract 2 project will only construct one of the two express lanes approved during PA/ED for this segment. Final design for the single express lane should minimize impact to ROW including the I-10 drainage channel while incorporating provisions for a future second express lane where practical. Additionally, final design shall include the addition of auxiliary lanes at select locations not previously included in the PA/ED design, including eastbound between Cherry Avenue and Citrus Avenue and between Sierra Avenue and Cedar Avenue. This project will include both the roadway work as well as toll collection system layout and infrastructure. The toll collection system design requirements will be prepared by the SBCTA toll system provider (TSP); however, extensive coordination will be required with the TSP, and the toll collection system infrastructure design will need to be incorporated into the final design plans developed under this design contract.

Final design services will include preparation of a supplemental project report and environmental revalidation to document that this work is the second construction package as part of the longer corridor approved in the original project report and environmental document.

Caltrans will provide oversight for compliance with State design standards and requirements. Assistance with the preparation of the construction bid advertisement package, support during right of way, responses to Requests for Information (RFI), and review of construction Contract Change Orders (CCO) during the construction phase is required. Coordination with the designer of the Project Approval and Environmental Document Phase (PA/ED) may be required to obtain project files and latest project design information.

## **I. APPLICABLE STANDARDS**

All documents shall be prepared in accordance with current SBCTA and Caltrans regulations, policies, procedures, manuals, and standards where applicable. CONSULTANT shall obtain, at its expense, all applicable Manuals and Standard Plans.

## **II. GENERAL DESCRIPTION OF REQUIRED SERVICES**

- A. Required services listed below do not supersede the requirements established in the Contract.
- B. CONSULTANT Services include the studies, reports, drawings, plans, specifications, estimates, and special provisions necessary to complete the plans, specifications, and estimates for the addition of express lanes on the I-10 corridor.
- C. The deliverables list for the PS&E phase will be refined during the initial planning and scoping Project Development Team (PDT) meeting. Not all deliverables listed in this attachment may be required.
- D. CONSULTANT shall develop and maintain a Project schedule. The Project schedule may be presented monthly to the PDT meeting. A deliverables matrix will accompany the schedule. The deliverables matrix will highlight the status of the documents in the review process.
- E. CONSULTANT shall employ appropriate quality control and quality assurance procedures for every deliverable.
- F. CONSULTANT shall identify potential risks and uncertainties related to the delivery and construction of the Project. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impacts to adjacent properties, public safety, and environmental considerations. If at any time during the performance of this Scope of Services, CONSULTANT observes, encounters, or identifies any circumstance that could pose potential risk, CONSULTANT shall notify SBCTA immediately.
- G. The design will be prepared in English units.
- H. Prime contract terms and conditions will be incorporated into the subcontract agreements.
- I. The Task and WBS Structure used for pricing, cost reporting and schedule preparation shall be consistent with the Caltrans Workplan Standards Guide for Delivery of Capital Projects. Project Management activities will be performed in accordance to the Caltrans' Workplan Standards Guide for Delivery of Capital Projects.



- J. CONSULTANT shall prepare and submit monthly invoices and project controls reports. Invoices shall follow SBCTA templates and shall contain all required information including project percent complete and earned value. CONSULTANT shall manage the contract budget and shall provide a monthly report including Earned Value and Estimate at Completion.
- K. Project plans and specifications must comply with the federal Americans with Disabilities Act (ADA) requirements 28 CFR, Part 35, and the *California and Local Building Codes* within the project limits. In accordance with 28 CFR Sec. 35.151, curbs and ramps must meet current ADA standards if the project includes streets that are to be newly constructed or altered (includes repaving). For ADA requirements, see Chapter 11 "Design Standards," and Section 12.7 of this chapter. Complete the Caltrans Certification of Compliance with Americans with Disabilities Act (ADA) Form.
- L. The final engineering technical reports must bear the signature, stamp or seal, registration number, and registration certificate expiration date of the registered civil engineer most directly in responsible charge or other registered or certified professional working on the report as specified in Section 9 of the Project Development Procedures Manual.
- M. CONSULTANT is responsible for the overall toll system design. Design shall be coordinated with the SBCTA Toll Service Provider (TSP) to ensure its requirements for installing, operating, and maintaining the toll collection system are fully incorporated into the design submittals. This shall require coordination meetings with TSP in the development, review and approval of the design submissions. TSP to provide infrastructure requirements documentation to assist CONSULTANT in developing the power, communications, pads, conduit, gantry structures and poles requirements for this project. The TSP will be responsible for maintaining and operating its toll collection system, so all measures shall be taken to ensure these activities can be performed safely in the design.
- N. CONSULTANT is responsible for determining the final lane configuration, location of ingress and egress points, and express lane transitions at the west and east end of the I-10 express lanes. Final design shall be coordinated with project stakeholders including SBCTA, Caltrans, and FHWA, and shall include operational analysis where appropriate and may include alternative analysis and cost estimates for these alternatives.

### III. ASSUMPTIONS

- A. There may be up to eight meetings per month (including conference calls) during the duration of this contract, including one mandatory monthly PDT meeting.
- B. CONSULTANT will coordinate with SBCTA, TSP and Caltrans prior to distribution of all deliverables to determine the points of contact, number of hardcopies and format of electronic files.



- C. Assume one SBCTA and TSP peer review and two Caltrans reviews for each major deliverable and a workshop for comment resolution, if required.
- D. Assume there may be two or more contract bid packages, final estimates and final reports. SBCTA may choose to package this work in multiple packages, such as early bridge work, or split out the civil and toll systems work.

#### IV. SCOPE OF SERVICES

Following the selection of a consultant, the selected firm shall prepare and submit a Cost Proposal and Project Schedule. The selected firm shall use the latest SBCTA Work Breakdown Structure (WBS), which follows the Caltrans Workplan Standards Guide for Delivery of Capital Projects, and cost and schedule templates for the preparation of the cost proposal and schedule.

#### **TASK 3.100.15 - PROJECT MANAGEMENT**

##### 3.100.15 Project Management

CONSULTANT shall furnish a Project Manager to coordinate all CONSULTANT operations with SBCTA, including but not limited to, tracking progress of the work and administering subcontracts. CONSULTANT Project Manager shall provide overall project management, coordination, and supervision of project staff to facilitate the performance of the work in accordance with standards and requirements of the SBCTA and other applicable standards and requirements. CONSULTANT Project Manager shall prepare and submit monthly project progress reports to SBCTA Project Manager.

##### *Deliverables:*

- *Monthly Progress Reports*

##### 3.100.15-1 Coordination and Meetings

CONSULTANT Project Manager shall conduct regular meetings with SBCTA, and shall conduct meetings and coordination with other stakeholders, including Caltrans and other agencies in monthly PDT meetings or technical workshops and focused meetings as necessary. CONSULTANT Project Manager will be responsible for preparation of agendas and meeting minutes, communication and distribution of project records and information, and responses to all internal requests for information about the project.

##### *Deliverables:*

- *PDT meeting notices, agendas, handouts/exhibits, deliverable matrix, and minutes.*

##### 3.100.15-2 Administration

CONSULTANT Project Manager shall prepare and update the Project schedule on a monthly basis or as needed. Project schedule shall be logical, complete, and shall consider SBCTA peer reviews. CONSULTANT Project Manager shall provide regular reporting on the project status, including, but not limited to, schedule, contract budget, general progress on project tasks, and project issues and concerns. CONSULTANT

Project Manager shall maintain project files using the Caltrans Uniform System in hard copies and electronic format.

CONSULTANT Project Manager shall prepare and implement a Project Specific Quality Control/Quality Assurance (QA/QC) Plan in conformance with Section V and a Risk Management Plan following SBCTA format and content requirements; CONSULTANT Project Manager will be responsible for adherence to all applicable SBCTA administrative policies and procedures.

*Deliverables:*

- *Project Schedules*
- *Project Master Files*
- *QA/QC Plan and Risk Management Plan*

**TASK 3.180 – PREPARE ENVIRONMENTAL REVALIDATION AND SUPPLEMENTAL PROJECT REPORT**

CONSULTANT shall develop design for generally one express lane compared to the two express lanes approved during PA/ED, avoiding impact to ROW to the extent practical. CONSULTANT shall develop eastern logical termini for the project in the vicinity of Pepper Avenue. CONSULTANT shall also coordinate the western connection of the SBCTA express lanes with Contract 1, which may include revisions to the number of lanes and location of ingress and egress points based on operational analysis. CONSULTANT shall develop design for auxiliary lanes at selection locations including from Cherry Avenue to Citrus Avenue and from Sierra Avenue to Cedar Avenue. Based on these geometrics, an environmental revalidation and supplemental project report shall be prepared to document the construction sequencing proposed for this project.

*Deliverables:*

- *Revised **Geometric Approval Drawings***
- *Environmental Revalidation*
- *Supplemental Project Report*

**TASK 3.185 – PREPARE BASE MAPS AND PLAN SHEETS**

Task 3.185.05 Updated Project Information

CONSULTANT shall request, collect, assemble, and review all pertinent project information, including, but not limited to, prior project related reports and Engineering Technical Reports, Environmental Documents and Environmental Technical Reports, CAD files and drawings, and relevant correspondence. CONSULTANT shall incorporate the collected materials and information into the Project Master File.

*Deliverables:*

- *Project Records Files*

### Task 3.185.10 Engineering and Photogrammetric Surveys

Mapping and Surveys and preparation of Base Maps were performed during the PA/ED phase. CONSULTANT shall review Project Mapping and Project Survey Control prepared to ensure completeness and accuracy. CONSULTANT shall inform SBCTA's Project Manager if there are incomplete or missing data in the Design Base Maps.

### **TASK 3.205 – PERMITS & AGREEMENTS**

#### Task 3.205.05 Determine Required Permits & Task 3.205.10 Obtain Permits

CONSULTANT shall perform work to identify all necessary permits to construct the project and obtain all necessary permits and agreements needed to construct the project. Work as part of this task may include discussions with permitting agencies, preparation of the permit and attachments such as maps and other exhibits identifying funds necessary for the permit application, and submitting the permit. Discussions and negotiations with permitting agencies shall only be performed in consultation with the SBCTA Project Manager or designee.

#### *Deliverables:*

- *Various Permits*

### **TASK 3.220-PERFORM RIGHT OF WAY ENGINEERING**

#### Task 3.220.05 and 220.10 Existing Land Net and Preparation of Land Net Map

CONSULTANT shall collect all record data and field evidence required to begin development of the Right of Way Base Map. Perform research to locate all relevant survey and land ownership records to complete existing land-net survey, boundary analysis, determination and delineation. CONSULTANT shall prepare land net survey as required for easements, and monumentations for perpetuation of record of survey.

#### *Deliverables:*

- *Land Net Map*

#### Task 3.220.15 and 220.20 Right of Way Maps and Acquisition Documents

CONSULTANT shall prepare right of way appraisal maps and other maps and exhibits as needed to support right of way acquisition including deeds, legal descriptions, resolution of necessity legal descriptions, and other documents and exhibits as needed to support the acquisition of required property interests from property owners, utilities, railroads, and other agencies as required.

*Deliverables:*

- *Right of way requirement maps*
- *Right of way appraisal maps*
- *Deeds*
- *Legal Descriptions*
- *Resolution of Necessity Exhibits as required*
- *Exhibits for utility relocations, railroad agreements, right of way acquisition, as required.*

### **TASK 3.230 – PREPARE HIGHWAY DRAFT PLANS, SPECIFICATIONS & ESTIMATES**

#### **Task 3.230.05 Draft Highway Plans**

CONSULTANT shall prepare the Highway Roadway Plans, Specifications, and Estimates (PS&E) plans set for the project following the Caltrans Highway Design Manual and Caltrans Standard Plans as appropriate. This will also include analysis of alternatives that may be required in looking at the most feasible terminus points, operational efficiencies, and ingress/egress locations. Sufficient study including design and cost estimates would be needed to provide adequate information for decisions on which alternative(s) to move forward with. Preparation of the Highway PS&E plans set shall include, but not be limited to, the preparation of the following roadway engineering sheets:

- |  |                                     |
|--|-------------------------------------|
| - Title Sheet                            | - Typical Cross Sections            |
| - Roadway/Geometric Layouts              | - Profile and Superelevation Sheets |
| - Construction Details                   | - Contour Grading Plans             |
| - Summary of Quantities                  | - Stage Construction Plans          |
| - Traffic Handling Plans                 | - Highway Planting Plans            |
| - Utility & Utility Relocation Plans     | - Drainage Plans                    |
| - Signing and Pavement Delineation Plans | - Electrical Plans                  |
| - Toll Infrastructure                    |                                     |
| - Transportation System Management       |                                     |

- Preparation of the roadway plans shall be consistent with Caltrans design standards to the greatest extent feasible. CONSULTANT shall coordinate toll infrastructure design with SBCTA Toll Service Provider (TSP). TSP shall provide initial infrastructure design requirements for its toll collection system. Enforcement and CHP considerations will need to be incorporated into the design. This safe locations for CHP to monitor traffic in the express lanes and safe areas for CHP to pull over vehicles in the Express and GP lanes.
- Coordination with RCTC toll system integrator may be required as well if RCTC is operating portions of this project.

CONSULTANT shall perform an internal QA/QC plans check and review and shall submit copies to SBCTA for peer review prior to submittal to Caltrans. CONSULTANT shall notify SBCTA's Project Manager if the CONSULTANT is seeking any exceptions to any applicable design standards.

*Deliverables:*

- 65% Plans
- 95% Plans

Task 3.230.20 Transportation Management Plan

CONSULTANT will prepare the Draft and Final Transportation Management Plan (TMP) in accordance with current Caltrans procedures and guidelines. The TMP will identify specific measures that can be taken during construction to reduce impacts due to construction on the traveling public and to provide travel through and around the work area.

*Deliverables:*

- *Transportation Management Plan*

Task 3.230.35 Draft Highway Specifications

CONSULTANT shall prepare the Highway Specifications and Special Provisions for the project following the Caltrans Standard Specifications. CONSULTANT shall notify SBCTA's Project Manager if the CONSULTANT is seeking any exceptions to this requirement.

*Deliverables:*

- *Draft Standard Special Provisions (65% and 95% PS&E)*

Task 3.230.40 Draft Highway Quantities and Estimates

CONSULTANT shall prepare the Highway Quantities and Estimates for the project following the Caltrans Standard Specifications including periodic cost updates, as well as cost estimates to support the analysis of project alternatives developed during design. CONSULTANT shall notify SBCTA's Project Manager if the CONSULTANT is seeking any exceptions to this requirement.

*Deliverables:*

- *Draft Quantities and Estimates*

Task 3.230.60 Updated Storm Water Data Report

CONSULTANT will prepare an Updated Storm Water Data Report (SWDR) in accordance with current Caltrans procedures and guidelines. The SWDR will identify specific measures that can be taken to handle storm water flows around the work area.

*Deliverables:*

- *Storm Water Data Report-PS&E*

Task 3.230.70 Updated Hydraulics Report

CONSULTANT will prepare an updated Hydraulics Report in accordance with current Caltrans procedures and guidelines. The updated Hydraulics Report will evaluate existing drainage systems and will be used to support the drainage plans.

*Deliverables:*

- *Hydraulics Report*

Task 3.230.80 Geotechnical Design Report

CONSULTANT will prepare a Geotechnical Design Report in accordance with current Caltrans procedures and guidelines. The Geotechnical Design Report will be used for recommendations to complete the plans and specifications.

*Deliverables:*

- *Geotechnical Design Report*

Task 3.230.80 Updated Materials Report

CONSULTANT will prepare an updated Materials Report in accordance with current Caltrans procedures and guidelines. The updated Materials Report will be used to support the pavement structural section design.

*Deliverables:*

- *Materials Report*

**TASK 3.240 – PREPARE STRUCTURAL DRAFT PLANS, SPECIFICATIONS & ESTIMATES**Task 3.240.60 Hydraulics Report

CONSULTANT will prepare the Draft and Final Hydraulics Report in accordance with current Caltrans procedures and guidelines. The Hydraulics Report will identify strategies and requirements for use by the design engineer to prepare the structural plan sheets.

*Deliverables:*

- *Hydraulics Report*

Task 3.240.65 Preliminary Foundation Report

CONSULTANT will prepare the Preliminary Foundation Report to be utilized as part of the Structures Type Selection. The Preliminary Foundation Report shall document existing foundation conditions, make preliminary foundation recommendations, and identify the need for investigations, subsurface exploration, and studies.

*Deliverables:*

- *Preliminary Foundation Report*

### Task 3.240.70 Subsurface Exploration and other Field Studies

CONSULTANT will perform work required to perform subsurface exploration to support the Foundation Report. This task includes all activities needed such as procurement of permits and rights to enter to perform any needed subsurface explorations. Results of the study shall be summarized in a report. Subsurface exploration work shall include proposed bridge widening and retaining or soundwalls required for the project.

CONSULTANT will perform an infiltration test to determine the percolation rates for the proposed storm water treatment facilities.

#### *Deliverables:*

- *Log of Test Borings*
- *Infiltration Test Report*

### Task 3.240.75 Draft Structural Plans

CONSULTANT shall prepare the Structural Plans, Specifications and Estimates (PS&E) plans set for the project following the Caltrans Highway Design Manual and Caltrans Standard Plans as appropriate. Preparation of the Structural PS&E plans set shall include, but not be limited to the preparation of the following roadway engineering sheets:

- |                            |                                 |
|----------------------------|---------------------------------|
| - Title Sheet              | - Typical Cross Sections        |
| - Foundation Plans         | - Bridge General Plans          |
| - Soundwall Plans          | - Retaining Wall Plans          |
| - Stage Construction Plans | - Structural Special Provisions |
| - Structural Quantities    |                                 |

CONSULTANT shall perform an internal QA/QC plans check and review and shall submit copies to SBCTA for peer review prior to submittal to Caltrans. CONSULTANT shall notify SBCTA's Project Manager if the CONSULTANT is seeking any exceptions to any applicable design standards.

#### *Deliverables:*

- *Type Selection Report*
- *65% Plans*
- *95% Plans*

### Task 3.240.80 Foundation Report

CONSULTANT shall prepare the Foundation Report incorporating subsurface explorations through report and Log of Test Borings. The Foundation Report is to provide the required geologic and geotechnical recommendations needed to prepare the structural plans sheets.

#### *Deliverables:*

- *Foundation Report*



### **TASK 3.255 – PREPARE FINAL PS&E PACKAGE**

#### **Task 3.255.20 Final District PS&E Package**

This task includes the distribution of the draft final combined highway and structural PS&E package for final review by Caltrans, SBCTA, and other stakeholders. CONSULTANT shall address comments received and incorporate changes as appropriate in the final combined PS&E package. Under this task, CONSULTANT shall perform an internal QA/QC plans check and review and shall submit the final combined PS&E package to an independent reviewer, which shall be provided by the CONSULTANT. The independent reviewer shall be a registered Professional Engineer in the State of California and shall certify the quality of the package and that the plans are constructible. The independent reviewer shall submit a stamped report to the SBCTA summarizing its review and certifying the constructability of the plans and that the final combined PS&E package is biddable. CONSULTANT will be responsible for completion of the draft final combined PS&E package in a manner where there is sufficient time to address comments during the independent review and finalize the PS&E package within the project schedule. CONSULTANT will be responsible for the constructability of the project.

#### *Deliverables:*

- *Final Combined PS&E Package*
- *Independent Constructability and Ready-to-Bid Certification*

#### **Task 3.255.40 Resident Engineer File and Supplemental Materials**

CONSULTANT shall be responsible for preparing the pending Resident Engineer File and other supplemental PS&E materials, which would include the following:

- |  |                                     |
|--|-------------------------------------|
| - Geotechnical Information Handout         | - Materials Information Handout     |
| - Construction Staking Package and Control | - Project Controls for Construction |
| - Grid Grades                              | - Construction Permits              |
| - Quantity Work Book                       | - Representative Cross Sections     |

#### *Deliverables:*

- *Pending Resident Engineer File*
- *Supplemental PS&E Materials*

### **TASK 3.260 – CONTRACT BID DOCUMENTS READY TO LIST**

#### **Task 3.260-1 Draft Contract**

CONSULTANT shall assist SBCTA in the preparation of the Construction Contract Bid Documents. Under this task, the CONSULTANT shall develop a draft contract, which shall be consistent with Caltrans standards. Draft contract shall include the plans, specifications, special provisions, applicable Federal, state and local laws, regulations, and requirements and item codes. All contract pay items shall utilize the Basic Engineering Estimate System (BEES) coding.



*Deliverables:*

- *Draft Construction Contract Package*

### **TASK 5.270 – CONSTRUCTION ENGINEERING – TECHNICAL SUPPORT**

Provide Technical Support to the construction engineering staff including design, traffic, hydraulics, materials, structures design, geotechnical services, environmental, landscape and other specialty staff. Functional support may include attendance at pre-work conferences, on-site construction support including contractor request for information (RFI) and RE pending file review.

### **TASK 6.295 – ACCEPT CONTRACT/PREPARE FINAL CONSTRUCTION ESTIMATE AND FINAL REPORT**

Work involved in the acceptance and final documentation of a construction contract.

Work involved includes coordination with the construction manager and/or Resident Engineer to develop as-built plans in accordance with Caltrans and the City Standards. Work includes the transfer of the red-line As-Built plan mark-ups to the original full size reproducible plan sheets (and CADD file) and forwarding a reproducible set of plans with the transferred As-Built changes to SBCTA, Caltrans and the Cities. CONSULTANT shall complete this task within 30 calendar days of receipt of red-line mark-ups.

*Deliverables:*

- *Red line construction package*
- *As-Built construction package*
- *Electronic and hardcopy submittal for Caltrans and City records*

## **V. PROJECT SPECIFIC QUALITY ASSURANCE AND QUALITY CONTROL PLAN REQUIREMENTS**

Quality Assurance (QA) encompasses all of the planned and systematic activities implemented within the quality system that can be demonstrated to provide confidence that a product or service will fulfill requirements for quality. Quality Control (QC) consists of operational techniques and activities used to fulfill requirements for quality. For environmental review process, preliminary engineering and final design, QC includes technical checking, review and design verification activities, while the QA activities includes the monitoring, surveillances, auditing and other means of oversight of the QC activities and documentation, to ensure completeness and adherence to the QC procedures.

A project specific quality management plan (herein referred to as a Project QA/QC Plan) shall be developed by the Consultant and submitted to SBCTA for review and approval. The Project QA/QC Plan shall describe how QA and QC will be executed and express by the Consultant and its subconsultants. In lieu of a Project QA/QC Plan, for small projects at the discretion of the SBCTA Director of Project Delivery, a copy of the Consultant's

standard QA and QC procedures that are to be followed by the Consultant team (including subconsultants) for the project, will be submitted to SBCTA for review and approval. The standard QA and QC procedures document and any appended project-specific processes, should address the same requirements listed below for the Project QA/QC Plan.

The following is a list of the minimum content and scope of what the Project QA/QC Plan shall contain. When submitted to SBCTA for review, the Project QA/QC Plan will be reviewed and assessed to ensure that these topic areas are covered and adequately addressed by the plan.

Project Introduction and Scope:

- Project description
- Scope of work
- Quality objectives
- List of deliverable documents for each milestone submittal

Project Team Qualifications, Organization, Staff, Roles and Responsibilities:

- A description of the minimum resource requirements for staff competence, skills, experience, and credentials.
- Organization chart showing project staff and lines of QA and QC authority and communications.
- List of project staff members, roles and responsibilities, including verification, QC review and technical checking, Project Management, Project QA Management and Technical Lead duties.

Quality Training:

- Quality training, including a training syllabus, schedule, and methods of tracking the staff that have been trained.

Scheduling of Quality Activities:

- Detailed QA and QC schedule that provides the timing, durations, and dependencies for all QC technical checking, interdisciplinary reviews, internal design verification against project criteria, and internal QA audits.

SBCTA, TSP and Caltrans Reviews:

- Formal external (SBCTA, TSP and Caltrans) review schedules (Peer Reviews and Constructability Reviews).
- Processes for SBCTA and TSP Peer Review and Caltrans review comments tracking, response, resolution, checking of comment incorporation, and closure process.

Internal Reviews:

- Quality procedures related to interdisciplinary design review (IDR) process.
- Technical review of environmental reports.

### Management of Requirements:

- The requirements for the development of a Basis of Design report that includes a list of governing project criteria, source documents for the governing criteria, including those from Caltrans, SBCTA and local municipalities.
- Requirements management processes used to track design variation requests, and procedures for changes to the requirements as a result of approved design variances.

### Quality Procedures for Project Controls:

- Project QA and QC procedures related to approved project scope changes and associated revisions to estimates and schedule.
- Project QA and QC procedures for configuration management against the baseline design.

### Quality Control (QC) Procedures:

- Detailed QC procedures, including descriptions of process steps and documentation of processes for technical checking, QC reviews, and design verification. The procedures for technical checking will include:
  - QC testing and validation of computer software used for the calculations
  - Checking of calculations and data (hand calculations and computer calculations input and output)
  - Checking of drawings and exhibits
  - Checking of specifications and contract documents
  - Checking of quantities and cost estimates
  - Review of studies or report-type documents
  - QC of CADD-produced documents
- Checklists to be used to verify: design criteria / technical compliance; submittal contents; CADD compliance; specifications compliance; calculations compliance; and milestone specific level of completion.

### Quality Assurance (QA) Procedures:

- The processes for QA monitoring, surveillances, and audits of the QC activities, including when QA audits are to be conducted prior to submittals, and the QC activities and QC documentation to be audited.
- Processes for the management of the implementation of Corrective Action to internal and external QA audit non-conformances and findings.

### Quality Documentation:

- Quality Records list or definition.

Document Control procedures, including electronic files and project folders, submittal procedures, control of hardcopies, uploading of scanned hardcopy PDF files, document retention requirements, and the treatment of quality documents. This part of the Project QA/QC Plan may reference sections of a project management plan and/or a separate project or firm document control plan.

## ***Minute Action***

### AGENDA ITEM: 6

***Date:*** December 1, 2021

***Subject:***

Purchase & Sale Agreements for Upland Surplus Properties

***Recommendation:***

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

A. Authorize the Executive Director, or his designee, to execute Purchase and Sale Agreement 22-1002709 for the sale of Assessor's Parcel Numbers 1046-605-02 and 1046-605-03 in the City of Upland to Euclid Housing, LP, a California limited partnership, pursuant to negotiations with WPH Holdings, LLC, a California limited liability company, for a negotiated sale amount of \$832,000, upon approval as to form by counsel.

B. Authorize the Executive Director, or his designee, to execute Purchase and Sale Agreement 22-1002710 for the sale of Assessor's Parcel Number 1046-605-01 in the City of Upland to Stowell Villas, LP, a California limited partnership, pursuant to negotiations with WPH Holdings, LLC, a California limited liability company, for a negotiated sale amount of \$768,000, upon approval as to form by counsel.

***Background:***

San Bernardino County Transportation Authority (SBCTA) owns a strip of land in the City of Upland (City), 75 feet in width, south of the San Gabriel Subdivision, north of Stowell Street, located between Euclid Avenue and Sultana Avenue. This strip of land is close to the Upland Metrolink station and is known as Assessor's Parcel Numbers (APN) 1046-605-01, 1046-605-02 and 1046-605-03, collectively the Upland Surplus Properties, as shown on Attachment A.

The Upland Surplus Properties were declared surplus by the San Bernardino Associated Governments (SANBAG) Board of Directors (Board) on October 5, 2016, with Resolution No. 17-008, which set forth the time and manner in which SANBAG would dispose of the surplus properties; however, at that time no Notices of Interest were received pursuant to California Government Code § 54220 et seq., also referred to as the Surplus Land Act (SLA), and SANBAG received only one bid for the Upland Surplus Properties, which was rejected.

Effective January 1, 2020, Assembly Bill (AB) 1486 made revisions to the SLA which included adding private Housing Sponsors to the list of entities which receive a Notice of Availability of surplus land for development of moderate to low income housing, prior to a public agency being allowed to make the surplus property available for sale to the public. SBCTA started the SLA process anew for the Upland Surplus Properties to document compliance with the revised SLA requirements. Final guidelines for the SLA were published by the California Department of Housing and Community Development (HCD) in April 2021, and on August 12, 2021, HCD sent SBCTA written comments regarding SBCTA's Surplus Land Disposition Documentation for the properties at Euclid Avenue and Stowell Street (APN 1046-605-01, 1046-605-02 and 1046-605-03) affirming that SBCTA has met all the requirements under the SLA for the purposes of disposing the Upland Surplus Properties for sale to WPH Holdings, LLC. A copy of the letter is provided as Attachment 1.

*Entity: San Bernardino County Transportation Authority*

SBCTA received a Notice of Interest from three Housing Sponsors in response to the Notice of Availability sent out for the Upland Surplus Properties. SBCTA staff worked with each of the Housing Sponsors to document the proposed number of affordable housing units, deepest average level of affordability and a formal offer to purchase the property. After working with each of the Housing Sponsors only WPH Holdings, LLC had provided documentation with the number of affordable housing units they propose to build, the average level of affordability of said units, and a formal offer to purchase the properties.

WPH Holdings, LLC has offered to purchase both properties for \$1,600,000 and provided a proposal to build 160 affordable rental units which also demonstrated the deepest average level of affordability. If the Board approves the sale of the properties to WPH Holdings, LLC, the SBCTA Executive Director will proceed with execution of Purchase and Sale Agreements with WPH Holdings, LLC, substantially in the form of the agreements attached to this item, for the sale of the properties, pursuant to Policy No. 10400. WPH Holdings, LLC will establish property specific limited partnerships for each of the transactions which will be reflected as the respective buyer for each property.

The table below provides a breakdown of the WPH Holdings, LLC offer. The revenue generated by this sale would be \$1,600,000 less any escrow charges or costs incurred in the transaction, which are customarily paid by the seller, such as and including documentary or transfer taxes.

<b>Table 1</b>		
<b>Property Description</b>	<b>Appraisal Value</b>	<b>WPH Holdings, LLC Offer</b>
APN 1046-605-01 201-299 East Stowell Street	\$710,000	\$768,000
APN 1046-605-02 and 03 120 S. Euclid Avenue	\$760,000	\$832,000
<b>Total</b>	<b>\$1,470,000</b>	<b>\$1,600,000</b>

Pursuant to the Board action taken on April 6, 2016, the revenue generated from the sale of the Upland Surplus Properties will be allocated toward additional parking for the Upland Metrolink station upon City owned land in the vicinity of the station. Citing a reduction in demand for commuter parking at this location subsequent to implementation of parking fees, the Transit Committee requested staff bring a future agenda item for consideration of how the sale proceeds will be used.

In addition, Attachment A was added post Transit Committee review to provide additional information on the surplus properties including their acreage.

For funding purposes WPH Holdings, LLC is purchasing the Upland Surplus Properties through single-purpose limited partnerships of which a WPH affiliate will be a general partner. Final form of the Purchase and Sale agreements approved as to form by counsel will reflect the respective single purpose limited partnerships WPH Holdings, LLC has established for these purchases. The portion of the Upland Surplus Properties located east of Euclid Avenue and west of Second Avenue will be purchased through Euclid Housing, LP, whereas the portion of the Upland Surplus Properties located east of Second Avenue and west of Sultana Avenue will be purchased through Stowell Villas, LP.

## Board of Directors Agenda Item

December 1, 2021

Page 3

***Financial Impact:***

This item is not consistent with the Fiscal Year 2021/2022 Budget. An administrative budget amendment is needed.

***Reviewed By:***

This item was reviewed and unanimously recommended for approval by the Transit Committee on November 10, 2021. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreements. Since approval by the Transit Committee, the staff report and recommendation have been updated to reflect the single-purpose limited partnerships WPH Holdings, LLC has established for the purchases of the Upland Surplus Properties.

***Responsible Staff:***

Ryan Aschenbrenner, Right of Way Manager

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Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

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San Bernardino County Transportation Authority

## General Contract Information

Contract No: 22-1002709 Amendment No.: \_\_\_\_\_

Contract Class: Receivable Department: Transit

Customer ID: 03742 Customer Name: EUCLID HOUSING, LP

Description: Purchase and Sale Agreement of Upland Surplus Properties APNs 1046-605-02 and 1046-605-03

List Any Accounts Payable Related Contract Nos.: \_\_\_\_\_

Dollar Amount							
Original Contract		\$	832,000.00	Original Contingency		\$	-
Prior Amendments		\$	-	Prior Amendments		\$	-
Current Amendment		\$	-	Current Amendment		\$	-
Total/Revised Contract Value		\$	832,000.00	Total Contingency Value		\$	-
	Total Dollar Authority (Contract Value and Contingency)					\$	832,000.00

## Contract Authorization

Board of Directors Date: 12/01/2021 Board Item # 8145

## Contract Management (Internal Purposes Only)

Local Escrow Agreement N/A

Accounts Receivable																	
Total Contract Funding:		\$			832,000.00			Funding Agreement No:		N/A							
Beginning POP Date:		N/A			Ending POP Date:		N/A			Final Billing Date:		N/A					
Expiration Date:		12/31/2021															
		Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:				Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:	
GL:	1080	30	0313	0360	43055000	832,000.00				GL:						-	
GL:						-				GL:						-	
GL:						-				GL:						-	
GL:						-				GL:						-	
GL:						-				GL:						-	

Ryan Aschenbrenner

Project Manager (Print Name)

Victor Lopez

Task Manager (Print Name)

Additional Notes: \$832,000 represents the negotiated purchase price of the property, however, revenue is anticipated to be less SBCTA's share of escrow fees and the documentary transfer tax fees for this transaction. Revenue is dedicated to Upland Metrolink station parking.

Attachment: 22-1002709 CSS (8145 : Purchase & Sale Agreements for Upland Surplus Properties)

**AGREEMENT FOR PURCHASE AND SALE AND**  
**JOINT ESCROW INSTRUCTIONS**

This AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS ("Agreement") is made and entered into by and between SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA), a public agency existing under the laws of the State of California ("Seller"), and EUCLID HOUSING, LP, a California limited partnership ("Buyer"), with reference and respect to the RECITALS set forth in paragraphs [A, B, C and D] below. Buyer and Seller are sometimes individually referred to herein as "Party" and collectively as the "Parties".

**RECITALS**

A. Pursuant to Resolution No. 17-008 – Surplus of Rail Property, adopted by SBCTA on October 5, 2016, the property identified and described in Section 1 below is excess to SBCTA's needs and has been declared to be Surplus Land.

B. SBCTA provided the notice of availability to applicable parties and entities pursuant to Government Code Section 54222 and in accordance with Section 201 of the California Department of Housing and Community Development's final Surplus Land Act Guidelines ("Guidelines").

C. Buyer responded to said notice of availability in addition to two other Housing Sponsors and after a negotiation period of not less than ninety days, SBCTA determined that Buyer was the Housing Sponsor who offered the greatest number of units for affordable rent at the deepest average level of affordability. Pursuant to said Guidelines, a record of negotiations and description of notices sent was submitted to the California Department of Housing and Community Development ("HCD"), and in a letter dated August 12, 2021, HCD concurred with SBCTA's determination.

D. Disposition of the Property at fair market value has been authorized, subject to the terms and conditions set forth in this Agreement.

In consideration of the mutual covenants contained herein and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. **Sale of Property.** Seller shall sell to Buyer, and Buyer shall purchase from Seller, at the price and upon the terms and conditions set forth in this Agreement, the following real property: (i) a fee interest in 120 South Euclid Avenue, APNs 1046-605-02 and 1046-605-03, more particularly described in Exhibit A ("Property") and depicted on Exhibit B of the Grant Deed attached hereto and incorporated herein as Exhibit 1, located immediately adjacent to APN 1046-551-42 (referred to as the "SBCTA Parcel").



2. Purchase Price. The purchase price for the Property shall be Eight Hundred Thirty Two Thousand Dollars (\$832,000.00) ("Purchase Price"). Buyer shall pay to Seller through Escrow (defined below) the Purchase Price, payable in cash, by cashier's or certified check or by wire transfer, at least three (3) business days prior to the Closing Date (also defined below).

3. Escrow.

3.1 Escrow. No later than ten (10) business days after the execution of this Agreement, Buyer and Seller shall open an escrow ("Escrow") with COMMERCE ESCROW COMPANY, ATTN: Dwayne Butler, 1055 Wilshire Blvd, Suite 1000, Los Angeles, CA 90017, 213-353-4060 ("Escrow Holder"), and shall deliver a fully executed copy of this Agreement to Escrow Holder. The deposit with Escrow Holder of a fully executed original of this Agreement shall constitute the opening of Escrow and authorization to Escrow Holder to act in accordance with the terms of this Agreement. This Agreement shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further instructions restating or amending the Agreement unless specifically so instructed by the Parties. Subject to approval of the Parties, Escrow Holder may, however, include its standard general provisions. Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with the Agreement and applicable law. Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened ("Opening Date").

3.2 Due Diligence. Buyer shall be entitled, at Buyer's sole cost, to conduct any and all further inspections, appraisals and investigations of the property that it may desire during an initial due diligence period of 45 days from Opening Date. Seller shall cooperate by providing access to the Property to Buyer's consultants and third party-vendors.

3.3 Closing Date. The Escrow shall close within 30 days following the expiration of the initial 45-day due diligence period, but in no event later than \_\_\_\_\_ ("Closing Date"). CLOSING SHALL BE ALL CASH AND NOT CONTINGENT ON LOAN APPROVAL.

3.4 Deposits by Buyer. Except as set forth in Section 2, Buyer shall deposit with Escrow Holder the following items no later than ten (10) business days prior to the Closing Date, duly executed and acknowledged where required:

3.4.1 The Purchase Price, plus such additional funds as are required to pay Escrow Holder's estimate of Buyer's costs and fees associated with the transaction as provided in Section 2 above.

3.4.2 Initial deposit shall be 3% of the Purchase Price. Notwithstanding Section 3.4 above, Buyer shall deposit said initial deposit with Escrow Holder no later than five (5) business days after the Opening Date.

3.4.3 A completed California Franchise Tax Board Form 593-W, and an affidavit certifying that the Seller is not a "foreign person" as defined in the Internal Revenue Code.

3.4.4 All other funds and documents as may be reasonably required by Escrow Holder or the Title Company to close the Escrow in accordance with this Agreement.

3.5 Deposit of Documents by Seller. Seller shall deposit with Escrow Holder the following items no later than ten (10) business days prior to the Closing Date, duly executed and acknowledged where required:

3.5.1 The Grant Deed conveying title in fee simple absolute of the Property to Buyer.

3.5.2 If required, a duly executed resolution authorizing the execution of this Agreement and the sale of the Property.

3.5.3 All other documents as may reasonably be required by Escrow Holder to close the Escrow in accordance with this Agreement.

3.6 If applicable, all real property taxes, any penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds against the Property which are liens and unpaid as of the Closing Date shall be paid by Seller, except those to which title is taken subject to and in accordance with the terms of this Agreement.

#### 4. Escrow Holder's Obligations.

4.1 The performance of the acts set forth in this Section shall constitute the "Closing" or the "Close of Escrow" as such term is used in this Agreement. The Escrow Holder shall conduct the Closing on the Closing Date by recording and distributing the following described documents and funds in the following manner:

4.1.1 Deliver to Seller on the Closing Date in immediately available funds the sum of the Purchase Price and such other funds, if any, due Seller by reason of prorations, less Seller's closing costs and prorations, if any.

4.1.2 Obtain from Seller documentation to place title in the condition necessary to enable conveyance pursuant to this Agreement;

4.1.3 Pay and charge Seller for any amounts necessary to place the title in the condition necessary to enable conveyance pursuant to this Agreement.

4.1.4 Pay and charge Buyer and Seller for any escrow charges, and costs incurred in this transaction, each party to pay their own costs.

4.1.5 Pay and charge Buyer for a CLTA Policy of Title Insurance and any endorsements to the Title Policy requested by the Buyer.

4.1.6 Seller shall pay all city or county documentary or transfer taxes.

4.1.7 Make all adjustments, except for taxes and assessments, on the basis of a 30-day month.

4.1.8 Record any instrument delivered through the Escrow, including any required quitclaim and grant deeds if such action is necessary to place record title in condition to comply with the terms of the Agreement.

4.1.9 At least ten (10) business days before the Closing Date, advise Buyer and Seller in writing of Escrow Holder's estimate of the total Escrow costs and fees associated with this transaction to be paid by Buyer. If this Agreement and the accompanying transaction are cancelled before the Closing Date without a default by either party, Buyer shall pay any cancellation fees imposed by the Escrow Holder. If this Agreement and the accompanying transaction are cancelled as a result of default by either Buyer or the Seller, then the defaulting party shall pay all cancellation fees imposed by the Escrow Holder.

4.1.10 Any amendments of, or supplements to, any Escrow instructions must be in writing and executed by the Buyer and Seller.

5. Conditions to Closing. The following conditions are conditions precedent to the Parties' obligation to consummate the Closing on the Property:

5.1 Buyer's Conditions to Closing. The Buyer's obligations to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions which are for Buyer's sole benefit on or prior to the dates designated below for the satisfaction of such conditions, or the date for Closing in the absence of a specified date:

5.1.1 Approval of Title Documents. Within 5 (five) days following the date of this Agreement, Seller shall cause Escrow Holder to deliver a preliminary title report with respect to the Real Property, together with legible copies of all exceptions listed in such report (collectively, "Title Documents"). Buyer shall have ten (10) business days after receipt of the Title Documents to notify Seller and Escrow Holder in writing of Buyer's disapproval of any exceptions referenced in such Title Documents. Failure of Buyer to disapprove any such exceptions within the aforementioned time limit shall be deemed to be an approval of the exceptions set forth in the Title Documents. In the event Buyer disapproves any exceptions set forth in the Title Documents, Seller shall have until the Closing Date to eliminate any disapproved exceptions, and if such exceptions are not eliminated, then the escrow shall be cancelled unless Buyer then elects to waive its prior disapproval.

5.1.2 Issuance of Title Insurance. Seller shall convey title to the Property to Buyer by a Grant Deed in the form of Exhibit 1 attached hereto. At the Close of Escrow, FIDELITY NATIONAL, Attn: Brandon Miller (the "Title Company"), shall issue through Escrow an Owner's Policy of Title Insurance ("Title Policy") with CLTA coverage with liability in the full amount of the Purchase Price, insuring fee simple title to the Property vested in Buyer subject only to the following exceptions (the "Permitted Exceptions"): (a) the standard printed exceptions set forth in the Title Policy; (b) general and special taxes and assessments not then delinquent or payable over time; (c) quasi-public utility, public utility, public alley, public street easements, and rights of way of record; and (d) those certain exceptions which have been approved in writing by Buyer, including those exceptions that appeared in the Title Documents that were not previously disapproved.

5.1.3 At or prior to the Closing, Seller shall have performed all of Seller's obligations herein that are to be performed prior to the Closing.

5.1.4 Seller's representations and warranties shall be true and correct as of the date of this Agreement and also as of the date of the Closing.

5.1.5 The physical condition of the Property shall be substantially the same at the Closing as on the date of execution of this Agreement, reasonable wear and tear excepted.

5.2 Seller Conditions to Closing. The Seller's obligations to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions which are for Seller's sole benefit on or prior to the dates designated below for the satisfaction of such conditions, or the date for Closing in the absence of a specified date:

5.2.1 At or prior to the Closing, Buyer shall have performed all of Buyer's obligations herein that are to be performed prior to the Closing.

5.3 Failure of Condition. If any condition stated in this Agreement has not been eliminated or satisfied within the time limits and pursuant to the provisions of this Agreement through no fault of either Party (in the case of a default, the provisions of Section 9 shall govern), then the Parties, as their sole and exclusive remedy, shall have the right to either waive the condition in question, and proceed with the Closing, or in the alternative, terminate this Agreement. In the event of such termination as the result of the failure of a condition to Closing, all documents and funds shall be returned to the party providing them, and neither party shall have any further rights or obligations under this Agreement, except that Escrow and title cancellation fees shall be paid in accordance with this Agreement.

6. Condition of Property.

6.1 Buyer has investigated the Property's zoning and other building matters affecting the Property and its condition, including but not limited to its suitability for Buyer's intended use and has determined that it is suitable for Buyer's intended use.

6.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing As-Is condition and has made all inspections of the Property that Buyer believes are necessary to protect its own interest.

6.3 Buyer hereby acknowledges that the Property is subject to the Covenants and Restrictions set forth in the Grant Deed attached as Exhibit 1 hereto.

7. Representations and Warranties.

7.1 The Parties represent and warrant to each other that as of the date hereof the following are true and correct:

7.1.1 No Party has received nor is it aware of any notification from the Department of Building and Safety, Health Department, or other such City, County or State authority having jurisdiction, requiring any work to be done on or affecting the Property.

7.1.2 No Party has received notice of any litigation, arbitrations, claims, violations from any agency, proceedings, or other actions, pending or threatened, that arise out of the ownership or operation of the Property.

7.1.3 Each Party has the power, right, and authority to enter this Agreement and the instruments referenced herein, and to take all actions necessary to consummate the transaction contemplated by this Agreement.

7.1.4 The execution and delivery of this Agreement and the documents referenced herein, the incurrence of the obligation, the consummation of the transaction and the compliance with this Agreement and the documents referenced herein do not conflict with or result in the material breach of any term or condition of or constitute a default under any bond, note, or other evidence of indebtedness or any agreement, indenture, mortgage, deed of trust, loan, corporate documents or agreements, lease or other agreement or instrument to which any Party is a part or affecting the Property.

7.1.5 The person(s) executing this Agreement and the instruments referenced herein have the power, right, and actual authority to bind each respective Party to the terms and conditions of this Agreement.

7.1.6 No attachments, executions, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other similar proceedings are pending or threatened against any Party or involving the Property.

7.1.7 No Party has entered any other agreement for the sale or transfer of the Property, and there are no rights of first refusal or option to purchase the Property.

7.1.8 Other than as set forth in the Title Documents, there are no other leases, subleases, occupancies or tenancies pertaining to the Property and no Party has any knowledge of any oral agreements with anyone with respect to the occupancy of the Property.

7.1.9 There are no service or maintenance agreements (oral or written) which affect the Property subsequent to Closing.

7.1.10 Each Party has provided to the others all environmental assessment reports in each Party's possession or otherwise reasonably available, including any reports that are in draft form as of the date of this Agreement and any raw data or other information that has not been compiled in a report. Any such reports which were prepared by third party consultants have been delivered as an accommodation and without any representation or warranty as to the sufficiency or accuracy, completeness, and/or validity of such reports, all of which are relied on at each Party's own risk. No Party has any current actual knowledge of any hazardous materials affecting the Property.



8. Release by Buyer.

8.1 For valuable consideration, Buyer hereby forever releases and fully discharges the Seller, and each of their predecessors and successors, and all of their officers, employees, agents, contractors, assignees, and representatives, from any and all claims, demands, damages, causes of action, costs, and expenses (including without limitation, experts' and attorneys' fees), that the Buyer now, or in the future may have, of whatsoever kind of nature, whether known or unknown, suspected or unsuspected, present or potential, foreseen or unforeseen, fixed or contingent, arising from or in any way connected with the condition of the Property sold hereunder (collectively, "Claim").

8.2 It is Buyer's intention in executing this Agreement that it shall be effective as a bar to each and every Claim, and in furtherance of this intention Buyer waives and relinquishes all rights and benefits under Section 1542 of the California civil code, which provides:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

\_\_\_\_\_/\_\_\_\_\_  
Buyer's Initials

The foregoing acknowledgment and release shall survive the Closing as well as the recording of the Grant Deed.

9. Default and Remedies.

9.1 Seller's Default. If the close of escrow shall fail to occur because of Seller's default under this Agreement, Buyer's sole and exclusive remedy, and in substitution for any other remedies that may exist at law or in equity (including, without limitation, an action for damages), shall be to terminate this Agreement, in which event the parties shall thereafter have no obligations under this Agreement or additional liability to one another.

9.2 Buyer's Default. If the close of escrow shall fail to occur because of Buyer's default under this Agreement, Seller shall have all rights and remedies available at law or in equity.

10. Miscellaneous Provisions.

10.1 Advice of Counsel. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

10.2 Assignment. Neither this Agreement nor any interest herein shall be assignable by Buyer without Seller's prior written consent.

10.3 Entire Agreement. This Agreement constitutes the entire agreement between Buyer and Seller regarding the Property, and supersedes all prior discussions, negotiations and agreements between Buyer and Seller, whether oral or written. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation concerning the Property, express or implied, not specified herein.

10.4 NOT USED

10.5 Time of the Essence. Time is of the essence with respect to all of the terms, conditions and obligations set forth herein.

10.6 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been delivered when hand delivered or deposited with a reputable overnight courier marked for "next day" delivery, or on the date shown on the return receipt after deposit in U. S. Mail, certified or registered, postage prepaid return receipt requested after it has been returned. All other general correspondence may be transmitted by regular U. S. Mail or by facsimile on the day transmitted. Notice shall be addressed to the Parties as follows:

To Buyer:

EUCLID HOUSING, LP,  
a California limited partnership  
752 S. San Pedro Avenue  
Los Angeles, CA 90014  
Email: HUGH@WPHholdings.com

To Seller:

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY  
Attention: Right of Way Manager  
Email: raschenbrenner@gosbcta.com

10.7 FIRPTA. The Foreign Investment in Real Property Tax Act (FIRPTA), IRC 1445, requires that every purchaser of U.S. real property must, unless an exemption applies, deduct and withhold from escrow proceeds ten percent (10%) of the gross sales price due to the property seller. The primary exemptions which might be applicable are: (a) Buyer provides Seller with an affidavit under penalty of perjury that Buyer is not a "foreign person" as defined in FIRPTA, or (b) Buyer provides Seller with a "qualifying statement," as defined in FIRPTA, issued by the Internal Revenue Service. Seller and Buyer agree to execute and deliver as appropriate, any instrument, affidavit, statement, or a FIRPTA Certificate and to perform any acts reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated there under.

10.8 Brokers. Seller and Buyer each warrant that they have had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the transactions contemplated herein and no broker or other person, firm or entity

are entitled to any commission or finder's fee in connection with these transactions as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party by reason of any dealings or act of the indemnifying party.

10.9 Governing Laws. The Parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the Parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, and the Americans With Disabilities Act. The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.10 Required Actions. The Parties hereto agree to and shall execute all instruments and documents and take all actions necessary to consummate the transaction contemplated by this Agreement and use its best efforts to accomplish the Closing in accordance with this Agreement.

10.11 Covenants. Seller covenants and agrees that after the date of the execution of this Agreement and through the Closing Date (a) Seller shall comply with all laws, rules, regulations and ordinances relating in any way to the Property; and (b) Seller shall not subject the Property to any liens, encumbrances, covenants, conditions, restrictions, easements, rights of way or similar matters, except as otherwise set forth in the Grant Deed, the form of which is attached as Exhibit 1 hereto.

10.12 Severability. If any term, covenant or condition of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected and each remaining term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law unless any of the stated purposes of this Agreement would be defeated.

10.13 Waivers. No waiver of any breach of any term, covenant or condition of this Agreement shall be deemed a waiver of any preceding or succeeding breach of that same of any other term, covenant or condition.

10.14 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.

10.15 Headings. Headings at the beginning of each Section are solely for the convenience of the Parties and are not a part of this Agreement. Whenever the context requires, the singular shall include the plural and the masculine shall include the feminine, and vice versa.

10.16 Survival. To the extent not required to be performed before the Closing Date or other cancellation of this Agreement, the representations and warranties of Seller contained in Section 7 shall survive the Closing Date or other cancellation of this Agreement for a period of 180 days.



10.17 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on any person or entity who is not a party to this Agreement any rights or remedies.

10.18 Amendment. Any amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller

10.19 Attorneys' Fees. If any Party brings an action or proceeding involving the Property, whether founded in tort, contract or equity, or to declare rights hereunder, each Party shall bear its own attorneys' fees and costs.

10.20 Days of Week. A "business day," as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day.

-----SIGNATURE PAGE TO FOLLOW-----

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date(s) set forth below next to their respective signatures.

Seller: SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

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

Name: Raymond Wolfe, PhD

Title: Executive Director

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Paula Gutierrez Baeza, counsel for SBCTA  
Richards, Watson & Gershon

Buyer: EUCLID HOUSING, LP,  
a California limited partnership

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

Name: Fariba Atighehchi

Title: Managing Partner

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

**EXHIBIT 1 TO  
PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

**GRANT DEED**

[APN(s): 1046-605-02 and 1046-605-03]

DRAFT

Attachment: 22-1002709 - WPH - PSA for APN 104660502 and 03 (8145 : Purchase & Sale Agreements for Upland Surplus Properties)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

EUCLID HOUSING, LP,  
a California limited partnership  
752 S. San Pedro Avenue  
Los Angeles, CA 90014  
Attention: \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S

APN: 1046-605-02 and 1046-605-03

Documentary Transfer Tax: \$ \_\_\_\_\_

## GRANT DEED AND COVENANT PURSUANT TO GOVERNMENT CODE SECTION 54222.5

WHEREAS, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a county transportation authority pursuant to Public Utility Code §§ 130800 et seq., (“**GRANTOR**”) is the record fee owner of that certain property described more particularly in Exhibit A and shown on Exhibit B (“**Property**”), which are attached hereto and incorporated herein by this reference;

WHEREAS, Assembly Bill 1486 amended the Surplus Land Act (Government Code Section 54220 et. seq.) and created new obligations before a local agency may dispose of surplus land;

WHEREAS, the Surplus Land Act designates the California State Department of Housing and Community Development (“HCD”) with oversight with respect to a local agency’s compliance with the Surplus Land Act; and

WHEREAS, **GRANTOR** wishes to grant to EUCLID HOUSING, LP, a California limited partnership (“**GRANTEE**”) the **Property** and **GRANTEE** wishes to acquire from **GRANTOR** the **Property** for developing low-and moderate-income housing; and

WHEREAS, HCD requires that certain affordability covenants and restrictions be recorded against surplus land in connection with its disposition for the development of low-and moderate-income housing; and

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **GRANTOR**, does hereby grant to **GRANTEE** the **Property** described more particularly in Exhibit A and shown on Exhibit B, which are attached hereto and incorporated herein by this reference.

Attachment: 22-1002709 - Exhibit 1 - Grant Deed for APN 104660502 and 03 (8145 : Purchase & Sale Agreements for Upland Surplus Properties)

**GRANTOR's** grant to **GRANTEE** of the **Property** is subject to the following Covenants and Restrictions for Real Property in accordance with Section 54222.5 of the Surplus Land Act:

A. Covenants and Restrictions. In accordance with Government Code Section 54222.5, **GRANTEE** shall agree to make available not less than 25 percent of the total number of units developed on the **Property** at affordable housing cost, as defined in California Health and Safety Code Section 50052.5, or affordable rent, as defined in Health and Safety Code Section 50053, to lower income households, as defined in Health and Safety Code Section 50079.5. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with Government Code Section 65915(c)(2).

B. The Covenants and Restrictions set forth at Paragraph A above are covenants and restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Government Code Section 54222.5.

IN WITNESS WHEREOF, **GRANTOR** has caused this Grant Deed to be executed by its authorized representatives as of the date specified below.

**GRANTOR:**

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY,  
a county transportation authority pursuant to  
Public Utility Code §§130800 et seq.

By: \_\_\_\_\_  
Raymond Wolfe, Ph.D., Executive Director

Date: \_\_\_\_\_, 2021

APPROVED AS TO FORM:

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

**Exhibit A**  
**Legal Description of Property**

A PORTION OF LOT 633 OF ONTARIO COLONY LANDS, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON THE MAP RECORDED IN BOOK 2 OF MAPS PAGE 8, AND THE MAP RECORDED IN BOOK 11 OF MAPS PAGE 6, AND AS DESCRIBED IN THE GRANT DEED TO THE CALIFORNIA CENTRAL RAILWAY COMPANY RECORDED NOVEMBER 14<sup>TH</sup>, 1887 IN BOOK 64 OF DEEDS, PAGES 558, 559, 559A, AND 560 TOGETHER WITH SECOND AVENUE, NOW VACATED, AS DESCRIBED IN THE QUITCLAIM DEED TO THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY RECORDED DECEMBER 30<sup>TH</sup>, 1958 IN BOOK 4960, PAGES 196 AND 197, ALL DOCUMENTS IN THE OFFICE OF THE COUNTER RECORDER OF SAID COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHWEST CORNER OF LOT NO. 633 OF SAID ONTARIO COLONY LANDS, BEING AT A POINT ON THE EAST LINE OF EUCLID AVENUE DISTANT FIFTY (50) FEET SOUTH FROM THE CENTERLINE OF LOCATION OF THE CALIFORNIA CENTRAL RAILWAY;

**THENCE** RUNNING EASTERLY ALONG THE NORTH LINE OF LOT NO. 633, SAID NORTH LINE BEING ALSO THE SOUTH LINE OF THE RIGHT OF WAY OF SAID RAILWAY, PARALLEL TO AND FIFTY (50) FEET FROM THE SAID CENTERLINE OF LOCATION A DISTANCE OF SIX HUNDRED AND THIRTY NINE (639) MORE OR LESS TO A POINT ON THE PROLONGATION OF WEST LINE OF SECOND AVENUE AS SHOWN ON THE N.W. STOWELL'S SUBDIVISION OF BLOCKS 633, 634, 647, 648, 673, AND 674 RECORDED IN BOOK 5 OF MAPS PAGE 18;

**THENCE** SOUTH ALONG SAID PROLONGED WEST LINE OF SECOND AVENUE A DISTANCE OF SEVENTY FIVE (75) FEET TO THE INTERSECTION OF THE NORTH LINE OF PARK STREET (NOW KNOWN AS STOWELL STREET) AS SHOWN ON SAID STOWELL'S SUBDIVISION AND SAID PROLONGED WEST LINE OF SECOND AVENUE;

**THENCE** ALONG THE NORTH LINE OF PARK STREET, PARALLEL TO AND DISTANT ONE HUNDRED TWENTY FIVE (125) FEET FROM SAID CENTERLINE OF LOCATION OF SAID RAILWAY A DISTANCE OF SIX HUNDRED AND THIRTY NINE (639) FEET TO A POINT IN THE EAST LINE OF EUCLID AVENUE;

**THENCE** NORTH ALONG THE EAST LINE OF EUCLID AVENUE A DISTANCE OF SEVENTY FIVE (75) FEET TO THE POINT OF BEGINNING CONTAINING AN AREA OF ONE AND TEN HUNDREDTHS OF AN ACRE (1.10) MORE OR LESS.

TOGETHER WITH THAT PORTION OF SECOND AVENUE, NOW VACATED, AS DESCRIBED IN THE QUITCLAIM DEED TO THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY RECORDED DECEMBER 30<sup>TH</sup>, 1958 IN BOOK 4690, PAGE 196 OF OFFICIAL RECORDS OF SAID COUNTY, WHICH WOULD PASS BY OPERATION OF LAW UPON CONVEYANCE OF THE LAND.

(APN 1046-605-02 & 1046-605-03)

**Exhibit B**  
**Depiction of Property**

[To be added once drafted]

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Bernardino )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

(Seal)



## General Contract Information

Contract No: 22-1002710 Amendment No.: \_\_\_\_\_

Contract Class: Receivable Department: Transit

Customer ID: 03741 Customer Name: STOWELL VILLAS, LP

Description: Purchase and Sale Agreement of Upland Surplus Property APN 1046-605-01

List Any Accounts Payable Related Contract Nos.: \_\_\_\_\_

Dollar Amount							
Original Contract		\$	768,000.00	Original Contingency		\$	-
Prior Amendments		\$	-	Prior Amendments		\$	-
Current Amendment		\$	-	Current Amendment		\$	-
Total/Revised Contract Value		\$	768,000.00	Total Contingency Value		\$	-
	Total Dollar Authority (Contract Value and Contingency)					\$	768,000.00

## Contract Authorization

Board of Directors Date: 12/01/2021 Board Item # 8145

## Contract Management (Internal Purposes Only)

Local

Escrow Agreement

N/A

Accounts Receivable													
Total Contract Funding:		\$			768,000.00		Funding Agreement No:		N/A				
Beginning POP Date:		N/A			Ending POP Date:		N/A			Final Billing Date:		N/A	
Expiration Date:		12/31/2021											
Sub-						Sub-							
Fund	Prog	Task	Task	Revenue	Total Contract Funding:		Fund	Prog	Task	Task	Revenue	Total Contract Funding:	
GL:	1080	30	0313	0360	43055000	768,000.00	GL:						-
GL:						-	GL:						-
GL:						-	GL:						-
GL:						-	GL:						-
GL:						-	GL:						-

Ryan Aschenbrenner

Project Manager (Print Name)

Victor Lopez

Task Manager (Print Name)

Additional Notes: \$768,000 represents the negotiated purchase price of the property, however, revenue is anticipated to be less SBCTA's share of escrow fees and the documentary transfer tax fees for this transaction. Revenue is dedicated to Upland Metrolink parking.

Attachment: 22-1002710 CSS (8145 : Purchase &amp; Sale Agreements for Upland Surplus Properties)

**AGREEMENT FOR PURCHASE AND SALE AND**  
**JOINT ESCROW INSTRUCTIONS**

This AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (“Agreement”) is made and entered into by and between SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA), a public agency existing under the laws of the State of California (“**Seller**”), and STOWELL VILLAS, LP, a California limited partnership (“**Buyer**”), with reference and respect to the RECITALS set forth in paragraphs [A, B, C and D] below. Buyer and Seller are sometimes individually referred to herein as “Party” and collectively as the “Parties”.

**RECITALS**

A. Pursuant to Resolution No. 17-008 – Surplus of Rail Property, adopted by SBCTA on October 5, 2016, the property identified and described in Section 1 below is excess to SBCTA’s needs and has been declared to be Surplus Land.

B. SBCTA provided the notice of availability to applicable parties and entities pursuant to Government Code Section 54222 and in accordance with Section 201 of the California Department of Housing and Community Development’s final Surplus Land Act Guidelines (“**Guidelines**”).

C. Buyer responded to said notice of availability in addition to two other Housing Sponsors and after a negotiation period of not less than ninety days SBCTA determined that Buyer was the Housing Sponsor who offered the greatest number of units for affordable rent at the deepest average level of affordability. Pursuant to said Guidelines a record of negotiations and description of notices sent was submitted to the California Department of Housing and Community Development (“HCD”) and in a letter dated August 12, 2021 HCD concurred with SBCTA’s determination.

D. Disposition of the Property at fair market value has been authorized, subject to the terms and conditions set forth in this Agreement.

In consideration of the mutual covenants contained herein and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. **Sale of Property.** Seller shall sell to Buyer, and Buyer shall purchase from Seller, at the price and upon the terms and conditions set forth in this Agreement, the following real property: (i) a fee interest in 255 and 297 Stowell Street, APN 1046-605-01, more particularly described in Exhibit A (“Property”) and depicted on Exhibit B of the Grant Deed attached hereto and incorporated herein as Exhibit 1, located immediately adjacent to APN 1046-551-42 (referred to as the “SBCTA Parcel”).

2. Purchase Price. The purchase price for the Property shall be Seven Hundred Sixty Eight Thousand Dollars (\$768,000.00) ("Purchase Price"). Buyer shall pay to Seller through Escrow (defined below) the Purchase Price, payable in cash, by cashier's or certified check or by wire transfer, at least three (3) business days prior to the Closing Date (also defined below).

3. Escrow.

3.1 Escrow. No later than ten (10) business days after the execution of this Agreement, Buyer and Seller shall open an escrow ("Escrow") with COMMERCE ESCROW COMPANY, ATTN: Dwayne Butler, 1055 Wilshire Blvd, Suite 1000, Los Angeles, CA 90017, 213-353-4060 ("Escrow Holder"), and shall deliver a fully executed copy of this Agreement to Escrow Holder. The deposit with Escrow Holder of a fully executed original of this Agreement shall constitute the opening of Escrow and authorization to Escrow Holder to act in accordance with the terms of this Agreement. This Agreement shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further instructions restating or amending the Agreement unless specifically so instructed by the Parties. Subject to approval of the Parties, Escrow Holder may, however, include its standard general provisions. Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with the Agreement and applicable law. Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened ("Opening Date").

3.2 Due Diligence. Buyer shall be entitled, at Buyer's sole cost, to conduct any and all further inspections, appraisals and investigations of the property that it may desire during an initial due diligence period of 45 days from Opening Date. Seller shall cooperate by providing access to the Property to Buyer's consultants and third party-vendors.

3.3 Closing Date. The Escrow shall close within 30 days following the expiration of the initial 45 day due diligence period, but in no event later than \_\_\_\_\_ ("Closing Date"). CLOSING SHALL BE ALL CASH AND NOT CONTINGENT ON LOAN APPROVAL.

3.4 Deposits by Buyer. Except as set forth in Section 2, Buyer shall deposit with Escrow Holder the following items no later than ten (10) business days prior to the Closing Date, duly executed and acknowledged where required:

3.4.1 The Purchase Price, plus such additional funds as are required to pay Escrow Holder's estimate of Buyer's costs and fees associated with the transaction as provided in Section 2 above.

3.4.2 Initial deposit shall be 3% of the Purchase Price. Notwithstanding Section 3.4 above, Buyer shall deposit said initial deposit with Escrow Holder no later than five (5) business days after the Opening Date.

3.4.3 A completed California Franchise Tax Board Form 593-W, and an affidavit certifying that the Seller is not a "foreign person" as defined in the Internal Revenue Code.

3.4.4 All other funds and documents as may be reasonably required by Escrow Holder or the Title Company to close the Escrow in accordance with this Agreement.

3.5 Deposit of Documents by Seller. Seller shall deposit with Escrow Holder the following items no later than ten (10) business days prior to the Closing Date, duly executed and acknowledged where required:

3.5.1 The Grant Deed conveying title in fee simple absolute of the Property to Buyer.

3.5.2 If required, a duly executed resolution authorizing the execution of this Agreement and the sale of the Property.

3.5.3 All other documents as may reasonably be required by Escrow Holder to close the Escrow in accordance with this Agreement.

3.6 If applicable, all real property taxes, any penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds against the Property which are liens and unpaid as of the Closing Date shall be paid by Seller, except those to which title is taken subject to and in accordance with the terms of this Agreement.

#### 4. Escrow Holder's Obligations.

4.1 The performance of the acts set forth in this Section shall constitute the "Closing" or the "Close of Escrow" as such term is used in this Agreement. The Escrow Holder shall conduct the Closing on the Closing Date by recording and distributing the following described documents and funds in the following manner:

4.1.1 Deliver to Seller on the Closing Date in immediately available funds the sum of the Purchase Price and such other funds, if any, due Seller by reason of prorations, less Seller's closing costs and prorations, if any.

4.1.2 Obtain from Seller documentation to place title in the condition necessary to enable conveyance pursuant to this Agreement;

4.1.3 Pay and charge Seller for any amounts necessary to place the title in the condition necessary to enable conveyance pursuant to this Agreement.

4.1.4 Pay and charge Buyer and Seller for any escrow charges, and costs incurred in this transaction, each party to pay their own costs.

4.1.5 Pay and charge Buyer for a CLTA Policy of Title Insurance and any endorsements to the Title Policy requested by the Buyer.

4.1.6 Seller shall pay all city or county documentary or transfer taxes.

4.1.7 Make all adjustments, except for taxes and assessments, on the basis of a 30-day month.

4.1.8 Record any instrument delivered through the Escrow, including any required quitclaim and grant deeds if such action is necessary to place record title in condition to comply with the terms of the Agreement.

4.1.9 At least ten (10) business days before the Closing Date, advise Buyer and Seller in writing of Escrow Holder's estimate of the total Escrow costs and fees associated with this transaction to be paid by Buyer. If this Agreement and the accompanying transaction are cancelled before the Closing Date without a default by either party, Buyer shall pay any cancellation fees imposed by the Escrow Holder. If this Agreement and the accompanying transaction are cancelled as a result of default by either Buyer or the Seller, then the defaulting party shall pay all cancellation fees imposed by the Escrow Holder.

4.1.10 Any amendments of, or supplements to, any Escrow instructions must be in writing and executed by the Buyer and Seller.

5. Conditions to Closing. The following conditions are conditions precedent to the Parties' obligation to consummate the Closing on the Property:

5.1 Buyer's Conditions to Closing. The Buyer's obligations to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions which are for Buyer's sole benefit on or prior to the dates designated below for the satisfaction of such conditions, or the date for Closing in the absence of a specified date:

5.1.1 Approval of Title Documents. Within 5 (five) days following the date of this Agreement, Seller shall cause Escrow Holder to deliver a preliminary title report with respect to the Real Property, together with legible copies of all exceptions listed in such report (collectively, "Title Documents"). Buyer shall have ten (10) business days after receipt of the Title Documents to notify Seller and Escrow Holder in writing of Buyer's disapproval of any exceptions referenced in such Title Documents. Failure of Buyer to disapprove any such exceptions within the aforementioned time limit shall be deemed to be an approval of the exceptions set forth in the Title Documents. In the event Buyer disapproves any exceptions set forth in the Title Documents, Seller shall have until the Closing Date to eliminate any disapproved exceptions, and if such exceptions are not eliminated, then the escrow shall be cancelled unless Buyer then elects to waive its prior disapproval.

5.1.2 Issuance of Title Insurance. Seller shall convey title to the Property to Buyer by a Grant Deed in the form of Exhibit 1 attached hereto. At the Close of Escrow, FIDELITY NATIONAL, Attn: Brandon Miller (the "Title Company"), shall issue through Escrow an Owner's Policy of Title Insurance ("Title Policy") with CLTA coverage with liability in the full amount of the Purchase Price, insuring fee simple title to the Property vested in Buyer subject only to the following exceptions (the "Permitted Exceptions"): (a) the standard printed exceptions set forth in the Title Policy; (b) general and special taxes and assessments not then delinquent or payable over time; (c) quasi-public utility, public utility, public alley, public street easements, and rights of way of record; and (d) those certain exceptions which have been approved in writing by Buyer, including those exceptions that appeared in the Title Documents that were not previously disapproved.

5.1.3 At or prior to the Closing, Seller shall have performed all of Seller's obligations herein that are to be performed prior to the Closing.

5.1.4 Seller's representations and warranties shall be true and correct as of the date of this Agreement and also as of the date of the Closing.

5.1.5 The physical condition of the Property shall be substantially the same at the Closing as on the date of execution of this Agreement, reasonable wear and tear excepted.

5.2 Seller Conditions to Closing. The Seller's obligations to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions which are for Seller's sole benefit on or prior to the dates designated below for the satisfaction of such conditions, or the date for Closing in the absence of a specified date:

5.2.1 At or prior to the Closing, Buyer shall have performed all of Buyer's obligations herein that are to be performed prior to the Closing.

5.3 Failure of Condition. If any condition stated in this Agreement has not been eliminated or satisfied within the time limits and pursuant to the provisions of this Agreement through no fault of either Party (in the case of a default, the provisions of Section 9 shall govern), then the Parties, as their sole and exclusive remedy, shall have the right to either waive the condition in question, and proceed with the Closing, or in the alternative, terminate this Agreement. In the event of such termination as the result of the failure of a condition to Closing, all documents and funds shall be returned to the party providing them, and neither party shall have any further rights or obligations under this Agreement, except that Escrow and title cancellation fees shall be paid in accordance with this Agreement.

## 6. Condition of Property.

6.1 Buyer has investigated the Property's zoning and other building matters affecting the Property and its condition, including but not limited to its suitability for Buyer's intended use and has determined that it is suitable for Buyer's intended use.

6.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing As-Is condition and has made all inspections of the Property that Buyer believes are necessary to protect its own interest.

6.3 Buyer hereby acknowledges that the Property is subject to the Covenants and Restrictions set forth in the Grant Deed attached as Exhibit 1 hereto.

## 7. Representations and Warranties.

7.1 The Parties represent and warrant to each other that as of the date hereof the following are true and correct:



7.1.1 No Party has received nor is it aware of any notification from the Department of Building and Safety, Health Department, or other such City, County or State authority having jurisdiction, requiring any work to be done on or affecting the Property.

7.1.2 No Party has received notice of any litigation, arbitrations, claims, violations from any agency, proceedings, or other actions, pending or threatened, that arise out of the ownership or operation of the Property.

7.1.3 Each Party has the power, right, and authority to enter this Agreement and the instruments referenced herein, and to take all actions necessary to consummate the transaction contemplated by this Agreement.

7.1.4 The execution and delivery of this Agreement and the documents referenced herein, the incurrence of the obligation, the consummation of the transaction and the compliance with this Agreement and the documents referenced herein do not conflict with or result in the material breach of any term or condition of or constitute a default under any bond, note, or other evidence of indebtedness or any agreement, indenture, mortgage, deed of trust, loan, corporate documents or agreements, lease or other agreement or instrument to which any Party is a part or affecting the Property.

7.1.5 The person(s) executing this Agreement and the instruments referenced herein have the power, right, and actual authority to bind each respective Party to the terms and conditions of this Agreement.

7.1.6 No attachments, executions, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other similar proceedings are pending or threatened against any Party or involving the Property.

7.1.7 No Party has entered any other agreement for the sale or transfer of the Property, and there are no rights of first refusal or option to purchase the Property.

7.1.8 Other than as set forth in the Title Documents, there are no other leases, subleases, occupancies or tenancies pertaining to the Property and no Party has any knowledge of any oral agreements with anyone with respect to the occupancy of the Property.

7.1.9 There are no service or maintenance agreements (oral or written) which affect the Property subsequent to Closing.

7.1.10 Each Party has provided to the others all environmental assessment reports in each Party's possession or otherwise reasonably available, including any reports that are in draft form as of the date of this Agreement and any raw data or other information that has not been compiled in a report. Any such reports which were prepared by third party consultants have been delivered as an accommodation and without any representation or warranty as to the sufficiency or accuracy, completeness, and/or validity of such reports, all of which are relied on at each Party's own risk. No Party has any current actual knowledge of any hazardous materials affecting the Property.

8. Release by Buyer.

8.1 For valuable consideration, Buyer hereby forever releases and fully discharges the Seller, and each of their predecessors and successors, and all of their officers, employees, agents, contractors, assignees, and representatives, from, any and all claims, demands, damages, causes of action, costs, and expenses (including without limitation, experts' and attorneys' fees), that the Buyer now, or in the future may have, of whatsoever kind of nature, whether known or unknown, suspected or unsuspected, present or potential, foreseen or unforeseen, fixed or contingent, arising from or in any way connected with the condition of the Property sold hereunder (collectively, "Claim"),.

8.2 It is Buyer's intention in executing this Agreement that it shall be effective as a bar to each and every Claim, and in furtherance of this intention Buyer waives and relinquishes all rights and benefits under Section 1542 of the California civil code, which provides:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

\_\_\_\_\_/\_\_\_\_\_  
Buyer's Initials

The foregoing acknowledgment and release shall survive the Closing as well as the recording of the Grant Deed.

9. Default and Remedies.

9.1 Seller's Default. If the close of escrow shall fail to occur because of Seller's default under this Agreement, Buyer's sole and exclusive remedy, and in substitution for any other remedies that may exist at law or in equity (including, without limitation, an action for damages), shall be to terminate this Agreement, in which event the parties shall thereafter have no obligations under this Agreement or additional liability to one another.

9.2 Buyer's Default. If the close of escrow shall fail to occur because of Buyer's default under this Agreement, Seller shall have all rights and remedies available at law or in equity.

10. Miscellaneous Provisions.

10.1 Advice of Counsel. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.



10.2 Assignment. Neither this Agreement nor any interest herein shall be assignable by Buyer without Seller's prior written consent.

10.3 Entire Agreement. This Agreement constitutes the entire agreement between Buyer and Seller regarding the Property, and supersedes all prior discussions, negotiations and agreements between Buyer and Seller, whether oral or written. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation concerning the Property, express or implied, not specified herein.

10.4 NOT USED

10.5 Time of the Essence. Time is of the essence with respect to all of the terms, conditions and obligations set forth herein.

10.6 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been delivered when hand delivered or deposited with a reputable overnight courier marked for "next day" delivery, or on the date shown on the return receipt after deposit in U. S. Mail, certified or registered, postage prepaid return receipt requested after it has been returned. All other general correspondence may be transmitted by regular U. S. Mail or by facsimile on the day transmitted. Notice shall be addressed to the Parties as follows:

To Buyer:

STOWELL VILLAS, LP,  
a California limited partnership  
752 S. San Pedro Avenue  
Los Angeles, CA 90014  
Email: HUGH@WPHholdings.com

To Seller:

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY  
Attention: Right of Way Manager  
Email: raschenbrenner@gosbcta.com

10.7 FIRPTA. The Foreign Investment in Real Property Tax Act (FIRPTA), IRC 1445, requires that every purchaser of U.S. real property must, unless an exemption applies, deduct and withhold from escrow proceeds ten percent (10%) of the gross sales price due to the property seller. The primary exemptions which might be applicable are: (a) Buyer provides Seller with an affidavit under penalty of perjury that Buyer is not a "foreign person", as defined in FIRPTA, or (b) Buyer provides Seller with a "qualifying statement", as defined in FIRPTA, issued by the Internal Revenue Service. Seller and Buyer agree to execute and deliver as appropriate, any instrument, affidavit, statement, or a FIRPTA Certificate and to perform any acts reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated there under.

10.8 Brokers. Seller and Buyer each warrant that they have had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the transactions contemplated herein and no broker or other person, firm or entity

are entitled to any commission or finder's fee in connection with these transactions as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party by reason of any dealings or act of the indemnifying party.

10.9 Governing Laws. The Parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the Parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, and The Americans With Disabilities Act. The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.10 Required Actions. The Parties hereto agree to and shall execute all instruments and documents and take all actions necessary to consummate the transaction contemplated by this Agreement and use its best efforts to accomplish the Closing in accordance with this Agreement.

10.11 Covenants. Seller covenants and agrees that after the date of the execution of this Agreement and through the Closing Date (a) Seller shall comply with all laws, rules, regulations and ordinances relating in any way to the Property; and (b) Seller shall not subject the Property to any liens, encumbrances, covenants, conditions, restrictions, easements, rights of way or similar matters, except as otherwise set forth in the Grant Deed, the form of which is attached as Exhibit 1 hereto.

10.12 Severability. If any term, covenant or condition of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected and each remaining term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law unless any of the stated purposes of this Agreement would be defeated.

10.13 Waivers. No waiver of any breach of any term, covenant or condition of this Agreement shall be deemed a waiver of any preceding or succeeding breach of that same of any other term, covenant or condition.

10.14 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.

10.15 Headings. Headings at the beginning of each Section are solely for the convenience of the Parties and are not a part of this Agreement. Whenever the context requires, the singular shall include the plural and the masculine shall include the feminine, and vice versa.

10.16 Survival. To the extent not required to be performed before the Closing Date or other cancellation of this Agreement, the representations and warranties of Seller contained in Section 7 shall survive the Closing Date or other cancellation of this Agreement for a period of 180 days.

10.17 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on any person or entity who is not a party to this Agreement any rights or remedies.

10.18 Amendment. Any amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller

10.19 Attorneys' Fees. If any Party brings an action or proceeding involving the Property, whether founded in tort, contract or equity, or to declare rights hereunder, each Party shall bear its own attorneys' fees and costs.

10.20 Days of Week. A "business day", as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date(s) set forth below next to their respective signatures.

Seller: SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

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

Name: Raymond Wolfe, PhD

Title: Executive Director

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Paula Gutierrez Baeza, counsel for SBCTA  
Richards, Watson & Gershon

Buyer: STOWELL VILLAS, LP,  
a California limited partnership

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

Name: Fariba Atighehchi

Title: Managing Partner

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

Attachment: 22-1002710 - WPH - PSA for APN 104660501 (8145 : Purchase & Sale Agreements for Upland Surplus Properties)

**EXHIBIT 1 TO  
PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

**GRANT DEED**

[APN(s): 1046-605-01]

DRAFT

Attachment: 22-1002710 - WPH - PSA for APN 104660501 (8145 : Purchase & Sale Agreements for Upland Surplus Properties)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

STOWELL VILLAS, LP,  
a California limited partnership  
752 S. San Pedro Avenue  
Los Angeles, CA 90014  
Attention: \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S

APN:1046-605-01

Documentary Transfer Tax: \$ \_\_\_\_\_

## GRANT DEED AND COVENANT PURSUANT TO GOVERNMENT CODE SECTION 54222.5

WHEREAS, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a county transportation authority pursuant to Public Utility Code §§ 130800 et seq., (“**GRANTOR**”) is the record fee owner of that certain property described more particularly in Exhibit A and shown on Exhibit B (“**Property**”), which are attached hereto and incorporated herein by this reference;

WHEREAS, Assembly Bill 1486 amended the Surplus Land Act (Government Code Section 54220 et. seq.) and created new obligations before a local agency may dispose of surplus land;

WHEREAS, the Surplus Land Act designates the California State Department of Housing and Community Development (“HCD”) with oversight with respect to a local agency’s compliance with the Surplus Land Act; and

WHEREAS, **GRANTOR** wishes to grant to STOWELL VILLAS, LP, a California limited partnership (“**GRANTEE**”) the **Property** and **GRANTEE** wishes to acquire from **GRANTOR** the **Property** for developing low-and moderate-income housing; and

WHEREAS, HCD requires that certain affordability covenants and restrictions be recorded against surplus land in connection with its disposition for the development of low-and moderate-income housing; and

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **GRANTOR**, does hereby grant to **GRANTEE** the **Property** described more particularly in Exhibit A and shown on Exhibit B, which are attached hereto and incorporated herein by this reference.

Attachment: 22-1002710 - Exhibit 1 - Grant Deed for APN 104660501 (8145 : Purchase & Sale Agreements for Upland Surplus Properties)

**GRANTOR's** grant to **GRANTEE** of the **Property** is subject to the following Covenants and Restrictions for Real Property in accordance with Section 54222.5 of the Surplus Land Act:

A. Covenants and Restrictions. In accordance with Government Code Section 54222.5, **GRANTEE** shall agree to make available not less than 25 percent of the total number of units developed on the **Property** at affordable housing cost, as defined in California Health and Safety Code Section 50052.5, or affordable rent, as defined in Health and Safety Code Section 50053, to lower income households, as defined in Health and Safety Code Section 50079.5. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with Government Code Section 65915(c)(2).

B. The Covenants and Restrictions set forth at Paragraph A above are covenants and restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Government Code Section 54222.5.

IN WITNESS WHEREOF, **GRANTOR** has caused this Grant Deed to be executed by its authorized representatives as of the date specified below.

**GRANTOR:**

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY,  
a county transportation authority pursuant to  
Public Utility Code §§130800 et seq.

By: \_\_\_\_\_  
Raymond Wolfe, Ph.D., Executive Director

Date: \_\_\_\_\_, 2021

APPROVED AS TO FORM:

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

**Exhibit A**  
**Legal Description of Property**

A PORTION OF LOTS 633 AND 634 OF ONTARIO COLONY LANDS, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON THE MAP RECORDED IN BOOK 2 OF MAPS PAGE 8, AND THE MAP RECORDED IN BOOK 11 OF MAPS PAGE 6, AND AS DESCRIBED IN THE GRANT DEED TO THE CALIFORNIA CENTRAL RAILWAY COMPANY RECORDED NOVEMBER 14<sup>TH</sup>, 1887 IN BOOK 64 OF DEEDS, PAGES 558, 559, 559A, AND 560 TOGETHER WITH SECOND AVENUE, NOW VACATED, AS DESCRIBED IN THE QUITCLAIM DEED TO THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY RECORDED DECEMBER 30<sup>TH</sup>, 1958 IN BOOK 4960, PAGES 196 AND 197, ALL DOCUMENTS IN THE OFFICE OF THE COUNTER RECORDER OF SAID COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** NEAR THE NORTHEAST CORNER OF LOT NO. 634 OF SAID ONTARIO COLONY LANDS AT A POINT ON THE WEST LINE OF SULTANA AVENUE DISTANT FIFTY (50) FEET SOUTH FROM THE CENTERLINE OF LOCATION OF THE CALIFORNIA CENTRAL RAILWAY, SAID POINT BEING THE POINT OF BEGINNING;

**THENCE** RUNNING WESTERLY ALONG THE NORTH LINE OF LOT NO. 634, SAID NORTH LINE BEING ALSO THE SOUTH LINE OF THE RIGHT OF WAY OF SAID RAILWAY, PARALLEL TO AND FIFTY (50) FEET FROM THE SAID CENTERLINE OF LOCATION A DISTANCE OF SIX HUNDRED AND FORTY THREE (643) MORE OR LESS TO A POINT ON PROLONGATION OF THE EAST LINE OF SECOND AVENUE AS SHOWN ON THE N.W. STOWELL'S SUBDIVISION OF BLOCKS 633, 634, 647, 648, 673, AND 674 RECORDED IN BOOK 5 OF MAPS PAGE 18;

**THENCE** SOUTH ALONG SAID PROLONGED EAST LINE OF SECOND AVENUE A DISTANCE OF SEVENTY FIVE (75) FEET TO THE INTERSECTION OF THE NORTH LINE OF PARK STREET (NOW KNOWN AS STOWELL STREET) AS SHOWN ON SAID STOWELL'S SUBDIVISION AND SAID PROLONGED EAST LINE OF SECOND AVENUE;

**THENCE** ALONG THE NORTH LINE OF PARK STREET, PARALLEL TO AND DISTANT ONE HUNDRED TWENTY FIVE (125) FEET FROM SAID CENTERLINE OF LOCATION OF SAID RAILWAY A DISTANCE OF SIX HUNDRED AND FORTY THREE (643) FEET TO A POINT IN THE WEST LINE OF SULTANA AVENUE;

**THENCE** NORTH ALONG THE WEST LINE OF SULTANA AVENUE A DISTANCE OF SEVENTY FIVE (75) FEET TO THE POINT OF BEGINNING CONTAINING AN AREA OF ONE AND ELEVEN HUNDREDTHS OF AN ACRE (1.11) MORE OR LESS.

TOGETHER WITH THAT PORTION OF SECOND AVENUE, NOW VACATED, AS DESCRIBED IN THE QUITCLAIM DEED TO THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY RECORDED DECEMBER 30<sup>TH</sup>, 1958 IN BOOK 4690, PAGE 196 OF OFFICIAL RECORDS OF SAID COUNTY, WHICH WOULD PASS BY OPERATION OF LAW UPON CONVEYANCE OF THE LAND.

(APN 1046-605-01)



**Exhibit B**  
**Depiction of Property**

[To be added once drafted]

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Bernardino )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

(Seal)

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



August 12, 2021

Ryan Aschenbrenner  
Right of Way Manager, Transit & Rail Programs  
1170 West Third Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410

Dear Ryan Aschenbrenner:

**RE: Written Comments Regarding San Bernardino County Transportation  
Authority's Surplus Land Disposition Documentation for the Properties at  
Euclid Avenue and Stowell Street (APNs 1046-605-01 and 1046-605-02,03).**

Thank you for submitting your surplus land documentation for review by the Department of Housing and Community Development (HCD). We received your documentation on July 14, 2021. This letter constitutes HCD's initial written comments, pursuant to Government Code section 54230.5(b)(2)(C) of the Surplus Land Act (SLA), for the properties located at APNs 1046-605-01 and 1046-605-02,03 in the City of Upland.

According to your letter and included documents, a Resolution declaring the properties to be surplus was issued on October 5, 2016 and a Notice of Availability (NOA) was sent to all the required entities on May 13, 2020. During the required 60-day period, three affordable housing entities expressed interest in purchasing the property. The three housing entries are Western Pacific Holdings, Community Housing Works, and Borstein Enterprises. Per your letter of July 19, 2021, of the three interested parties, Western Pacific Holdings' proposal offered the deepest level of affordability with a guarantee of 160 affordable units. The San Bernardino County Transportation Authority (SBCTA) now wishes to proceed with the sale of the property to Western Pacific Holdings.

The letter and documents that you provided establish that a Resolution declaring the property to be surplus was issued on October 5, 2016 and a Notice of Availability (NOA) was sent to all the required entities on May 13, 2020. You have enclosed a summary of all the housing proposals and confirmed that Western Pacific Holdings offers the deepest level of affordability. You have also enclosed the appropriate draft affordability covenant to be recorded against the property.

Attachment: HCD SLA Determination Letter (8145 : Purchase & Sale Agreements for Upland Surplus Properties)

San Bernardino Transportation Authority

HCD determines that you have met all the requirements under the SLA for the purposes of disposing of the surplus land located at APNs 1046-605-01 and 1046-605-02,03 in the City of Upland. SBCTA is permitted to proceed with the sale of the property.

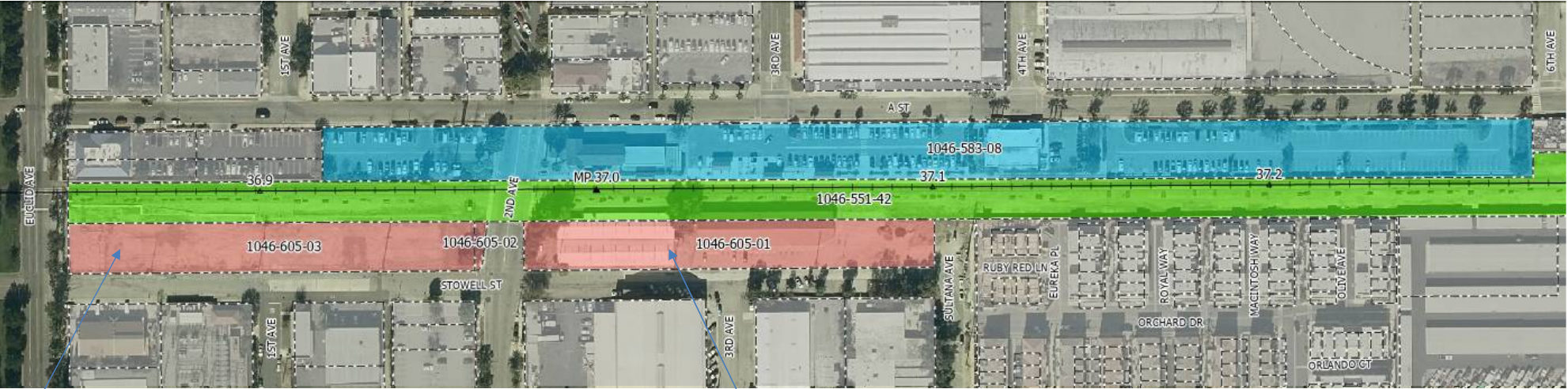
SBCTA or its representatives may send any questions to [publiclands@hcd.ca.gov](mailto:publiclands@hcd.ca.gov).

Sincerely,






Sasha Wisotsky Kergan  
Data & Research Unit Chief  
Housing Policy Development

# Upland Surplus Properties



120 South Euclid Avenue APN 1046-605-02,03  
Area 1.15 Acres

201-299 East Stowell Street APN 1046-605-01  
Area 1.10 Acres

-  Surplus Parcels
-  Active Rail Corridor
-  Upland Metrolink Station & Existing Parking

## ***Minute Action***

### AGENDA ITEM: 7

***Date:*** December 1, 2021

***Subject:***

Defer Shortway Subdivision Quiet Zone Project

***Recommendation:***

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

- A. Defer the Shortway Subdivision Quiet Zone Project (Project) until the Southern California Regional Rail Authority identifies a schedule for the maintenance and rehabilitation work to be completed.
- B. De-allocate the remaining estimated balance of \$3,240,000 of unexpended Local Valley Transportation Funds currently allocated to the Project.

***Background:***

The San Bernardino County Transportation Authority (SBCTA) identified \$4 million of funding for the Shortway Subdivision Quiet Zone Project (Project) in February 2016 and the SBCTA Board of Directors (Board) provided direction to staff to proceed with the design, environmental clearance, and construction improvements to implement the Project. On October 19, 2016, SBCTA executed Memorandum of Understanding (MOU) No. 17-1001586 with the City of San Bernardino (City) to define the roles and responsibilities for the implementation and renewal of a quiet zone along the Shortway Subdivision in accordance with a Federal Railroad Administration (FRA) analysis of infrastructure improvements, which included installation of constant warning circuitry, new vehicular and pedestrian gates and flashers, and pedestrian channelization at rail crossings at Rialto Avenue and Walnut Street in the City. The bulk of improvements were required for Rialto Avenue, while the proposed improvements at Walnut Street were limited due to constraints associated with the existing profile of the roadway. Completing this work would bring the infrastructure to a state of good repair for an estimated cost of \$6.2 million, which is to be completed by the Southern California Regional Rail Authority (SCRRA) as part of its Rehabilitation Program. As the identification of priorities and funding of the SCRRA Rehabilitation Program is done in partnership with the other four member agencies as part of the annual budget process, a consensus on prioritization and funding of rehabilitation projects must be reached before work can commence. The MOU was subsequently amended on February 8, 2018, to extend the term through December 31, 2021, in order to allow for funding and scheduling of the work to be determined. However, on July 11, 2018, the Board approved postponing the Project until SCRRA secured funding for the track rehabilitation portion.

While the rehabilitation work has been recommended by SCRRA staff for funding as part of their annual Rehabilitation and Capital Program, and was included for Fiscal Year 2021/2022, work has not progressed. Further, earlier this year, SCRRA developed a Grade Crossing Prioritization Tool, which assesses, analyzes, and rates each of the SCRRA at-grade crossings based on their existing conditions and incident information as a result of increased crossing incidents across the system. On a scale of 1 (immediate repairs needed) to 5 (excellent), the crossing assessment score of the crossings associated with the Shortway Subdivision Quiet Zone Project was 3.4 out of 5, which is considered fair to good. SCRRA staff has determined that the

*Entity: San Bernardino County Transportation Authority*

## Board of Directors Agenda Item

December 1, 2021

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Project will not be completed within the next five (5) years in order for SCRRA to prioritize maintenance and rehabilitation work at crossings that scored lower and have since been identified as priorities. SCRRA is in the process of updating its Maintenance and Rehabilitation Plan to reflect the updated priority status of rehabilitation projects.

Since the MOU with the City expires at the end of the year and funding for the rehabilitation overall Project is unknown, staff is recommending shelving the project and de-allocating the remaining balance as shown under Recommendations A and B. A new MOU will be developed once SCRRA is in a position to move forward with the rehabilitation component and the additional project funding is secured. As an alternative, the Board could elect to fully fund the rehabilitation component of the project, however, this would be setting a precedent of SBCTA fully funding rehabilitation work on the Shortway, which staff does not recommend.

***Financial Impact:***

This item is consistent with the Fiscal Year 2021/2022 Budget.

***Reviewed By:***

This item was reviewed and unanimously recommended for approval by the Transit Committee on November 10, 2021. SBCTA General Counsel has reviewed this item.

***Responsible Staff:***

Victor Lopez, Director of Capital Delivery

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Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

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San Bernardino County Transportation Authority

## ***Minute Action***

### AGENDA ITEM: 8

***Date:*** December 1, 2021

***Subject:***

Amendment No. 1 to Contract No. 21-1002621 with Nossaman, LLP for Legal Advisement Services for the Brightline West Lease and Revised Cucamonga Station Agreement

***Recommendation:***

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

A. Allocate \$200,000 of Valley Local Transportation Funds to Task 0313, Transit Right of Way Management, to support the development of the Brightline West lease and revised Cucamonga Station Agreement.

B. Approve Amendment No. 1 to Contract No. 21-1002621 with Nossaman, LLP for legal advisement services related to the Brightline West lease and revised Cucamonga Station Agreement, increasing the contract amount by \$200,000, for a new not-to-exceed amount of \$250,000, to be funded with Local Transportation Funds – Rail, contingent upon the submission of certificates of insurance demonstrating compliance with contract requirements.

***Background:***

In July 2020, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) approved Contract No. 21-1002447, a Memorandum of Understanding with DesertXpress Enterprises, LLC, also known as Brightline West, related to development of a privately funded high-speed passenger rail connection between Las Vegas, Nevada, and the Rancho Cucamonga Metrolink station, now known as Cucamonga Station. As part of the coordination efforts, development of a lease agreement for a portion of the San Gabriel Subdivision between Interstate 15 and Cucamonga Station is needed. Further, given the shared use of the Cucamonga Station and potential transit-oriented development, the City of Rancho Cucamonga requested we update the station area agreement with a new agreement.

Contract No. 21-1002621 was awarded to Nossaman, LLP under General Counsel authority, in accordance with SBCTA Procurement Policy No. 11000, Section VIII.B.5 - General Counsel, for legal advisement services related to these efforts in an amount of \$50,000. Negotiations and work are ongoing and an increase to the contract amount is needed. The complexity and length of the negotiations are beyond what was expected in the initial cost proposal. As the amendment amount exceeds General Counsel's authority amount of \$100,000, staff is requesting approval of Amendment No. 1 to Contract No. 21-1002621, increasing the contract amount by \$200,000, for a new, not-to-exceed amount of \$250,000, to be funded with Local Transportation Funds - Rail.

***Financial Impact:***

This item is not consistent with the Fiscal Year 2021/2022 Budget. An administrative budget adjustment will be processed.

***Reviewed By:***

This item was reviewed and unanimously recommended for approval by the Transit Committee on November 10, 2021. SBCTA General Counsel, Procurement Manager, and Risk Manager have reviewed this item and the draft amendment.

*Entity: San Bernardino County Transportation Authority*



Board of Directors Agenda Item  
December 1, 2021  
Page 2

***Responsible Staff:***

Carrie Schindler, Director of Transit and Rail Programs

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Approved  
Board of Directors  
Date: December 1, 2021  
Witnessed By:

San Bernardino County Transportation Authority

## General Contract Information

Contract No: 21-1002621 Amendment No.: 1

Contract Class: Payable Department: Transit

Vendor No.: 01519 Vendor Name: Nossaman, LLP

Description: Legal Advisement Services for Brightline Lease at Rancho Cucamonga Metrolink Station

List Any Related Contract Nos.: \_\_\_\_\_

Dollar Amount							
Original Contract		\$	50,000.00	Original Contingency		\$	-
Prior Amendments		\$	-	Prior Amendments		\$	-
Current Amendment		\$	200,000.00	Current Amendment		\$	-
Total/Revised Contract Value		\$	250,000.00	Total Contingency Value		\$	-
	Total Dollar Authority (Contract Value and Contingency)					\$	250,000.00

## Contract Authorization

Board of Directors Date: 12/01/2021 Board Item # 8147

## Contract Management (Internal Purposes Only)

Other Contracts Local Sole Source? No Administrative Budget Adjustment N/A

Professional Services (Non-A&E) N/A

## Accounts Payable

Estimated Start Date:				04/26/2021		Expiration Date:				04/26/2026		Revised Expiration Date:					
NHS:				N/A		QMP/QAP:				N/A		Prevailing Wage:				N/A	
												Total Contract Funding:		Total Contingency:			
Fund		Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name				\$	250,000.00	\$	-		
GL: 1040		30	0313	0360	52200	41200000		LTF Rail					250,000.00		-		
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Ryan Aschenbrener

Carrie Schindler

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes:

Attachment: 21-1002621 CSS (8147 : Amendment No. 1 To Legal Services Contract No. 21-1002621)

**AMENDMENT NO. 1 TO CONTRACT NO. 21-1002621**

**FOR**

**LEGAL ADVISEMENT SERVICES FOR AGREEMENTS RELATED TO BRIGHTLINE  
AT RANCHO CUCAMONGA METROLINK STATION**

**(NOSSAMAN, LLP)**

This Amendment No. 1 to Contract No. 21-1002621 is made by and between the San Bernardino County Transportation Authority (“SBCTA”) and the firm of Nossaman, LLP (“ATTORNEY”). SBCTA and ATTORNEY are each a “Party” and collectively are “Parties”.

**RECITALS**

- A. SBCTA, under Contract No. 21-1002621, engaged ATTORNEY to provide legal services relating to the development of a Brightline high speed passenger rail station and use of a portion of the San Gabriel Subdivision at the Rancho Cucamonga Metrolink Station, including preparing and negotiating agreements and providing legal advice and counsel (“Contract”); and
- B. SBCTA and ATTORNEY desire to amend the Contract to increase the contract price by \$200,000.

**NOW, THEREFORE**, in consideration of the terms and conditions set forth herein, SBCTA and ATTORNEY agree as follows:

1. ARTICLE 3.1 COMPENSATION is deleted and replaced in its entirety to read as follows;
 

“3.1 The total Not-To-Exceed Amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) for Services to be provided under this Contract. SBCTA shall compensate ATTORNEY for Services performed pursuant to the rates set forth in Exhibit “B”, Attorneys’ Fees and Charges. The hourly rates identified in Exhibit “B” shall remain fixed for the term of this Contract and include ATTORNEY’s direct labor costs, indirect costs, and profit. All costs and expenses shall be reimbursed for the amounts identified in Exhibit “B”. SBCTA will not reimburse for any expenses not shown in Exhibit “B”.”
2. The Recitals set forth above are incorporated herein by this reference.
3. Except as amended by this Amendment No. 1, all other provisions of the Contract, and amendments thereto, shall remain in full force and effect and are incorporated herein by this reference.

4. This Amendment No. 1 is effective upon execution by SBCTA.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 1 below.

**NOSSAMAN, LLP**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

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

Bernadette Duran-Brown  
Partner

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

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

Curt Hagman  
Board President

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

**APPROVED AS TO FORM:**

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

Julianna K. Tillquist  
General Counsel

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

**CONCURRENCE:**

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

Jeffery Hill  
Procurement Manager

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

Attachment: Amendment 21-1002621-1 (8147 : Amendment No. 1 To Legal Services Contract No. 21-1002621)

## EXHIBIT "B"

## ATTORNEY'S FEES AND CHARGES

Pricing is on a time-and-materials basis based upon ATTORNEY's hourly billable rates below:

<u>Category</u>	<u>Rate</u>
Partners	\$ 425.00 per hour
Associates	\$ 425.00 per hour
Of Counsel	\$ 425.00 per hour
Paralegals	\$ 265.00 per hour

Out of pocket costs incurred by ATTORNEY in performing the Services.

## ***Minute Action***

AGENDA ITEM: 9

***Date:*** *December 1, 2021*

***Subject:***

Board Member Appointments

***Recommendation:***

A. Approve the re-appointment of Mayor John Dutrey, City of Montclair, to the Gold Line Phase II Joint Powers Authority to serve as the primary member for an additional two-year term expiring December 31, 2023.

B. Approve the re-appointment of Supervisor Janice Rutherford to the Sam and Alfreda L. Maloof Foundation for Arts and Crafts for an additional two year term expiring December 31, 2023.

C. Note the Presidential re-appointment of Mayor Frank Navarro, City of Colton; Mayor Acquanetta Warren, City of Fontana; and Mayor L. Dennis Michael, City of Rancho Cucamonga, to the Transit Committee for additional two-year terms expiring December 31, 2023.

D. Note the Presidential re-appointment of Mayor Acquanetta Warren, City of Fontana; Council Member David Avila, City of Yucaipa; and Vice Mayor Ed Paget, City of Needles, to the Southern California Association of Governments (SCAG) Community, Economic and Human Development Committee for additional two-year terms expiring December 31, 2023.

E. Note the Presidential re-appointment of Council Member Cynthia Moran, City of Chino Hills; Mayor John Valdivia, City of San Bernardino; and Council Member Rick Denison, Town of Yucca Valley, to the SCAG Energy and Environment Committee for additional two-year terms expiring December 31, 2023.

F. Note the Presidential re-appointment of Mayor John Dutrey, City of Montclair, to the SCAG Transportation Committee for a two-year term expiring December 31, 2023.

G. Approve the re-appointment of Mayor Pro Tem Alan Wapner, City of Ontario, to serve as a member of the Southern California Association of Governments (SCAG) Regional Council representing San Bernardino County Transportation Authority for a two-year term expiring December 31, 2023.

***Background:***

San Bernardino County Transportation Authority (SBCTA) Policy No. 10001 authorizes the SBCTA President to make Presidential appointments to SBCTA Policy Committees and Southern California Association of Governments (SCAG) Policy Committees. The policy also states that Presidential appointments will be reported to the Board.

**Recommendation A:** This recommendation requests approval to re-appoint Mayor John Dutrey to the Gold Line Phase II Joint Powers Authority (JPA) to serve as the primary member for an additional two-year term expiring on December 31, 2023. The Gold Line Phase II JPA is formed by the 14 cities along the Gold Line route and SBCTA. It is the forum for the review, consideration, study, development and recommendation of policies and plans for the extension of

*Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority*

the Gold Line from Pasadena to Montclair. Members of the Gold Line Phase II JPA receive a stipend of \$100.00 paid by the Gold Line Phase II JPA.

**Recommendation B:** This recommendation requests approval for the re-appointment of Supervisor Janice Rutherford to the Sam and Alfreda L. Maloof Foundation for the Arts and Crafts for an additional two-year term expiring December 31, 2023.

**Recommendation C:** This recommendation is to note the Presidential re-appointments of Mayor Frank Navarro, Mayor Acquanetta Warren, and Mayor L. Dennis Michael to the Transit Committee for additional two-year terms expiring on December 31, 2023.

**Recommendation D-F:** This recommendation is to note the Presidential re-appointments of Mayor Aquanetta Warren, Council Member David Avila and Vice Mayor Ed Paget to the Southern California Association of Governments (SCAG) Community, Economic and Human Development Committee; Council Member Cynthia Moran, Mayor John Valdivia and Council Member Rick Denison to the SCAG Energy and Environment Committee; and Mayor John Dutrey to the SCAG Transportation Committee. Terms of these appointments expire December 31 of odd numbered years. The SBCTA President is authorized to make appointments to SCAG Committees. SCAG Committees meet the first Thursday of each month. Subregional appointees receive a stipend of \$120 for up to four Policy or Task Force meetings per month paid by SCAG.

**Recommendation G:** This recommendation requests approval for the re-appointment of Mayor Pro Tem Alan Wapner, City of Ontario, to serve as a member of the Southern California Association of Governments (SCAG) Regional Council representing SBCTA for a two-year term expiring December 31, 2023. SBCTA, as a dues paying member of SCAG and serving as a County Transportation Commission, has a seat on the SCAG Regional Council. SCAG Regional Council members receive a \$120 stipend for attendance.

A listing of SBCTA Appointments to External Agencies, SBCTA Representatives on SCAG Committees and SBCTA Policy Committee Membership are included in the appendix of the SBCTA Board of Directors agenda.

***Financial Impact:***

This item does not have a financial impact on the adopted budget.

***Reviewed By:***

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

***Responsible Staff:***

Marleana Roman, Clerk of the Board

Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

## ***Minute Action***

### AGENDA ITEM: 10

***Date: December 1, 2021***

***Subject:***

Award On-Call Construction Management Contracts

***Recommendation:***

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

- A. Award Contract No. 22-1002663 with Anser Advisory Management, LLC, for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and
- B. Award Contract No. 22-1002705 with Kleinfelder Construction Services, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and
- C. Award Contract No. 22-1002706 with SYRUSA Engineering, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and
- D. Award Contract No. 22-1002707 with TRC Engineers, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and
- E. Award Contract No. 22-1002708 with WSP USA, Inc., for On-Call Construction Management Services for an amount not-to-exceed \$5,000,000, a contract term of five (5) years, and an optional one (1) year contract extension; and
- F. Approve a total expenditure authority for an amount not-to-exceed \$5,000,000, each for Contract Nos. 22-1002663, 22-1002705, 22-1002706, 22-1002707 and 22-1002708; for contract terms of five (5) years; and
- G. Approve exception to the Procurement and Special Risk Assessment Policy No. 11000 and authorize the Executive Director, or his designee, to extend the contract duration by one (1) year beyond the contract terms of five (5) years to Contract Nos. 22-1002663, 22-1002705, 22-1002706, 22-1002707 and 22-1002708, if necessary.

***Background:***

In September 2021, the San Bernardino County Transportation Authority (SBCTA) Board of Directors (Board) authorized the release of the Requests for Proposals (RFP) for On-Call Construction Management (CM) Services for various upcoming projects going into construction. The goal was to procure up to five (5) consulting firms to serve on a bench that staff can utilize for various services needed for projects. On September 2, 2021, the RFP was released and the notice was received by over 1,600 entities. The RFP was downloaded by 127 firms. The availability of the RFP was provided to various organizations, including those listed below, to encourage small businesses and disadvantaged businesses to consider submitting a proposal.

- Southern CA Black Chamber of Commerce
- Asian Business Association Inland Empire
- Asian American Architects and Engineers Association (AAa/e) of Southern California

*Entity: San Bernardino County Transportation Authority*



## Board of Directors Agenda Item

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- National Association of Black Women in Construction
- National Association of Minority Contractors
- National Association of Women in Construction
- National Latina Business Women Association Inland Empire
- National Society of Black Engineers
- Inland Empire Hispanic Leadership Council
- National Association of Women Business Owners
- Women's Enterprise Business Council West
- Construction Executive
- Construction Business Owner
- ITS California
- WTS Inland Empire
- ACEC Riverside/San Bernardino Chapter
- Construction Management Association of America SC
- Associated General Contractors - Riverside/San Bernardino District
- American Society of Civil Engineers San Bernardino and Riverside Counties

On October 5, 2021, SBCTA received 22 proposals from the following firms listed below (in alphabetical order).

- ABA Global
- Anser Advisory Management, LLC
- Arcadis
- EXP
- Falcon Engineering Services
- FCG Consultants
- Fountainhead
- Ghiradelli Associates
- Hill International
- Jacobs Project Management
- Kleinfelder Construction Services, Inc.
- MARRS Services Inc
- Mott MacDonald
- PPM Group
- Psomas
- S2 Engineering
- Southstar
- SYRUSA Engineering, Inc.
- TKE
- TRC Engineers, Inc.
- TY Lin International
- WSP USA Inc.

The Evaluation Committee consisted of three SBCTA staff members from SBCTA. Committee members reviewed each proposal to first determine whether it was responsive to requirements listed in the RFP. Each panel member read each proposal and independently scored each firm. On October 21, 2021, the committee met, evaluated and ranked the firms based on qualifications, related experience, reference scores, staffing and organization, and work plan. At the completion of discussions the panel members individually scored the proposals based on the following evaluation criteria: Qualifications of the Firm - 35%, Proposed Staffing and Project Organization - 35%, and Work Plan - 30%. After careful consideration by the committee, the following firms were selected for the SBCTA CM Services bench (in alphabetical order). The following firms' demonstrated well qualified teams with strong local experience, and ingenuity in their proposals that exceeded requirements of the RFP:

- Anser Advisory Management, LLC (Contract No. 22-1002663)
- Kleinfelder Construction Services, Inc. (Contract No. 22-1002705)
- SYRUSA Engineering, Inc. (Contract No. 22-1002706)
- TRC Engineers, Inc. (Contract No. 22-1002707)
- WSP USA Inc. (Contract No. 22-1002708)

Each contract will be awarded for a not-to-exceed expenditure amount of \$5,000,000, and a term of five (5) years, with an option to extend an additional one (1) year if necessary. Staff is recommending that the Board authorize the Executive Director, or his designee, to extend the term for contracts under this procurement for an additional one (1) year beyond the SBCTA maximum term of five (5) years, as needed. The contracts are provided as a separate attachment to this agenda.

The intent of the on-call bench is to competitively award Contract Task Orders (CTOs) as the need arises. As services are required, staff will circulate a CTO scope of work to the successful firms soliciting a response from each firm. SBCTA staff will evaluate the responses and assign the CTO to the firm that best meets the project requirements and needs subject to various factors, including but not limited to schedule and cost. Other factors will include staff experience, expertise, and availability; proven success and history of quality and timely document success.

Assignment of CTOs will be based on a competitive response to the project scope of work, and as such, language is included in the RFP and contract that SBCTA does not guarantee a certain number of CTOs will be issued, nor does it guarantee that all firms will receive an equal number of CTOs. By utilizing this mechanism for assignment of CTOs, staff will be more effective in meeting project needs. Each CTO will identify the funding sources and specific program or project requirements.

***Financial Impact:***

This item is consistent with the Fiscal Year 2021/2022 Budget under the various subtask numbers requiring On-Call Construction Management Services.

***Reviewed By:***

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft contracts.

Board of Directors Agenda Item  
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***Responsible Staff:***

Khalid Bazmi, Construction Manager

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Approved  
Board of Directors  
Date: December 1, 2021  
Witnessed By:

San Bernardino County Transportation Authority

## ***Minute Action***

### AGENDA ITEM: 11

***Date:*** December 1, 2021

***Subject:***

Transportation Development Act Article 3 Award Extension Request: Orange Blossom Trail III

***Recommendation:***

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

Approve an additional deadline extension for the Transportation Development Act Article 3 Award for the City of Redlands Orange Blossom Trail III award from 12/31/2021 to 12/31/2023.

***Background:***

San Bernardino County Transportation Authority (SBCTA) oversees the disbursement of two percent (2%) of the Local Transportation Funds (LTF) made available to counties and cities for facilities, for the exclusive use of pedestrians and bicyclists, known as the Transportation Development Act (TDA) Article 3 Program. In August 1999, the SBCTA Board of Directors (Board) approved a policy that twenty percent (20%) of the Article 3 program would be made available for projects that improve access to transit stops for pedestrians and persons with disabilities. The remaining eighty percent (80%) would be available for pedestrian and bicycle projects.

On July 10, 2013, SBCTA (SANBAG at the time) awarded TDA Article 3 funding in the amount of \$918,722 to the City of Redlands (City) for the construction of the Orange Blossom Trail Phase III (Project) Class I bicycle and pedestrian trail. To date, SBCTA has disbursed \$107,558 to the City leaving them with a balance of \$811,164. A history of changes made to the project's scope and deadlines is shown in the table below.

No.	Approval Date	Approved By	From Date	To Date	Description
<b>Original Award Terms</b>					
0	7/10/13	Board	7/11/13	6/30/16	Construct 1.2 miles of Orange Blossom Trail between Mountain View Avenue to California Avenue.
<b>Award Extensions (and Scope Change)</b>					
1	2/23/16	Staff	6/30/16	6/30/17	SBCTA staff approved an extension request since the project was progressing.
2	10/26/16	Staff	6/30/17	12/31/17	The City ran into difficulty obtaining an encroachment permit for the segment between Byrn Mawr Avenue and Mountain View Avenue. They were granted a scope change to replace this 0.5 mile segment with one of similar length between Alabama Street and Tennessee Avenue and a deadline extension due to the delays caused by this modification.
3	10/10/17	Staff	12/31/17	12/31/18	Extension request granted.
4	8/21/19	Staff	12/31/18	12/31/20	Extension granted due to unforeseen Flood

*Entity: San Bernardino County Transportation Authority*

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					Control permitting delays.
5	3/3/21	Board	12/31/20	12/31/21	The City revised design drawings to include reach beyond the revised Project's extents in order to address issues discovered when revising the Water Quality Management Plan. These changes triggered the need for additional permitting and certification as well as an amendment to the Common Use Agreement made with Flood Control and the additional hydrology and hydraulic calculations.
No.	Approval Date	Approved By	From Date	To Date	Description
<b>Current Extension Request</b>					
6			12/31/21	12/31/23	While the City has made progress with all the work triggered by the drainage redesign previously noted on their 5 <sup>th</sup> extension, they did not foresee the amount of resubmittals to Flood Control that would be needed (5 since the beginning of 2021). As of October 5 <sup>th</sup> , the City is waiting for the permit or a reply from Flood Control and is prepared to put the project out to bid as soon as the permit is obtained. SBCTA staff is recommending an additional year extension beyond the City's request in order to provide time for other unforeseen delays.

In 2018, the Board approved TDA Article 3 Program guidelines stipulating the following:

“Two one-year extensions may be granted at the discretion of SBCTA for projects that are moving forward but cannot be completed by the award sunset date. Subsequent extensions are at the discretion of the SBCTA Board. Extension requests must include appropriate justification for an extension and provide a revised project schedule with an expected completion date.”

Since the project is progressing, and the City indicates the project is ready to list once they receive the Flood Control permit, staff recommends approval of the extension request from December 31, 2021 to December 21, 2023.

**Financial Impact:**

This item is consistent with the Fiscal Year 2021/2022 Budget.

**Reviewed By:**

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

**Responsible Staff:**

Ginger Koblasz, Senior Planner

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Approved  
Board of Directors  
Date: December 1, 2021  
Witnessed By:

San Bernardino County Transportation Authority



City of  
**REDLANDS**

Incorporated 1888  
Municipal Utilities & Engineering Department  
35 Cajon Street, Suite 15A  
Redlands, CA 92373  
909-798-7698

JOHN R. HARRIS  
Director

October 5, 2021

Ginger Koblasz  
San Bernardino County Transportation Authority  
1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410

**City of Redlands Orange Blossom Trail: Transportation Development Act Grant Time Extension**

Dear Ms. Koblasz,

As you are aware, the Orange Blossom Trail Phase III Project (Project) design is currently near completion. As part of the project, a decomposed granite trail from I-10 Freeway to California Street and asphalt concrete trail from Alabama Street to Tennessee Street, will be constructed within San Bernardino Flood Control (Flood Control) right of way in Redlands (City).

Previously, the City has submitted revised design drawings to Flood Control which includes an additional reach from Bryn Mawr Ave. to the I-10 Freeway and additional drainage design. The additional drainage design adds a trench drain, catch basin, and culvert in order to address a drainage issue found when revising the Water Quality Management Plan. These additions to the project will require an amendment to the Common Use Agreement made with Flood Control and additional hydrology and hydraulic calculations. Also, the new drainage design has triggered the need for Storm Water Construction General Permit and Water Board Certification.

Currently, the City has received a waiver from the Water Board determining that the Construction General Permit is not needed. However, the City did not foresee the amount of resubmittals needed to obtain the Flood Control permit. There has been a need for five resubmittals to Flood Control since the beginning of calendar year 2021 alone. As of October 4, 2021 Flood Control has stated to the City that the permit is ready to be sent for signature pending one conditional. The City has fulfilled that conditional on October 5, 2021 and is now awaiting the permit or reply from Flood Control. The City is prepared to put this project out to bid as soon as the permit is obtained.

In the award letter for the grant, dated July 11, 2013, the anticipated completion date was June 30, 2016. The City is appreciative of the subsequent time extension requests granted and is, once again, formally requesting another time extension to December 31, 2022 to complete the project.

Should you have any questions regarding the City's time extension request, please contact me at (909) 798-7584 ext. 4.

Thank you,

**GERARD NEPOMUCENO**  
Associate Engineer



## ***Minute Action***

### AGENDA ITEM: 12

***Date: December 1, 2021***

***Subject:***

San Bernardino County Transportation Authority/Southern California Regional Rail Authority Acknowledgement Agreement for Rail Right-of-Way & Union Pacific Railroad Billing Dispute Settlement Agreement

***Recommendation:***

That the Board, acting as the San Bernardino County Transportation Authority;

A. Approve Contract No. 22-1002751 an Acknowledgement Agreement for Rail Right-of-Way between the San Bernardino County Transportation Authority (SBCTA) and Southern California Regional Rail Authority (SCRRA) to memorialize SCRRA's role in overseeing and administering certain agreements on behalf of SBCTA with respect to the provision of commuter rail service in San Bernardino County.

B. Approve Contract No. 22-1002752, a Union Pacific Railroad (UPRR) Billing Dispute Settlement Agreement between UPRR Company, SCRRA, Los Angeles County Metropolitan Transportation Authority, and SBCTA; SBCTA's part in this agreement is limited to acknowledging and agreeing to those provisions related to the Baldwin Park Branch Shared Use Agreement.

***Background:***

Since 2015, the Southern California Regional Rail Authority (SCRRA) and Union Pacific Railroad (UPRR) have had ongoing billing disputes related to rehabilitation work and the cost allocation between the two entities. The primary disputes were surrounding shared track used to access the Los Angeles Union Station (LAUS). However, there is a small portion of the Baldwin Park Branch, approximately 2.8 miles, where UPRR still provides service to a lumber yard in Rialto, which was affected by the dispute. SCRRA and UPRR have been in negotiations for approximately two (2) years and have reached an agreement as indicated in the attached Settlement Agreement. There were two primary factors leading to the disputed amounts, including portions of track covered by the agreements and the date that the applicable price index was applied (e.g., July 1 versus January 1). Specifically related to the Baldwin Park Branch, UPRR made an over-payment in 2014 due to an incorrect count on the number of revenue rail cars that ran to serve the lumber yard. The number of revenue rail cars using this portion of track, or an indexed minimum fee, whichever is less, determines the fee that UPRR is required to pay Metrolink for maintenance-of-way services.

SCRRA staff has recommended to the SCRRA Board of Directors to settle the dispute and approve the Settlement Agreement. Further, they have requested SBCTA to sign the Settlement Agreement in acknowledgement of, and agreement to, the reconciliation with respect to the Baldwin Park Branch Shared Use Agreement, as their work on that subdivision is separate from their commuter rail related efforts. This request highlighted the need for an Acknowledgement Agreement between SBCTA and SCRRA memorializing, reiterating, and acknowledging SCRRA's historical, present, and future role in overseeing and administering certain shared use agreements on behalf of SBCTA in San Bernardino County.

*Entity: San Bernardino County Transportation Authority*



## Board of Directors Agenda Item

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The combined settlement amount, which is in turn a write off SCRRA has been carrying on their financial books, is \$3,926,676. SBCTA's share of the write off amount is \$314,514.53, of which \$238,621 is attributable to the Baldwin Park Subdivision portion. In anticipation of reaching an agreement, SCRRA included sufficient funding in their Fiscal Year 2021/2022 budget and no separate action by the SBCTA Board of Directors is needed to increase this year's subsidy.

***Financial Impact:***

This item is consistent with the Fiscal Year 2021/2022 Budget.

***Reviewed By:***

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreements.

***Responsible Staff:***

Carrie Schindler, Director of Transit and Rail Programs

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Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

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San Bernardino County Transportation Authority

## General Contract Information

Contract No: 22-1002751 Amendment No.: \_\_\_\_\_

Contract Class: Payable Department: Transit

Vendor No.: 02003 Vendor Name: Southern California Regional Rail Authority (SCRRA)

Description: Acknowledge Agreement between SCRRA and SBCTA

Dollar Amount							
Original Contract		\$	-	Original Contingency		\$	-
Prior Amendments		\$	-	Prior Amendments		\$	-
Current Amendment		\$	-	Current Amendment		\$	-
Total/Revised Contract Value		\$	-	Total Contingency Value		\$	-
		Total Dollar Authority (Contract Value and Contingency)				\$	-

## Contract Authorization

Board of Directors Date: 12/01/2021 Board Item # 8162

## Contract Management (Internal Purposes Only)

Zero Dollar Contracts Sole Source? N/A N/A

Zero Dollar MOU/COOP/JPA N/A

## Accounts Payable

Estimated Start Date:	<u>12/01/2021</u>	Expiration Date:	<u>12/31/2039</u>	Revised Expiration Date:	_____
NHS:	<u>N/A</u>	OMP/QAP:	<u>N/A</u>	Prevailing Wage:	<u>N/A</u>
				Total Contract Funding:	Total Contingency:
Fund	Prog	Task	Sub-Task	Object	Revenue
PA Level	Revenue Code Name	\$	-	\$	-
GL					
GL					
GL					
GL					
GL					
GL					
GL					
GL					
GL					
GL					

Carrie Schindler

Carrie Schindler

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes:

Attachment: Acknowledgement Agreement 22-1002751 CSS [Revision 1] (8162 : SBCTA/SCRRA Acknowledgement Agreement for Rail ROW &amp;

## Acknowledgement Agreement No. 22-1002751

This Acknowledgment Agreement is entered into between Southern California Regional Rail Authority (“SCRRA”), operator of the Metrolink passenger rail service in Southern California and joint powers authority, and San Bernardino County Transportation Authority (“SBCTA”), one of SCRRA’s five member agencies, effective as of the date of the last signature below.

WHEREAS, since its founding in 1991, SCRRA has overseen and administered certain clerical and financial aspects of the provision of Metrolink commuter rail service for and on behalf of its five member agencies, including SBCTA; and

WHEREAS, SBCTA and SCRRA desire to set forth, memorialize, reiterate and acknowledge herein SCRRA’s historical, present, and future role in overseeing and administering certain agreements on behalf of SBCTA with respect to the provision of commuter rail service in San Bernardino County.

Therefore, for good and valuable consideration, the sufficiency of which is hereby acknowledged, SBCTA and SCRRA hereby acknowledge and agree as follows:

1. SCRRA is authorized and directed to oversee, on SBCTA’s behalf, the administration of shared use and/or joint facilities agreements between SBCTA (or its predecessors or successors in interest) and any freight rail operators (including Union Pacific Railroad Company (“UPRR”) and/or Burlington Northern and Santa Fe Railway (“BNSF”), and their predecessors or successors in interest) with respect to the operation of commuter rail service in San Bernardino County (“Rail Agreement(s)”), including, without limitation, those certain Shared Use Agreements for the Pasadena Subdivision (San Bernardino County), the Pasadena-Redlands Easement, Pasadena-Redlands Trackage Rights, SB Shops Trackage Rights, and Cajon Trackage Rights, and the Redlands Subdivision (up to MP 9.48, freight activities having been abandoned on those portions beyond MP 9.48), each dated October 30, 1992, among the predecessors in interest to BNSF and SBCTA, and finally the Baldwin Park Branch (the “Baldwin Park SUA”), dated as of April 18, 1991, among the predecessors in interest to UPRR, the Los Angeles County Metropolitan Transportation Authority, and SBCTA, provided that SCRRA shall not agree to any amendments to or deviations from SBCTA’s rights or obligations under any such Rail Agreement without the advance written approval of SBCTA.
2. SBCTA and SCRRA acknowledge that SCRRA has engaged recently in discussions with UPRR on behalf of SBCTA and SCRRA’s other member agencies with respect to certain payments withheld by UPRR under certain agreements between UPRR and various SCRRA member agencies, including without limitation the Baldwin Park SUA. SBCTA and SCRRA further acknowledge and agree that SCRRA is authorized to undertake and proceed with those certain negotiations towards resolving such outstanding payment disputes provided that SBCTA’s advance written consent is required prior to final agreement of any negotiated dispute.

3. SBCTA further acknowledges that SCRRA may undertake and proceed with any future negotiation deemed appropriate by SCRRA in order to resolve future disputes under any Rail Agreement, provided that SCRRA shall not agree to any arrangements or resolutions that would impose any material obligation or liability on SBCTA without the advance written approval of SBCTA.
4. SBCTA and SCRRA further acknowledge and agree that, notwithstanding anything herein to the contrary, SCRRA shall not have the right to enter into any agreements providing for the acquisition, disposition, or leasing of real property owned by SBCTA without the advance written approval of SBCTA. Such approval shall be within the sole discretion of SBCTA's Board of Directors.
5. The parties acknowledge and agree that nothing in this Acknowledgement Agreement shall alter the rights or obligations of SCRRA or SBCTA, or any other party, under SCRRA's Joint Powers Agreement or any other agreement between the parties hereto, nor do the terms of this Acknowledgement Agreement set forth all the rights or obligations of SCRRA or SBCTA with respect to the provision of commuter rail service in San Bernardino County.

**THE PARTIES HEREBY ACKNOWLEDGE AND AGREE:**

DATED: \_\_\_\_\_, 2021

SOUTHERN CALIFORNIA REGIONAL  
RAIL AUTHORITY

By: \_\_\_\_\_  
[Name]  
[Title]

DATED: \_\_\_\_\_, 2021

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Curt Hagman  
President, SBCTA Board of Directors

## General Contract Information

Contract No: 22-1002752 Amendment No.: \_\_\_\_\_

Contract Class: Payable Department: Transit

Vendor No.: 02003 Vendor Name: Southern California Regional Rail Authority (SCRRA)

Description: Settlement Agreement between SBCTA, Union Pacific Railroad Company, SCRRA, and LA Metro

Dollar Amount							
Original Contract		\$	-	Original Contingency		\$	-
Prior Amendments		\$	-	Prior Amendments		\$	-
Current Amendment		\$	-	Current Amendment		\$	-
Total/Revised Contract Value		\$	-	Total Contingency Value		\$	-
	Total Dollar Authority (Contract Value and Contingency)					\$	-

## Contract Authorization

Board of Directors Date: 12/01/2021 Board Item # 8162

## Contract Management (Internal Purposes Only)

Zero Dollar Contracts Sole Source? N/A N/A

Zero Dollar MOU/COOP/JPA N/A

## Accounts Payable

Estimated Start Date: 12/01/2021 Expiration Date: 12/31/2039 Revised Expiration Date: \_\_\_\_\_

NHS: N/A OMP/QAP: N/A Prevailing Wage: N/A

Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	Total Contract Funding:	Total Contingency:
								\$	\$
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-

Carrie Schindler

Carrie Schindler

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes:

Attachment: Settlement Agreement 22-1002752 CSS [Revision 1] (8162 : SBCTA/SCRRA Acknowledgement Agreement for Rail ROW &amp; UPRR

## SETTLEMENT AGREEMENT No. 22-1002752

This Settlement Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the, “Effective Date”), by and between **UNION PACIFIC RAILROAD COMPANY (“UP”)**, on the one hand, and **SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (“SCRRA”) and LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (“LA Metro,”** and together with SCRRA, collectively “Metrolink”) on the other (“UP” and “Metrolink” together referred to as the “Parties”).

*Whereas*, the Parties (where applicable, through their predecessors in interest) are party to the “East Bank Joint Facilities Agreement,” dated March 7, 1942 (as amended, the “**1942 Agreement**”; attached hereto as Exhibit A), the “**East Bank Easement Agreement**,” dated December 20, 1991 (as amended, the “Easement Agreement”; attached hereto as Exhibit B), and the Shared Use Agreement (Saugus Line), dated December 16, 1992 (as amended, the “**Saugus SUA**”; attached hereto as Exhibit C) (collectively referred to as the “**East Bank Agreements**”).

*Whereas*, the Parties are negotiating the terms of one or more new agreements, or amendments to certain existing agreements, to replace or amend the East Bank Agreements.

*Whereas*, the Parties disputed various billings from Metrolink to UP pursuant to the East Bank Agreements (the “**Dispute**”).

*Now, Therefore*, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to the following:

1. **Settlement of Disputed Billing.** Upon execution by the Parties of this Agreement, UP shall pay to Metrolink the principal sum of \$3,926,676.00 (the “**Payment**”), in full settlement of all disputed billing, as itemized in Exhibit D, issued by Metrolink to UP through March 31, 2021.

2. **Interim Billing Arrangements.** Notwithstanding anything to the contrary in the East Bank Agreements, effective as of April 1, 2021 and until such time as the Parties enter into new agreements to replace or amend the existing East Bank Agreements, the Parties agree that billing to be issued by Metrolink to UP pursuant to the East Bank Agreements, and UP’s payment thereof, shall conform to the following:

- a. UP shall pay Metrolink in accordance with the Saugus SUA for all areas north of and including Alhambra Junction.
- b. UP shall pay Metrolink with respect to the portion of Zone 1 (as established under the 1942 Agreement) of the East Bank from but excluding Alhambra Junction to and including Mission Junction pursuant to and as calculated under the 1942 Agreement;
- c. UP shall pay Metrolink with respect to Zone 2 (as established under the 1942 Agreement) pursuant to and as calculated under the 1942 Agreement;

- d. Metrolink shall not bill UP for Zones 3 or 4 (as established under the 1942 Agreement) under any of the East Bank Agreements;
- e. Monthly interest rental under the 1942 Agreement shall be \$4,858.00;
- f. Amounts owed under the Mission Tower Agreement shall continue to be calculated and billed in accordance with the terms of such agreement;
- g. Billing under the East Bank Easement Agreement is to be determined pursuant to the terms of such agreement, subject to the recalculation of the “Fee” thereunder in accordance with Metrolink’s July 1, 2021 election therefor.

3. **Negotiation of New East Bank Agreement.** From the Effective Date until a date not earlier than April 1, 2023, the Parties agree to negotiate in good faith and endeavor to amend or replace the East Bank Agreements. If such East Bank Agreements have not been amended or replaced by April 1, 2023, either party may elect to terminate such negotiations at any time thereafter by providing written notice of such election to the other party. In the event that such obligation to negotiate is terminated as described in the preceding sentence, the billing and payment arrangements set forth in Section 2 hereof shall remain in effect following such termination.

4. In consideration of and upon completion of the Payment and the other payment arrangements set forth herein, the adequacy of which the Parties concede and accept, the Parties hereby fully and forever release and discharge each other and all of their successors, predecessors, assigns, indemnitors, shareholders, divisions, subsidiaries, controlling persons, insurers, partners, parents, directors, agents, attorneys, servants, employees of such entities, both recent and former, and their respective heirs, executors, and administrators, and any and all employees of all such entities, from any and all claims, demands, damages, debts, costs, expenses, liabilities, actions or causes of action or suits of any kind, including but not limited to claims for contribution or indemnity, compensatory, consequential, punitive and exemplary damages, known or unknown, suspected or unsuspected, fixed or contingent, and whether or not concealed or hidden, which have existed or may have existed, or that do exist, or that were or could have been asserted, through and including the Effective Date, (i) pursuant to any of the East Bank Agreements (including, without limitation, with respect to all invoices listed on Exhibit D hereto), with the exception of any claims relating to Amtrak or Intercity Service or to invoices for flagging services, and (ii) in connection with the specific invoices listed on Exhibit D hereto that were issued under: (A) the Shared Use Agreement for the Azusa Branch, dated as of December 20, 1990, between the predecessors in interest to UP and the LA Metro (the “**Azusa Branch Shared Use Agreement**”), and (B) the Shared Use Agreement for the Baldwin Park Branch, dated as of April 18, 1991, among the predecessors in interest to UP, LA Metro, and the San Bernardino County Transportation Authority (the “**Baldwin Park Branch Shared Use Agreement**”). **THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THIS IS A GENERAL RELEASE & WAIVER OF KNOWN AND UNKNOWN CLAIMS THAT WERE OR COULD HAVE BEEN ASSERTED PURSUANT TO THE EAST BANK AGREEMENTS AND THAT, BY SIGNING THIS AGREEMENT, THEY ARE SIGNING AND AGREEING TO SUCH A GENERAL RELEASE & WAIVER.**



The parties understand and expressly waive any rights or benefits available under California Civil Code Section 1542, as well as any other statute, law, or rule of similar effect, and acknowledge and agree that this waiver is an essential and material term of this release and the settlement that led to it, and without such waiver the settlement would not have been accepted. The Parties hereby represent that they have been advised by their legal counsel, understand and acknowledge the significance and consequence of this release and of this specific waiver of Section 1542 and other such laws. California Civil Code Section 1542 provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

The foregoing waiver includes any claims based on federal, state, or local statute, law, regulation, or case law. This release is intended to be construed as broadly as possible. This waiver shall not apply to actions, claims, liabilities, debts, or causes of actions arising from a Party's breach of this Agreement.

Notwithstanding anything to the contrary in this Agreement, the release and discharge in this Section 4 shall not apply with respect to the obligations, warranties, and representations created under this Agreement.

5. While this Agreement resolves all issues between the Parties and their respective agents and representatives concerning the matters described herein, it does not constitute an admission by any of the Parties or any such agents or representatives of any facts alleged by any Party, or of any liability for damages or wrongdoing whatsoever. Nothing in this Agreement or any related document shall be construed or admissible in any proceeding as evidence of liability for damages or wrongdoing by any of the Parties or their respective agents or representatives, except to the extent necessary for the enforcement of this Agreement or the Parties' rights hereunder. The Parties agree that this Agreement, and all such related documents, are the result, and a part, of a compromise within the provisions of California Evidence Code §§ 1152 and 1154, and similar laws of other jurisdictions.

6. Capitalized terms not defined in this Agreement shall have the definition provided for in the applicable East Bank Agreement to which the term belongs.

7. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Facsimile or PDF copies of this Agreement are acceptable as original copies. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, assigns, heirs, administrators, executors, and conservators. This Agreement is not intended to benefit any third parties not expressly referenced herein. This Agreement may be amended, modified, canceled, or waived only by written instrument executed by each of the Parties. No waiver of any provision of this Agreement, or any breach hereof, shall be deemed a waiver of any other provision or breach of this Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the applicable provision or breach. Each Party



acknowledges that it has been represented by counsel in connection with this Agreement. Accordingly, any rule of law, including Section 1654 of the California Civil Code or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it, has no application and is expressly waived. If any claim is made by a Party relating to any conflict, omission, or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by or at the request of any Party or its counsel. This Agreement will be governed by the law of the State of California, without giving effect to any choice of law or conflict of law rules or provisions.

[Signatures on next page]

DRAFT

DATED: \_\_\_\_\_, 20\_\_

UNION PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_  
 [Name]  
 [Title]

DATED: \_\_\_\_\_, 20\_\_

SOUTHERN CALIFORNIA REGIONAL  
 RAIL AUTHORITY

By: \_\_\_\_\_  
 [Name]  
 [Title]

DATED: \_\_\_\_\_, 20\_\_

LOS ANGELES METROPOLITAN  
 TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
 [Name]  
 [Title]

**Acknowledged and Agreed solely with  
 respect to provisions related to the Baldwin  
 Park Branch Shared Use Agreement:**

DATED: \_\_\_\_\_, 20\_\_

SAN BERNARDINO COUNTY  
 TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
 Curt Hagman  
 President, SBCTA Board of Directors

**Exhibit A**  
**1942 Agreement**

Attachment: Exhibit A 1942 Agreement (8162 : SBCTA/SCRRRA Acknowledgement Agreement for Rail ROW & UPRR Billing Dispute Settlement

**AGREEMENT**

**BETWEEN**

**Los Angeles & Salt Lake  
Railroad Company**

**Union Pacific Railroad Company  
Southern Pacific Railroad Company  
AND  
Southern Pacific Company**

**DATED: MARCH 7, 1942**

*Covering the terms and conditions applicable to the  
maintenance, operation, etc., by the parties of the  
so-called "East Bank Joint Facilities" in the City  
of Los Angeles, County of Los Angeles,  
State of California.*

THIS AGREEMENT, made and entered into this 7th day of March, 1942, by and between LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the first part, its lessee, UNION PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the second part, (parties of the first and second parts hereinafter collectively called "Union Pacific"); and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the States of California, Arizona and New Mexico, party of the third part, its lessee, SOUTHERN PACIFIC COMPANY, a corporation organized and existing under the laws of the State of Kentucky, party of the fourth part (parties of the third and fourth parts hereinafter collectively called "Southern Company"), WITNESSETH:

#### RECITALS

The party of the first part is the owner of, and the party of the second part as its lessee is in possession of and operating, certain lines of railroad in the City of Los Angeles, County of Los Angeles, State of California.

The party of the third part is the owner of, and the party of the fourth part as its lessee is in possession of and operating, certain lines of railroad in the City of Los Angeles, County of Los Angeles, State of California.

The parties of the first, third and fourth parts have heretofore entered into certain agreements covering or relating to joint operations over certain lines of railroad in the City of Los Angeles, County of Los Angeles, State

of California, certain of which lines of railroad it is now proposed to be covered by this agreement. Said agreements are more specifically described as follows:

- (a) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated July 18, 1917 (Los Angeles & Salt Lake Railroad Company Audit No. 2807, Southern Pacific Company Audit No. 13722);
- (b) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4409, Southern Pacific Company Audit No. 15600), and known as the "Temporary Agreement";
- (c) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4410, Southern Pacific Company Audit No. 28979), and known as the "Permanent Agreement";
- (d) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4411, Southern Pacific Company Audit No. 17395), and known as the "Terminating Agreement";
- (e) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923 (Los Angeles & Salt Lake Railroad Company Audit No. 4412, Southern Pacific

Company Audit No. 17396), and known as the "Option Agreement";

- (f) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1929 (Los Angeles & Salt Lake Railroad Company Audit No. 4409-1, Southern Pacific Company Audit No. 15600), and known as the "First Supplemental Agreement";
- (g) Agreement between Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company dated December 20, 1933 (Los Angeles & Salt Lake Railroad Company Audit No. 4409-2, Southern Pacific Company Audit No. 35848), and known as the "Second Supplemental Agreement."

The uses and rights granted under Agreements (a), (c), (d) and (e) were never exercised and under Agreements (b), (f) and (g) ("Temporary Agreement" and supplements thereto), Southern Company was granted the right to use, under the terms and conditions of said "Temporary Agreement" and supplements thereto, certain tracks and facilities of Los Angeles & Salt Lake Railroad Company from the southerly right of way line of The Atchison, Topeka and Santa Fe Railway Company near the foot of Avenue 18, easterly of the Los Angeles River, to a connection with the tracks of Southern Company on Alameda Street at a point just southerly of Washington Boulevard (formerly Washington Street), and Los Angeles & Salt Lake Railroad Company was granted the right to use certain tracks of Southern Company from said connection on Alameda Street to a point on Alameda Street at the intersection of the southerly



line of Third Street, including the use of the station facilities of Southern Company located between Central Avenue, Alameda Street, Sixth Street and Third Street, and known as the Arcade (Central) Station Facilities, all in the City of Los Angeles, County of Los Angeles, State of California.

Under said "Temporary Agreement" of October 1, 1923, Southern Company and Los Angeles & Salt Lake Railroad Company commenced joint operations as of November 2, 1924, over the tracks and facilities described therein, and such operations were continued under said agreement and supplements thereto by said Southern Company and said Los Angeles & Salt Lake Railroad Company or its lessee, Union Pacific Railroad Company, until May 7, 1939.

Effective as of January 1, 1936, Union Pacific Railroad Company leased all of the properties of Los Angeles & Salt Lake Railroad Company and assumed all of the obligations and acquired all the rights of Los Angeles & Salt Lake Railroad Company under said agreements hereinabove referred to.

By Decision No. 18593 dated July 8, 1927 (30 C.R.C. 151), the Railroad Commission of the State of California (hereinafter called "Railroad Commission") ordered Southern Pacific Company, Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to construct and operate a union passenger terminal within that portion of the City of Los Angeles, California, bounded by Commercial Street, North Main Street, Redondo (Rondout) Street, Alhambra Avenue, and the Los Angeles River, and also to make



such additions, extensions, improvements and changes in or abandonments of existing railroad facilities as might be reasonably necessary and incidental to the use of such union passenger terminal, conditioned, however, upon the entry by the Interstate Commerce Commission of an order (thereafter on May 8, 1928, made in Docket No. 14778, 142 I.C.C. 489) containing appropriate findings and certificates covering the said construction, extensions and abandonments.

The Interstate Commerce Commission, in said Docket No. 14778, approved the abandonment of operations of all passenger and freight train service except industrial freight switching service on the main line of Southern Company on Alameda Street, in the City of Los Angeles, between College Street and East 15th Street, all as shown on Exhibit A hereinafter referred to, and authorized the construction, extension, rearrangement and joint use of their several lines of railroads by the parties to said Docket No. 14778, including Southern Company and Los Angeles & Salt Lake Railroad Company, to properly serve said union passenger terminal and properly handle their freight operations.

Said order of the Railroad Commission (Decision No. 18593) was upheld by the Supreme Court of the State of California on May 27, 1930 (209 Cal. 460, 288 Pac. 775), and on May 18, 1931 (283 U. S. 380), by the Supreme Court of the United States.

Thereafter, upon application to said Railroad Commission, the latter, by Decision No. 26399, dated October 4, 1933 (39 C.R.C. 25), approved a plan submitted by Los Angeles & Salt Lake Railroad Company and The Atchi-

son, Topeka and Santa Fe Railway Company, and, among other things, ordered and directed Southern Company (a) to join with Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company in constructing and operating a union passenger terminal in conformance with said plan approved in said Decision No. 26399; (b) to abandon and discontinue operating its passenger station in Los Angeles at the Arcade site (also known as the Central Station site); and (c) to abandon and discontinue the use of and remove certain tracks and other facilities south of College Street and College Street extended easterly.

Pursuant to the Orders and Decisions above referred to said Los Angeles Union Passenger Terminal was constructed, and upon the commencement of operations of said Passenger Terminal, at 12:01 A.M., May 7, 1939, Union Pacific ceased operations over Southern Company's tracks in Alameda Street and the use of Southern Company's Arcade (Central) Station facilities and has no further need for operation over said tracks or the use of said station facilities, and Southern Company discontinued the use as a passenger station of its said Arcade (Central) Station facilities and main line passenger operations over said tracks in Alameda Street between College Street and East 15th Street and prior thereto discontinued freight train operations except industrial freight switching service within said limits.

Southern Company, however, desires to continue its operations over certain Union Pacific tracks and facilities from the southerly right of way line of The Atchison, Topeka and Santa Fe Railway Company near the foot of Avenue 18 easterly of the Los Angeles River to a con-

nection with the tracks of Southern Company at a point on Alameda Street just southerly of Washington Boulevard (formerly Washington Street), and in connection therewith has made necessary extensions in its operations or facilities to serve the Los Angeles Union Passenger Terminal.

The parties hereto propose by separate document or documents to terminate, effective as of the effective date of this agreement, all of the above agreements which are in effect at the time this agreement becomes effective.

#### AGREEMENT:

NOW, THEREFORE, in order to more fully set forth the understanding of the parties hereto with respect to said operations of Southern Company, it is mutually understood and agreed as follows:

#### ARTICLE I.

##### EXHIBITS

Section 1. The general location of the trackage and facilities of Union Pacific, the continued use of which is desired by Southern Company, is shown in yellow on map attached hereto and hereby made a part hereof, said map being dated March 1, 1940, and identified as Exhibit A.

Section 2. Maps showing in detail the jointly used trackage by red lines, the jointly used right of way in green tint on Exhibits B and C and in yellow tint on Exhibit D, and all other Joint Facilities as hereinafter defined that can be readily indicated on maps of such scale have been heretofore prepared by the parties hereto,

identified by the signatures of the respective Valuation Officers of said parties, designated as Exhibits B, C and D, and are hereby made parts of this agreement without being attached hereto.

Section 3. Detailed statements of property schedules and values of said Joint Facilities have been heretofore prepared by the parties hereto, identified by the signatures of the respective Valuation Officers of said parties, designated as Exhibit E, and are hereby made a part of this agreement without being attached hereto.

## ARTICLE II.

### DEFINITIONS

Section 1. *Joint Facilities*—"Joint Facilities," as used in this agreement, shall mean all right of way, tracks, bridges, buildings, culverts, signals, interlocking plants, grade separations and appurtenant property of the Union Pacific (except telephone and telegraph lines), all of which are more specifically shown on said Exhibits B, C and D, and included on said Exhibit E.

Section 2. *Zones*—Said Joint Facilities have been divided into four Zones designated on said Exhibit A and more particularly shown on said Exhibits B, C and D, and are described as follows:

**Zone 1.** From the southerly right of way line of The Atchison, Topeka and Santa Fe Railway Company near the foot of Avenue 18 to Engineer's Station 49 plus 95 immediately south of Alhambra Avenue.

**Zone 2.** From said Engineer's Station 49 plus 95 to heels of frogs of double track switch turnouts ap-

proximately eight hundred (800) feet south of Olympic Boulevard (formerly Ninth Street).

ZONE 3. From said heels of frogs of double track switch turnouts to connection with trackage of Southern Company in Alameda Street just southerly of Washington Boulevard.

ZONE 4. Section facilities and underlying realty between First and Kearny Streets and east of Myers Street.

The division of said Joint Facilities into zones as above described may be changed from time to time upon the request of either of the parties hereto. If the parties are unable to agree upon such change the question shall be submitted to arbitration in the manner hereafter provided, but such zones when so established shall continue in effect for a period not less than five years, but there shall be no request for change in such zones to become effective before May 7, 1944.

Section 3. *Cars Handled Percentage*—The term "cars handled percentage" as used in this agreement for determination of the payment or division of any item or items of expense with respect to any one of said Zones 1, 2 and 3, means the percentage that bears the same ratio to one hundred per cent (100%) as the number of cars (counted as hereinafter prescribed) moved in any one of said Zones, or any part thereof, by one party during any one month or otherwise agreed upon period of time bears to the total number of cars (counted as hereinafter prescribed) moved by all parties using said Joint Facilities, or any part thereof, in the same Zone and for the same period of time.



In counting cars moved over said Joint Facilities, or any part thereof:

- (a) Each car, each car body in an articulated unit of two or more car bodies, and each caboose shall be counted as one car;
- (b) Each Diesel or electric locomotive of one or more units, each steam locomotive (including tenders if any) or other type of motive power operating with or without cars shall be counted as one car.
- (c) Each motor car having space for carrying passengers, baggage, mail or express shall be counted as one car;
- (d) Each car, locomotive or motor car, as above described, moving through any Zone or picked up or set out on tracks diverging therefrom, shall be counted once in each Zone in which the same is moved, either in whole or in part.

Notwithstanding the foregoing, however, the following equipment shall not be counted:

- (1) Work equipment, work trains and relief equipment, including locomotives therefor, engaged in service upon the Joint Facilities;
- (2) Empty passenger train cars and locomotives therefor, including light locomotive movements associated therewith, being moved or turned by Union Pacific in emergencies in Zone 1;
- (3) Empty passenger train cars and locomotives therefor, including light locomotive movements associated therewith, being moved by Southern Company in Zone 2 or in emergencies in Zone 1, in going to or from Southern Company's coach yard;

(4) Business cars of all parties using the Joint Facilities.

Effective as of 12:01 A.M., May 7th, 1939 the cars-handled percentages of the parties for said Zones 1, 2 and 3 shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>	
Zone 1.....	95.581%	4.419%	SW → M. 2.
Zone 2.....	68.898%	31.102%	M. 2. → 9 H.
Zone 3.....	76.286%	23.714%	9 H. → 6 H. 100

which percentages shall remain in effect until changed, as hereinafter provided.

From time to time, upon request of either party hereto, Union Pacific and Southern Company shall arrange for a joint count of cars (counted as hereinabove prescribed and for such representative periods as may be mutually agreed upon) moving over the Joint Facilities, and all percentages thus determined as hereinabove provided, except when said percentages are determined monthly, shall remain in effect for at least one (1) year before another joint count of cars is made and shall not be retroactive. Whenever a joint count of cars is made, the count shall be taken separately in each of Zones 1, 2 and 3.

Section 4. *Interstate Commerce Commission Regulations*—The term "current Interstate Commerce Commission regulations," as used in this agreement, means the accounting rules and regulations prescribed by the Interstate Commerce Commission, or other regulatory body having jurisdiction in the premises, in effect from time to time and as followed by Union Pacific.

## ARTICLE III.

## VALUATION OF JOINT FACILITIES

Section 1. It is mutually agreed that the value of said Joint Facilities is the sum of One Million, Seven Hundred Thousand, Two Hundred Twenty-two Dollars sixty cents (\$1,700,222.60) as of May 7, 1939. There have been included in said value and in Exhibit E the following work orders and the estimated expenditures thereof:

<i>Description</i>	<i>Estimated Expenditure</i>
W. O. 260 Mission Interlocker.....	\$38,733.50
W. O. 1175 (Acct. 27 only) Signals— Alhambra Avenue—north.....	21,953.58
W. O. 1205 Signals—Alhambra Avenue to 9th Street Jct.....	29,174.13
W. O. 1403 Ballast South of 7th St.....	None
Total .....	\$89,861.21

Subject to adjustment upon financial completion of said work orders, it is agreed that said value as so finally adjusted shall be used by the parties hereto in determining rental to be paid by Southern Company to Union Pacific for the rights granted to Southern Company under the terms and conditions of this agreement.

## ARTICLE IV.

## GRANT OF RIGHTS

Section 1. Union Pacific grants to Southern Company during the life of this agreement, in common with Union Pacific and such other railroad company or companies as Union Pacific may hereafter admit to the use of the



Joint Facilities, the right and privilege of operating, with Southern Company's own employees, its trains, locomotives, motor cars and cars of every class and kind over and along the Joint Facilities, or any part thereof.

Section 2. In addition to the rights hereinabove granted, Southern Company shall have, and is hereby granted, the right at its own cost and expense during the life of this agreement:

- (a) To maintain, rearrange or add to the existing connections of its lines of railroad with said Joint Facilities approximately at the points shown upon said Exhibits A, B, C, and D; provided, however, that such rearrangement or additional connection shall not unreasonably interfere with the joint use of said facilities as herein contemplated;
- (b) To construct and maintain a single or double track connection from its tracks in Alameda Street immediately south of Butte Street, if extended, to a point in Zone 3 of the Joint Facilities near Alameda Street;
- (c) To move upon and over said Joint Facilities the cars of Pacific Electric Railway Company in bridge service.

The term "bridge service" as used in this Article IV shall mean the transferring or hauling of cars of every class or kind in continuous movement over the Joint Facilities.

Section 3. Southern Company, however, shall have  
no right to construct, maintain or operate any industrial  
track or industrial tracks connected, or which shall here-

after connect, with the Joint Facilities or to serve any industries from the Joint Facilities.

## ARTICLE V.

### TELEPHONE AND TELEGRAPH LINES

Section 1. Southern Company shall have the right to construct telephone and telegraph lines longitudinally along and under the joint right of way; provided that such lines shall be installed and maintained by and at the sole cost and expense of Southern Company in locations approved by and in a manner satisfactory to Union Pacific.

Section 2. Southern Company shall also have the right, subject to the approval of Union Pacific and any telephone or telegraph company having rights in the premises or in communication conduits along and under the joint right of way, to use such conduits or cables therein if space is available therefor.

Section 3. Said telephone and telegraph lines, including conduits and cables, shall not form a part of the Joint Facilities.

## ARTICLE VI.

### MAINTENANCE

Section 1. Union Pacific shall maintain and keep the Joint Facilities in reasonable repair and reasonably suitable for the combined business of all parties using said Facilities. It is expressly understood and agreed that Southern Company shall not by reason of any defect in the Joint Facilities, or by reason of the failure of Union Pacific to repair such defect, have or make against Union

Pacific any claim or demand for any loss, damage or injury whatsoever arising from such defect, neglect or failure; but in case Union Pacific shall fail to repair any such defect as aforesaid within a reasonable time after Southern Company shall have given to Union Pacific written notice specifying the defect and requesting that it be repaired, then Southern Company shall have the right to make the necessary repairs at once, and Union Pacific shall and will pay the cost thereof which shall thereupon be apportioned between the parties as in this agreement provided.

## ARTICLE VII.

### MANAGEMENT AND CONTROL

Section 1. *Management*—The Joint Facilities shall be under the exclusive direction and control of Union Pacific.

Section 2. *Rules and Regulations*—Union Pacific shall from time to time promulgate such reasonable rules, regulations and orders governing the Joint Facilities as will be consistent for proper, expeditious, economical and safe operation thereon and thereover of the locomotives, trains, motor cars and cars of all parties using said Facilities. Such rules, regulations and orders shall be reasonable, just and fair to such parties, and all Union Pacific officers and employees engaged in the operation and maintenance of the Joint Facilities shall impartially perform their duties.

Section 3. *Precedence of Trains*—All passenger trains operating upon the Joint Facilities shall be given preference over other trains according to their class and

superiority, and the trains of all parties shall be given equal dispatch according to their class and superiority.

#### ARTICLE VIII.

##### RENTAL

Section 1. In consideration of the rights granted in this agreement, Southern Company shall pay to Union Pacific monthly during the life of this agreement:

- (a) As rental for the use of Zones 1, 2 and 3, a sum representing one-twelfth ( $1/12$ ) of one-half ( $1/2$ ) of five per cent (5%) of the agreed valuation of said Zones as shown on said Exhibit E, provided, however, that in the event of cessation of operation of its Glendale Branch, the Union Pacific shall cease to operate over that portion of Zone 1 between the southerly right of way line of the Atchison, Topeka & Santa Fe Railway Company near the foot of Avenue 18, easterly of the Los Angeles River and heel of frogs south of Spring Street in (1) Pasadena Branch connection in the Union Pacific's first main track at Engineer's Station 85 + 70.69, and (2) cross-over to said Pasadena Branch connection and Union Pacific's second main track at Engineer's Station 69 + 36.89, then the Southern Company shall pay as monthly rental for said portion of Zone 1 a sum representing one-twelfth of five per cent ( $1/12$ th of 5%) of the valuation of said portion of Zone 1, as reflected by Exhibit E, including additions, betterments, and retirements.
- (b) As rental for the use of Zone 4, a sum representing one-twelfth ( $1/12$ ) of one-half ( $1/2$ ) of five per cent (5%) of the agreed valuation of the Joint Facility proportion of said Zone 4 as shown on Exhibit E.

## ARTICLE IX.

PAYMENTS FOR MAINTENANCE AND OPERATION

Section 1. Southern Company shall pay monthly to Union Pacific a sum representing Southern Company's cars handled percentage of the total actual cost to Union Pacific of operation (except train and engine operation other than work-train operations), maintenance, repairs, renewals and replacements separately applicable to each of Zones 1, 2 and 3.

Section 2. Southern Company shall pay monthly to Union Pacific a sum representing seventy-eight and four-tenths (78.4) per cent of forty (40) per cent of the total actual cost to Union Pacific of operation, maintenance, repair, renewal and replacements applicable to Zone 4.

Section 3. To the actual cost of labor and materials furnished by Union Pacific and used in the operation (except train and engine operation other than work-train operations), maintenance, repairs, renewals and replacements of the Joint Facilities, there shall be added:

- (a) On all items of labor, including wages of foremen, ten (10) per cent for supervision, accounting and the cost of such tools as may be used by extra gangs; however, ten (10) per cent shall not be added to the cost of contract work or to the cost of work performed by parties other than parties to this agreement;
- (b) Seventy-eight and four-tenths (78.4) per cent of forty (40) per cent of the replacement cost at company storehouse of tools and roadway machines assigned to regular section gangs, including transportation charges thereon as hereinafter provided;

- (c) A charge for storehouse expenses of one (1) per cent on the actual cost of rails and cross-ties, and ten (10) per cent on the actual cost of all other materials and supplies passing through storehouse, which costs shall include charge for transportation on said rails, cross-ties, materials and supplies, but not including the transportation charges provided for in Section 3(e) of this Article IX;
- (d) A charge for purchasing department expense of one (1) per cent on the actual cost of all materials and supplies which do not pass through the storehouse;
- (e) Transportation charges on all materials and supplies transported for use on the Joint Facilities at the rate of one-half cent ( $\frac{1}{2}\text{¢}$ ) per ton per mile, but not to exceed the published tariff rates, where the materials and supplies are transported, in other than work-trains, over the rail lines of Union Pacific.

Section 4. To the actual cost of operating and maintaining the Joint Facilities there shall also be added:

- (a) Rental at agreed upon rates for use of roadway machines, special tools and appliances which individually cost Three Hundred Dollars (\$300.00) or more, and for use of locomotives, work and rolling stock equipment engaged in work-train service, while performing work upon or in respect to the Joint Facilities;
- (b) Wages of crews, fuel, water, lubricants, other supplies, engine house expenses, together with additives properly assessable under Section 3 hereof, and all other costs of operating locomotives and work equipment while performing work upon or in respect to the Joint Facilities;



- (c) A trackage charge of two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per mile for movement (except where transportation charges are assessed under Section 3(e) hereof) of each locomotive and each unit of work or rolling stock equipment in or to be used in work service on the Joint Facilities, moved to and from stations on Union Pacific distant not to exceed one hundred sixty (160) miles from Los Angeles, but excluding movements over the Joint Facilities.

Section 5. Prices for second-hand and scrap material and supplies used in and released from the Joint Facilities shall be agreed upon from time to time by the parties hereto.

Section 6. At the close of each calendar year so much of the monthly amounts paid or borne by Southern Company hereunder during that year as are chargeable to Maintenance of Way and Structures (and taxes applicable thereto) under current Interstate Commerce Commission regulations shall be readjusted so that Southern Company will bear and pay its cars handled percentage of the total of such charges for such year on an annual instead of a monthly basis, except that for the year 1939 such adjustment shall be made on the basis of the period of that year subsequent to 12:01 A.M., May 7th; provided, however, that such adjustment shall be made only when cars are counted and percentages determined monthly as permitted by Article II, Section 3.

## ARTICLE X.

### TAXES

Section 1. Union Pacific shall pay all taxes and assessments, as herein described, allocable to the Joint Facili-

ties, and Southern Company shall, upon demand, pay to Union Pacific.

- (a) One-half (1/2) of any taxes and assessments, exclusive of taxes and assessments levied against the rolling stock of Union Pacific, which may be levied upon, fairly attributable and allocable to, assessed against, charged to or on account of the real and personal property comprising the Joint Facilities, or any part thereof, as said Joint Facilities are included on said Exhibit E and any changes therein; provided, however, that should the assessment classification of Zone 1 be changed from present Branch Line classification to Main Line classification, then and in that event Southern Company shall pay any increased taxes due to said reclassification of Zone 1 until such time as the cars handled percentage in Zone 1, collectively of Union Pacific and such other railroads as may hereafter be admitted to the use of said Zone, shall become twenty-five per cent (25%) of the total cars handled thereon and thereafter, at which time said taxes on said Zone 1 shall be divided equally between all parties using said Zone; and provided further that if and when the monthly rental to be paid by the Southern Company on that portion of Zone 1 specifically described in subdivision (a) of Section 1 of Article VIII hereof shall be increased as in said subdivision provided, then the Southern Company shall pay the full amount, instead of a part as hereinbefore in this subdivision (a) provided, of taxes and assessments levied upon, fairly attributable or allocable to, assessed against, charged to or on account of said portion of Zone 1.
- (b) One-half (1/2) of all local license and privilege franchise taxes attributable to, charged to or on



account of the operations contemplated under this agreement, exclusive, however, of any such taxes due solely to Union Pacific's operation upon said Joint Facilities.

- (c) ~~Southern Company's cars handled percentage, as such term is hereinbefore defined, of all social security taxes, unemployment insurance taxes, railroad retirement taxes, sales taxes, use taxes and taxes which may from time to time be levied or assessed against or on account of materials used and labor employed in the operation, maintenance, repairs, renewals and replacements of the Joint Facilities.~~

Section 2. "Taxes" or "assessments," as used in this Article X, levied or assessed against the Joint Facilities, shall not be deemed to include any taxes or assessments paid by Union Pacific which properly constitute charges to Investment in Road and Equipment or Railway Operating Expenses, as are defined in current Interstate Commerce Commission regulations. Expenditures by Union Pacific for such taxes and assessments shall become a part of the Capital and Operating Expenditures applicable to the Joint Facilities, and Southern Company shall pay its interest rental proportion or cars handled percentage, as appropriate, of such expenditures as in Article XII and Article IX of this agreement provided.

Section 3. It is understood and agreed that in the event a different method of levying taxes is hereafter adopted in California, or any other forms of taxation are hereafter imposed, resulting in inequities to either of the parties hereto, then such new taxes levied or assessed against the Joint Facilities, or any part thereof, shall be

apportioned between all parties using the Joint Facilities on a fair and equitable basis.

## ARTICLE XI.

### DEPRECIATION

Section 1. Should depreciation on Joint Facilities be currently accrued and set up on the books of Union Pacific under Interstate Commerce Commission regulations, or other authorized governmental authority, it shall be assessed and be apportioned between the parties hereto as mutually agreed upon.

## ARTICLE XII.

### ADDITIONS AND BETTERMENTS

Section 1. Union Pacific may from time to time make such changes in, or additions and betterments to, the Joint Facilities as shall in its judgment be necessary or desirable for the economical and safe operation thereof, or as shall be required by Federal or State law, or by lawful municipal ordinance or public service regulation or order, and the same shall immediately become a part of the Joint Facilities hereunder. Southern Company shall pay thereon monthly to Union Pacific as rental, in addition to the rentals hereinbefore provided, a sum equal to one-twelfth ( $1/12$ ) of two and one-half ( $2\frac{1}{2}$ ) per cent of the actual cost to Union Pacific chargeable to Investment in Road and Equipment of such changes, additions and betterments (as ascertained under the current Interstate Commerce Commission regulations). There shall be added to such sum upon which Southern Company shall pay rental as hereinabove provided, the total

amount of all taxes (as the same are defined in Article X, Section 1 (c)) allocable to such changes, additions and betterments. That portion of such actual cost of such changes, additions and betterments chargeable to Railway Operating Expenses, including taxes as provided in Article X, Section 1 (c) shall be considered as maintenance expense, and Southern Company shall pay its proportion thereof in the manner and as provided in Articles IX and X hereof.

Section 2. Notwithstanding the foregoing, however, in the event Union Pacific shall desire to make any changes in, additions to, or betterments of the Joint Facilities costing in excess of Ten Thousand Dollars (\$10,000.00) chargeable to Investment in Road and Equipment, it shall so notify Southern Company, and if Southern Company shall consider the same unnecessary or undesirable for the safe or economical operation of the Joint Facilities then, upon written request by Southern Company, the question of such necessity or desirability (except when the same shall be required by lawful authority) shall be submitted to arbitration; and if it shall be determined by arbitration that the same are not necessary or desirable, as aforesaid, or if it shall be determined by arbitration that the same are necessary or desirable for use only by Union Pacific, then Union Pacific may make such changes, additions or betterments and Southern Company shall not be required to pay any taxes or expenses of construction, operation, maintenance, renewals and retirements connected therewith or rental charges thereon until Southern Company shall use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable

for joint use as aforesaid, at which time the same, including any subsequent changes, additions and betterments thereto, shall become additions and betterments to the Joint Facilities.

Section 3. In the event Southern Company shall request Union Pacific to make changes in, or additions to, or betterments of the Joint Facilities, and Union Pacific does not deem the same to be necessary or desirable for the joint use of the parties hereto and the safe or economical operation of the Joint Facilities, then and in that event the question of such necessity or desirability shall first be submitted to arbitration, and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, the said changes, additions or betterments shall not be made. However, if it shall be determined by arbitration that the said changes, additions and betterments are necessary or desirable for use only by Southern Company, Union Pacific shall make such changes, additions or betterments at the sole cost and expense of the Southern Company, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne by Southern Company until or unless Union Pacific shall use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, at which time Union Pacific shall reimburse Southern Company for the cost of such change, addition or betterment, together with the cost of any subsequent changes, additions, or betterments thereto, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released

for joint use as aforesaid, at which time the same, including any subsequent changes, additions and betterments thereto, shall become additions and betterments to the Joint Facilities.

Section 3. ~~In the event Southern Company shall request Union Pacific to make changes in, or additions to, the Joint Facilities, and Union Pacific does not deem the same to be necessary or desirable for the joint use of the Joint Facilities, then the Southern Company shall first have the same investigated, and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, the said changes, additions or betterments shall not be made. However, if it shall be determined by arbitration that the said changes, additions and betterments are necessary or desirable for use only by Southern Company, Union Pacific shall make such changes, additions or betterments at the sole cost and expense of the Southern Company, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne by Southern Company until or unless Union Pacific shall use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, at which time Union Pacific shall reimburse Southern Company for the cost of such change, addition or betterment, together with the cost of any subsequent changes, additions, or betterments thereto, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released~~

from all liens, mortgages or encumbrances thereon, and thereafter such facilities shall become additions and betterments to the Joint Facilities.

Section 4. In the event either party shall desire that any changes, additions or betterments should be made to the Joint Facilities for the sole account of the party so desiring them and the other party has no objection thereto, then Union Pacific shall make such changes, additions or betterments to the Joint Facilities at the sole cost and expense of the party desiring the same, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne solely by the party desiring said change, addition or betterment until or unless the other party shall use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, whereupon the said change, addition or betterment shall become additions and betterments to the Joint Facilities and Union Pacific shall reimburse Southern Company for the cost thereof, together with the cost of any subsequent changes, additions or betterments thereto if said costs were borne by Southern Company, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released from all liens, mortgages or encumbrances thereon.

Section 5. In the event changes, additions or betterments were made at the sole expense of either party hereto and said changes, additions or betterments later shall become a part of the Joint Facilities as hereinabove provided, the portion of the cost of such changes, additions or betterments which was charged to Railway Operating





Expenses shall be divided and borne by all parties using same in accordance with their cars handled percentages for the month in which said changes, additions or betterments were completed, and Southern Company shall commence the payment of rental on the portion of the cost of such changes, additions or betterments, as outlined in Section 1 of this Article XII, commencing with the first of the month following the determination that such changes, additions or betterments shall become part of the Joint Facilities.

Section 6. Notwithstanding the foregoing, no change, addition or betterment shall be made or requested by either party that will permanently or materially impair the usefulness of said Joint Facilities to either of the parties hereto.

Section 7. Except as otherwise provided in Section 1 of this Article XII, the terms "actual cost" or "sole cost" as used in this agreement in connection with changes or additions or betterments shall be the amount as ascertained under the current Interstate Commerce Commission regulations restated to include charges as outlined in Sections 3(e), 4(a), 4(c) and 5 of Article IX hereof.

### ARTICLE XIII.

#### GRADE SEPARATIONS

Section 1. It is agreed as follows with respect to expenditures borne by Union Pacific in connection with the construction of grade separation structures across the tracks of Union Pacific forming a part of the Joint Facilities:



There shall first be determined the net amount of such expenditures in respect to each structure (after deducting all credits except moneys paid to Union Pacific in the acquisition of property or as compensation for damages) as is chargeable to Investment in Road and Equipment under the current Interstate Commerce Commission regulations. There shall then be allocated to the Joint Facilities such proportion of the amount so determined to constitute charges to Investment in Road and Equipment as the number of tracks forming a part of the Joint Facilities and passing under or over the grade separation structure bears to the total number of tracks owned by or constructed under authority of Union Pacific passing under or over the said structures. The amount so allocated to the Joint Facilities shall be treated as an addition to and betterment of the Joint Facilities and included in the amount upon which Southern Company pays rental as in Articles VIII and XII provided. Adjustment of the capitalization respecting each structure shall be made from time to time in accordance with any changes in the number of tracks passing under or over said structures determined in the manner indicated above.

Section 2. The provisions of the next preceding section shall apply to expenditures borne by Union Pacific in connection with construction of each said structure independently of any expenditure borne by it for changes in the Joint Facilities due to or made necessary by the construction of such structures. The expenditures for any such changes in the Joint Facilities shall be restated in order to determine the actual cost of the work in accordance with the provisions of Articles IX and XII of this agreement. Of the actual cost of such work so determined,

that part thereof chargeable to Investment in Road and Equipment shall be included in the value upon which Southern Company pays rental in accordance with Articles VIII and XII, and the part thereof chargeable to Railway Operating Expenses of the Zone in which said structure is located or constructed shall constitute a part of the operating expenses of said Zone as in Article IX provided, and the part chargeable to taxes shall be allocated as in Article X provided.

#### ARTICLE XIV.

##### RETIREMENTS

Section 1 (a). Whenever any change in, elimination, disposal or retirement of any part of the Joint Facilities is made which, under the current Interstate Commerce Commission regulations, reduces the ledger value of the Joint Facilities, then the contract valuation, as shown by Exhibit E, including additions and betterments, upon which the Southern Company shall thereafter be required to pay rental under Articles VIII and XII hereof, shall be reduced according to said contract valuation thereof, including additives applicable thereto.

(b). Whenever any part of the Joint Facilities shall be withdrawn from Joint Use by mutual agreement, and Union Pacific elects to retain said part for its exclusive use, or use by or with any third party, then said contract valuations upon which the Southern Company shall thereafter be required to pay rental under Articles VIII and XII hereof, shall be reduced according to the contract valuation thereof, including additives applicable thereto.

Section 2. Any loss chargeable to Railway Operating Expenses or Profit and Loss Accounts, resulting from sale, abandonment or other retirement of the Joint Facilities, or any part thereof, shall first be divided to determine the portions thereof applicable to the period of the sole and exclusive use of the Joint Facilities by Union Pacific or Southern Company, as the case may be, and the period of the Joint Use of the Joint Facilities by Southern Company and Union Pacific, and the portion applicable to the period of such joint use shall be apportioned to the parties in the same proportion as the expense for maintenance of the particular facility, or part thereof, involved, and the portion applicable to the period of exclusive use by the Southern Company shall be borne by said company; provided, however, that any loss or gain incurred or realized by Union Pacific in the sale or retirement of land shall be borne solely by or inure to the sole benefit of Union Pacific.

Section 3. Notwithstanding the foregoing, no withdrawal, change in, elimination, disposal or retirement of any part of the Joint Facilities which will permanently or materially impair the usefulness to the Southern Company of the Joint Facilities shall be made without the consent of the Southern Company.

## ARTICLE XV.

### CLASSIFICATION OF ACCOUNTS

Section 1. Expenditures chargeable to Investment in Road and Equipment and to Railway Operating Expenses and other appropriate accounts, except as in this agreement otherwise provided, occasioned by the construction,

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Section 2. Any loss chargeable to Railway Operating Expenses or Profit and Loss Accounts, resulting from sale, abandonment or other retirement of the Joint Facilities, or any part thereof, shall first be divided to determine the portions thereof applicable to the period of the sole and exclusive use of the Joint Facilities by Union Pacific or Southern Company, as the case may be, and the period of the Joint Use of the Joint Facilities by Southern Company and Union Pacific, and the portion applicable to the period of such joint use shall be apportioned to the parties in the same proportion as the expense for maintenance of the particular facility, or part thereof, involved, and the portion applicable to the period of exclusive use by the Southern Company shall be borne by said company; provided, however, that any loss or gain incurred or realized by Union Pacific in the sale or retirement of land shall be borne solely by or inure to the sole benefit of Union Pacific.

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## ARTICLE XV.

### CLASSIFICATION OF ACCOUNTS

Section 1. Expenditures chargeable to Investment in Road and Equipment and to Railway Operating Expenses and other appropriate accounts, except as in this agreement otherwise provided, occasioned by the construction,

operation, maintenance, repairs, renewals, replacements and retirements of the Joint Facilities, shall be classified in accordance with current Interstate Commerce Commission regulations as followed by the Union Pacific and shall be added to the rental base or apportioned on a cars handled percentage basis as defined in Article XII and Article IX of this agreement.

## ARTICLE XVI.

### CHANGES IN MOTIVE POWER

Section 1. It is understood and agreed that changes, additions or betterments made in or to the Joint Facilities, or any part thereof, on account of a change in the kind or character of motive power operated by either party on any of its lines into the City of Los Angeles to other than the methods used by either party as of the date of the execution of this agreement, shall not come within the meaning of changes, additions or betterments hereinabove provided in Article XII, but that each party shall have the full and free right, at its sole cost and expense and without entailing any charge or liability upon the other party, as to original installation, operation, maintenance, repairs, renewals, replacements and retirements, to make any changes, additions or betterments upon the Joint Facilities, or any part thereof, incident to such change in motive power, provided the same shall not unreasonably impair the use or safe operation of the Joint Facilities by either party. If, after one of the parties hereto shall have changed to such other kind or character of motive power, the other party shall desire to do likewise, then it shall have the right to do so, and the special facilities, if constructed by Union Pacific,

shall thereupon be deemed and treated as additions and betterments to the Joint Facilities as though provided under Article XII of this agreement. If such facilities shall have been constructed by Southern Company, then Union Pacific, if it shall desire to acquire and use the same, shall pay to Southern Company the actual cost to it, together with the cost of any subsequent changes, additions or betterments thereto, and Southern Company shall convey the same to Union Pacific free, clear and released from all liens, mortgages and encumbrances thereon, and thereupon the facilities shall then be deemed additions and betterments to the Joint Facilities as though provided by Union Pacific under said Article XII.

#### ARTICLE XVII.

##### ADMISSION OF OTHER RAILROADS

Section 1. Union Pacific reserves the right at all times to grant to other railroad company or companies the use of the Joint Facilities, or any part thereof, in common with itself and Southern Company, provided such admission of other railroad company or companies shall not unreasonably hinder or obstruct the Southern Company in the use of the rights granted hereunder. In case any other railroad company or companies shall be, at any time during the life of this agreement, admitted to the use of any or all of said Joint Facilities, then during the time the said railroad company or companies so admitted shall use or be entitled to the use of said Joint Facilities, or any part thereof, the sums payable to the Union Pacific by the Southern Company under Articles VIII and XII and Subdivisions (a) and (b) of Section 1 and Section 2 of Article X hereof on account of the said Joint Facilities,



or the part thereof so used, shall be that proportion of the charges for rental and taxes applicable to that portion of said Joint Facilities which the company or companies so admitted shall use or be entitled to use that one bears to the entire number of railroad companies at the time entitled to use the Joint Facilities or such part thereof.

Section 2. In the event Union Pacific shall grant to other railroad company or companies the use of the Joint Facilities, or any part thereof, as hereinabove provided, the charges for operation, maintenance, repair, renewal, replacements and retirements shall be borne by each company using the Joint Facilities, or any part thereof, in accordance with its respective cars handled percentage, except that charges in connection with retirements shall be borne as provided in Article XIV.

Section 3. The provisions of this article shall not apply to any temporary permission granted by Union Pacific to other railroad company or companies to use the joint facilities or any part thereof, for detour purposes for periods not exceeding sixty (60) days in any calendar year.

## ARTICLE XVIII.

### INSURANCE—PREMIUMS AND RECOVERIES

Section 1. Premiums paid for insurance carried by Union Pacific on the Joint Facilities shall be prorated on a cars handled percentage basis, provided that if in lieu thereof Union Pacific shall carry its own insurance the cost thereof as allocated to the Joint Facilities shall be borne on a cars handled percentage basis.

Section 2. In the event Union Pacific shall voluntarily, or pursuant to Federal or State regulations, carry Federal or State compensation insurance, or insurance of any similar character, for the protection of joint employees while engaged in the construction, operation, maintenance, repair, renewal or retirement of the Joint Facilities, said policies shall protect both Union Pacific and Southern Company, and the cost of the premiums therefor shall be divided in accordance with the provisions of Articles VIII, IX and XII, as the case may be.

Section 3. In the event the Joint Facilities, or any part thereof, are damaged or destroyed by fire or otherwise during the life of this agreement, Union Pacific shall repair or restore the same unless the parties hereto agree that the repair or restoration thereof is not necessary. Any insurance recovered by Union Pacific as a result of said damage or destruction shall be applied in reduction of the charges to Railway Operating Expenses or Profit and Loss (as the case may be) occasioned by such repair, restoration or retirement in which Southern Company is required to participate as in Article IX and Article XIV provided.

## ARTICLE XIX.

### LIABILITY

With respect to liability as in this Article provided Southern Pacific Railroad Company and Southern Pacific Company shall be considered one party, and Los Angeles & Salt Lake Railroad Company and Union Railroad Company shall be considered one party, and in either case where the term "user" is employed shall be considered one user.



Section 1. The term "loss or damage" as used in this Article relates to loss or damage arising upon or adjacent to the Joint Facilities, and embraces all losses and damages growing out of the loss of or damage to property, including property belonging to any or all of the users, and all losses and damages growing out of the death of or injury to persons, and also embraces all costs and expenses incident to such losses or damages. With respect to questions of liability, neither the Joint Facilities nor the work trains or work equipment of Union Pacific or Southern Company, while performing work on the Joint Facilities for the benefit thereof shall be deemed the exclusive property of any user.

Section 2. The term "joint employees" as used in this agreement includes all officers of the rank of Division Superintendent or those of lesser rank and all other employees while actually engaged in the management, construction, operation, maintenance, repairs, renewals, replacements or retirements of any of the Joint Facilities, but it shall not include any such officer or employee during such time as he is performing any service for or on behalf of or in respect to the use of the Joint Facilities solely for one of the users; when so employed such officer or employee shall be deemed for the time being the sole employee of the user for whom or in whose behalf or in respect to whose use of the Joint Facilities such service is being performed.

**Section 3. Loss or damage due**

- (a) To the negligence or wrongful act or omission of the sole employee or employees of one of the users, or

- (b) To the concurring negligence or wrongful act or omission of a joint employee and of the sole employee or employees of one of the users, or
- (c) To the failure or defect of the exclusive equipment or appliances of one of the users,

shall be borne by the user whose sole employee or employees or whose exclusive equipment or appliances so caused or contributed to such loss or damage.

**Loss or damage due**

- (d) To the concurring negligence or wrongful act or omission of the sole employee or employees of one user and the sole employee or employees of the other user or users, or
- (e) To the concurring negligence or wrongful acts or omissions of a joint employee and of the sole employee or employees of one user, and of the sole employee or employees of any other user or users,

shall be borne equally by the users involved, except that each user shall bear all such loss or damage in respect to its own exclusive property or property in its custody or upon its cars, and as to its sole employees, passengers, or persons upon its locomotives, cars or trains.

**Loss or damage due**

- (f) To the negligence or wrongful act or omission of a joint employee or employees, or
- (g) To the failure or defect of any part of the Joint Facilities, or in the work trains or work equipment of Union Pacific or Southern Company while performing service upon or in respect to the Joint Facilities, or

(h) To unknown causes, or

(i) To the acts of third persons not in the employ or under the control of any user,

shall be borne by each user as to its own exclusive property or property in its custody or upon its cars, and as to its sole employees, passengers, or persons upon its locomotives, trains, or cars, while as to other persons and their property and as to joint employees and the Joint Facilities, and as to work trains or work equipment of Union Pacific or Southern Company while performing work upon or in respect to the Joint Facilities, such loss or damage shall be deemed an expense of operation and maintenance or addition and betterment, as the case may be, and shall be divided between the users in the manner described in Articles IX and XII hereof, except that in cases of accidents in which the locomotives, cars, trains (except work trains) or sole employees of one or more users are concerned, the liability for any resulting loss or damage as to such persons and their property, joint employees and Joint Facilities, work trains or work equipment shall be borne solely by the user if only one, or jointly and equally by the users if more than one, whose locomotives, cars, trains or sole employees are concerned.

Section 4. Anything hereinabove to the contrary notwithstanding, no user shall have any claim against any other user for loss or damage of any kind caused by or resulting from interruption or delay to its business.

Section 5. Each user who may be liable for or be required hereunder to bear any loss or damage will in-

demnify and save harmless the other user or users from such loss or damage and against the payment of and liability for such loss or damage.

Section 6. Each user may make settlement of all claims for loss or damage for which it and any other user shall be jointly liable hereunder, but no payment in excess of Five Hundred Dollars (\$500.00), except in emergency cases for the settlement of personal injury claims and then not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) shall be voluntarily made by any user in settlement of any such claim without first having obtained in writing the consent of the other user or users involved. In making voluntary settlements as aforesaid, the user making the same shall in all cases procure from each claimant and deliver to the other user or users involved a written release from liability in the premises.

Section 7. If any suit shall be brought against any user or users, and any judgment shall be recovered which any user or users shall be compelled to pay and other user or users shall, under the provisions of this agreement, be solely liable therefor, then such other user or users shall on demand promptly repay to the user or users paying the same any moneys which the user or users paying the same shall have paid or been required to pay, whether in the way of damages, costs, fees or other expenses; and, if the liability in any such case or cases is joint as between the users, the user or users paying the same shall be reimbursed to the extent and in the proportion that the other user or users may be required to bear or participate in such liability as hereinabove provided.

Section 8. No user or users shall be concluded by any judgment at law or in equity against any other user or users unless it or they have had reasonable notice from such other user or users requiring it or them to appear in an action or suit and make defense thereto for its or their own account or jointly with the other user or users. If such notice shall have been given by any user or users, and the other user or users involved receiving the same shall fail to appear and make defense, it or they shall be concluded by the judgment or decree in said suit.

## ARTICLE XX.

### COMPLIANCE WITH LAWS AND REGULATIONS

Section 1. Each user undertakes and agrees in respect to its use of the said Joint Facilities and the operation of equipment and appliances thereon or thereover to comply with all Federal and State laws or regulations, and laws, rules, regulations or orders promulgated by any municipality, board or commission in respect thereto for the protection of employees or other persons or parties, and if any failure on its part so to comply therewith shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the other user or users, promptly to reimburse and indemnify such other user or users for or on account of such fine, penalty, cost or charge and all expenses and attorney's fees incurred in defending any action which may be brought against such other user or users on account thereof, and further agrees, in the event of any such action, upon notice thereof being given by such other user or users, to defend such action free of all cost, charge and expense to such user or users.

## ARTICLE XXI.

## EQUIPMENT

Section 1. Any locomotive, motor car, car or equipment used or operated by any party using the Joint Facilities, or any part thereof, shall be deemed to be the motive power or equipment of such party, whether owned by it or not.

## ARTICLE XXII.

## PICKING UP WRECKS

Section 1. If any locomotive, motor car, car or equipment of either party hereto shall be wrecked or derailed while upon the Joint Facilities, the same shall be picked up or re-railed without unnecessary delay by either Southern Company or Union Pacific as may be mutually agreed upon from time to time, and the expense of picking up such wreck or derailed equipment shall be borne by the parties in accordance with the provisions of Article XIX hereof.

## ARTICLE XXIII.

## REVENUES

Section 1. Revenues derived from rental of any part of the Joint Facilities, other than from railroad companies operating trains or cars thereon and thereover, shall be so apportioned that the Southern Company shall receive the portion of such revenue in the ratio that one bears to the total number of railroad companies using the Joint Facilities; provided, however, that no apportionment shall be made of the revenues received from any agreement amounting to Five Dollars (\$5.00) or less per annum.



**ARTICLE XXIV.****PAYMENT OF BILLS**

Section 1. All sums payable hereunder by Southern Company to Union Pacific shall be paid, within thirty (30) days after rendition of bills therefor, in lawful currency of the United States of America. Errors or disputed items in such bills shall not be deemed a valid excuse for delay in payment, but shall be subject to subsequent adjustment.

**ARTICLE XXV.****ARBITRATION**

Section 1. With respect to arbitration as in this Article provided, Southern Pacific Railroad Company and Southern Pacific Company shall be considered one party, and Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company shall be considered one party.

Section 2. In case any disagreement shall arise between the parties hereto as to the meaning of any provisions of this agreement, or concerning the observance or performance of any covenant hereof, or as to any other matter arising under this agreement, whether or not assigned under this agreement as a matter of arbitration, then such subject of disagreement shall be submitted to the arbitrament of three disinterested persons who shall be experienced railroad men then or recently in steam railroad service, and who shall be experienced in matters of the character in dispute, to be chosen as follows:

Section 3. The party desiring arbitration shall select its arbitrator and give written notice thereof to the other

party, and shall in such notice state precisely the matter or matters which it proposes to bring before the arbitrators, and only the matters so stated shall be considered by them. Within thirty (30) days after the service of such notice, the party so notified shall select an arbitrator and notify the moving party in writing of such selection. If the party so notified shall not select an arbitrator and notify the moving party in writing of such selection as aforesaid, then the second arbitrator may be appointed by the Judge of the District Court of the United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act, upon application of the moving party upon giving ten (10) days' written notice of such application to the other party to the controversy.

Section 4. The arbitrators so selected or appointed in the manner provided in the next preceding section within thirty (30) days after the designation of the last one chosen shall jointly name a third arbitrator.

Section 5. If in any case, as aforesaid, the two arbitrators so chosen or designated shall fail to agree upon the selection of such third arbitrator, such arbitrator may be appointed by the Judge of the District Court of the United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act upon application of the moving party upon ten (10) days' written notice of such application to the other party to the controversy.

Section 6. The arbitrators having taken and subscribed an oath before some person authorized by law to admin-



ister oaths, to the effect that they will well and truly try and impartially and justly decide the matter in controversy according to the best of their ability (which oath shall be filed with their decision) shall, as soon as possible after their selection, meet to hear and decide the question or questions submitted to them, and shall give to each of the parties hereto reasonable notice of the time and place of such meeting. The hearings of the board of arbitrators shall be conducted in a lawful manner, and after hearing all parties interested and taking such sworn testimony or making such investigation as they shall deem necessary, the written decision of the arbitrators, signed by a majority of them, shall determine the controversy; and such determination shall be final and conclusive upon the parties to the arbitration.

Section 7. Upon the making of such decision each party hereto shall and will immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision may be required of it.

Section 8. The books and records of the parties hereto, so far as they relate to the matters of arbitration, shall be open to the examination of the arbitrators.

Section 9. The party against which the award shall be made shall pay all of the fees and expenses of the arbitration, or such fees and expenses may be apportioned by the board of arbitrators as it may determine.

Section 10. Until the arbitrators shall make their award upon any question submitted to them, the business, settlements and payments to be transacted and made under this agreement shall continue to be trans-

acted and made in the manner and form existing prior to the rise of such question.

## ARTICLE XXVI.

### PROVISIONS BINDING UPON ALL RAILROAD COMPANIES

Section 1. The provisions of Article XIX and Article XXI of this agreement shall be binding not only as between the parties hereto but as between them and all railroad companies from time to time using the Joint Facilities, or any part thereof, and Union Pacific shall cause to be inserted in every contract for the use of the Joint Facilities, or any part thereof, provisions covering the matters treated in said Articles and in this Article identical with the provisions of said three Articles stated, and such contracts shall in this respect be construed as if each one were signed by all of the railroad companies at any time using the Joint Facilities, or any part thereof. Failing to cause such provisions to be inserted in the contract with any railroad company hereafter admitted to the use of the Joint Facilities, or any part thereof, Union Pacific shall assume such obligations as such other company would have assumed if such provisions had been inserted in its contract.

## ARTICLE XXVII.

### INSPECTION OF RECORDS

Section 1. So much of the books, accounts and records of each party as relate to the subject matter of this agreement, shall at all reasonable times be open to inspection by the proper officers and agents of the other party.

## ARTICLE XXVIII.

## DEFAULT

Section 1. If Southern Company shall fail to pay any sum payable by it hereunder on the date when the same shall be due, or shall fail to perform or comply with any other covenant or condition by it to be performed and complied with under this agreement, and such default shall continue for a period of six (6) months after written demand for such payment or performance, as in Article XXX provided, shall have been made upon Southern Company by Union Pacific, then and in such case Union Pacific shall have and is hereby given the right at its election to declare this agreement terminated, and after giving notice in writing of such election to Southern Company, this agreement then and there by such notice shall be terminated and all rights of Southern Company shall cease and determine, and Union Pacific may exclude Southern Company, and anyone acting under its permission and authority, wholly from the Joint Facilities. Such termination, however, shall not relieve either party from any liability which may have attached or accrued prior to or at the date of such termination or deprive either party of the right to enforce any such liability or the benefit of any covenant or obligation in this agreement contained to indemnify and hold it harmless. It is expressly agreed that the failure or refusal of Southern Company to make payments or to perform or comply with any covenants or conditions which shall be the subject of arbitration or litigation between the parties hereto shall not, pending final determination of such arbitration or litigation, be deemed cause for termination of this agreement.

**ARTICLE XXIX.****REMOVAL OF SOUTHERN COMPANY'S FACILITIES**

Section 1. Upon the expiration or earlier termination of this agreement, Southern Company shall promptly remove from the Joint Facilities any tracks or facilities then owned by it and restore the Joint Facilities to substantially their former condition, and if Southern Company shall fail to make such removal or restoration within one hundred and eighty (180) days from the date of such expiration or termination, then such tracks or facilities shall become the property of Union Pacific.

**ARTICLE XXX.****NOTICES**

Section 1. Demands or notices under this agreement shall be in writing to the President, any Vice-President or any General Manager of the party hereto to be notified.

**ARTICLE XXXI.****MORTGAGES, LIENS, ETC.**

Section 1. The rights that Southern Pacific Railroad Company and Southern Pacific Company acquire hereunder shall be deemed appurtenant to and running with the respective railroads and properties of either or both of said companies in the State of California, and either or both of said companies may sell, assign, lease or mortgage said rights in connection with and as a part of the sale, assignment, lease or mortgage as an entirety of all of its or their respective railroads and properties in said State.

Section 2. This agreement is subject to all valid existing contracts, leases, liens and encumbrances which may affect said Joint Facilities.

## ARTICLE XXXII.

### FILING AGREEMENT

Section 1. Southern Company shall file copies of this agreement with the Interstate Commerce Commission and the Railroad Commission of the State of California.

## ARTICLE XXXIII.

### SUCCESSORS AND ASSIGNS

Section 1. The several covenants and stipulations herein contained shall be mutually binding upon and inure to the benefit of the parties hereto, their successors, lessees and assigns; provided, however, that if Los Angeles & Salt Lake Railroad Company resumes possession of its railroad it shall ipso facto be substituted in the place and stead of Union Pacific, and that if Southern Pacific Railroad Company resumes possession of its railroad it shall ipso facto be substituted in the place and stead of Southern Company.

## ARTICLE XXXIV.

### EFFECTIVE DATE—TERM OF AGREEMENT

Section 1. This agreement shall take effect as of 12:01 A.M., the 7th day of May, 1939, and shall continue in force to and including April 14, 1988, and thereafter ~~terminated by written notice given~~ terminated by either party hereto to the other on any date in such notice stated, not less, however, than one year subsequent to the date on which such notice is given. *d.*

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in four counterparts by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries or Assistant Secretaries the day and year first above written.

LOS ANGELES & SALT LAKE  
RAILROAD COMPANY,

Signed W. M. JEFFERS

By: ~~(Signed) Wm. Jeffers,~~

*Its President.*

Attest:

(Signed) PAUL BIGDON,  
*Assistant Secretary.*

(SEAL)

UNION PACIFIC RAILROAD  
COMPANY,

Signed W. M. JEFFERS

By: ~~(Signed) Wm. Jeffers,~~

*Its President.*

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Attest:

(Signed) PAUL RIGDON,  
*Secretary.*

(SEAL)

SOUTHERN PACIFIC RAILROAD  
COMPANY,

By: (Signed) ROY G. HILLEBRAND,  
*Its Second Vice-President.*

Attest:

(Signed) JAY D. BACON,  
*Assistant Secretary.*

(SEAL)

SOUTHERN PACIFIC COMPANY,

By: (Signed) A. T. MURPHY,  
*Its President.*

Attest:

(Signed) JAY D. BACON,  
*Assistant Secretary.*

(SEAL)





## AGREEMENT

BETWEEN

Los Angeles & Salt Lake  
Railroad Company,  
Union Pacific Railroad Company

AND

Southern Pacific Company

DATED APRIL 8, 1943

*Covering joint use by Southern Company of UP tracks  
from 9th Street Junction and Bridge Junction to  
near Fruitland Avenue for the purpose of  
serving the Union Stockyards and Cen-  
tral Manufacturing District in Los  
Angeles, California.*

THIS AGREEMENT, made and entered into this 8th day of April, 1943, by and between LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the first part; its lessee, UNION PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Utah, party of the second part (parties of the first and second parts hereinafter collectively called "Union Pacific"); and SOUTHERN PACIFIC COMPANY, a corporation organized and existing under the laws of the State of Kentucky, party of the third part (hereinafter called "Southern Company"), WITNESSETH:

#### RECITALS

Los Angeles & Salt Lake Railroad Company and Southern Company entered into an agreement dated February 4, 1930, whereunder Southern Company was granted the right to operate its trains, engines and cars in common with Los Angeles & Salt Lake Railroad Company over certain tracks of the latter company extending from the east bank of the Los Angeles River in the City of Los Angeles, California, in the vicinity of Ninth and Butte Streets, to the vicinity of Hobart in said city and over certain additional tracks of Los Angeles & Salt Lake Railroad Company in common with said latter company and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation organized under the laws of the State of Kansas (hereinafter called "Atchison Company"), extending from the vicinity of Hobart in said city to a connection with the tracks of the LOS ANGELES JUNCTION RAILWAY COMPANY

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in the City of Vernon, County of Los Angeles, State of California, for the purpose of serving the Union Stockyards and the Central Manufacturing District directly or through interchange with the Los Angeles Junction Railway. The Interstate Commerce Commission in its Finance Docket No. 7146, decided December 13, 1928, approved the application of Southern Company for operation upon tracks of Los Angeles & Salt Lake Railroad Company as above described. Los Angeles & Salt Lake Railroad Company had granted operating rights to the Atchison Company over a portion of the trackage above mentioned by an agreement dated November 4, 1922. It was provided in said agreement dated February 4, 1930, that the same would terminate concurrently with the termination of that certain agreement between Southern Pacific Railroad Company, Southern Company and Los Angeles & Salt Lake Railroad Company dated October 1, 1923, and known as the "Temporary Agreement", covering the joint use of the station facilities known as the "Arcade (Central) Station Facilities" and certain track facilities in the City of Los Angeles, County of Los Angeles, State of California.

Said agreement of February 4, 1930, was supplemented and amended by agreement of April 22, 1930, and by agreement of December 1, 1934.

Effective as of January 1, 1936, Union Pacific Railroad Company leased all of the properties of Los Angeles & Salt Lake Railroad Company and assumed all of the obligations and acquired all the rights of Los Angeles & Salt Lake Railroad Company under said agreements hereinabove referred to.

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The parties hereto have entered into an agreement hereinafter called the "East Bank Agreement", covering continued use by Southern Pacific Railroad Company and Southern Company (considered as one party) of certain tracks of Union Pacific and by separate document have terminated as of 12:01 a.m., May 7, 1939, the said Temporary Agreement and certain other agreements referred to in said East Bank Agreement. Said East Bank Agreement contains provisions to the effect that the same shall take effect as of 12:01 a.m., May 7, 1939, and shall continue in full force and effect to and including April 14, 1988, and thereafter until terminated by written notice given (either before or after said expiration date) by either party thereto on any date in such notice stated, not less, however, than two (2) years subsequent to the date on which such notice shall be given.

That upon map attached hereto dated May 7, 1939, marked Exhibit "A", are shown by brown lines certain of the tracks of Union Pacific over which Southern Pacific Railroad Company and Southern Company (considered as one party) have acquired operating rights under said East Bank Agreement. Said tracks shown in brown lines connect with the tracks of Union Pacific covered by said agreement dated February 4, 1930. Since the execution of said agreement of February 4, 1930, certain of the tracks covered thereby have been relocated, and by supplements to said agreement and to said agreement with the Atchison Company dated November 4, 1922, operating rights of the Southern Company and of the Atchison Company over the tracks covered by said agreement of February 4, 1930, as heretofore supplemented, have been changed.

The parties hereto desire to formally terminate said agreement of February 4, 1930, as amended and supplemented by said agreements of April 22, 1930, and December 1, 1934, said termination to be effective as of 12:01 a.m., May 7, 1939, and to enter into a new agreement whereby the Union Pacific will grant to Southern Company, for the purpose of serving the Union Stockyards and the Central Manufacturing District directly or through interchange with Los Angeles Junction Railway Company, the right to operate over certain tracks of the Union Pacific, in common with Union Pacific and such other company or companies as Union Pacific may admit to the use thereof, and over certain other tracks, in common with the Atchison Company and Union Pacific and such other company or companies as Union Pacific may admit to the use thereof. It is proposed that this new agreement shall take effect as of 12:01 a.m., May 7, 1939, and shall continue until terminated as hereinafter provided.

### AGREEMENT

NOW, THEREFORE, in order to more fully set forth the understanding of the parties hereto with respect to said operations of Southern Company, it is mutually understood and agreed as follows:

### ARTICLE I

#### EXHIBITS

Section 1. The general location of trackage and facilities of Union Pacific (which, subject to the rights of Union Pacific Railroad Company as lessee, are owned by Los Angeles & Salt Lake Railroad Company), the con-

tinued use of which is desired by Southern Company, is shown in green and mauve on map attached hereto and hereby made a part hereof, said map being dated May 7, 1939, and identified as Exhibit "A".

Section 2. Maps showing in detail the jointly used trackage by green and mauve lines, the joint right of way outlined in green tint on Exhibit "B" and outlined in mauve tint on Exhibit "C", and all other Joint Facilities as hereinafter defined that can be readily indicated on maps of such scale have been heretofore prepared by the parties hereto, identified by the signatures of the respective valuation officers of said parties, designated as Exhibits "B" and "C", and are hereby made parts of this agreement without being attached hereto.

Section 3. Detailed statements of property schedules and values of said Joint Facilities have been heretofore prepared by the parties hereto, identified by the signatures of the respective valuation officers of said parties, designated as Exhibit "D", which exhibit is hereby made a part of this agreement without being attached hereto.

### ARTICLE II

#### DEFINITIONS

Section 1. *Description of Joint Tracks*—Those certain tracks indicated in green upon Exhibits A and B will for convenience be referred to hereafter collectively as "Joint Track Unit A".

Those certain tracks indicated in mauve upon Exhibits A and C will for convenience be hereafter referred to collectively as "Joint Track Unit B".

The term "Joint Facilities" as used in this agreement shall mean the joint right of way and such tracks, bridges,

buildings, culverts, signals, interlocking plants, grade separations, railroad facilities and appurtenances thereon and which are listed on the Valuation Schedule on Exhibit "D" and all additions and betterments thereto made as provided in Article XII hereof (except for the sole account of one of the parties hereto), and also section facilities hereafter constructed or used, as to the portion the valuation of which is by mutual agreement of the parties hereto added to the valuation of the Joint Facilities. The term "Joint Facilities" shall not include the telephone and telegraph lines of the Union Pacific nor existing tracks of Union Pacific upon the joint right of way not comprising a part of Joint Track Unit A or Joint Track Unit B nor such tracks and railroad facilities which Union Pacific shall in the future construct upon the joint right of way other than as additions and betterments to the Joint Facilities whether Union Pacific shall conduct operations thereover solely or in common with other railroad companies. Shown by red lines on Exhibit "B" and Exhibit "C" are certain existing tracks of Union Pacific located upon the joint right of way over which Union Pacific alone conducts operations and which are not part of the Joint Facilities. Shown by yellow lines on Exhibit "B" and Exhibit "C" are certain tracks of Union Pacific located upon the joint right of way over which Union Pacific conducts operations in common with the Atchison Company, which tracks are not part of the Joint Facilities.

For the purpose of the payment by the Southern Company of its share of the maintenance and operation expenses of the Joint Facilities and of rental upon additions and betterments thereto, each portion of the Joint Facili-

ties as to which the number of Railroad Companies using the same is different from the number thereof using another portion of the Joint Facilities shall be considered as a separate unit.

Joint Track Unit A and Joint Track Unit B presently constitute the two units of the Joint Facilities, but the number and extent of the units of the Joint Facilities shall automatically change in accordance with changes made in the number of users of the Joint Facilities or any part thereof during the term hereof. For the purposes of this agreement Union Pacific shall be considered as one user.

**Section 2. Cars Handled Percentage**—The term "cars handled percentage" as used in this agreement for determination of the payment or division of any item or items of expense with respect to any one of the units of the Joint Facilities means the percentage that bears the same ratio to one hundred percent (100%) as the number of cars (counted as hereinafter prescribed) moved in said unit or any part thereof, during any one month (or otherwise agreed-upon period of time) by any party hereto bears to the total number of cars (counted as hereinafter prescribed) moved by all parties using the Joint Facilities in the same unit, or any part thereof, and during the same period of time. For the purpose of determining the cars handled percentage of the Southern Company under this Section 2 all cars moved upon the Joint Facilities except cars in possession of the Southern Company shall be counted as Union Pacific cars.

In counting cars moved over said Joint Facilities, or any part thereof:

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- (a) Each car, each car body in an articulated unit of two or more car bodies and each caboose shall be counted as one car;
- (b) Each Diesel or electric locomotive of one or more units, each steam locomotive (including tenders if any) or other type of motive power operating with or without cars shall be counted as one car;
- (c) Each motor car having space for carrying passengers, baggage, mail or express shall be counted as one car;
- (d) Each car, locomotive or motor car, as above described, moving through any unit or picked up or set out on track diverging therefrom shall be counted once in each unit in which the same is moved, either in whole or in part.

Notwithstanding the foregoing, however, the following equipment shall not be counted:

- (1) Work equipment, work trains and relief equipment, including locomotives therefor, engaged in service upon the Joint Facilities.
- (2) Business cars of all parties using the Joint Facilities.

Effective as of 12:01 a.m., May 7, 1939, and until 12:01 a.m., June 1, 1940, the cars handled percentage of the parties for said Joint Track Unit A and Joint Track Unit B shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>
Joint Track Unit A.....	16.64%	83.36%
Joint Track Unit B.....	16.64%	83.36%

Effective as of 12:01 a.m., June 1, 1940, and until 12:01 a.m., January 1, 1942, the cars handled percentage of the

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parties for said Joint Track Unit A and Joint Track Unit B shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>
Joint Track Unit A.....	17.878%	82.122%
Joint Track Unit B.....	17.878%	82.122%

Effective as of 12:01 a.m., January 1, 1942, the cars handled percentage of the parties for said Joint Track Unit A and Joint Track Unit B shall be as follows:

	<i>Southern Company</i>	<i>Union Pacific</i>
Joint Track Unit A.....	16.03%	83.97%
Joint Track Unit B.....	16.03%	83.97%

Said last named percentages shall remain in effect until changed as hereinafter provided.

From time to time upon request of either Union Pacific or Southern Company the parties hereto shall arrange for a joint count of cars (counted as hereinabove prescribed and for such period as may be mutually agreed upon) moving over the Joint Facilities or any unit thereof, and all percentages thus determined as herein provided, except when such percentages are determined monthly by mutual agreement, shall remain in effect for at least one (1) year before another joint count of cars is made, or for as great a portion of one (1) year as possible in case the respective units of the Joint Facilities are changed during said one-year period as provided in Section 1 of Article II hereof. No cars handled percentage determined as above shall be retroactive beyond date upon which a new car count is requested or required.



Whenever a joint count of cars is made, the count shall be taken separately in each unit of the Joint Facilities.

Section 3. *Interstate Commerce Commission Regulation*—The term “current Interstate Commerce Commission regulations” as used in this agreement means the accounting rules and regulations prescribed by the Interstate Commerce Commission or other regulatory body having jurisdiction in the premises in effect from time to time and as followed by Union Pacific.

Section 4. *Parties*—Subject to the provisions of Article XXX hereof, Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company, except where specifically otherwise provided or where one of said parties shall be individually mentioned, shall be deemed one party and one user.

### ARTICLE III

#### VALUATION OF JOINT FACILITIES

Section 1. It is mutually agreed that the value of said Joint Facilities is the sum of Two Hundred Eighty-One Thousand Three Hundred Thirty and 30/100 Dollars (\$281,330.30) for Joint Track Unit A and One Hundred Ten Thousand Eight Hundred Thirty and 28/100 Dollars (\$110,830.28) for Joint Track Unit B, both as of May 7, 1939.

### ARTICLE IV

#### GRANT OF RIGHTS

Section 1. *Joint Use by Southern Company*—The Union Pacific hereby grants to the Southern Company the right

and privilege throughout the term of this agreement to use Joint Track Unit A in common with Union Pacific and any other railroad company or companies admitted to the use thereof as hereinafter provided and to use Joint Track Unit B in common with Union Pacific and Atchison Company (during the continuance of the Atchison Company's right to use the same during the term hereof) and any other railroad company or companies admitted to the use thereof as hereinafter provided for the operation of its trains, engines and cars thereover, provided, however, that the use of said Joint Facilities by the Southern Company shall be limited solely to through movements for the purpose of serving, directly or through interchange with the Los Angeles Junction Railway Company, the Central Manufacturing District and the Union Stockyards located in said district, and for the purpose of serving the facilities of the Vernon Feed Yards shown by cross-hatching on said Exhibit “A” over spur tracks now or hereafter constructed within the limits of said Vernon Feed Yards which connect with the Joint Facilities. Except as hereinabove in this section provided, the Southern Company shall have no right whatever to construct, maintain or operate any track connecting with the Joint Facilities or to operate over any track now or hereafter constructed connecting with the said Joint Facilities or to serve any industry served from the Joint Facilities or from any track connected therewith. For the purpose of this agreement the Central Manufacturing District comprises that area generally known, as of the date hereof, as “Central Manufacturing District”, or as said District may be enlarged, extended or contracted. The rights herein granted to Southern

Company are subject to the right hereby reserved to Union Pacific, its successors and assigns, to utilize the joint right of way in any way which will not permanently or materially impair the use of the Joint Facilities by Southern Company, including the right of Union Pacific to use and to grant to others than Southern Company the right to use railroad tracks and facilities located upon the joint right of way which are not a part of the Joint Facilities. The use by Union Pacific and such others of said railroad tracks and facilities which are not part of the Joint Facilities shall not affect the obligation of Southern Company to pay rental as herein provided, except that Southern Company shall be entitled to its proportion as provided in Article XXI hereof of revenue (including rental and taxes) received by Union Pacific from such others for use of the Joint right of way so occupied by said railroad tracks and facilities.

## ARTICLE V

### TELEPHONE AND TELEGRAPH LINES

Section 1. *Construction of Lines*—Southern Company shall have the right to construct telephone and telegraph lines longitudinally along, over or under the joint right of way; provided that such lines shall be installed and maintained by and at the sole cost and expense of Southern Company in locations approved by and in a manner satisfactory to Union Pacific.

Section 2. *Use of Existing Conduits*—Southern Company shall also have the right, subject to the approval of Union Pacific and any telephone or telegraph company having rights in the premises or in communication con-

duits along or under the joint right of way, to use such conduits or cables therein if space is available therefor.

Section 3. *Status of Lines*—Said telephone and telegraph lines, including conduits and cables, shall not form a part of the Joint Facilities.

## ARTICLE VI

### MAINTENANCE AND OPERATION

Section 1. *Maintenance*—Union Pacific shall maintain, repair, renew and replace the Joint Facilities in reasonable condition for the combined business of all parties using said facilities. It is expressly understood and agreed that Southern Company shall not by reason of any defect in the Joint Facilities, or by reason of the failure of Union Pacific to repair such defect, have or make against Union Pacific any claim or demand for any loss, damage or injury whatsoever arising from such defect, neglect or failure.

Section 2. *Operation*—The cost of train, engine and car operations over the Joint Facilities, except the operation by Union Pacific of engines and work train equipment engaged in maintaining, repairing or renewing any part of the Joint Facilities or in connection with the construction of additions and betterments thereto, shall be borne solely by each of the parties hereto as to its own trains, engines and cars.

Section 3. *Interruption or Delay to Traffic*—In case the use of the Joint Facilities shall be interrupted or traffic thereover delayed from any cause whatsoever, no party hereto shall have any claim against the others for liability



on account of loss or damage of any kind resulting from such interruption or delay.

## ARTICLE VII

### MANAGEMENT AND CONTROL

Section 1. *Management*—The Joint Facilities shall be under the exclusive direction and control of Union Pacific.

Section 2. *Rules and Regulations*—Union Pacific shall from time to time promulgate such reasonable rules, regulations and orders governing the Joint Facilities as will be consistent for proper, expeditious, economical and safe operation thereon and thereover of the locomotives, trains, motor cars and cars of all parties using said facilities. Such rules, regulations and orders shall be reasonable, just and fair to such parties, and all Union Pacific officers and employees engaged in the operation and maintenance of the Joint Facilities shall impartially perform their duties.

Section 3. *Precedence of Trains*—All passenger trains operating upon the Joint Facilities shall be given preference over other trains according to their class and superiority, and the trains of all parties shall be given equal dispatch according to their class and superiority.

## ARTICLE VIII

### RENTAL

Section 1. In consideration of the rights granted in this agreement, Southern Company, subject to any rental adjustments resulting from changes in the number of or extent of the units of the Joint Facilities and subject to

provisions of Article X, Article XII, Article XIII and Article XV hereof, shall pay to Union Pacific monthly, during the life of this agreement as rental for the use of the Joint Facilities, the following sums:

- (a) Joint Track Unit A, Four Hundred Twenty-Seven and 77/100 Dollars (\$427.77), being one-twelfth (1/12) of one-half (1/2) of 81.095 percent of four and one-half percent (4½%) of Two Hundred Eighty-One Thousand, Three Hundred Thirty and 30/100 Dollars (\$281,330.30).
- (b) Joint Track Unit B, One Hundred Twelve and 35/100 Dollars (\$112.35), being one-twelfth (1/12) of one-third (1/3) of 81.095 percent of four and one-half percent (4½%) of One Hundred Ten Thousand, Eight Hundred Thirty and 28/100 Dollars (\$110,830.28).

The phrase "applicable interest rental rate or rates" as used in Article XIII and Article XV of this agreement with respect to the valuation of the Joint Facilities, or any part thereof, in existence as of the effective date of this agreement shall mean 81.095 percent of 4½ percent, and with respect to the valuation of the Joint Facilities resulting from cost of changes, additions and betterments and taxes, each of which under the terms of this agreement is chargeable to Investment in Road and Equipment subsequent to the effective date of this agreement shall mean four and one-half percent (4½%).

## ARTICLE IX

### PAYMENTS FOR MAINTENANCE AND OPERATION

Section 1. Southern Company shall pay monthly to the Union Pacific a sum representing Southern Company's

cars handled percentage of the total actual cost to Union Pacific of operation (except train and engine operation other than work-train operation), maintenance, repairs, renewals and replacements separately applicable to each unit of the Joint Facilities.

Section 2. *Section Facilities*—The total actual cost to Union Pacific of the work referred to in Section 1 of this Article IX shall include a reasonable proportion of the total actual cost to Union Pacific of operation, maintenance, repair, renewal and replacement applicable to section facilities, any portion of the valuation of which is included on Exhibit D, and to section facilities hereafter constructed or used, any portion of the valuation of which is by mutual agreement added to the valuation of the Joint Facilities.

Section 3. *Cost Defined*—To the actual cost of labor and materials furnished by Union Pacific and used in the operation (except train and engine operation other than work-train operation), maintenance, repairs, renewals and replacements of the Joint Facilities there shall be added:

- (a) On all items of labor, including wages of foremen, ten percent (10%) for supervision, accounting and the cost of such tools as may be used by extra gangs; however no percentage shall be added to the cost of contract work or to the cost of work performed by parties other than parties to this agreement or to the wages paid employees engaged in the operation of interlocking plants, nor shall any charge be made for wages of any supervisors of Union Pacific while engaged in inspecting said interlocking plants;

- (b) A reasonable proportion of the replacement cost of tools and roadway machines costing less than \$300.00 per machine assigned to regular section gangs, including transportation charges thereon as hereinafter provided;
- (c) A charge for storehouse expenses of one percent (1%) on the actual cost of rails and cross-ties and ten percent (10%) on the actual cost of other materials and supplies passing through to the storehouse area, which costs shall include transportation charges on said rails, cross-ties, materials and supplies, but not including transportation charges provided for in Section 3-(e) of this Article IX;
- (d) A charge for purchasing department expense one percent (1%) on the actual cost of all materials and supplies which do not pass through to the storehouse area;
- (e) Transportation charges for transportation on the rail lines of the Union Pacific on all materials and supplies transported for use on the Joint Facilities at the rate of one-half cent (1/2) per ton per mile, but not to exceed the published tariff rates, where the materials and supplies are transported in other than work trains.

Section 4. *Additional Items of Cost*—To the actual cost of operating and maintaining the Joint Facilities there shall also be added:

- (a) Rental at agreed upon rates for use of roadway machines, special tools and appliances which individually cost Three Hundred Dollars (\$300.00) or more, and for use of locomotives, work cars and rolling stock equipment engaged in work-train

service, while performing work upon or in respect to the Joint Facilities;

- (b) Wages of crews, fuel, water, lubricants, other supplies, engine-house expenses, together with additives properly assessable under Section 3 hereof, and all other costs of operating locomotives and work equipment while performing work upon or in respect to the Joint Facilities;
- (c) A trackage charge of two and one-half cents (2½c) per mile for movement (excluding movements over the Joint Facilities except where transportation charges are assessed under Section 3(e) hereof) of each locomotive and each unit of work or rolling stock equipment in or to be used in work service on the Joint Facilities, moved to and from stations on Union Pacific distant not to exceed one hundred sixty (160) miles from Los Angeles, but excluding movements over the Joint Facilities.

Section 5. *Second-Hand Material*—Prices for second-hand and scrap material and supplies used in and released from the Joint Facilities shall be agreed upon from time to time by the parties hereto.

Section 6. *Annual Adjustments*—At the close of each calendar year so much of the monthly amounts paid or borne by Southern Company hereunder during that year as are chargeable to Maintenance of Way and Structures (and taxes applicable thereto) under current Interstate Commerce Commission regulations shall be readjusted so that Southern Company will bear and pay its cars handled percentage of the total of such charges for such year on an annual instead of a monthly basis; provided, however, that such adjustment shall be made only when cars

are counted and percentages determined monthly as permitted by Article II, Section 2.

## ARTICLE X

### TAXES

Section 1. *Taxes in General*—Union Pacific shall pay all taxes and assessments as hereinafter described allocable to the Joint Facilities, and Southern Company thereafter, upon demand, shall pay to Union Pacific

- (a) Its cars handled percentage of any taxes and assessments, exclusive of taxes and assessments levied against the rolling stock of the Union Pacific, which may be levied upon, fairly attributable and allocable to, assessed against, charged to or on account of the real and personal property comprising each respective unit of the Joint Facilities.
- (b) Its cars handled percentage of all local license and privilege franchise taxes attributable to, charged to or on account of the operations contemplated under this agreement with respect to each unit of the Joint Facilities, exclusive, however, of any such taxes due solely to Union Pacific operations upon said Joint Facilities.
- (c) Its cars handled percentage of all social security taxes, unemployment insurance taxes, railroad retirement taxes, sales taxes, use taxes and taxes which may from time to time be levied or assessed against or on account of materials used and labor employed in the operation, maintenance, repairs, renewals and replacements of the Joint Facilities.

Section 2. *Taxes Chargeable to Investment*—"Taxes" or "assessments", as used in this Article X, levied or assessed against the Joint Facilities, shall not be deemed to include any taxes or assessments paid by Union Pacific which properly constitute charges to Investment in Road and Equipment or Railway Operating Expenses as defined in current Interstate Commerce Commission regulations. Expenditures by Union Pacific for such taxes and assessments shall become a part of the Capital and Operating Expenditures applicable to the Joint Facilities, and Southern Company shall pay rental upon the amount of such Capital Expenditures at the rate specified for additions and betterments in Article XII of this agreement provided and its cars handled percentage of such Operating Expenditures as in Article IX of this agreement provided.

Section 3. *New Method of Taxation*—It is understood and agreed that in the event a different method of levying taxes is hereafter adopted in California, or any other forms of taxation are hereafter imposed, resulting in inequities to either of the parties hereto, then such new taxes levied or assessed against the Joint Facilities, or any part thereof, shall be apportioned between all parties using the Joint Facilities on a fair and equitable basis.

## ARTICLE XI

### DEPRECIATION

Section 1. *Apportionment*—Should depreciation on Joint Facilities, or any part thereof, be currently accrued and set up on the books of Union Pacific under Interstate Commerce Commission regulations, or other authorized

governmental authority, it shall be assessed and apportioned between the parties hereto as mutually agreed upon.

## ARTICLE XII

### ADDITIONS AND BETTERMENTS

Section 1. *Rental For*—Union Pacific may from time to time make such changes in or additions and betterments to the Joint Facilities as shall in its judgment be necessary or desirable for the economical and safe operation thereof, or as shall be required by Federal or State law, or by lawful municipal ordinance or public service regulation or order, and the same shall immediately become a part of the Joint Facilities hereunder. That portion of costs incurred by Union Pacific in connection with public improvements not owned by Union Pacific, but which properly constitutes a charge to Investment in Road and Equipment as defined in current Interstate Commerce Commission regulations, and which is fairly allocable to the Joint Facilities as determined by the respective benefits to Joint Facilities and to exclusive facilities of Union Pacific, shall be deemed a cost of additions and betterments to the Joint Facilities upon which Southern Company shall pay rental as in this section provided. Southern Company shall pay thereon monthly to Union Pacific as rental, in addition to the rentals hereinabove provided, and with respect to each unit of the Joint Facilities, a sum equal to one-twelfth (1/12) of that proportion of four and one-half percent (4½%) of the actual cost to the Union Pacific chargeable to Investment in Road and Equipment of such changes, additions or betterments in each unit (as ascertained from current Interstate Com-

merce Commission regulations) as one bears to the total number of users in each such unit. Said actual cost shall include the total amount of taxes (of the character referred to in Article X, Section 1-(c)) allocable to that portion of the work of making such changes, additions and betterments, the cost of which is chargeable to Investment in Road and Equipment. The portion of such actual cost of such changes, additions and betterments chargeable to Railway Operating Expenses, including that portion of the taxes of the character referred to in Article X, Section 1-(c), which are allocable thereto, shall be considered as maintenance expense, and Southern Company shall pay its proportion in the manner and as provided in Article IX hereof.

Section 2. *Additions and Betterments in Excess of \$10,000.00*—Notwithstanding the foregoing, however, in the event Union Pacific shall desire to make any changes in, additions to, or betterments of the Joint Facilities costing in excess of Ten Thousand Dollars (\$10,000.00) chargeable to Investment in Road and Equipment, it shall so notify Southern Company, and if Southern Company shall consider the same unnecessary or undesirable for the safe or economical operation of the Joint Facilities for joint use, then, upon written request by Southern Company, the question of such necessity or desirability (except when the same shall be required by lawful authority) shall be submitted to arbitration; and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, as aforesaid, or if it shall be determined by arbitration that the same are necessary or desirable for use only by Union Pacific, then

Union Pacific may make such changes, additions or betterments, and Southern Company shall not be required to pay any taxes or expenses of construction, operation, maintenance, renewals and retirements connected therewith or rental charges thereon until Southern Company shall desire to use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, at which time the same, including any subsequent changes, additions and betterments thereto, shall become additions and betterments to the Joint Facilities.

Section 3. *Requested by Southern Company*—In the event Southern Company shall request Union Pacific to make changes in, or additions to, or betterments of the Joint Facilities, and Union Pacific does not deem the same to be necessary or desirable for the joint use of the parties hereto and the safe or economical operation of the Joint Facilities, then, and in that event, the question of such necessity or desirability shall first be submitted to arbitration, and if it shall be determined by arbitration that the same are not necessary or desirable for joint use, the said changes, additions or betterments shall not be made. However, if it shall be determined by arbitration that the said changes, additions and betterments are necessary or desirable for use only by Southern Company, Union Pacific shall make such changes, additions or betterments at the sole cost and expense of the Southern Company, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne by Southern Company until or unless Union Pacific shall desire to use the same,



or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, at which time Union Pacific shall reimburse Southern Company for the cost of such change, addition or betterment, together with the cost of any subsequent changes, additions or betterments thereto, provided Southern Company shall concurrently be required to convey the title to such addition and betterment free, clear and released from all liens, mortgages or encumbrances thereon, and thereafter such facilities shall become additions and betterments to the Joint Facilities.

Section 4. *For Sole Account of One Party*—In the event either party shall desire that any changes, additions or betterments should be made to the Joint Facilities for the sole account of the party so desiring them, and the other party has no objection thereto, then Union Pacific shall make such changes, additions or betterments to the Joint Facilities at the sole cost and expense of the party desiring the same, and all taxes and expenses of construction, operation, maintenance, renewals and retirements connected therewith shall be borne solely by the party desiring said change, addition or betterment until or unless the other party shall desire to use the same, or until, because of changed conditions, the same shall be determined by arbitration to be necessary or desirable for joint use as aforesaid, whereupon the said change, addition or betterment shall become additions and betterments to the Joint Facilities and Union Pacific shall reimburse Southern Company for the cost thereof, together with the cost of any subsequent change, addition or betterment thereto if said costs were borne by South-

ern Company, provided Southern Company shall concurrently be required to convey the title to such additions and betterment free, clear and released from all liens, mortgages or encumbrances thereon. In any event, the Union Pacific shall have the right to make any changes, additions or betterments to the Joint Facilities for its sole account and at its sole cost and expense, and the said changes, additions and betterments, when made, shall be subject to all of the provisions of this Section 4.

Section 5. *Later Made Part of Joint Facilities*—In the event changes, additions or betterments were made at the sole expense of either party hereto and said changes, additions or betterments later shall become a part of the Joint Facilities as hereinabove provided, the portion of the cost of such changes, additions or betterments which was charged to Railway Operating Expenses shall be divided and borne by all parties using same in accordance with their cars handled percentages for the month in which said changes, additions or betterments were completed, and Southern Company shall commence the payment of rental on the portion of the cost of such changes, additions or betterments, as outlined in Section 1 of the Article XII, commencing with the first of the month following the determination that such changes, additions or betterments shall become part of the Joint Facilities.

Section 6. *Impairment of Joint Facilities*—Notwithstanding the foregoing, no change, addition or betterment shall be made or requested by either party that will permanently or materially impair the usefulness of said Joint Facilities by either of the parties hereto.

Section 7. *Cost*—Except as otherwise provided in Section 1 of this Article XII, the terms “Actual Cost” or “Sole Cost” as used in this agreement in connection with changes or additions or betterments shall be the amount as ascertained under the current Interstate Commerce Commission regulations restated to include charges as outlined in Sections 3-(e), 4-(a), 4-(c) and 5 of Article IX hereof.

### ARTICLE XIII

#### RETIREMENTS

Section 1. *Reduction in Rental*—(a) Whenever any change in, elimination, disposal or retirement of any part of the Joint Facilities is made, which, under the current Interstate Commerce Commission regulations, reduces the ledger value and agreed valuation, or either thereof, as the case may be, of the Joint Facilities, then the valuation of the Joint Facilities upon which the Southern Company shall thereafter be required to pay rental under Article VIII, Article X and Article XII hereof shall be reduced by the valuation, including additives applicable thereto, of the facility so changed, eliminated, disposed of or retired, and Southern Company shall thereafter pay as rental on the reduced valuation its proportion as stated in Article VIII hereof, or as changed pursuant to the provisions of Article XV hereof, computed at the applicable interest rental rate or rates.

(b) Whenever any part of the Joint Facilities shall be withdrawn from joint use by mutual agreement, and Union Pacific elects to retain said part for its exclusive use or use by or with any third party, the said valuation

of the Joint Facilities upon which the Southern Company shall thereafter be required to pay rental under Article VIII, X and XII hereof shall be reduced by the valuation including additives applicable thereto, of the facility withdrawn, and Southern Company shall thereafter pay as rental on the reduced valuation its proportion as stated in Article VIII hereof, or as changed pursuant to the provisions of Article XV hereof, computed at the applicable interest rental rate or rates.

Section 2. *Apportionment of Losses on Retirement*—Any loss chargeable to Railway Operating Expenses, Profit and Loss Accounts, resulting from sale, abandonment or other retirement of the Joint Facilities, or part thereof, shall first be divided to determine the portions thereof applicable to the period of the sole exclusive use of the Joint Facilities by Southern Company or Union Pacific and the period of joint use of the Joint Facilities by Southern Company and Union Pacific and the portion applicable to the period of such joint use shall be apportioned to the parties in the same proportion as the expense for maintenance of the particular facility, or part thereof, involved, is allocated to the parties at the time of such sale, abandonment or other retirement, and the portion applicable to the period of exclusive use by the Southern Company shall be borne by said company; provided, however, that the loss or gain incurred or realized by Union Pacific at the sale or retirement of land shall be borne solely by Union Pacific and inure to the sole benefit of Union Pacific. Use of the Joint Facilities by Union Pacific and any railroad companies other than Southern Company shall be

sidered exclusive use thereof by the Union Pacific for the purposes of this section.

Section 3. *Limitation on Retirement*—Notwithstanding the foregoing, no withdrawal, change in, elimination, disposal or retirement of any part of the Joint Facilities which will permanently or materially impair the usefulness to the Southern Company of the Joint Facilities shall be made without the consent of the Southern Company.

#### ARTICLE XIV

##### CLASSIFICATION OF ACCOUNTS

Section 1. *Interstate Commerce Commission Regulations*—Expenditures chargeable to Investment in Road and Equipment and to Railway Operating Expenses and other appropriate accounts, except as in this agreement otherwise provided, occasioned by the construction, operation, maintenance, repairs, renewals, replacements and retirements of the Joint Facilities, shall be classified in accordance with current Interstate Commerce Commission regulations as followed by the Union Pacific and shall be added to the rental base or apportioned on a cars handled percentage basis in the manner provided in Article XII and Article IX of this agreement.

#### ARTICLE XV

##### ADMISSION OR ELIMINATION OF OTHER RAILROADS

Section 1. *Right of Admission Reserved by Union Pacific*—Union Pacific reserves the right at all times to grant to other railroad company or companies the use of

the Joint Facilities, or any part thereof, in common with itself, Southern Company and any railroad company already admitted to the use thereof, provided such admission of other railroad company or companies shall not unreasonably hinder or obstruct the Southern Company in the use of the rights granted hereunder. In case any other railroad company or companies shall be, at any time during the life of this agreement, admitted to the use of any or all of said Joint Facilities, then during the time the said railroad company or companies so admitted shall use or be entitled to the use of said Joint Facilities, or any part thereof, the monthly rental payable to Union Pacific by Southern Company under the provisions of Articles VIII, X and XII hereof upon that portion of the Joint Facilities to the use of which the said Railroad Company or Companies shall have been admitted, shall be one-twelfth (1/12) of the proportion that one bears to the entire number of railroad companies at the time entitled to use said portion of the Joint Facilities of the product of the valuation of the said portion of the Joint Facilities (including portion of taxes and cost of changes, additions and betterments chargeable to Investment in Road and Equipment) multiplied by the applicable interest rental rate or rates.

Section 2. *Elimination of Other Railroads*—In case any railroad company or companies other than Southern Company or Union Pacific now or hereafter admitted to the use of the Joint Facilities, or any part thereof, shall discontinue use of all or any part of the Joint Facilities under an arrangement with Union Pacific whereby said railroad company or companies shall not be thereafter



obligated to pay rental to Union Pacific for the use thereof, then during the time the said railroad company or companies shall not use or be entitled to use the said Joint Facilities or any part thereof, the monthly rental payable to Union Pacific by Southern Company under the provisions of Articles VIII, X and XII hereof upon that portion of the Joint Facilities which the said company or companies shall be thereafter not entitled to use shall be one-twelfth (1/12) of the proportion that one bears to the entire number of railroad companies thereafter entitled to use said portion of the Joint Facilities of the product of the valuation of the said portion of the Joint Facilities (including portion of taxes and cost of changes, additions and betterments chargeable to Investment in Road and Equipment) multiplied by the applicable interest rental rate or rates.

Section 3. *Detours*—The provisions of this article shall not apply to any temporary permission granted by Union Pacific to other railroad company or companies to use the Joint Facilities or any part thereof, for detour purposes, for periods not exceeding sixty (60) days in any calendar year.

## ARTICLE XVI

### INSURANCE—PREMIUMS AND RECOVERIES

Section 1. *Apportionment*—Premiums paid for insurance carried by Union Pacific on the Joint Facilities shall be prorated on a cars handled percentage basis.

Section 2. *Compensation Insurance*—In the event Union Pacific shall voluntarily, or pursuant to Federal or State regulations, carry Federal or State compensation

insurance, or insurance of any similar character, for the protection of joint employees while engaged in the construction, operation, maintenance, repair, renewal or retirement of the Joint Facilities, said policies shall protect both Union Pacific and Southern Company, and the cost of the premiums therefor shall be divided in accordance with the provisions of Article IX hereof, or when chargeable to Investment in Road and Equipment in connection with changes, additions or betterments, rental upon the portion of the cost so chargeable shall be paid by Southern Company as provided in Article XII hereof.

Section 3. *Destruction of Joint Facilities*—In the event the Joint Facilities, or any part thereof, are damaged or destroyed by any casualty during the life of this agreement, Union Pacific shall repair or restore the same unless the parties hereto agree that the repair or restoration thereof is not necessary, in which event the same shall be retired. Any insurance recovered by Union Pacific as a result of such damage or destruction shall be applied in reduction of the charges to Railway Operating Expense or Profit and Loss (as the case may be) occasioned by such repair, restoration or retirement. The portion of such charges to Railway Operating Expenses or Profit and Loss (as the case may be) over and above such insurance recoveries shall be borne by the party or parties hereto who shall be liable for such damage or destruction of the Joint Facilities under Article XVII hereof, it being the intention that none of the parties to this agreement shall assume any liability under said Article XVII which is compensated by recovery under insurance carried on the Joint Facilities. If no party hereto shall be so liable

under Article XVII, then the excess of said charges to Railway Operating Expenses or Profit and Loss as the case may be over and above such insurance recovery shall be borne by the parties hereto in accordance with the provisions of Article IX or Article XIII hereof as the case may be.

## ARTICLE XVII

### LIABILITY

With respect to liability as in this Article provided, Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company shall be considered one party, and where the term "user" is employed, shall be considered one user.

Section 1. (a) For the purposes of the liability provisions of this agreement, all officers and other employees of the Union Pacific whose duties are directly connected with the movement of trains, engines or cars upon and along the Joint Facilities shall, while performing such duties in connection with such movements for or on behalf of one user (as hereinafter in subsection (b) of this section defined) for the time being, be considered and held to be the sole employees of such user, and while performing such duties in connection with such movement for or on behalf of two or more users (thus defined) shall, for the time being, be considered and held to be the joint employees of such users.

All employees of the Union Pacific while engaged in the maintenance, repair or renewal of any part of the Joint Facilities or the construction of any addition or betterment thereto, shall for the purposes of the liability

provisions of this agreement be deemed to be the joint employees of the parties hereto and of the other carrier using such part of the Joint Facilities.

(b) Except as herein otherwise provided, liability for injury to or death of persons whomsoever, and for loss of or damage to property whatsoever, in connection with the construction, maintenance, operation, repair, renewal or replacements of the Joint Facilities, shall be fixed between the parties hereto and other railroad or railway companies using the Joint Facilities as follows (the parties hereto and such other railroad or railway companies being hereinafter in this section referred to individually as "user" and collectively as "users"):

When due to

- (a) the acts or omissions of any user or of its officers, agents or employees; or to
- (b) the concurring acts or omissions of a joint employee or joint employees and of any user or its officers, agents or employees; or to
- (c) defects of any kind in the separate equipment or facilities of any user (except the Joint Facilities and except engines and work train equipment engaged in maintaining, repairing, renewing any part of the Joint Facilities, or connection with the construction of additions and betterments thereto), shall be borne solely by such user;

when due to

- (d) the concurring acts or omissions of two or more users or of their officers, agents or employees or to

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- (e) defects of any kind in the separate equipment or facilities (except the Joint Facilities and except the engines and work train equipment mentioned in subdivision (c) of this section) of two or more users; or to
- (f) the concurring acts or omissions of a joint employee or joint employees and of two or more users or of their officers, agents or employees,

shall be borne

(1) solely by each of the users concerned in any of the three cases aforesaid as to its own property (other than the Joint Facilities and the engines and work-train equipment mentioned in subdivision (c) of this section) or property in its custody or control and as to its own employees, passengers and patrons and all others on its engines, trains or cars or on or about the Joint Facilities in the transaction of business with it; and

(2) jointly and equally by the users concerned in any of the three cases aforesaid as to the other user or users, third persons and their property, joint employees and their property, the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section:

when due to

- (g) the acts or omissions of a joint employee or joint employees of two or more users,

shall be borne

(1) solely by each of the users whose joint employee or joint employees are concerned, as to its own property

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(other than the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section) or property in its custody or control, and as to its own employees, passengers and patrons and all others on its engines, trains or cars or on or about the Joint Facilities in the transaction of business with it; and

(2) jointly and equally by the users whose joint employee or joint employees are concerned, as to the other user or users, third persons and their property, joint employees and their property, the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section;

when due to

(h) any other cause whatsoever,  
shall be borne

(1) solely by each user as to its own property (other than the Joint Facilities and the engines and work train equipment mentioned in subdivision (c) of this section) or property in its custody or control, and as to its own employees, passengers and patrons and all others on its engines, trains or cars, or on or about the Joint Facilities in the transaction of business with it; and

(2) jointly and equally by all users of the part of the Joint Facilities involved, as to third persons and their property, joint employees and their property, the Joint Facilities and engines and work train equipment mentioned in subdivision (c) of this section, except that in cases of accidents in which the engines, trains, cars or sole employees of one or more users are concerned, then the liability for the resulting injury, death, loss or dam-

age shall, as to such persons and property, be borne solely by the user, if only one, or jointly and equally by the users, if more than one, whose engines, trains, cars or sole employees are concerned.

If it shall be impossible to determine whether any person is an exclusive passenger, patron or employee of any user, then the liability for injury to or death of such person, or loss of or damage to the property of such person, shall, except as herein otherwise provided, be apportioned as in the case of third persons.

Section 2. Anything herein to the contrary notwithstanding, no user shall have any claim against another user for any loss or damage which may occur to its rolling stock equipment or to that in its possession or to the contents thereof, while on the Joint Facilities, arising by reason of fire, whether such fire be due to the negligence of such other user, or otherwise.

Section 3. Any user against which a claim is made involving joint liability shall give prompt notice thereof to the other user or users jointly liable, and no user not so notified prior to the settlement of such claim shall be bound for a proportionate share of any settlement of such claim or the expense incident thereto, but such user's share shall be borne by the user so failing to give the required notice.

If a claim is made against any user which under this agreement is not chargeable in whole or in part with the liability involved in such claim, such user shall promptly notify in writing the responsible user or users.

All releases taken pursuant to the settlement of a claim and all claims involving joint liability shall include the user or users, and copies thereof shall be furnished each of the users.

If a judgment should be recovered against and satisfied by one user involving a liability which should under the agreement be borne entirely or participated in by one or more of the other users, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the users in strict accordance with the provisions of this agreement, and the users against which such judgment shall have been recovered shall be promptly reimbursed by such other user or users to the extent to which the latter are indebted.

No user shall, however, be concluded by any judgment or decree at law or in equity against any other user unless it has had reasonable notice from such other user requiring it to appear in the action or suit and make defense thereto for its own account or jointly with the other user. If such notice shall have been given by one user to the other users or any of them and the user or users receiving such notice shall have failed to appear and make defense, it or they shall be concluded by the judgment or decree in such suit.

Section 4. Each user shall fully indemnify and shall hold harmless the other users, their successors and assigns from and against all claims, liability, judgments, costs and expenses of whatsoever nature resulting from or arising out of or by reason of any injury to or death of persons or loss of or damage to property properly chargeable to such user under the provisions of this agreement.

The provisions of this Article XVII shall be binding not only as between the parties hereto, but as between them and all railroad and railway companies from time to time using the Joint Facilities, or any part thereof, and the Union Pacific shall cause to be inserted in every contract for the use of the Joint Facilities, or any part thereof, provisions identical with the provisions in this section stated, and such contracts shall, in this respect, be construed as if each one were signed by all the railroad or railway companies at any time using the Joint Facilities, or any part thereof. Failing to cause such provisions to be inserted in the contract with any railroad or railway company hereafter admitted to the use of the Joint Facilities, or any part thereof, the Union Pacific shall assume such obligations as such other company would have assumed if such provisions had been inserted in its contract.

#### ARTICLE XVIII

##### COMPLIANCE WITH LAWS AND REGULATIONS

Section 1. Each user undertakes and agrees in respect to its use of the said Joint Facilities and the operation of equipment and appliances thereon or thereover to comply with all Federal and State laws or regulations, and laws, rules, regulations or orders promulgated by any municipality, board or commission in respect thereto for the protection of employees or other persons or parties, and if any failure on its part so to comply therewith shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the other user or users, promptly to reimburse and indemnify such other user or users for or on account of such fine, penalty, cost or

charge and all expenses and attorneys' fees incurred defending any action which may be brought against such other user or users on account thereof, and further agrees, in the event of any such action, upon notice thereof being given by such other user or users, to defend such action free of all cost, charge and expense such user or users.

#### ARTICLE XIX

##### EQUIPMENT

Section 1. Any locomotive, motor car, car or equipment used or operated by any party using the Joint Facilities or any part thereof, shall be deemed to be the motor power or equipment of such party, whether owned by or not.

#### ARTICLE XX

##### PICKING UP WRECKS

Section 1. If any locomotive, motor car, car or equipment of any party hereto shall be wrecked or derailed while upon the Joint Facilities, the same shall be picked up or re-railed without unnecessary delay by either Southern Company or Union Pacific, as may be mutually agreed upon from time to time, and the expense of picking up such wreck or derailed equipment shall be borne by the parties in accordance with the provisions of Article XVII hereof.

#### ARTICLE XXI

##### REVENUES

Section 1. Revenues derived from rental of any part of the Joint Facilities, other than from railroad companies,



operating trains or cars thereon and thereover, shall be apportioned to and divided between the parties hereto on the same basis as the expenses of maintenance and operation of the Joint Facilities are apportioned to and divided between the parties as provided for in Section 1 of Article IX of this agreement; provided, however, that no apportionment shall be made of revenues received from any agreement amounting to Five Dollars (\$5.00) or less per annum.

## ARTICLE XXII

### PAYMENT OF BILLS

Section 1. All sums payable hereunder by Southern Company to Union Pacific shall be paid within thirty (30) days after rendition of bills therefor in lawful currency of the United States of America. Errors or disputed items in such bills shall not be deemed a valid excuse for delay in payment, but shall be subject to subsequent adjustment.

## ARTICLE XXIII

### ARBITRATION

Section 1. With respect to arbitration as in this Article provided, Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company shall be considered one party.

Section 2. In case any disagreement shall arise between the parties hereto as to the meaning of any provisions of this agreement, or concerning the observance or performance of any covenant hereof, or as to any other matter arising under this agreement, whether or not

assigned under this agreement as a matter of arbitration, then such subject of disagreement shall be submitted to the arbitrament of three disinterested persons who shall be experienced railroad men then or recently in steam railroad service, and who shall be experienced in matters of the character in dispute, to be chosen as follows:

Section 3. The party desiring arbitration shall select its arbitrator and give written notice thereof to the other party, and shall in such notice state precisely the matter or matters which it proposes to bring before the arbitrators, and only the matters so stated shall be considered by them. Within thirty (30) days after the service of such notice, the party so notified shall select an arbitrator and notify the moving party in writing of such selection. If the party so notified shall not select an arbitrator and notify the moving party in writing of such selection as aforesaid, then the second arbitrator may be appointed by the Judge of the District Court of the United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act, upon application of the moving party upon giving ten (10) days' written notice of such application to the other party to the controversy.

Section 4. The arbitrators so selected or appointed in the manner provided in the next preceding section within thirty (30) days after the designation of the last one chosen shall jointly name a third arbitrator.

Section 5. If in any case, as aforesaid, the two arbitrators so chosen or designated shall fail to agree upon the selection of such third arbitrator, such arbitrator may be appointed by the Judge of the District Court of the

United States within whose District the Joint Facilities are located, who shall have served longest in that capacity in said District and who is willing to act, upon application of the moving party upon ten (10) days' written notice of such application to the other party to the controversy.

Section 6. The arbitrators having taken and subscribed an oath before some person authorized by law to administer oaths, to the effect that they will well and truly try and impartially and justly decide the matter in controversy according to the best of their ability (which oath shall be filed with their decision) shall, as soon as possible after their selection, meet to hear and decide the question or questions submitted to them, and shall give to each of the parties hereto reasonable notice of the time and place of such meeting. The hearings of the board of arbitrators shall be conducted in a lawful manner, and after hearing all parties interested and taking such sworn testimony or making such investigation as they shall deem necessary, the written decision of the arbitrators, signed by a majority of them, shall determine the controversy, and such determination shall be final and conclusive upon the parties to the arbitration.

Section 7. Upon the making of such decision each party hereto shall and will immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision may be required of it.

Section 8. The books and records of the parties hereto, so far as they relate to the matters of arbitration, shall be open to the examination of the arbitrators.

Section 9. The party against which the award shall be made shall pay all of the fees and expenses of the arbitration, or such fees and expenses may be apportioned by the board of arbitrators as it may determine.

Section 10. Until the arbitrators shall make their award upon any question submitted to them, the business settlements and payments to be transacted and made under this agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such question.

#### ARTICLE XXIV

##### INSPECTION OF RECORDS

Section 1. So much of the books, accounts and record of each party as relate to the subject matter of this agreement shall at all reasonable times be open to inspection by the proper officers and agents of the other party or parties.

#### ARTICLE XXV

##### DEFAULT

Section 1. If Southern Company shall fail to pay any sum payable by it hereunder on the date when the same shall be due, or shall fail to perform or comply with any other covenant or condition by it to be performed and complied with under this agreement, and such default shall continue for a period of six (6) months after written demand for such payment or performance, as in Article XXVI provided, shall have been made upon Southern Company by Union Pacific, then and in such case Union Pacific shall have and is hereby given the right at its election to

declare this agreement terminated, and after giving notice in writing of such election to Southern Company this agreement then and there by such notice shall be terminated and all rights of Southern Company shall cease and determine, and Union Pacific may exclude Southern Company, and anyone acting under its permission and authority, wholly from the Joint Facilities. Such termination, however, shall not relieve either party from any liability which may have attached or accrued prior to or at the date of such termination or deprive either party of the right to enforce any such liability or the benefit of any covenant or obligation in this agreement contained to indemnify and hold it harmless. It is expressly agreed that the failure or refusal of Southern Company to make payments or to perform or comply with any covenants or conditions which shall be the subject of arbitration or litigation between the parties hereto shall not, pending final determination of such arbitration or litigation, be deemed cause for termination of this agreement.

#### ARTICLE XXVI

##### REMOVAL OF SOUTHERN COMPANY'S FACILITIES

Section 1. Upon the expiration or earlier termination of this agreement, Southern Company shall promptly remove from the Joint Facilities any tracks or facilities then owned by it and restore the portions of the Joint Facilities involved to substantially their former condition, and if Southern Company shall fail to make such removal or restoration within one hundred eighty (180) days from the date of such expiration or termination, then such tracks or facilities shall become the property of Union Pacific.

#### ARTICLE XXVII

##### NOTICES

Section 1. Demands or notices under this agreement shall be in writing to the President, any Vice-President or any General Manager of the party hereto to be notified.

#### ARTICLE XXVIII

##### MORTGAGES, LIENS, ETC.

Section 1. The rights that Southern Company acquires hereunder shall be deemed appurtenant to and run with its railroad and properties in the State of California, and it may sell, assign, lease or mortgage said rights in connection with and as a part of the sale, assignment, lease or mortgage as an entirety of all of its railroad and properties in said State.

Section 2. This agreement is subject to all valid existing contracts, leases, liens and encumbrances which may affect said Joint Facilities.

#### ARTICLE XXIX

##### FILING AGREEMENT

Section 1. Southern Company shall file copies of this agreement with the Interstate Commerce Commission and with the Railroad Commission of the State of California or both, in the event it becomes necessary, as a matter of law or in compliance with a lawful order of a governmental body having jurisdiction in the premises, to file such copies.



## ARTICLE XXX

## SUCCESSORS AND ASSIGNS

Section 1. The several covenants and stipulations herein contained shall be mutually binding upon and inure to the benefit of the parties hereto, their successors, lessees and assigns; provided, however, that if Los Angeles & Salt Lake Railroad Company resumes possession of its railroad it shall ipso facto be substituted in the place and stead of Union Pacific.

## ARTICLE XXXI

## EFFECTIVE DATE—TERM OF AGREEMENT

This agreement shall take effect as of 12:01 a.m., the 7th day of May, 1939, and shall continue in force to and including April 14, 1988, and thereafter until terminated by written notice given (either before or after said expiration date) by any party hereto to the others on any date in such notice stated, not less, however, than two (2) years subsequent to the date on which such notice shall be given; provided, however, that should Southern Company desire not to continue the use of the Joint Facilities for the purposes hereinabove described, it may terminate this agreement at any time after the lapse of fifteen (15) years from the effective date hereof by giving to Union Pacific six (6) months' written notice of intention to accomplish such termination as of a date to be specified in said notice.

## ARTICLE XXXII

## TERMINATION OF PRIOR AGREEMENT

Effective as of 12:01 a.m., the 7th day of May, 1939, that certain agreement between Union Pacific and the

Southern Company dated February 4, 1930, as supplemented and amended by agreement of April 22, 1930, and by agreement of December 1, 1934, shall be terminated and cease to be in effect at such time, and all rights accruing thereunder are waived, provided, however, that no rights or obligations accruing at or prior to 12:01 a.m., May 7, 1939, under the provisions of said agreement as so supplemented are waived, including the right of arbitration.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in two counterparts by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective secretaries or assistant secretaries the day and year first above written.

LOS ANGELES & SALT LAKE  
RAILROAD COMPANY,

By: (Signed) G. F. ASHBY,  
*Its Vice-President.*

Attest:

(Signed) PAUL RIGDON,  
*Assistant Secretary.*

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(SEAL)

UNION PACIFIC RAILROAD  
COMPANY,

By: (Signed) G. F. ASHBY,  
*Its Vice-President.*

Attest:

(Signed) PAUL RIGDON,  
*Assistant Secretary.*

(SEAL)

SOUTHERN PACIFIC COMPANY,

By: (Signed) A. T. MERCIER,  
*Its President.*

Attest:

(Signed) ROY G. HILLEBRAND,  
*Assistant Secretary.*

(SEAL)

C. L. D. No. 5181

August 18, 1943.

Southern Pacific Company  
65 Market Street  
San Francisco, California

Gentlemen:

Please refer to agreement between the undersigned and you, dated April 8, 1943, covering joint use by Southern Pacific of Union Pacific tracks from Ninth Street Junction and Bridge Junction to Fruitland Avenue for the purpose of serving the Union Stockyards and Central Manufacturing District in Los Angeles, California, which has been executed by you and is before the undersigned for final execution.

In view of the fact that depreciation accounting became effective for railroads January 1, 1943, we should appreciate an understanding with you that effective January 1, 1943, and pending the consummation of agreement for the assessing and apportionment of depreciation as provided in Section 1 of Article XI of the above mentioned agreement, any retirement loss in connection with the Joint Facilities chargeable to depreciation reserve shall be apportioned under the provisions of Section 2 of Article XIII of said agreement as though chargeable to Railway Operating Expenses or Profit and Loss Accounts.

Attachment: Exhibit A 1942 Agreement (8162 : SBCTA/SCRRA Acknowledgement Agreement for Rail

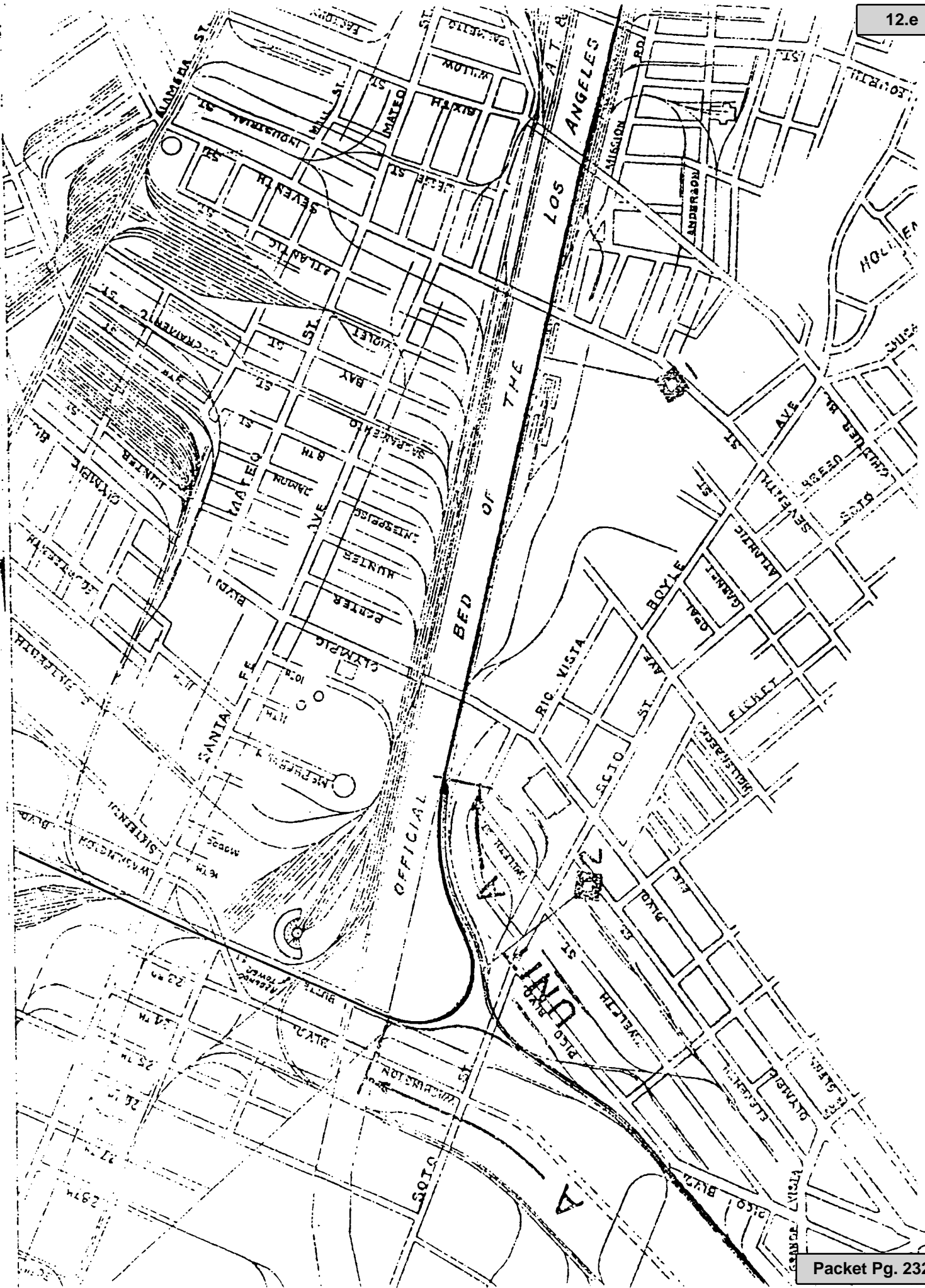
Your execution and return of the enclosed copy of this letter will confirm the foregoing understanding.

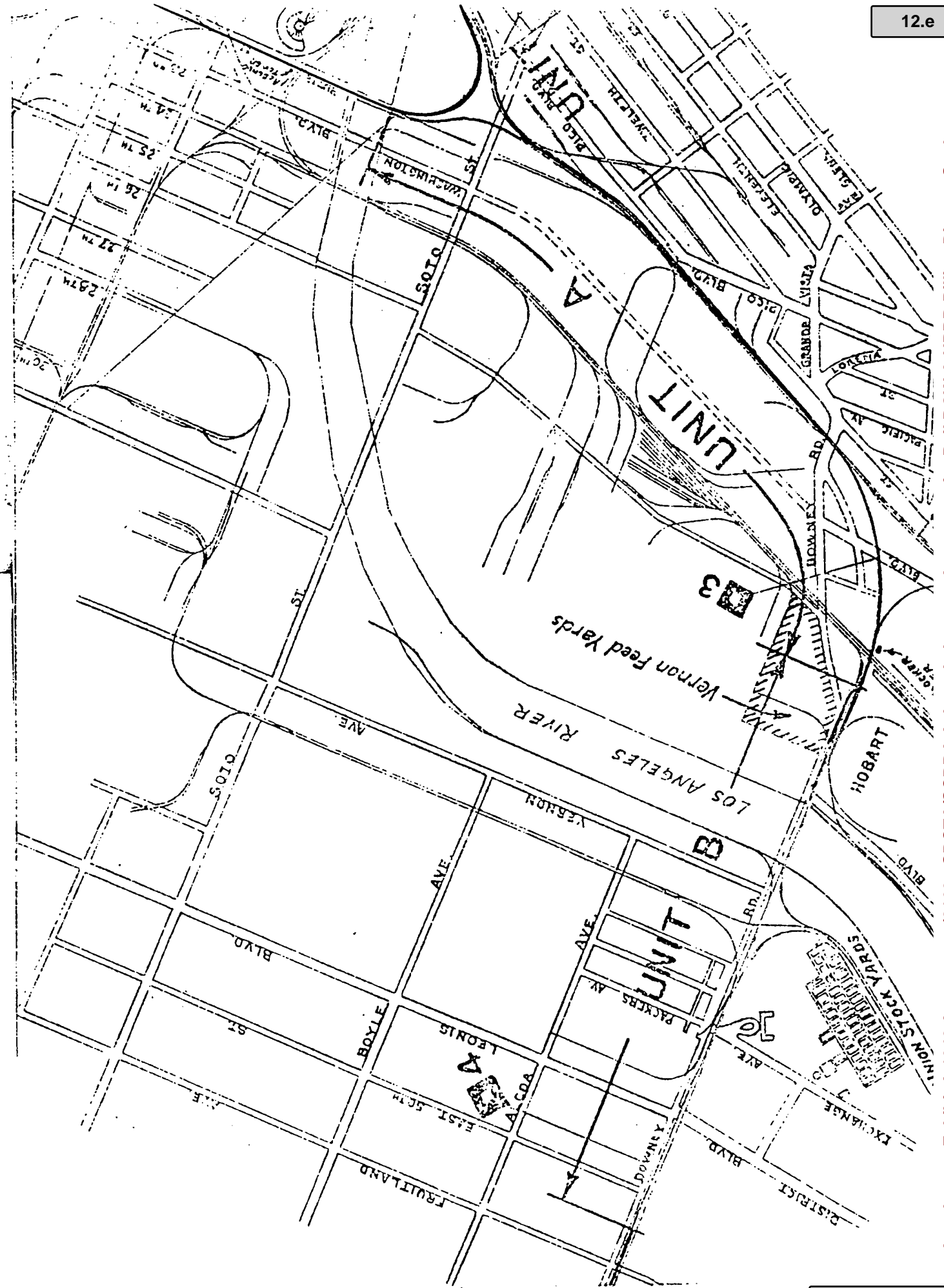
LOS ANGELES & SALT LAKE RAILROAD COMPANY  
UNION PACIFIC RAILROAD COMPANY

By: G. F. ASHBY  
*Vice-President*

ACCEPTED AND APPROVED this  
28th day of October, 1943.

SOUTHERN PACIFIC COMPANY  
By: D. J. RUSSELL  
*Vice-President*





# LEGEND

- Union Pacific trackage used jointly by Southern Company and Union Pacific
- Union Pacific trackage used by Southern Company and Union Pacific "East Bank Contract"
- Union Pacific trackage used by Atchison Company under dated Nov. 4, 1922 and subsequent
- Union Pacific trackage used by Atchison Company, Southern Company, and Union Pacific



## EXHIBIT "A"

LOS ANGELES & SALT LAKE RAILROAD  
UNION PACIFIC RAILROAD COMPANY

TRACKAGE USED JOINTLY BY SOUTHERN PACIFIC  
IN REACHING THE UNION STOCKYARDS,  
MANUFACTURING DISTRICT AND THE  
LOS ANGELES, CALIF.

12e



LETTER TO UP JOINT FACILITIES (August 12, 2002)

Cc: to UP West Colton Operations and SCRRA Engineering Department.

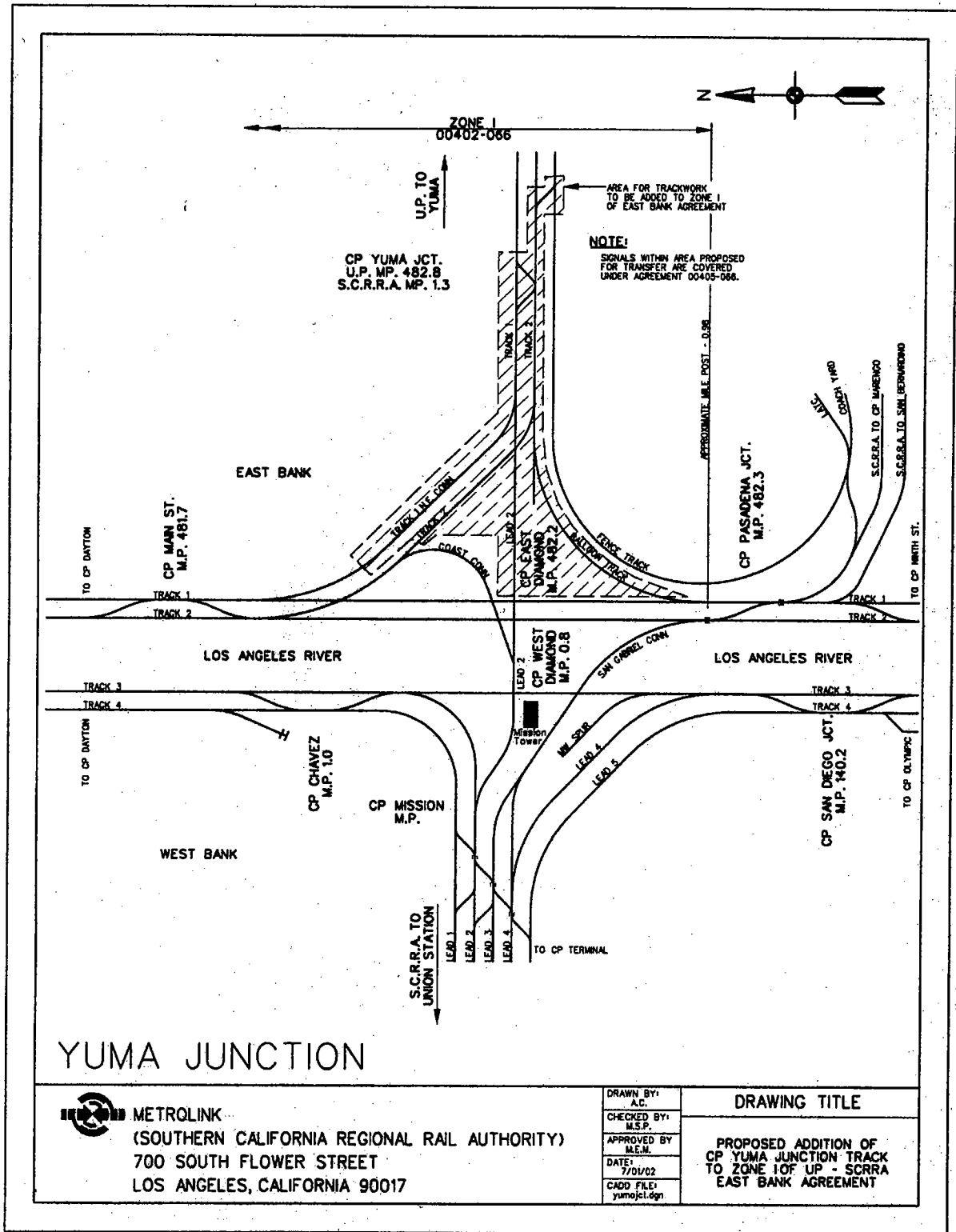
The SCRRA, as successor in interest to the Union Pacific in the Mission Tower and East Bank agreements (footnoted below), is currently obligated to maintain eight power switch machines and the associated signals and insulated joints at Control Point Yuma Junction (CP Yuma Jct.) where the UP maintains the underlying tracks and switches. The SCRRA as a successor to the Mission Tower agreement, maintain the signals appearances and the dispatching of Yuma Jct. The SCRRA dispatchers control CP Yuma Jct. as part of the CTC on the River Subdivision.

This shared maintenance responsibility (SCRRA Signals and UP Track / Switches) has been unable to keep the Yuma Jct. segment in a reliable state of service, primarily due to the difficulty in coordinating work between the two parties. From July 18, 2001 until April 8, 2002, there have been 8-recorded incidents of delay to trains due to track and switch related signal problems. There may be a number of additional unrecorded delay incidents, at the Junction with problems that were discovered during inspections and repairs. Also, in some incidents, they delayed multiple trains. All of the traffic on this track is UP movements. Attached is a drawing that illustrates the track area under discussion.

This situation has been discussed by local UP and SCRRA maintenance and operating staff and their proposed resolution is to assign SCRRA all of the track maintenance underlying the signal maintenance and the tracks to the west of CP Yuma Jct. enroute to CP Pasadena Jct. ("Balloon Track"), CP East Diamond (# 2 Lead) and to CP Main St. (Northeast Connecting Tracks 1 and 2) to the SCRRA. This proposed track maintenance would be done as an extension of the Zone 1 of the East Bank agreement. The track work performed by SCRRA Yuma Jct. would be billed to UP in the same manner as track work is currently charged for Zone 1.

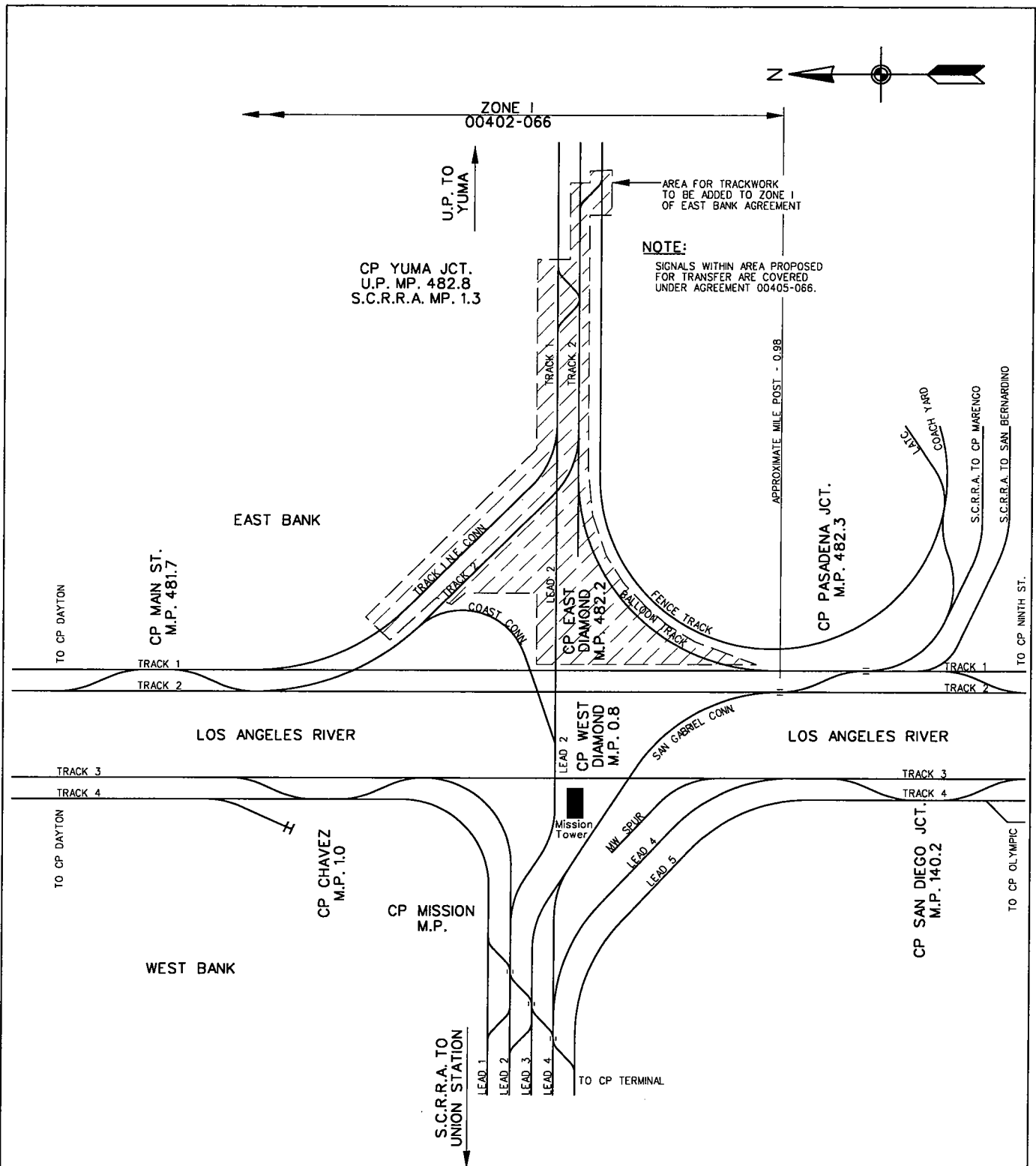
Recent SCRRA inspection of the track structure in the Yuma Jct. territory indicates that significant rehabilitation will be required over the next two to three years. If the maintenance is transferred to SCRRA, this work will be accomplished under competitively bid maintenance and rehabilitation contracts (as is all other SCRRA rehabilitation work). It will be the intent of the parties that these rehabilitation type expenses would be treated as rehabilitation expenses are currently being treated for Zone 1 cost. This proposed rehabilitation is to bring the condition of the track up to current industry standards, noting that SCRRA and UP track standards are similar.

We propose that the "Definition" of Zone 1 in ARTICLE II Section 2., be amended to included Track work in the Yuma Junction area as denote by the hashed area on the attached drawing. This change would be agreed to upon signature by both parties and would amend to the East Bank agreement for Zone 1.



...\\Track Charts\\Temp\\yuma.jct.dgn 08/05/2002 03:59:24 PM





# YUMA JUNCTION



**METROLINK**  
(SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY)  
700 SOUTH FLOWER STREET  
LOS ANGELES, CALIFORNIA 90017

DRAWN BY:  
A.C.  
CHECKED BY:  
M.S.P.  
APPROVED BY:  
M.E.M.  
DATE:  
7/01/02  
CADD FILE:  
yumajct.dgn

## DRAWING TITLE

PROPOSED ADDITION OF  
CP YUMA JUNCTION TRACK  
TO ZONE 1 OF UP - SCRRA  
EAST BANK AGREEMENT

LETTER TO UP JOINT FACILITIES (Aug 2, 2002)  
copies to UP West Colton Operations and Engineering folks.

The SCRRA, as successor in interest to the Union Pacific in the Mission Tower and East Bank agreements (footnoted below), is obligated to maintain eight power switch machines and the associated signals and insulated joints at Control Point Yuma Junction (CP Yuma Jct.) where the UP maintains the underlying track. The SCRRA is assigned the signal maintenance and dispatching of Yuma Jct. as a successor to the Mission Tower agreement. SCRRA dispatchers control CP Yuma Jct. as part of the CTC on the River Subdivision.

This shared maintenance responsibility has been unable to keep this property in a reliable state of service, primarily due to the difficulty in coordinating work between the two parties. From July 18, 2001 until April 8, 2002, there have been 8 recorded incidents of delay to trains due to track and switch related signal problems. There may be unrecorded delay incidents, there were problems discovered during inspections and repairs, and some incidents delayed multiple trains. All of the traffic on this track is UP movements. Attached drawing \_\_\_\_\_ illustrates the track under consideration for this change.

This situation has been discussed by local UP and SCRRA maintenance and operating staff and their proposed resolution is to assign all of the track maintenance underlying the signal maintenance and the tracks to the west of CP Yuma Jct. enroute to CP Pasadena Jct. ("Balloon Track"), CP East Diamond (# 2 Lead) and to CP Main St. (Northeast Connecting Tracks 1 and 2) to the SCRRA. This is proposed to be done as an extension of the Zone 1 of the East Bank agreement. Charges for track maintenance in Zone 1 are pro-rated by the number of (trains?) (tons?) moved by the parties, the most recent figures are that UP pays \_\_\_\_% and SCRRA pays \_\_\_\_% in Zone 1. Work performed by SCRRA would be billed to UP in the same manner as is now done for Zone 1.

SCRRA's inspection of the track structure in this territory indicates that significant rehabilitation will be required over the next two to three years. If the maintenance is transferred to SCRRA, this work will be accomplished under competitively bid maintenance and rehabilitation contracts (as is all other SCRRA rehabilitation work). It will be the intent of the parties that these rehabilitation expenses will be treated as operating expenses and not betterments even though the weight of rail will be increased for some of the track and turnouts and some sharp curves may have timber ties replaced with concrete ties. This proposed rehabilitation is to bring the condition of the track up to current industry standards, noting that SCRRA and UP track standards are similar. It is impractical to purchase smaller weight turnouts and track material to replicate the 112, 113, 119, and 132 lb. material now in some of the track.

*Bruce: Will the change be by a new MOU or will it just be a counter-signed letter?*

Attached is a draft MOU that upon signature by both parties would amend the East Bank agreement to make the changes described above. If you have any questions about this proposed change, we will be pleased to schedule a conference, meeting, or a field trip.

Please contact Director of Engineering & Construction M. E. McGinley (213-452-0250) or me if you have any questions.

**Exhibit B**  
**Easement Agreement**

Attachment: Exhibit B - East Bank Easement Agreement (8162 : SBCTA/SCRRRA Acknowledgement Agreement for Rail ROW & UPRR Billing

UPRR COUNCIL PART

EAST BANK EASEMENT AGREEMENT

160330

THIS EAST BANK EASEMENT AGREEMENT (this "Agreement") dated as of December 20, 1991 is entered into by Union Pacific Railroad Company, a Utah corporation ("UP"), and the Los Angeles County Transportation Commission ("LACTC") with reference to the following facts:

A. Pursuant to that certain Grant Deed dated December 20, 1991 (the "Grant Deed"), UP granted to LACTC the railroad right-of-way from along UP's East Bank Line in Los Angeles, California, from Milepost 2.09 near Ninth Street Junction to Milepost -2.04 near the Atchison, Topeka and Santa Fe Railway Company overhead crossing, as more particularly described in Exhibit A attached hereto (the "Operating Land").

B. In the Grant Deed, UP reserved unto itself, and its successors and assigns the rights over such property as set forth in this Agreement to operate freight train service on the rail tracks running along such right-of-way, upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. The following capitalized terms are used in this Agreement with the following meanings:

"AAR" shall mean the Association of American Railroads.

"Costs" shall have the meaning set forth in Section 6(b) of this Agreement.

"CPUC" shall mean the California Public Utilities Commission.

"Dispatching Changeover Date" shall mean the date that is the earliest of (i) the Service Commencement Date, (ii) the date set by LACTC as the Dispatching Changeover Date in a written notice by LACTC delivered to UP at least thirty (30) days prior to such proposed Dispatching Changeover Date or (iii) the date (which shall not be before December 31, 1994) set by UP in a written notice by UP delivered to LACTC at least six (6) months prior to such proposed Dispatching Changeover Date.

"Fee" shall have the meaning set forth in Section 6(b) of this Agreement.

"FRA" shall mean the Federal Railroad Administration.

"Operating Land" shall have the meaning set forth in Recital A above.

"Recalculation Date" shall have the meaning set forth in Section 6(b) of this Agreement.

"SCRRA" shall mean the Southern California Regional Rail Authority.

"Service" shall consist of Trains, whether occupied or empty, which are used to provide, pursuant to the authority granted by this Agreement, either (i) freight rail service or (ii) occasional business car or excursion train service into the Los Angeles Union Passenger Terminal.

"Service Commencement Date" shall mean the date which is earlier to occur of (i) the date on which SCRRRA commences regularly scheduled commuter service over the Tracks or (ii) the date which is the later of December 31, 1993 or the completion of the construction described in the Riverside Lease Agreement. The parties agree to confirm such date in writing.

"Tracks" shall mean all the main line tracks, structures (including, without limitation, bridges) passing tracks, rights-of-way, signals and signal systems, switches, crossovers, interlocking devices and plants, terminal facilities, track improvements and other rail facilities now located or hereafter constructed or installed on the Operating Land.

"Train" shall consist of one or more locomotive units and freight cars attached thereto; provided, however, that, for Train Mile Rate purposes, "hi-rail" vehicles shall not be included.

"Train Mile" shall mean the movement of a Train, whether or not revenue-generating, inclusive of all engines and passenger cars, over a one-mile distance on the Tracks.

2. Reservation of Trackage Rights. Subject to the terms and conditions set forth herein, UP reserves from the interests granted to LACTC under the Grant Deed and LACTC confirms unto UP an easement for trackage rights on and over and continued access to and use of the Operating Land and the Tracks to provide Service. UP retains any and all duties, responsibilities and obligations arising under the Interstate Commerce Act

which require UP to serve its existing and any future rail shippers, it being understood and agreed that nothing set forth herein or in the Grant Deed shall be construed to obligate or require LACTC to assume, adopt, or acquire any duties, liabilities, responsibilities or obligations to provide any rail freight services whatsoever to any of UP's current or future shippers located anywhere in the vicinity of the Operating Land. UP, its agents, servants, employees, consultants and contractors, shall also have the right to enter upon the Operating Land and Tracks and operate such equipment "hi-rail" vehicles, rerouting equipment, and other machinery and equipment reasonably necessary to provide the Service.

3. Dispatching and Control. (a) Prior to the Dispatching Changeover Date, the dispatching of any and all Trains, cars, locomotives and other equipment of either party hereto over and along the Tracks and the maintenance of all signal systems shall, at all times, be subject to the exclusive direction and control of UP's superintendent, train dispatchers and other authorized agents and in accordance with such reasonable operating rules as UP shall, from time to time, institute in accordance with the terms and conditions of this Agreement. In connection therewith, UP shall (i) schedule and dispatch trains along the Tracks in a safe, reliable and on-time manner, in a manner that minimizes disruption of LACTC's activities on the Tracks, if any, and in a manner that complies with all applicable laws, regulations or rules, state or federal



and (ii) maintain all signal systems in a safe and reliable manner and in a manner that complies with all applicable laws, regulations or rules, state or federal. UP shall provide to the LACTC such reports and information as may be reasonably necessary for LACTC to conduct its operations.

(b) Except as set forth in Section 3(a) hereof, the management, operation and maintenance of the Operating Land and the Tracks shall, at all times, be under the exclusive direction and control of LACTC and its operator, and the movement of any and all Trains, cars, locomotives and other equipment over and along the Tracks shall, at all times, be subject to the exclusive direction and control of LACTC's superintendent, train dispatchers and other authorized agents and in accordance with such reasonable operating rules as LACTC shall, from time to time, institute in accordance with the terms and conditions of this Agreement. In connection therewith, LACTC shall schedule and dispatch trains along the Tracks in a safe, reliable and on-time manner, in a manner that minimizes disruption of LACTC's passenger service as described in this Agreement and in a manner that complies with all applicable laws, regulations or rules, state or federal. LACTC shall provide to UP such reports and information as may be reasonably necessary for UP to conduct its operations.

(c) LACTC shall determine the schedules for its Trains and shall provide such schedules, and any changes thereto, in a timely manner to UP. UP shall schedule its trains so as to minimize interference with LACTC's scheduled Trains but UP shall

be allowed to schedule its trains in a manner that will enable UP to provide competitive freight service, including time-sensitive services to existing and future customers, during periods other than LACTC's scheduled service. UP shall provide the schedules for its Trains, and any changes thereto, in a timely manner to LACTC

(d) All operating, dispatching and maintenance decisions by LACTC affecting the movement of trains, cars, and engines on the Tracks shall give priority to LACTC's Trains.

(e) LACTC shall not adopt, except by mutual agreement with UP (which shall not be unreasonably withheld), a new communications systems or signal system for use on the Operating Land or the Tracks which would adversely affect UP's Service, unless required by any statute, law, ordinance, or governmental regulation.

4. Train Operations. (a) UP and LACTC shall each be responsible for providing and operating its own trains on the Tracks and each shall operate its trains in a safe manner. UP and LACTC shall each maintain an adequate and experienced staff sufficient to operate its respective trains on the Tracks.

(b) UP and LACTC shall comply (i) with all applicable laws, regulations or rules, state or federal, covering the operations on, and the inspection, testing or safety of, the Operating Land, the Tracks, trains and other equipment thereon, and any personnel employed in the maintenance and operation thereof, (ii) with the General Code of Operating Rules and any

successor publication, and (iii) with all of LACTC's timetables, general orders and bulletins and other standards relating to such operation, maintenance, condition, inspection, testing or safety, which timetables, general orders, bulletins and other standards shall be provided in writing by LACTC to UP.

(c) Neither LACTC nor UP shall have any responsibility for inspecting, maintaining, servicing or repairing any locomotives, hi-rail vehicles, passenger cars, freight cars or other equipment used by the other party on the Operating Land or the Tracks. If, by any reason of mechanical failure or for any other cause, the trains or other hi-rail vehicles of UP or LACTC become stalled or disabled on the Tracks and are unable to proceed, or fail to maintain the speed required of trains to meet normal schedules or if in emergencies crippled or otherwise defective trains or items of equipment are on or otherwise blocking or impeding operations on the Tracks, then the party whose trains or items of equipment are involved in the incident shall be responsible for furnishing motive power or such other assistance as may be necessary to haul, help or push such equipment or trains, or remove the disabled equipment. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose trains or items of equipment are involved in the incident has not been adequate relative to the scheduled uses of the Tracks, such other party may, but shall not be required to, render such assistance as may reasonably be required in light of such scheduled uses, and the party whose trains or items of equipment are involved in

the incident shall reimburse the other party, within thirty (30) days after receipt of the bill therefor, for the cost and expense of rendering any such assistance.

(d) LACTC shall, at least three (3) days in advance or as soon as otherwise practicable, notify UP of any investigation or hearing concerning the violation of any operating rule, safety rule, regulation or order or instructions of LACTC by any of the employees of UP. Such investigation or hearing may be attended by any official of UP, and any such investigation shall be conducted in accordance with any applicable collective bargaining agreement.

(e) Each of UP and LACTC shall obtain and maintain all regulatory approvals as may be required for the conduct of their respective operations on the Operating Land and the Tracks.

(f) UP and LACTC shall have exclusive responsibility for the provision of claims handling service in connection with any aspect of their respective operations on the Operating Land and the Tracks, and in no event shall either assert any right to require the other or any of the other's affiliates to provide, or bear any of the costs and expenses arising from, such operations.

(g) UP and LACTC shall have exclusive responsibility for the provision of the services of railroad police or law enforcement personnel in connection with their respective operations on the Operating Land or the Tracks, and in no event shall either assert any right to require the other or

any of the other's affiliates to provide, or bear any of the costs and expenses arising from such services.

(h) If in the exercise of any of its rights or performance of any of its obligations under this Agreement, UP shall reasonably need to enter upon any portion of the Operating Land outside the normal course of operations, then UP shall give reasonable notice to LACTC of such entry, which notice shall be not less than forty-eight (48) hours in advance, except in the case of emergencies. In no event shall UP, or any of its agents, servants, employees, consultants or contractors, enter upon the Operating Land without having first received permission from LACTC's dispatching center in accordance with then existing procedures of LACTC.

5. Maintenance, Repairs and Capital Expenditures.

(a) LACTC shall be solely responsible for performing all construction, maintenance and repairs on the Operating Land and the Tracks, including, without limitation, the repair of trackage, structures and signals, installation of ties and ballast, surfacing work, and replacement in-kind of existing facilities such as trackage, structures and signals. In connection therewith, LACTC shall use reasonable and customary care, skill and diligence in the performance of construction, maintenance and repairs on the Operating Land and the Tracks. All construction, maintenance and repairs shall be done in a manner that complies with all applicable laws, regulations or rules, state or federal. LACTC shall maintain an adequate and

experienced staff sufficient to maintain and repair the Operating Land and the Tracks as required under this Section 5(a).

(b) LACTC shall maintain (which maintenance shall include capital expenditures as appropriate) all of the main line Tracks in reasonable repair and reasonably suitable for the combined business of UP and LACTC thereon and in any event at no less than FRA Class 2 standards.

(c) Without the prior written consent of UP, LACTC shall not materially re-locate the Tracks or otherwise modify or remove any of the Tracks in a manner that would have a material adverse effect on the operations of UP on the Tracks; provided that this Section 5(e) shall not prohibit LACTC from maintaining and repairing the Tracks in accordance with its obligations under this Agreement.

(d) LACTC shall construct, or cause to be constructed, at UP's sole cost and expense, any turnout, switch or connecting track deemed necessary by UP in order to serve any new shipper or customer. UP shall submit to LACTC for LACTC's approval, which approval shall not be unreasonable withheld, all plans for any such construction. UP shall make such progress payments for the cost of such construction as agreed to by UP and LACTC. If UP ceases using any such constructed improvements and such cessation continues for two years, then upon the request of LACTC UP shall remove such improvements at UP's sole cost and expense or, at LACTC's option, LACTC shall have the right to remove such improvements at UP's sole cost and expense, and UP shall reimburse LACTC therefor upon demand.

6. Train Mile Rate. (a) To reimburse LACTC for UP's proportionate share of maintenance, operation and capital expenditure costs for the Tracks, UP shall pay to LACTC an annual fee (the "Fee") of \$7,000 per year. On or before August 31 of each year, UP shall pay the Fee to LACTC for the year commencing on July 1 of the preceding year and ending on June 30 of the then current year.

(b) As of July 1 of the year in which the seventh anniversary of the Service Commencement Date occurs and as of July 1 in every seventh year thereafter (each such date being referred to as a "Recalculation Date"), the Fee shall be, upon the request of either party, recalculated by the parties, as set forth in this Section 6(b). The parties shall agree on the share of Costs allocable to UP based on the anticipated annual number of train miles that UP will move over the Tracks in the succeeding seven year period as compared to the anticipated annual number of total train miles that all parties using the Tracks will move over the Tracks in the same period. Such agreed upon share of Costs may be expressed as an annual sum or as a train mile rate, as the parties may agree. In determining such share of Costs and the anticipated annual number of train miles, the parties shall consider the actual Costs and the actual train miles for the three years preceding the Recalculation Date in addition to their expectations for the succeeding seven year period. "Costs" shall mean all costs and expenses incurred with respect to the Tracks which are normally included as Dispatching



Costs, Maintenance-of-Way & Structures--Operating Expenses and Maintenance-of-Way & Structures--Capital Expenditures. In the absence of agreement, the matter will be arbitrated in the manner prescribed in Section 9 of this Agreement.

(c) Commencing on July 1, 1994, the Fee shall be adjusted upward or downward as of July 1 of each year (other than a year in which the Fee is recalculated under Section 6(b) of this Agreement) to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the final Annual Indexes for Charge-Out Prices and Wage Rates (1977=100) included in the Railroad Cost Indexes issued by the AAR. In making such determination, the final "Material Prices, Wages Rates, and Supplements Combined (excluding fuel) Index" for the West shall be used, and the final index figure for the calendar year 1993 shall be taken as the base; provided, however, that after any recalculation under Section 5(b) above, the final index figure for the calendar year preceding the most recent Recalculation Date shall be taken as the base. Adjustment for the Per Train Mile Rate shall be achieved by calculating the percent of increase or decrease, as the case may be, in the index figure for the calendar year ending on the December 31 prior to the July 1 on which the adjustment is to be made relative to the index figure for 1993 (or the calendar year preceding the most recent Recalculation Date, as the case may be) and increasing or decreasing the Fee by such percentage; provided, that such adjustment shall be made to the nearest cent.



(i) By way of example, assuming "A" to be the "Material Prices, Wage Rates, and Supplements Combined (excluding fuel) Final Index Figure, Western District" for the calendar year 1993; "B" to be the "Material Prices, Wage Rates and Supplements Combined (excluding fuel) Final Index Figure for the calendar year 1994; and "C" to be the original \$7,000 Fee, the Fee to be effective July 1, 1994, would be determined by the following formula:

$$\frac{B}{A} \times C$$

(ii) In the event the base for the AAR Railroad Cost Indexes issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the base (established as herein provided) for the calendar year 1993 (or the calendar year preceding the most recent Recalculation Date, as the case may be). If the AAR or any successor organization discontinues publication of the AAR Railroad Cost Indexes, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be arbitrated in the manner prescribed in Section 9 of this Agreement.

7. Property Taxes. To the extent any real property taxes are payable with respect to the easement reserved unto UP as provided herein over the Operating Land, UP shall pay such real property taxes prior to delinquency and shall protect,

defend, indemnify and hold LACTC harmless from and against any and all liability, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) LACTC may sustain or incur on account of any such real property taxes.

8. Liability, Indemnification and Insurance. The liability, indemnification and insurance provisions set forth in Exhibit B attached hereto are hereby incorporated by reference.

9. Arbitration. If at any time a question or controversy shall arise between the parties hereto dealing with the construction of any part of this Agreement or concerning the observance or performance of any of the conditions herein contained or the rights or obligations of either party under this Agreement, either party shall submit such question or controversy to arbitration under the Commercial Arbitration Rules of the American Arbitration Association as hereinafter provided. Such question or controversy shall be submitted to a single, competent disinterested arbitrator if the parties hereto are able to agree upon such arbitrator within twenty (20) days after the party desiring such arbitration shall notify in writing the other party. If such single arbitrator cannot be agreed upon before the expiration of the twenty (20) days, and either party wishes to pursue arbitration of the matter, arbitration shall be had before a board of three (3) persons to be named as follows: the party demanding such arbitration shall give the other party notice of such demand, stating specifically the question or

questions to be submitted for decision or the point or points in controversy, and nominating a person who has the required qualification to act as one arbitrator; the party to whom such notice is given shall appoint a second arbitrator and give the party hereto demanding arbitration notice in writing of such appointment within twenty (20) days from the time of such notice. If, at the expiration of the twenty (20) days from the receipt of such notice, the party receiving it has not notified the party demanding the arbitration of its nomination of a second arbitrator, the party making the demand may make such selection. The first and second arbitrators shall select a third, and if the arbitrators chosen shall be unable to agree upon a third arbitrator within a period of twenty (20) days from the date of appointment of the second arbitrator, the third arbitrator may be appointed upon ten (10) days' notice upon motion or application of either party hereto by the Chief or Presiding Judge, or judge acting as Chief or Presiding Judge, of the Superior Court of Los Angeles County, California. The parties agree that each shall bear its own costs of arbitration, including any costs associated with the arbitrator selected by each said party. The parties agree to split equally the costs of the third arbitrator. In the event a dispute is arbitrated by a single arbitrator, the parties agree to share all costs of said arbitrator equally.

The arbitrator or board of arbitrators (hereafter "arbitrator(s)") so constituted as aforesaid shall set the date, time and place for each hearing, shall give to each of the parties, at least ten (10) days' advance written notice of the

date, time and place of the initial hearing and shall proceed without delay to hear and determine the matters in dispute. The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator(s) may deem necessary to an understanding and determination of the dispute. The arbitrator(s) or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party. The award shall be made promptly by the arbitrator(s) and, unless otherwise agreed by the parties or specified by law, no later than thirty (30) days from the date of closing the hearing. Each of the parties hereto may be represented by counsel or other authorized representative at any hearing. The party intending to be so represented shall notify the arbitrator(s) and the other party of the name and address of the representative at least three (3) days prior to the date set for the hearing.

The award of such arbitrator(s), or of a majority of them, shall be final and binding upon the parties to such arbitration, and each party shall immediately make such changes in the conduct of such party's business or such payment as restitution, as the case may be, as required by such award. The books and papers of the parties hereto, so far as they relate to matters submitted to arbitration, shall be open to the investigation of the arbitrator(s).

The parties agree that the arbitrator's(s') award may be entered with any Court having jurisdiction and the award may then be enforced as between the parties, without further

evidentiary proceedings, the same as if entered by the Court at the conclusion of a judicial proceeding in which no appeal was taken. Arbitration shall be the sole remedy for defaults under this Agreement.

10. Termination. (a) This Agreement shall be effective and shall burden the Operating Land in perpetuity, unless terminated pursuant to Section 12(b) or 12(c).

(b) UP may terminate the easement reserved as described in this Agreement upon sixty (60) days prior advance written notice to LACTC of UP's intention to terminate, which notice shall set forth the termination date. After such termination date, UP shall have no further obligation under this Agreement.

(c) If UP ceases to operate Trains over the Tracks for a period of five (5) years, then UP shall petition the Interstate Commerce Commission to abandon its freight service responsibilities over the Tracks and upon the granting by the ICC of permission so to abandon, this Agreement shall terminate and UP shall have no further rights hereunder.

11. Assignment. UP may not assign or otherwise delegate any of its rights and duties hereunder, without the prior written consent of LACTC which shall not be unreasonably withheld, except that in connection with the sale of all of UP's interest in its East Bank Line, UP may, without the consent of LACTC, transfer its rights and duties hereunder to a financially

and operationally capable class 1 railroad. UP shall give LACTC at least forty-five (45) days' prior written notice of any such sales assignment, or delegation and, at LACTC's request, UP shall provide reasonable evidence that any purchaser, assignee, or delegee is financially and operationally capable.

12. Force Majeure. Each party will be excused from the performance of any of its obligations hereunder to the other party where such nonperformance is occasioned by any event beyond its control, which shall included without limitations, any order, rule, or regulations of any federal, state, or local governmental body, agency, or instrumentality, work stoppage, accident, natural disaster, or civil disorder, provided the party so excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy, cure, or remove such event as soon as reasonably practicable.

13. Notices. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served if delivered by hand to the party to whose attention it is directed, or same shall be deemed to have been properly served and delivered on the fifth day after being mailed by registered or certified mail, return receipt requested, with postage prepaid and addressed as follows:

If intended for LACTC: Los Angeles County Transportation  
Commission  
818 West Seventh Street  
Los Angeles, CA 90017  
Attention: Mr. Richard Stanger

If intended for UP: Union Pacific Railroad  
1416 Dodge Street  
Omaha, Nebraska 68179  
Attention: Mr. A. L. Shoener

With a copy to: Vice President-Law  
Union Pacific Railroad Company  
1416 Dodge Street, Room 830  
Omaha, NE 68179

Each party may designate by notice in writing  
substitute parties and/or a new address to which any notice,  
demand, request or communication shall thereafter be served.

From time to time by written notice to the other party,  
each party shall designate its representative for operations  
matters under this Agreement. With respect to discussions with  
such representative on matters of operations under this  
Agreement, each party shall be entitled to rely on the responses  
and decisions made by the other party's representative so  
designated.

14. Governing Law. This Agreement shall be governed  
by and construed in accordance with the laws of the State of  
California.

15. Severability. Each provision of this Agreement  
shall be interpreted so as to be effective and valid under  
applicable law to the fullest extent possible. If any provision

contained herein shall for any reason be held invalid, illegal or unenforceable in any respect, then, in order to effect the purposes of this Agreement, it shall be construed as if such provision had never been contained herein.

16. Entire Agreement. This Agreement, including the exhibits attached hereto, contains the entire agreement between LACTC and UP with respect to operations on the Operating Land and the Tracks. No modifications or amendments to this Agreement shall be binding upon either party unless set forth in a document duly executed by both LACTC and UP.

17. No Third Party Beneficiaries. This Agreement, including, without limitation, the provisions set forth on Exhibit B hereto, is for the benefit of the parties hereto and their successors and assigns only, and shall not be deemed to inure to the benefit of any third parties.

18. No Partnership. It is the intention of the parties not to render the parties liable as partners of each other. Neither party shall be liable for obligations incurred by the other party, except as expressly provided in this Agreement. Nothing in this Agreement nor any of the activities of the




parties pursuant to this Lease shall be construed to create a partnership of any kind between the parties.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it as of the day and year first above written.


UNION PACIFIC RAILROAD  
COMPANY

By:

  
Printed Name: R. B. SCHOULTZ  
Title: EX ASST. TO EX VICE PRESIDENT-OPERATION

LOS ANGELES COUNTY  
TRANSPORTATION COMMISSION

By:

  
Richard Stanger  
Title: \_\_\_\_\_

*KPD for AMA*

**EXHIBIT A**  
**DESCRIPTION OF OPERATING LAND**

Attachment: Exhibit B - East Bank Easement Agreement (8162 : SBCTA/SCRRRA Acknowledgement Agreement for Rail ROW & UPRR Billing

## EXHIBIT A

PARCEL A

All title, rights, interests, easements, franchises or rights of way over, across and through those portions of the holdings of the Union Pacific Railroad (formerly Los Angeles and Salt Lake Railroad) in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

Beginning at a point on the northerly line of Parcel A of Parcel Map L.A. No. 2309 filed in Book 43, Page 61 of Parcel Maps, records of said County, distant North 62°54'22" West thereon 193.63 feet from the centerline of Soto Street 100 feet wide as shown on said Parcel Map; said point also being a point on the curve of the northeasterly line of said Parcel A which is concave easterly, having a radius of 1516.41 feet, a radial line of said curve to said point bears South 83°28'27" West; thence southerly along said curve 9.98 feet through a central angle of 0°22'37" to a point of compound curvature with a curve concave easterly having a radius of 263.28 feet; thence southerly along said curve 89.54 feet to a point of compound curvature with a curve concave northeasterly having a radius of 597.02 feet; thence southeasterly along said curve 131.96 feet through a central angle of 12°39'50" to a point on the southerly line of said land described in said Book D471, Page 188 of Official Records; thence North 87°54'51" East along said southerly line 33.45 feet to the southeasterly corner of the land described in Book D471, Page 188 of Official Records of said County and shown on said Parcel Map as being a point on the west line of said Soto Street, 100 feet wide; thence South 3°08'24" East along said west line of Soto Street 64.59 feet; thence South 78°36'17" West 39.20 feet; thence North 46°18'45" East 4.76 feet; thence North 43°41'15" West 98.88 feet; thence North 42°37'59" West 241.43 feet; thence North 73°40'04" West 10.69 feet; thence North 42°42'15" West 1188.58 feet to a point on the east line of the official bed of the Los Angeles River as established by Ordinance No. 287 of the City of Los Angeles; thence North 10°43'01" West along said east line 7050.61 feet to an angle point in said east line; thence North 10°43'11" West along said east line 2137.49 feet to the beginning of a tangent curve of said east line which is concave easterly, having a radius of 655.32 feet; thence northerly 259.43 feet along said curve through a central angle of 22°40'56"; thence tangent to said curve North 11°57'45" East along said east line 1617.77 feet to the beginning of a tangent curve of said east line which is concave easterly, having a radius of 655.32 feet and a central angle of record of 25°08'11"; thence northerly along said curve to the southerly line of the lands of the State of California, commonly known as Santa Ana Freeway, Route 5; thence easterly along said south line to a point on a curve, concentric with and 42.92 feet easterly, measured radially to last mentioned curve of said east line; thence southerly along said curve to a point of tangency with a line parallel with and 42.92 feet easterly of, measured at right angles to said east

line; thence South  $11^{\circ}57'45''$  West along said parallel line 1600.59 feet to the beginning of a tangent curve, concave easterly having a radius of 700.00 feet; thence southerly 277.12 feet along said curve, through a central angle of  $22^{\circ}40'56''$  to a point of tangency with a line parallel with and 42.77 feet easterly of, measured at right angles, to said east line; thence South  $10^{\circ}43'11''$  East along said parallel line 2119.56 feet; thence South  $10^{\circ}43'01''$  East along a line parallel with and 42.77 feet easterly of, measured at right angles, to said East line 2640 feet more or less to a point on the south line of Seventh Street thence southerly along the easterly line and its southerly prolongation of the following Assessor's Parcels: 5171-024-801, 810, 813 and 803 and 5170-010-800 as shown in Assessor's Map Book 5171, Page 24 and Book 5170, Page 10 in said Assessor's office, to the south line of Olympic Boulevard (formerly Ninth Street); thence in a direct line to the northwest corner of Assessor's Parcel 5169-015-007 in Assessor's Map Book 5169, Page 15 filed in the office of the Assessor of said County; thence southeasterly, northeasterly, southeasterly and northeasterly along the courses of the westerly line of said Assessor's Parcel to an angle point in the westerly line of the 3.7725 Ac. Parcel shown on a Record of Survey filed in Book 50, Page 34 of Records of Surveys of said County; thence along said westerly line and the westerly line of the Record of Survey South  $3^{\circ}07'45''$  East 76.19 feet to a point on a non-tangent curve of the westerly line of said Record of Survey which is concave easterly having a radius of 1587.28 feet, a radial line of said curve bears to said point South  $69^{\circ}54'40''$  West; thence southeasterly along said curve and said westerly line 805.13 feet through a central angle of  $29^{\circ}03'45''$  to the most southerly corner of the 0.6959 Ac. Parcel shown on said Record of Survey; thence leaving said westerly line South  $42^{\circ}25'28''$  West 1.46 feet; thence South  $51^{\circ}17'13''$  East 296.98 feet to the beginning of a tangent curve concave southwesterly having a radius of 583.69 feet; thence southeasterly along said curve to the southerly prolongation of the westerly line of Lot 2 in Block 1, Tract No. 6783 per map recorded in Book 99, Pages 77 to 84 inclusive of Maps, records of said County; thence North  $4^{\circ}59'47''$  East along said prolongation and said westerly line 295.77 feet to the northwest corner of said Lot 2; thence South  $62^{\circ}31'30''$  East along the southwesterly line of Rio Vista Street, 60 feet wide as shown on said Tract No. 6783 to a point on a line parallel with and 35.00 feet easterly of, measured at right angles to last said westerly line and its southerly prolongation; thence South  $4^{\circ}59'47''$  West along said parallel line 162.08 feet to the south line of Block 1, said Tract No. 6783 being also the northwest corner of Assessor's Parcel 5169-015-004 in said Assessor's Map Book; thence southerly along the westerly line of said Assessor's Parcel through its various courses to the point of beginning of this description.

Together with that certain Union Pacific Railroad bridge (Railroad, Mile Post 2.09) which crosses said Soto Street, 100 feet wide at or near said southeasterly corner of the land described in Book D471, Page 188 of Official Records of said County.

PARCEL B

All title, rights, interests, easements, franchises or rights of way, over, across and through those portions of the holdings of the Union Pacific Railroad (formerly the Los Angeles and Salt Lake Railroad) in the City of Los Angeles, County of Los Angeles, State of California abutting the east line of the official bed of the Los Angeles River as established by Ordinance 287 of said City, bounded on the south by the south line of the lands of the State of California commonly known as the Santa Ana Freeway, Route 5 and bounded on the north by the southeasterly line of Humboldt Street, 50 feet wide, more particularly described as follows:

Assessor's Parcels 5410-006-800, 801, 802 and 807 as shown in Assessor's Map Book 5410, Page 6 in the office of the Assessor of said County and Parcels 3, 4, 5, 8 and 10 as shown on Recorder's File Map No. 604-R Los Angeles and Salt Lake Railroad Company on file in the office of the Surveyor of said County as R.F. 604-R together with any holdings of said Union Pacific Railroad over, across and through Macy Street, Alhambra Avenue, North Main Street, Albion Street, Jetty Street, North Spring Street, North Broadway and Pasadena Avenue all as shown in Assessor's Map Book 5410, Pages 2, 3 and 4 and Book 5447, Pages 17 and 27 on file in said Assessor's Office.

EXCEPT therefrom Assessor's Parcel No. 5447-027-004 shown in Assessor's Map Book 5447, Page 27 on file in said Assessor's Office.

PARCEL C

All title, rights, interests, easements, franchises or rights of way over, across and through those holdings of the Union Pacific Railroad in the City of Los Angeles, County of Los Angeles, State of California as described in Exhibit "B" to grant Deed recorded as Instrument No. 90-104400 of Official Records of said County. Said holding being a crossing of the Los Angeles River at Union Pacific Railroad Mile Post (-0.95) servicing Los Angeles Union Passenger Terminal. Including the Union Pacific Railroad bridge at such crossing.

PARCEL D

All title, rights, interests, easements, franchises or rights of way over, across and through that certain parcel of land in the City of Los Angeles, County of Los Angeles, State of California described in Deed recorded in Book 15684, Page 129 of Official Records of said County.

The foregoing Parcels A, B, C and D are also indicated on the attached maps consisting of fifteen pages.

**Exhibit C**  
**Saugus SUA**

SHARED USE AGREEMENT  
(SAUGUS LINE)

between

Southern Pacific Transportation  
Company

and

Los Angeles County Transportation Commission

December 16, 1992



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SHARED USE AGREEMENT  
(SAUGUS LINE)

THIS SHARED USE AGREEMENT (this "Agreement") dated December 16, 1992, is entered into by SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Railroad"), and LOS ANGELES COUNTY TRANSPORTATION COMMISSION (the "Commission").

-ARTICLE I  
DEFINITIONS

The following capitalized terms are used in this Agreement with the following meanings:

Section 1.1     AAR. Association of American Railroads.

Section 1.2     ABS. Automatic Block Signal System, a series of consecutive blocks governed by block signals actuated by a train, engine or by certain conditions affecting the use of the block. The physical signal system includes the wayside block signals, electronic coded track circuits, vital relays, underground cable, poleline, cases, houses, and other necessary signal apparatus.

Section 1.3     Alhambra-Bridge 5 Segment. The portion of the Saugus Line between and including Alhambra Junction and Bridge 5.

Section 1.4     Alhambra-CRI Segment. The portion of the Saugus Line between and including Alhambra Junction and the Commuter Rail Interlocker.

Section 1.5     Alhambra Junction. The junction located at MP 482.05 at the intersection of the Railroad's Alhambra line and the Commission's East Bank line, including all Crossovers at present and future locations in the vicinity thereof (the present location of such Crossovers being as indicated on Exhibit 1.5 attached hereto).

Section 1.6     Alhambra-Santa Clarita Segment. The portion of the Saugus Line between and including Alhambra Junction and Santa Clarita.

Section 1.7     Amtrak. The National Railroad Passenger Corporation, acting on its own behalf in intercity rail service, including any statutory successor (other than the Commission) performing similar functions.

Section 1.8     Amtrak Service. Intercity rail passenger service or Section 403(b) Service operated by Amtrak on Amtrak Trains, including services provided by Amtrak at passenger

tations, but excluding services provided by Amtrak as Operator for the Commission.

Section 1.9 Amtrak Train. Any Train operated by Amtrak to provide intercity rail passenger service or Section 403(b) Service operated by Amtrak, but shall not include any Commission Train, even if Amtrak is the Operator of such Commission Train.

Section 1.10 Bridge 5. The signal bridge over the Saugus Line located at MP 481.10.

Section 1.11 Bridge 5-Santa Clarita Segment. The portion of the Saugus Line between and including Bridge 5 and Santa Clarita.

Section 1.12 Burbank-Alhambra Segment. The portion of the Saugus Line between and including Burbank Junction and Alhambra Junction.

Section 1.13 Burbank Junction. The junction located at MP 471.6, including all Crossovers at present and future locations in the vicinity thereof (the present location of such Crossovers being as indicated on Exhibit 1.13 attached hereto).

Section 1.14 Burbank Siding. The siding adjacent to the Saugus Line between MP 470.1 and MP 471.8.

Section 1.15 Changeover Date. Each date upon which the Commission assumes responsibility for the dispatching and maintenance of a portion of the Santa Clarita-Palmdale Segment, as set forth in Sections 4.2 and 5.2. The Changeover Date with respect to any portion of the Santa Clarita-Palmdale Segment shall be the earliest of (i) the date on which the Commission elects to assume sole responsibility for dispatching and maintenance of such portion the Santa Clarita-Palmdale Segment, as specified in a written notice of such election delivered to Railroad at least 60 days prior to the date specified in the notice as the Changeover Date; (ii) the date the Commission commences construction of any Shared Use Facility on such portion of the Santa Clarita-Palmdale Segment, or (iii) the date the Commission commences scheduled Commission Rail Service on any Shared Use Facility on such portion of the Santa Clarita-Palmdale Segment. The Commission may not assume responsibility for dispatching any portion of the Santa Clarita-Palmdale Segment without also assuming responsibility for the maintenance of such portion, nor may the Commission assume responsibility for maintaining any portion of the Santa Clarita-Palmdale Segment without also assuming responsibility for the dispatching of such portion. Each successive Changeover Date shall apply to a portion of the Santa Clarita-Palmdale Segment that is contiguous with a portion of the Saugus Line for which the Commission



Already has assumed responsibility for dispatching and maintenance.

Section 1.16 Commission. The Commission and any permitted successor or assign of the Commission.

Section 1.17 Commission Rail Service. The operation of Trains, authorized by the Commission, which are used solely to provide rail passenger service, and any other operation related solely to rail passenger service activities, and Non-Revenue Equipment of the Commission; provided however, the term "Commission Rail Service" shall not include Amtrak Service.

Section 1.18 Commission Train. Any Train operated by or on behalf of the Commission performing Commission Rail Service, but not including any Amtrak Train.

Section 1.19 Commuter Rail Interlocker. The junction, including power operated double Crossovers, to be constructed by the Commission at approximately MP 479.71, as shown on Exhibit 1.19 attached hereto.

Section 1.20 Crossing Warning System. A system which provides a visual and audible warning to vehicular traffic when a train or engine approaches the highway crossing from either direction. The system includes all flashing light signals, gate mechanisms, bells, and all of the control equipment including track circuits, constant warning devices, relays, cases, houses, underground cable, poleline, and other necessary signal apparatus.

Section 1.21 Crossover. Any track connection between two adjacent main line Tracks or Track that crosses or provides access across a main line Track or Tracks or provides a connection or access between two or more main line Tracks, including Interlockers.

Section 1.22 CTC. Centralized Traffic Control, a bi-directional block signal system under which train movements are authorized by block signal indications with the absolute signals and power switches controlled by the dispatcher from a remote console. The physical signal system includes the wayside block signals, power operated switch machines, electronic coded track circuits, vital relays, and underground cable which provide vital control of the signals and power switch machines, non-vital supervisory field code units, cases, houses, and other necessary signal apparatus, the dispatcher control console with its computers, and all of the communication modems and microwave equipment that is used to link the dispatcher console to the wayside signal system.

Section 1.23 Customary Additives. Elements of cost customarily charged by railroads to one another and added to

Callings that generally are calculated as a percentage of direct labor costs, are intended to compensate for paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes, personal liability and property damage, compensation insurance, and administrative and supervisory expenses that include direct and general overhead and are subject to periodic changes depending upon industry practices. As an example, 1989 amounts are shown on Exhibit 1.23 attached hereto.

Section 1.24 Dayton Bridge. The bridge over the Los Angeles River located at MP 480.73.

Section 1.25 Dayton Tower. The concrete building of that name located on Parcel B of Taylor Yard adjacent to the Saugus Line at MP 480.70.

Section 1.26 East Bank Agreement. That certain Agreement dated March 7, 1942 by and among Los Angeles & Salt Lake Railroad Company and its lessee, Union Pacific Railroad Company, and Southern Pacific Railroad Company and its lessee, Southern Pacific Company.

Section 1.27 FRA. Federal Railroad Administration.

Section 1.28 Freight Train. Any Train performing rail Freight Service, but excluding any Railroad Special Train.

Section 1.29 General Orders. A document or documents issued from time to time to notify employees of the Railroad as to additions to and modifications of the Railroad's operating rules and applicable Railroad Timetable.

Section 1.30 Glendale Siding. The siding on the south side of Track No. 2 of the Saugus Line between MP 478.07 and MP 476.84, as the same may be extended or reduced pursuant to Section 2.13.

Section 1.31 ICC. Interstate Commerce Commission.

Section 1.32 Intercity Service. Any passenger railroad service which does not have both its origination point and its destination point within the Counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura, State of California.

Section 1.33 Interlockers. A Signal System at a Crossover that includes an arrangement of signal appliances so interconnected that their movements must automatically succeed each other in proper sequence.

Section 1.34 Lancaster. MP 405.50 on the Railroad's Bakersfield Line.

Section 1.35 LAUPT. Los Angeles Union Passenger Terminal (MP 482.8).

Section 1.36 LAUPT Bridge. The bridge over the Los Angeles River at MP 482.58 and the connecting Tracks described on Exhibit 2.2(i) attached hereto.

Section 1.37 Materials Additives. Elements of cost customarily charged by railroads to one another and added to any and all materials costs that generally are calculated as a percentage of direct costs, are intended to compensate for store, purchasing and handling expenses, sales or use taxes, foreignline freight, and on-line freight and are subject to periodic changes depending upon industry practices. As an example, 1989 amounts are shown on Exhibit 1.37 attached hereto.

Section 1.38 Mission Tower. The dispatching and control tower of that name situated west of the Los Angeles River in the southwesterly angle of the crossing of the tracks of The Atchison, Topeka and Santa Fe Railway Company westerly of the Los Angeles Rives and shown on Exhibit 1.38 attached hereto.

Section 1.39 Mission Tower Agreement. That certain Agreement dated September 30, 1943 by and among The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Railroad Company and its lessee Southern Pacific Company, Los Angeles & Salt Lake Railroad Company and its lessee Union Pacific Railroad Company, and the Los Angeles Union Passenger Terminal.

Section 1.40 Non-Revenue Equipment. Freight locomotives, maintenance of way equipment and freight cars that are either empty or loaded only with maintenance of way equipment or material and equipment transported over the Shared Use Facilities for the internal use of either party, including rails, ties, ballast and other track materials and signal and bridge materials and supplies.

Section 1.41 NRPC Agreement. The National Railroad Passenger Corporation Agreement dated April 16, 1971, as amended from time to time.

Section 1.42 Operator. Any person, firm, corporation or other legal entity utilized by the Commission or the Railroad to operate on its behalf and for its account in conducting operations on the Shared Use Facilities.

Section 1.43 Palmdale Junction. The clear point of the junction switch located at MP 414.42 as indicated on Exhibit 1.43 attached hereto.

Section 1.44 Palmdale-Lancaster Segments. The Commission's Palmdale to Lancaster Segment shall be the strip of land 40 feet wide purchased by the Commission from the Railroad



as of the date hereof between Palmdale Junction and Lancaster. The Railroad's Palmdale to Lancaster Segment shall be the Railroad's main line between Palmdale Junction and Lancaster.

Section 1.45 Peak Commuter Period or Peak Commuter Periods. The period from 5:00 a.m. to 9:00 a.m. and the period from 4:00 p.m. to 9:00 p.m., in each case Pacific Daylight Time or Pacific Standard Time, as applicable.

Section 1.46 Rail Freight Service. The operation of (i) Trains which consist solely of locomotives or locomotives with freight cars, whether loaded or empty, which are used to provide local rail freight service or overhead rail freight service, (ii) Non-Revenue Equipment of the Railroad, and (iii) any other related freight service activity, such as loading, unloading, repositioning of freight locomotives or freight cars, inspection or weighing of freight cars, maintenance or rehabilitation of tracks or any rail equipment or facilities on the Shared Use Facilities that are used for such service.

Section 1.47 Railroad. The Railroad and any permitted successor or assign of the Railroad.

Section 1.48 Railroad's Agreed Annual Share. Defined in Section 5.3 of this Agreement.

Section 1.49 Railroad Special Trains. Freight customer Trains, board of directors Trains, employee excursion Trains, or Trains with government officials (including business cars at the end of Freight Trains) operated by the Railroad on a non-revenue basis.

Section 1.50 Railroad Timetable. The numbered and dated publication of the Railroad however then designated and then currently in effect at any point in time on or after the date of execution of this Agreement that contains instructions relating to the movement of Trains, engines or equipment and other essential information related thereto. The current version of such publication as of the date of execution of this Agreement is Pacific Region Timetable No. 1, dated October 25, 1992 and Southwest Region Timetable No. 1, dated October 25, 1992.

Section 1.51 Right-of-Way. All real property and real property rights owned by the Commission in Los Angeles County making up a contiguous rail right-of-way from and including the Alhambra Junction north to and including Palmdale Junction.

Section 1.52 Santa Clarita. MP 448.55 on the Saugus Line.

Section 1.53 Santa Clarita-Palmdale Segment. The portion of the Saugus Line between and including Santa Clarita and Palmdale Junction.

Section 1.54 Saugus Line. The Shared Use Tracks between and including the Alhambra Junction and Palmdale Junction, excluding the Glendale Siding.

Section 1.55 Section 403(b) Service. Service provided by Amtrak pursuant to Section 403(b) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. § 563(b)).

Section 1.56 Shared Use Facilities. The Shared Use Tracks, all improvements relating thereto, all improvements used in rail service located within the Right-of-Way as of the date of execution of this Agreement, all bridges and Signal Systems for any of the foregoing, the LAUPT Bridge, and all other Tracks and other facilities constructed pursuant to any provisions of this Agreement except, unless otherwise agreed to in the future by the Commission and the Railroad, all passenger stations, passenger loading platforms and layover facilities hereafter constructed by the Commission. The Shared Use Facilities shall not include the Glendale Siding and the yard, industrial, switching and storage tracks identified in Exhibit 1.56 attached hereto.

Section 1.57 Shared Use Tracks. All existing main line Tracks, Crossovers and passing sidings between and including the Alhambra Junction and Palmdale Junction, excluding the Glendale Siding; and future main line Tracks, Crossovers and passing sidings constructed over the term of this Agreement pursuant to Sections 2.3, 2.4, 2.5 and 2.7.

Section 1.58 Signal System. A system that includes all of the wayside block signals and other signal equipment required for either CTC or ABS and all of the Crossing Warning Systems installed at road related grade crossings.

Section 1.59 Taylor Yard. The railyard located along the east bank of the Los Angeles River extending generally from Riverside Drive at its southern end to Fletcher Drive at its northern end.

Section 1.60 Tracks. Track structure and all appurtenances thereto, including rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankment, signals, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with

struction, renewal, maintenance and operation of said track structures and all appurtenances thereof.

Section 1.61 Trains. A locomotive unit or car, or more than one such unit or car coupled, with or without cars, which are at any time used on the Shared Use Facilities. Any reference herein to any Trains or equipment of or used by a party shall include Trains or equipment of or used by such party's Operator.

Section 1.62 Tunnels. The Saugus Line Tunnels (No. 18, 19, and 25) and all tracks lying within said tunnels and between Tunnels 18 and 19. The west end of Tunnel 18 is located at MP 436.74 and the east end of Tunnel 19 is located at MP 437.56. The west end of Tunnel 25 is located at MP 454.82 and the east end is located at MP 456.57.

Section 1.63 Ventura Shared Use Agreement. The Shared Use Agreement (Ventura Line) dated the date hereof among the Railroad, the Commission and the Ventura County Transportation Commission.

## ARTICLE II SHARED USE FACILITIES

Section 2.1 Statement of Purpose. The intent of the parties in entering into this Agreement is to set forth their respective rights and obligations concerning operation of the Saugus Line after its acquisition by the Commission, to provide for efficient and timely Commission Rail Service and Amtrak Service both now and in the future, and to preserve the Railroad's Rail Freight Service both now and in the future on a service-competitive basis.

### Section 2.2 Access and Use.

(a) Subject to the terms hereof, Railroad reserves from the interests sold by Railroad to the Commission by deeds of even date herewith and the Commission confirms unto Railroad an easement and trackage rights on and over the Shared Use Facilities to provide Rail Freight Service as set forth herein. The Railroad retains any and all duties, responsibility and obligations arising under the Interstate Commerce Act which require Railroad to serve its existing and any future rail shippers, it being understood and agreed that nothing set forth herein or in said deeds or easement shall obligate or require the Commission to assume, adopt or acquire any duties, liabilities, responsibilities or obligations to provide any Rail Freight Service whatsoever to any of Railroad's current or future shippers. Nothing in this Agreement shall be construed as granting or reserving to the Railroad any interest or right in the Right-of-Way other than the rights expressly provided herein.

2 Commission reserves the right to use the Right-of-Way for any purpose other than providing freight service (except for the operation of Commission Non-Revenue Equipment), provided that such use does not interfere with the Railroad's ability to provide service-competitive Rail Freight Service.

(b) During the Peak Commuter Periods the Railroad shall have no right to use any portion of the Shared Use Facilities which has a single main line Track, except for the following which shall be scheduled and dispatched as provided in Article IV of this Agreement:

- (i) The Railroad's Freight Trains shall have the right to follow the last scheduled peak direction Commission Train during each Peak Commuter Period so long as such Freight Train will be in the clear at least 10 minutes prior to a meet.
- (ii) The Railroad's overhead Freight Trains moving in the predominant direction of Commission Rail Service that enter the Shared Use Facilities before the start of a Peak Commuter Period shall have the right to complete their moves through the Shared Use Facilities so long as such Freight Trains (A) maintain normal operating speed sufficient to prevent delay of the Commission Trains following such Freight Trains; and (B) will be in the clear at least 10 minutes prior to a meet.
- (iii) In addition to those Trains permitted by clauses (i) and (ii) above, the following overhead Freight Trains moving in the predominant direction of Commission Rail Service during a Peak Commuter Period shall have the right to use the Shared Use Facilities during such Peak Commuter Period, provided such Trains have sufficient power to permit them to maintain a normal operating speed sufficient to prevent delay of the Commission Trains following such Freight Trains, and provided further they will not unreasonably interfere with scheduled Commission Rail Service:
  - (1) Trains scheduled for arrival at the Shared Use Facilities before the beginning of a Peak Commuter Period, but which arrive late, may use the Shared Use Facilities during that Peak Commuter Period, except that only one such late

Train shall be permitted on the Saugus Line during each Peak Commuter Period.

- (2) During the years 1997 through 1999, in addition to the late Trains permitted by clause (1) above, the Railroad shall be permitted to schedule one Train (subject to the Commission's reasonable consent as to time) on the Saugus Line during each Peak Commuter Period.
- (3) During the year 2000 and thereafter, in addition to the late Trains permitted by clause (1) above, the Railroad shall be permitted to schedule two Trains on the Saugus Line (subject to the Commission's reasonable consent as to times) during each Peak Commuter Period.
- (4) After the year 2003, in addition to the late Trains permitted by clause (1) above and the scheduled Trains permitted by clause (3) above, the Commission shall negotiate with the Railroad to permit the scheduling of more Freight Trains during the Peak Commuter Periods as a need therefor is demonstrated, and if the parties cannot agree on such additional schedules, the matter shall be submitted to arbitration in accordance with Article VIII.

The Railroad shall pay to the Commission a penalty, as set forth on Exhibit 2.2(b) attached hereto, if the additional use of the Shared Use Facilities by the Railroad during the Peak Commuter Periods contemplated by this clause (iii) cause delays in scheduled Commission Rail Service.

(c) At times other than the Peak Commuter Periods, the Railroad shall have the right to use any portion of the Shared Use Facilities which has a single main line Track for Freight Trains scheduled in accordance with Section 4.1(b), subject to the dispatching priorities contained in Article IV.

(d) Any portion of the Shared Use Facilities which now or in the future has two or more main line Tracks shall be operated as follows: (i) the Commission and the Railroad both shall have the shared use at all times of all main line Tracks constituting that portion of the Saugus Line having two or more main line Tracks and the related Shared Use Facilities and (ii) the Commission and the Railroad both shall have the shared use at all times of any Crossovers and Tunnels within or contiguous to



any portion of the Saugus Line having two or more main line Tracks, subject in the case of each of (i) and (ii) to the dispatching priorities contained in Article IV and provided that, during the Peak Commuter Periods, the Railroad may not conduct local freight service (which does not include the movement of locomotive without cars to or from Taylor Yard) except for the following: (i) time sensitive Trains to and from the General Motors auto plant located at GEMCO yard or any successor plant at the same location, and (ii) other local Freight Trains that do not, in the reasonable judgment of the Commission, delay scheduled Commuter Rail Service.

(e) The Railroad's employees, agents and designees shall have access to the Shared Use Facilities in connection with the Railroad's Rail Freight Service; provided however, this right of access shall not be deemed to require the Commission to take any actions or expend any funds to enable such persons to exercise such right of access, and provided further, such access shall not unreasonably interfere with Commission Rail Service.

(f) The Commission agrees that the Railroad has and shall have the exclusive right to use existing and future Shared Use Facilities for Rail Freight Service; provided however, that the Commission may move Non-Revenue Equipment of the Commission between the Commission's non-contiguous line segments.

(g) The Peak Commuter Periods shall not apply to the Saugus Line on days when the Commission does not have scheduled operations on that line during Peak Commuter Periods or to any portion of the Saugus Line on which the Commission is not conducting scheduled operations. The Commission may commence scheduled operations on all or any portion of the Saugus Line during what would be the Peak Commuter Periods of any day but for the application of the preceding sentence. On such commencement of such scheduled operations, the Peak Commuter Periods shall apply to the Saugus Line or such portion thereof on such day.

(h) The Railroad or any Operator designated by the Railroad shall have the right to use the existing and future Shared Use Facilities only for Rail Freight Service and Railroad Special Trains. The Commission shall use, or permit the use of, the Shared Use Facilities only for Commission Rail Service, Amtrak Service and the Railroad's Rail Freight Service.

(i) The Commission grants the Railroad trackage rights on and over and continued access to and use of the LAUPT Bridge and connecting Tracks described on Exhibit 2.2(i) attached hereto, to provide Rail Freight Service to Capitol Milling Company, for access to and from the Railroad's Cornfield Yard and for Railroad Special Train access to LAUPT. The management, operation and maintenance of such LAUPT Bridge and Track shall at all times be under the direction and control of the Commission or its Operator and the movement of trains, cars and locomotives

ver and along such Tracks shall at all times be subject to the reasonable direction and control of the Commission. At the Commission's sole option, the Commission may elect to provide to the Railroad on a temporary or permanent basis alternative trackage rights of comparable utility in order for the Railroad to provide Rail Freight Service to Capitol Milling Company, to have access to and from the Railroad's Cornfield Yard and to have Railroad Special Train access to LAUPT. In the event such permanent alternative trackage rights are provided to the Railroad, the Railroad's trackage rights on and over the LAUPT Bridge and connecting Tracks described on Exhibit 2.2(i) shall terminate. In the event such temporary alternative trackage rights are provided to the Railroad, the Railroad's trackage rights on and over the LAUPT Bridge and connecting Tracks described on Exhibit 2.2(i) shall be suspended during such time as such alternative trackage rights are provided. The Railroad's trackage rights described herein to provide Rail Freight Service to Capitol Milling shall terminate at such time as the Railroad is no longer providing Rail Freight Service to Capitol Milling Company. The Railroad's trackage rights described herein for access to and from the Railroad's Cornfield Yard shall terminate at such time as the Railroad is no longer using Cornfield Yard.

(j) There shall be no Intercity Service north of Burbank Junction, except as may be required by law.

(k) Railroad Special Trains may be operated on the Saugus line only at times other than Peak Commuter Periods and subject to scheduling and operating times reasonably acceptable to the Commission and which do not interfere with Commission Rail Service.

### Section 2.3 Construction and Use in the Right-of-Way.

(a) The Commission shall have the right to remove, relocate or modify any existing improvements lying within the Right-of-Way so long as such removal, relocation or modification does not unreasonably interfere with the Railroad's Rail Freight Service. Upon at least 30 days' notice from the Commission to the Railroad, the Commission may remove at its cost and expense any industrial track switch not used for a period of 15 months if such removal would not violate any legal obligation of the Railroad, provided that the Commission shall not remove any such switch if the Railroad shall elect in writing to pay to the Commission an annual maintenance fee in the amount of \$2,500 for each such switch during the period such switch is out of use. For the purposes of the preceding sentence, a switch for which the Railroad has elected to pay the annual maintenance fee shall be deemed to continue to be out of use unless and until such time as the Railroad shall have transported at least 10 freight cars across such switch in a 12 month period. Such maintenance fee shall be in addition to all other amounts payable by the Railroad

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the Commission hereunder and shall be adjusted for inflation in accordance with the methodology of Section 5.3(c).

(b) Neither the Commission, its successors or assigns, nor its designated Operator shall at any time use the Right-of-Way to move any freight or provide any freight services or for any other freight purposes except for the limited purpose of moving Non-Revenue Equipment of the Commission between the Commission's non-contiguous line segments.

(c) The Railroad shall have the right to require the Commission to construct at grade Crossovers at the Railroad's sole cost and expense subject to the prior written approval of the Commission, which approval shall not be unreasonably withheld, to cross the Right-of-Way and the Commission's Palmdale-Lancaster Segment to provide Rail Freight Service to the Railroad's existing and future freight customers at existing and future sites and to use other rail facilities existing as of the date of execution of this Agreement. Approval by the Commission shall not be deemed to have been unreasonably withheld if the proposed improvements would conflict with the then existing or planned use of the Right-of-Way or the Commission's Palmdale-Lancaster Segment by the Commission unless the Railroad is required by applicable law to construct the improvements. In that event, the Commission, at the sole cost and expense of the Railroad, shall construct that portion of the improvements located within the Right-of-Way or the Commission's Palmdale-Lancaster Segment, and the Railroad shall operate its Rail Freight Service on such improvements, in a manner that minimizes interference with the then existing or planned use of the Shared Use Facilities or the Commission's Palmdale-Lancaster Segment by the Commission. In addition to all other amounts payable by the Railroad to the Commission hereunder, the Railroad shall pay to the Commission an annual fee in the amount of \$2,500 for each Crossover located within the Right-of-Way or the Commission's Palmdale-Lancaster Segment constructed pursuant to this Section 2.3(c). Such fee shall be adjusted for inflation in accordance with the methodology of Section 5.3(c). ? of

(d) The Railroad shall have the right to require the Commission to construct trackage on the Right-of-Way to connect sidings or main line Tracks and thereby complete or lengthen multiple main line tracked segments of the Saugus Line at the Railroad's sole cost and expense and subject to prior written approval by the Commission, which approval shall not be unreasonably withheld. Approval by the Commission shall not be deemed to have been unreasonably withheld if the proposed improvements would conflict with the then existing or planned use of the Right-of-Way by the Commission unless the Railroad is required by applicable law to construct the improvements. In that event, the Commission, at the sole cost and expense of the Railroad, shall construct that portion of the improvements located within the Right-of-Way in a manner that minimizes



Interference with the then existing or planned use of the Shared Use Facilities by the Commission. Any such trackage shall be constructed to the same maximum grade and standards of utility as the multiple main line tracked segments to be completed or lengthened.

#### Section 2.4 Commission's Additions and Improvements.

The Commission agrees to pay for the following additions and improvements (which have been determined to be important to existing intercity service by the LOSSAN 2 report), which shall be completed by the Railroad within 60 days after the execution of this Agreement:

- (i) Bi-directional signalization and adjustment of existing automatic warning devices for the Main Tracks No. 1 and No. 2 between Burbank Junction and the Commuter Rail Interlocker.
- (ii) CTC between Burbank Jct. and the Commuter Rail Interlocker.
- (iii) Universal (double reversing) Crossover at the Commuter Rail Interlocker and a single Crossover at Glendale (MP 476.4).

Section 2.5 Additional Improvements. The Commission shall permit additional improvements to the Shared Use Facilities reasonably requested by the Railroad and approved by the Commission, which approval shall not be unreasonably withheld. Approval by the Commission shall not be deemed to have been unreasonably withheld if the proposed improvements would conflict with the then existing or planned use of the Right-of-Way by the Commission, unless the Railroad is required by applicable law to construct the improvements. In that event, the Commission, at the sole cost and expense of the Railroad, shall construct that portion of the improvements located within the Right-of-Way in a manner that does not unreasonably interfere with the then existing or planned use of the Shared Use Facilities by the Commission.

Section 2.6 Contractors and Personnel. The Commission or its Operator shall use its own contractors to construct any of the additions and improvements provided for in this Agreement. The Commission shall promptly complete the additions and improvements and their construction shall not unreasonably interfere with the Railroad's Rail Freight Service. The Commission shall provide necessary flagmen and other personnel to assure safe operation of rail facilities in connection with such construction. The Railroad shall pay the full cost of any person required under the immediately preceding sentence in connection with the construction of any additions or betterments constructed at the expense of the Railroad, and any

of its own personnel or additional personnel designated by the Railroad which it elects to have present during construction (whether or not such construction is performed at the expense of the Railroad). The Commission shall require its contractors to maintain insurance in accordance with the Commission's customary requirements for contractors working on its rail lines. The Railroad shall be named as an additional insured on each such insurance policy.

Section 2.7 Joint Projects. The Commission and the Railroad shall cooperate in all future road grade separation projects for the Shared Use Facilities. The Railroad shall contribute to the non-federal or state share of each such project in proportion to its percentage of total train movements on the subject crossing measured during the 90-day period ending on the date the grade separation is approved for construction, except that the Railroad shall not be required to contribute toward, and the Commission shall pay all of the cost imposed upon the Railroad for, any future road grade separation projects which (i) would not be required if the Commission were not conducting Commission Rail Service on the Shared Use Facilities or (ii) are initiated or proposed by the Commission.

Section 2.8 Location of Passenger Facilities.

(a) The construction and operation of the Commission's passenger loading facilities shall not unreasonably interfere with the Railroad's Rail Freight Service.

(b) The Commission shall be solely responsible for the design and construction of passenger stations, platforms and other passenger facilities, and the Railroad shall bear no responsibility, nor have rights of approval or oversight, for the design or construction of such facilities. The Commission will design and construct its passenger loading facilities in accordance with then current AAR standards.

Section 2.9 Removal of Improvements. Except as provided in Section 2.3(a), any addition or improvement on the Shared Use Facilities constructed after the date hereof that is owned or funded by the Railroad may not be removed by the Commission without the Railroad's approval and, upon removal, its re-use or salvage value shall remain solely with the Railroad. With respect to any additions or improvements jointly owned by the Railroad and the Commission, the re-use or salvage value shall be allocated between the Railroad and the Commission in accordance with their ownership interests. Removal costs shall be borne by the party owning the additions or improvements, except as provided in Section 2.3(a).

Section 2.10 Ownership.

(a) The Commission shall own all Shared Use Facilities existing at the date of execution of this Agreement.

(b) The Commission shall own all future improvements located on the Right-of-Way that are constructed or installed at the Commission's sole cost and expense.

(c) The Railroad shall own all future improvements that are constructed at the sole cost and expense of the Railroad.

(d) The ownership of any future improvements funded jointly by the Commission and the Railroad shall be as mutually agreed to by them.

Section 2.11 Mission Tower. The Railroad agrees to convey to the Commission all of the Railroad's right, title and interest in and to Mission Tower upon the completion of construction by the Commission of (i) Tracks from the LAUPT to the Commuter Rail Interlocker (west of the existing Tracks connecting such points) and (ii) a new bridge over the Los Angeles River. The Railroad shall promptly thereafter execute and record any and all such documents as shall be required to perfectuate such conveyance. Notwithstanding the termination of the Mission Tower Agreement as between the parties hereto, the Commission and the Railroad agree as follows:

(a) The Railroad shall pay to the Commission an amount equal to the share of the maintenance costs which the Railroad would have been required to pay under Article VIII, Section 3 of the Mission Tower Agreement had it not been so terminated. At the request of either party, the number of Units (as defined in the Mission Tower Agreement) owned by each of the parties shall be reviewed annually to redetermine the proper allocation of such costs in accordance with the provisions of subparagraph (b) of such Article VIII, Section 3.

(b) Within 30 days following the date of this Agreement, the parties shall determine the total and respective parties' Train movements through the Mission Tower control area during a consecutive seven day period. Until such time as the Commission relocates the dispatching of the Mission Tower control area to a centralized dispatching facility, the Railroad shall pay to the Commission a percentage of the dispatching costs for the Mission Tower control area equal to the Railroad's percentage of total Train movements as determined under the preceding sentence. At the request of either party, the relative percentages shall be redetermined annually in accordance with the methodology of the first sentence of this subparagraph (b).

(c) After such time as the Commission relocates the dispatching of the Mission Tower control area to a centralized dispatching facility, the Railroad shall pay to the Commission for the dispatching of the Mission Tower control area an amount equal to the Railroad's fair share of such dispatching costs taking into account the other amounts that the Railroad is paying to the Commission for dispatching, personnel and services, provided that the amount required to be paid by the Railroad under this subparagraph (c) shall in no event exceed the amount which the Railroad was required to pay under subparagraph (b) immediately prior to such relocation.

Section 2.12 Dayton Tower. On or before May 1, 1993, the Railroad shall vacate Dayton Tower.

Section 2.13 Glendale Siding. The Railroad shall maintain the Tracks on the Glendale Siding and install split point derails for both ends of the Glendale Siding. The Railroad may extend the southern terminus of the Glendale Siding by up to approximately 5,000 feet to MP 479.02, and, upon notice by the Railroad to the Commission, the Railroad shall construct, at the Railroad's sole cost and expense, such extension of the Glendale Siding on the portions of the Right-of-Way that may be affected by such southerly extension of the Glendale Siding. Such extension shall be located and constructed in such a way as to minimize interference with the existing or planned use for the Right of Way and Shared Use Facilities by the Commission. On and after the fifth anniversary hereof, upon not less than one year's prior written notice by the Commission to the Railroad that abandonment of all or a specified portion of the approximately 2,000 feet of the Glendale Siding north of MP 477.32 is required in connection with the Commission's planned light rail operations and related facilities, the Railroad shall promptly abandon its use of such portion, with the result that the Glendale Siding shall be not less than approximately 9,000 feet long (from MP 477.32 to MP 479.02). In connection with such abandonment, the Commission at its cost and expense (i) shall during such period reconnect the unabandoned portion of the Glendale Siding to the Shared Use Tracks, and (ii) shall have the right, but not the duty, to remove the abandoned portion of the Glendale Siding.

Section 2.14 Crew and Equipment Changes; Parking. The Railroad may not conduct any crew and equipment changes for its Trains (other than "step on-step off" crew changes which do not interfere with Commission Rail Service) on either (i) any portion of the Saugus Line that has only one main line Track (other than any portion of the Santa Clarita-Palmdale Segment for which a Changeover Date has not occurred), or (ii) the Alhambra-CRI Segment. The Railroad may not park any of its Trains on any main line Track.



# ARTICLE III OPERATIONS

## Section 3.1 General.

(a) Subject to the provisions of Article IV regarding scheduling and dispatching and Article V regarding maintenance and repair, the Commission shall have exclusive control over the operation of the Shared Use Facilities and shall operate the Shared Use Facilities in a safe, reliable and on-time manner and in a manner that minimizes disruption of the Railroad's Rail Freight Service scheduled in accordance with Section 4.1.

(b) The Commission shall provide to the Railroad normal performance and incident reports and such other information and reports as the Railroad may reasonably request.

(c) The Railroad and the Commission (directly or through its Operator) each shall be responsible for providing and operating its own Trains on the Shared Use Facilities.

## Section 3.2 Personnel.

(a) The Commission shall maintain or cause its Operator to maintain an adequate and experienced staff to operate, maintain and repair the Shared Use Facilities required to be operated or maintained by it and to operate the Commission's Trains that use the Shared Use Facilities in accordance with the Commission's obligations under this Agreement.

(b) The Railroad shall maintain an adequate and experienced staff sufficient to operate, maintain and repair the Shared Use Facilities required to be operated or maintained by it and to operate the Railroad's Trains that use the Shared Use Facilities in accordance with the Railroad's obligations under this Agreement. Such staff shall demonstrate to the Commission's reasonable satisfaction that they have sufficient knowledge of the Commission's rules and procedures for operations on the Shared Use Facilities and, to the extent legally required, shall meet FRA requirements.

(c) At the Railroad's sole cost and expense, the Commission shall provide to such staff of the Railroad and the Railroad's Operator such training as is necessary regarding Commission's rules and procedures for operations on the Shared Use Facilities.

Section 3.3 Operator. The Commission's rights with respect to use of the Shared Use Facilities may be exercised through an Operator acting as a contractor pursuant to a written agreement between the Commission and the Operator. Any such Operator shall be obligated to comply with all the provisions of

This Agreement, including Articles II, III and IV regarding the exercise of such rights to use of the Shared Use Facilities, and the Commission shall remain responsible for such compliance. The Railroad's rights with respect to the Shared Use Facilities may be exercised through the Railroad or through a single Operator acting as a contractor pursuant to a written agreement between the Railroad and the Operator, provided that the Railroad's rights may not be exercised by both the Railroad and an Operator. The Railroad shall consult with the Commission not less than 45 days in advance regarding the designation of an Operator. Any such Operator shall be a financially and operationally capable party, and at the Commission's request, the Railroad shall provide reasonable evidence to the Commission that the proposed Operator is financially and operationally capable. Any Operator of the Railroad also shall be obligated to comply with all of the provisions of this Agreement, including Articles II, III and IV regarding the exercise of the Railroad's rights to use of the Shared Use Facilities, and the Railroad shall remain responsible for such compliance.

#### Section 3.4 Operating Equipment.

(a) Neither the Commission nor the Railroad shall have any responsibility for inspecting, maintaining, servicing or repairing any locomotives, hi-rail vehicles, passenger cars, freight cars and other equipment used by the other party or its Operator on the Shared Use Facilities, but all such equipment shall at all times comply with applicable FRA, AAR, federal, state, and local requirements and with the Commission's reasonable standards for locomotives and cars permitted to operate over the Commission's Tracks, which standards of the Commission shall be identified and specified in writing to the Railroad.

(b) All Trains used by the Commission or the Railroad or their respective Operators on the Shared Use Facilities shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts and with all regulations adopted pursuant to either. Each of the Commission and the Railroad and their respective Operators also shall comply with any other applicable laws, regulations or rules, state or federal, covering the operation, condition, inspection or safety of the Trains operated by it on the Shared Use Facilities.

#### Section 3.5 Operating Standards.

(a) The Commission and the Railroad shall operate their respective Trains on the Shared Use Facilities in compliance at all times with the reasonable rules, regulations, instructions and orders published by the Commission from time to time, provided such rules, regulations, instructions and orders must be consistent with the terms of this Agreement. Each of the Commission and the Railroad and all personnel of either

including personnel of their respective Operators) who are present on their respective Trains using the Shared Use Facilities at any time shall comply fully with all applicable laws, regulations or rules, including licensing, whether federal, state or local, covering the operation, maintenance, condition, inspection, testing or safety of their respective Trains or of personnel employed in the maintenance and operation of any of their respective Trains, including the U.S. Department of Transportation regulations on the control of alcohol and drug use. The Railroad may (i) adopt supplemental rules applicable to its operations on the Shared Use Facilities to the extent that such rules do not otherwise conflict with the provisions of this Section 3.5(a) and (ii) request modification of the applicable rules, regulations, instructions and orders of the Commission, which modifications may be made from time to time by the mutual agreement of the parties hereto.

(b) The printing and distributing of new timetables, timetable supplements or other related publications by the Commission shall be at the Commission's sole cost and expense. The printing and distributing of new Railroad Timetables, timetable supplements or other related publications by the Railroad shall be at the Railroad's sole cost and expense.

(c) Each of the Commission and the Railroad, at its sole cost and expense, shall obtain, install and maintain in all locomotives and hi-rail vehicles used by it or its Operator on the Shared Use Facilities such communication equipment as is necessary to allow its Trains to communicate with dispatching and signaling facilities for the Shared Use Facilities. The party in control of dispatching under the terms of this Agreement at any time may not adopt, except by mutual agreement with the other party, new communication systems or Signal Systems for use on the Shared Use Facilities which theretofore have not been adopted generally in the railroad industry.

(d) The Commission shall, at least three days in advance or as soon as otherwise practicable, notify the Railroad of any investigation or hearing concerning the violation of any rule, regulation, order or instructions of the Commission by any of the employees of the Railroad or its Operator. Such investigation or hearing may be attended by any official of the Railroad or of its Operator designated by the Railroad, and any such investigation or hearing shall be conducted in accordance with any applicable collective bargaining agreement. The Railroad shall pay the Commission, within 30 days after receipt of bills therefor, the reasonable cost of such investigation or hearing, for which the Commission may contract with a third party to perform any or all of the investigation or hearing transcription activities with the Railroad to pay all costs and expense related thereto.



(e) The Commission shall have the right to exclude from the Shared Use Facilities any employee of the Railroad or its Operator determined to be in violation of the Commission's reasonable rules, regulations, orders or instructions which are in conformity with the provisions of this Agreement. The Railroad shall indemnify, defend and hold harmless the Commission, its affiliates and its and their respective officers, agents and employees from and against any and all claims, liabilities and expenses resulting from such exclusion. If such disciplinary action is appealed by an employee of the Railroad or its Operator to any tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, then such employee shall not thereafter be barred from service on the Shared Use Facilities by reason of such occurrence.

### Section 3.6 Emergency Operations.

(a) If, by any reason of mechanical failure or for any other cause, the Trains or any locomotives, hi-rail vehicles, passenger cars or freight cars of the Commission or the Railroad or their respective Operators become stalled or disabled on the Shared Use Tracks and are unable to proceed, or fail to maintain the speed required of Trains to meet normal schedules, or if in emergencies crippled or otherwise defective equipment is set out from any such Trains onto the Shared Use Tracks, then the party whose Trains or items of equipment are involved in the incident shall be responsible for furnishing motive power or such other assistance as may be necessary to haul, help or push such equipment or Trains, or to properly move the disabled equipment. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Trains or items of equipment are involved in the incident has not been adequate relative to the scheduled uses of the Shared Use Tracks, such other party may render such assistance as may reasonably be required in light of such scheduled uses, and the party whose Trains or items of equipment are involved in the incident shall reimburse the other party, within 30 days after receipt of the bill therefor, for the cost and expense of rendering any such assistance. The costs and expense of services referenced above in this paragraph (a), including loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be paid by the party whose Trains or items of equipment are involved in the incident.

(b) If it becomes necessary to make repairs to crippled or defective Trains or related equipment of the Commission or the Railroad or their respective Operators in order to move it from the Shared Use Tracks, such work shall be the responsibility of the party whose Trains or items of equipment are involved in the incident. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that

The efforts of the party whose Trains or items of equipment are involved in the incident to make the repairs are not adequate in light of the scheduled uses of the Shared Use Tracks, such other party may take control of the repairs. If the repairs are performed by the other party, then the party whose Trains or items of equipment are involved in the incident shall reimburse the other party for the cost thereof, within 30 days after receipt of the bill therefor, at the then current AAR dollar rate for labor charges found in the Office Manual of the AAR Interchange Rules.

(c) Whenever the Commission's or the Railroad's Trains on the Shared Use Tracks require rerailing, wrecking service or wrecking train service, the party whose Train is involved shall be responsible for performing such service. Upon mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response whose Train is involved in the incident is not adequate in light of the scheduled uses of the Shared Use Tracks, the other party may take control of such rerailing, wrecking service or wrecking train service as may be required. Whichever party has responsibility for maintenance and repair of the affected Shared Use Tracks under the terms of Article V shall make such repairs to and restoration of the Shared Use Tracks as may be required. The cost and expense of services referenced above in this paragraph (c), including loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be paid by the party whose Train is involved in the incident. All equipment and salvage from the same shall be promptly picked up by the party whose Train is involved in the incident or such party's Operator or delivered to the party whose Train is involved in the incident or such party's Operator by the other party, and all costs and expenses, including Customary Additives therefor, incurred by the other party shall likewise be paid to the other party by the party whose Train is involved in the incident. All costs and expenses to be borne under this Section 3.6(c) by the party whose Train is involved in the incident shall be paid within 30 days after receipt of the bills therefor.

Section 3.7 Regulatory Approvals. Each of the Commission and the Railroad shall obtain and maintain all such regulatory approvals as may be required for the conduct of their respective operations on the Shared Use Facilities.

Section 3.8 Claims Handling. Except as otherwise provided in Article VII, the Commission and the Railroad shall each have exclusive responsibility for the provision of claims handling service in connection with any aspect of its operations on the Shared Use Facilities, and in no event shall either or its Operator assert any right to require the other or any of the other's affiliates to provide, or bear any of the costs and expenses arising from, such operations.

Section 3.9 Railroad Police. The Commission and the Railroad shall have exclusive responsibility for the provision of the services of railroad police or law enforcement personnel in connection with their respective operations on the Shared Use Facilities, and in no event shall either or its Operator assert any right to require the other or any of the other's affiliates to provide, or bear any of the costs and expenses arising from, such services.

#### ARTICLE IV SCHEDULING AND DISPATCHING

##### Section 4.1 Scheduling.

(a) The Commission shall determine the schedule of Commission Trains and shall provide such schedules, and any changes thereto, in a timely manner to the Railroad; provided however that the Commission shall not schedule Commission Trains that would unreasonably interfere with the Railroad's Rail Freight Service during times which are not Peak Commuter Periods. X As used in this Section 4.1(b), a proposed Commission schedule shall be deemed to unreasonably interfere with the Railroad's Rail Freight Service if such use by the Commission would materially affect the Railroad's ability to provide service-competitive freight service, including time sensitive service, to existing and future customers and to increase its Rail Freight Service to the extent its market will permit. The Railroad shall have the burden of proving that a proposed Commission schedule has materially affected or will materially affect the Railroad's ability to provide service-competitive freight service, including time sensitive service, to existing and future customers or to increase its Rail Freight Service to the extent its market will permit.

(b) The Railroad shall determine the schedule of Freight Trains during Peak Commuter Periods, subject to the limitations of Section 2.2(b) and 2.2(d). The Railroad shall determine the schedule of Freight Trains at all times other than the Peak Commuter Periods, subject to the approval of the Commission, which approval shall not be unreasonably withheld or delayed. As used in this Section 4.1(b), the Commission's refusal to approve a proposed schedule shall be deemed to be unreasonable if such refusal would materially affect the Railroad's ability to provide service-competitive freight service, including time sensitive service, to existing and future customers and to increase its Rail Freight Service to the extent its market will permit. The Railroad shall have the burden of proving that a refusal by the Commission has materially affected or will materially affect the Railroad's ability to provide service-competitive freight service, including time sensitive service, to existing and future customers or to increase its Rail Freight Service to the extent its market will permit.

(c) The Railroad shall determine the schedule of Railroad Special Trains subject to the limitations of Section 2.2(k).

#### Section 4.2 Dispatching.

(a) The Commission shall at all times have exclusive control over dispatching the Alhambra-Bridge 5 Segment. From and after such time as the Commission reconfigures its signal and radio systems and notifies the Railroad that the Commission is operationally capable of dispatching, the Commission shall have exclusive control over dispatching the Bridge 5-Santa Clarita Segment and the Glendale Siding. The Railroad shall dispatch the Bridge 5-Santa Clarita Segment and the Glendale Siding until such time, and shall dispatch each portion of the Santa Clarita-Palmdale Segment until the Changeover Date applicable thereto. On each such Changeover Date, the Commission shall assume dispatching over the applicable portion of the Santa Clarita-Palmdale Segment.

(b) Dispatching shall be consistent with the schedules determined in accordance with Section 4.1; provided, that the following priorities shall apply:

- (i) As between Commission Trains and intercity passenger Trains, the provisions of Exhibit 4.2(b) attached hereto shall govern.
- (ii) Commission Trains scheduled in accordance with Section 4.1 and operating in revenue service, and Amtrak Trains operating in revenue service, shall be accorded absolute preference and priority over Freight Trains.
- (iii) Empty Commission Trains and Railroad's locomotives not attached to any cars shall receive appropriate priority in order to be in position for the next scheduled revenue assignments of such Trains or locomotives or crews or equipment thereon.
- (iv) Notwithstanding the priorities established by (ii) and (iii) above, Freight Trains shall at no time be required to wait for Commission Trains for more than 15 minutes (A) prior to crossing at Burbank Junction, at the Commuter Rail Interlocker or at other Crossovers within a portion of the Shared Use Facilities that has two or more main line Tracks, or (B) prior to entering Tunnels within or contiguous to a portion of the Shared Use Facilities that has two or more main line Tracks.



(v) Solely with respect to the Alhambra-CRI Segment, and except for the time periods described in clause (vi) below, the following priorities shall apply in lieu of the priorities set forth in clauses (ii) through (iv) above:

- (1) Commission Trains scheduled in accordance with Section 4.1 and operating in revenue service, and Amtrak Trains operating in revenue service, shall be accorded absolute preference and priority over Freight Trains.
- (2) Commission Trains not in revenue service shall receive appropriate priority in order to be in position for the next scheduled revenue assignments of such Trains or crews or equipment thereon.
- (3) Notwithstanding the priorities established by clauses (1) and (2) above, Freight Trains shall at no time be required to wait for Commission Trains for more than 15 minutes prior to being permitted to enter, cross or proceed on the Alhambra-CRI Segment, unless a different priority is required from time to time to relieve congestion at LAUPT; and provided that after completion of the improvements described in clause (vi) below the normal routing of scheduled Commission Trains shall be on such improvements and on the west bank of the Los Angeles River.
- (4) Freight Trains shall have absolute preference and priority over equipment of the Commission utilizing the Shared Use Tracks to access the Commission's maintenance facility on Parcel B of Taylor Yard and maintenance of way equipment of the Commission and shall not be held or delayed for such equipment, unless a different priority is required from time to time to relieve congestion at LAUPT.
- (5) Locomotives not attached to any cars shall be accorded "first come, first serve" priority with the Commission Trains in revenue service.

(vi) Solely with respect to the Alhambra-CRI Segment for the period from the date that the Dayton Bridge is removed (which date is estimated to be March 1993) to the date that the Commission completes construction of (x) Tracks from LAUPT to the Commuter Rail Interlocker west of the existing Tracks connecting such points and (y) a new bridge over the Los Angeles River (which date is expected to be August 1993), the following priorities shall apply in lieu of the priorities set forth in clauses (ii) through (v) above:

(1) Commission Trains scheduled in accordance with Section 4.1 and operating in revenue service, and Amtrak Trains operating in revenue service, shall be accorded absolute preference and priority over Freight Trains.

(2) Commission Trains not in revenue service shall receive appropriate priority in order to be in position for the next scheduled revenue assignments of such Trains or crews or equipment thereon.

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 (3) Notwithstanding the priorities established by clauses (1) and (2) above, (A) at times other than Peak Commuter Periods, Freight Trains shall at no time be required to wait for Commission Trains for more than 15 minutes prior to being permitted to enter, cross or proceed on the Alhambra-CRI Segment, and (B) during Peak Commuter Periods, locomotives not attached to any cars shall at no time be required to wait for Commission Trains for more than 30 minutes prior to being permitted to enter, cross or proceed on the Alhambra-CRI Segment, unless a different priority is required from time to time to relieve congestion at LAUPT.

(4) During periods other than Peak Commuter Periods, Freight Trains shall have absolute preference and priority over equipment of the Commission utilizing the Shared Use Tracks to access the Commission's maintenance facility on Parcel B of Taylor Yard and maintenance of way equipment of the Commission and

shall not be held or delayed for such equipment, unless a different priority is required from time to time to relieve congestion at LAUPT.

- (5) During periods other than Peak Commuter Periods, Locomotives not attached to any cars shall be accorded "first come, first serve" priority with the Commission Trains in revenue service.

(c) The Commission shall provide employees of the Railroad or its Operator with reasonable access to dispatching facilities to allow monitoring of the dispatching of Trains on the Shared Use Facilities.

(d) The Railroad, at no cost, expense or liability to the Commission, shall negotiate appropriate labor agreements with its employees relating to the termination of dispatching by the Railroad.

(e) Either party providing dispatching over the Saugus Line shall provide such service 24 hours per day, seven days per week.

(f) From and after the date the Commission commences dispatching of the Alhambra-Santa Clarita Segment pursuant to Section 4.2(a), the Railroad shall pay to the Commission the amount of \$83,683 per year for the Commission's dispatching of the Railroad's Trains on the Alhambra-Santa Clarita Segment. In addition, from and after each Changeover Date, the Railroad shall pay to the Commission for dispatching of the Railroad's Trains the amount of \$2,498 per year for each mile of the portion of the Santa Clarita-Palmdale Segment for which the Commission has assumed responsibility on such Changeover Date. All of the amounts described above shall be prorated on a daily basis for any period of time less than a year, and all such amounts shall be paid by the Railroad to the Commission in equal monthly installments.

(g) Disputes over dispatching shall be addressed initially by the appropriate senior officers of each party and, if necessary, shall be resolved by arbitration pursuant to Article VIII. If the arbitrator(s) determine that there has been a material and continuing breach of the dispatching provisions of this Article IV by the party providing dispatching, they may provide for dispatching by the other party or alternating dispatching duties between the parties (if these measures are practicable), or undertake any other reasonable measures to ensure compliance with these dispatching requirements. In connection with any such change in dispatching duties as may be ordered by the arbitrator(s), the arbitrator(s) shall equitably



adjust the provisions of this Agreement relating to the payment for dispatching services.

## ARTICLE V MAINTENANCE AND REPAIR

**Section 5.1 Maintenance Standards.** Unless otherwise agreed by the parties hereto, existing Shared Use Tracks shall be maintained at such level as to allow continued operation for existing types of service in existence on the date of execution of this Agreement at the train speeds shown in the applicable Railroad Timetable and applicable General Orders that are effective on the date of the execution of this Agreement and attached hereto as Exhibit 5.1. Unless otherwise agreed by the parties hereto, future Shared Use Tracks shall be maintained at such level as to allow continued operation at the same train speeds as those of the adjacent Shared Use Tracks. All other Shared Use Facilities shall be maintained and repaired to keep them in a safe and reliable condition and at least at the levels of utility, maintenance and repair existing on the date of execution of this Agreement. Repair and maintenance shall be done in a manner that minimizes disruptions to operations of both the Commission and the Railroad; provided, that night maintenance shall not normally be required.

### **Section 5.2 Maintenance Responsibilities.**

(a) The Commission shall have the exclusive control over the maintenance and repair of, and shall maintain and repair the Shared Use Facilities on, the Alhambra-Santa Clarita Segment immediately following the effective date of this Agreement; provided that the Railroad shall make its maintenance crews available during a transition period of 15 days following such effective date to provide for an orderly transition of maintenance responsibilities. The Railroad shall have exclusive control over the maintenance and repair of, and shall maintain and repair the Shared Use Facilities on each portion of the Santa Clarita-Palmdale Segment until the Changeover Date applicable thereto. On each such Changeover Date, the Commission shall assume exclusive control over the maintenance and repair of, and shall maintain and repair, the Shared Use Facilities on the applicable portion of the Santa Clarita-Palmdale Segment; provided that the Railroad shall make its maintenance crews available during a transition period of 15 days following each such Changeover Date to provide for an orderly transition of maintenance responsibilities.

(b) If at any time the Commission shall discontinue commuter service on a portion of the Shared Use Facilities for a period of three months or more, then the Railroad shall have the right to assume all maintenance and repair of such portion of the Shared Use Facilities upon at least 60 days' prior written notice

the Commission. In such case the Railroad's Agreed Annual Share (as defined in subsection 5.3(a)) shall be equitably adjusted based upon the provisions of Section 5.3 and the methodology of Exhibit 5.2(b). Upon any such assumption, the Commission shall be relieved of its maintenance and repair obligations on such portion of the Saugus Line. At such time as the Commission resumes Commission Rail Service on such portion of the Saugus Line, the Commission, upon 30 days prior written notice to the Railroad, may assume maintenance responsibilities over such portion of the Saugus Line upon the resumption of its operations. The Railroad's Agreed Annual Share shall be readjusted to reflect the Commission's assumption of such maintenance responsibilities.

(c) All disputes as to the fulfillment of the other parties' maintenance and repair obligations as set forth in this section 5.2 shall be submitted to arbitration pursuant to Article VIII, and the remedies of damages and specific performance shall be available therein.

### Section 5.3 Cost and Expense.

(a) Until the first Changeover Date, the Railroad's Agreed Annual Share shall be \$728,425 (subject to adjustments specified in paragraphs (c) and (d) of this Section 5.3), which is the sum of two components: (i) the "Car-Mile Component" in the amount of \$568,162 subject to adjustments for inflation and car volume as such adjustments are specified in paragraphs (c) and (d) of this Section 5.3, and (ii) the "Route-Mile Component" in the amount of \$160,263, subject to adjustments for inflation as such adjustments are specified in paragraph (c) of this Section 5.3.

X Upon the occurrence of a Changeover Date covering less than all of the Santa Clarita-Palmdale Segment, the Railroad's Agreed Annual Share shall be increased by an amount equal to \$20,478 per mile (subject to adjustments specified in paragraphs (c) and (d) of this Section 5.3), which is the sum of two components: (i) the "Car-Mile Component" in the amount of \$16,683 per mile, subject to adjustments for inflation and car volume as such adjustments are specified in paragraphs (c) and (d) of this Section 5.3, and (ii) the "Route-Mile Component" in the amount of \$3,795 per mile, subject to adjustments for inflation as such adjustments are specified in paragraph (c) of this Section 5.3.

After the final Changeover Date with respect to all portions of the Santa Clarita-Palmdale Segment, the Railroad's Agreed Annual Share for the Saugus Line shall be \$1,450,273 (\$728,425 for the Alhambra-Santa Clarita Segment and \$721,848 for the Santa Clarita-Palmdale Segment, subject to adjustments specified in paragraphs (c) and (d) of this Section 5.3), which is the sum of two components: (i) the "Car-Mile Component" in the amount of \$1,156,236 (\$568,162 for the Alhambra-Santa Clarita

ment and \$588,074 for the Santa Clarita-Palmdale Segment), subject to adjustments for inflation and car volume as such adjustments are specified in paragraphs (c) and (d) of this Section 5.3, and (ii) the "Route-Mile Component" in the amount of \$294,037 (\$160,263 for the Alhambra-Santa Clarita Segment and \$133,774 for the Santa Clarita-Palmdale Segment), subject to adjustments for inflation as such adjustments are specified in paragraph (c) of this Section 5.3.

All adjustment required due to any Changeover Date shall become effective on and as of such Changeover Date.

The Railroad's Agreed Annual Share shall constitute its total required contribution for the maintenance, repair and enhancement of the portion of the Shared Use Facilities maintained by the Commission, including capital projects thereon and additions and betterments thereto, except for the costs, fees and expenses described in paragraph (b) of this Section 5.3. The maintenance, repair and enhancement expenses referred to in this paragraph (a) of Section 5.3 shall include both expensed and capitalized items, and maintenance, repair and enhancement expenses and other items charged against the Railroad's Agreed Annual Share for work performed on the Shared Use Facilities by the Commission also shall include Customary Additives and Materials Additives. The Commission shall be responsible for all costs and expenses incurred by it for maintenance, repair and enhancement of the Shared Use Facilities in excess of the Railroad's Agreed Annual Share, except as described in paragraph (b) of this Section 5.3. For example, if the Railroad's Agreed Annual Share for a given year was \$728,425 and maintenance, repair and enhancement expenses, including capital projects and additions and betterments (excluding expenses described in paragraph (b) of this Section 5.3), incurred by the Commission during that year, plus Customary Additives and Materials Additives, totalled \$1,000,000, the Commission would be responsible for \$271,575.

The Railroad shall contribute the Railroad's Agreed Annual Share for the Shared Use Facilities on a monthly basis so long as this Agreement is in force. The Commission shall send the Railroad a monthly statement that sets forth the maintenance, repair and enhancement expenses incurred by the Commission during the prior month and a cumulative total for such expenses incurred during the year up to the end of such month.

(b) Except as provided in this paragraph (b), capital projects and production programs on the Shared Use Facilities, including additions and betterments to the Shared Use Facilities, shall be paid for by the Commission. The Railroad shall pay the Commission, and there shall be no credit against the Railroad's Agreed Annual Share, for (i) any capital projects on the Shared Use Facilities (including additions and betterments to the Shared Use Facilities) initiated by the Railroad, or (ii) any other item

the cost of which this Agreement expressly provides for the Railroad to pay or share. In addition to the Railroad's Agreed Annual Share, the Railroad shall be required to pay (i) the full maintenance costs of all Shared Use Facilities owned by it and any improvements constructed at the request of the Railroad pursuant to Sections 2.3(c), 2.3(d) and 2.4., (ii) all costs for the maintenance of the improvements described in clauses (i), (ii) and (iii) of Section 2.4 until the date that all such improvements are completed to the satisfaction of the Commission, (iii) the annual maintenance fee for industrial track switches not used for 15 months and not permitted to be removed by the Commission, as more particularly set forth in Section 2.3(a), prorated as appropriate, (iv) the annual fee for Crossovers installed by the Commission at the Railroad's request pursuant to Section 2.3(c), as more particularly set forth in Section 2.3(c), prorated as appropriate, and (v) the dispatching and maintenance costs provided for in Section 2.11. The amounts specified in clauses (i), (iii), (iv) and (v) immediately above shall be paid to the Commission in equal monthly installments together with the installments of the Railroad's Agreed Annual Share as provided in Section 5.3(f).

(c) The Railroad's Agreed Annual Share shall be adjusted upward or downward annually in accordance with the final "Materials Prices, Wage Rates and Supplements Combined (excluding f. l.) Index" (the "Index") included in the final Annual Indexes Charge-Out Prices and Wage Rates (1977-100) issued by the AAR (the "AAR Railroad Cost Indexes"). Adjustment of each of the components of the Railroad's Agreed Annual Share shall be made by multiplying each by the ratio of the Index figure for a particular calendar year relative to the Index figure for calendar year 1990; provided, that such adjustments shall be made to the nearest cent. By way of example and assuming no Changeover Date has occurred, if "A" is the Index figure for calendar year 1990 and "B" is the Index figure for calendar year 1993, then the adjustments required by this Section 5.3(c) would be determined as follows:

- (1) \$ 568,162 x B/A = The Car-Mile Component of the Railroad's Agreed Annual Share as adjusted per Section 5.3(c) for calendar year 1994.
- (2) \$ 160,263 x B/A = The Route-Mile Component of the Railroad's Agreed Annual Share as adjusted per Section 5.3(c) for calendar year 1994.

If the base for the Index shall be changed from the year 1977, appropriate revision shall be made in the base (established as herein provided) for the calendar year 1990. If the AAR or any successor organization discontinues publication of the AAR Railroad Cost Indexes, an appropriate substitute for determining



the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be arbitrated in the manner prescribed in Article VIII of this Agreement.

(d) The Car-Mile Component shall be adjusted annually to reflect changes in the Railroad's traffic on the Shared Use Facilities (including the traffic of the Railroad and its Operator and any purchaser, assignee, transferee, lessee or delegee of the Railroad pursuant to Section 6.2) measured by aggregate car-miles. The Car-Mile Component shall be adjusted separately for the Alhambra-Santa Clarita Segment and the Santa Clarita-Palmdale Segment. References in this Section 5.3 to adjustments under this paragraph (d) shall include adjustments to both the Car-Mile Component for the Alhambra-Santa Clarita Segment and the Car-Mile Component for that portion of the Santa Clarita-Palmdale Segment for which a Changeover Date has occurred.

The Railroad's aggregate car-miles for Trains operated on the Alhambra-Santa Clarita Segment for the fourth quarter of 1990 shall be the "Base Car-Miles" for the Alhambra-Santa Clarita Segment. The car-miles adjustment shall be applied to increase or decrease the original Car-Mile Component for the Alhambra-Santa Clarita Segment of \$568,162 (adjusted for inflation as specified in paragraph (c) of this Section 5.3) for the adjustment year based on the ratio of the Railroad's aggregate car-miles for Trains operated on the Alhambra-Santa Clarita Segment during the fourth quarter of the adjustment year, including the aggregate car-miles attributable to Trains operated by any purchaser, assignee, transferee, lessee or delegee of the Railroad pursuant to Section 6.2, to the Base Car-Miles for the Alhambra-Santa Clarita Segment.

The Railroad's aggregate car-miles for Trains operated on the Santa Clarita-Palmdale Segment for the fourth quarter of 1990 shall be the "Base Car-Miles" for the Santa Clarita-Palmdale Segment. The car-miles adjustment shall be applied to increase or decrease the original Car-Mile Component for the Santa Clarita-Palmdale Segment of \$588,074 (\$16,683 per mile) (adjusted for inflation as specified in paragraph (c) of this Section 5.3) for the adjustment year based on the ratio of the Railroad's aggregate car-miles for Trains operated on the Santa Clarita-Palmdale Segment during the fourth quarter of the adjustment year, including the aggregate car-miles attributable to Trains operated by any purchaser, assignee, transferee, lessee or delegee of the Railroad pursuant to Section 6.2, to the Base Car-Miles for the Santa Clarita-Palmdale Segment.

For purposes of this Section 5.3, a "car-mile" shall mean one railroad car or locomotive traveling one route-mile. Thus, a locomotive and nine railroad cars traveling over 5 route-miles would result in an aggregate of 50 car-miles. Within

days after the end of each adjustment year, the Railroad shall deliver to the Commission a certified statement of aggregate car-miles for the fourth quarter of the adjustment year computed in accordance with the provisions of this Section 5.3(d).

By way of illustrating the adjustment required by this paragraph (d), if (i) the Index figure for 1990 was 100; (ii) the Index figure for 1993 was 110; (iii) the Base Car-Miles were 100,000 car-miles and (iv) the car-miles of the Railroad in the fourth quarter of 1993 aggregated to 110,000 car-miles, then the Car-Mile Component for 1994 (assuming that no Changeover Date has occurred) would be:

$$\$568,162 \times (110/100) \times (110,000/100,000), \text{ or } \$687,476.$$

(e) The Railroad's Agreed Annual Share for any year shall be the sum of the Car-Mile Component, as adjusted for any Changeover Date pursuant to paragraph (a) of this Section 5.3 and as further adjusted for that year pursuant to paragraphs (c) and (d) of this Section 5.3, and the Route-Mile Component, as adjusted for any Changeover Date pursuant to paragraph (a) of this Section 5.3 and as further adjusted for that year pursuant to paragraph (c) of this Section 5.3.

(f) The Railroad shall pay its Agreed Annual Share directly to the Commission in equal monthly installments.

## ARTICLE VI ASSIGNMENTS, TENANTS AND SALES

### Section 6.1 Commission.

(a) The Commission may sell all or any portion of its interest in the Shared Use Facilities, and the Commission may assign, lease, transfer or otherwise delegate any of its rights and duties hereunder in connection with a sale of its interest in the Saugus Line or otherwise, without securing the consent of the Railroad if such sale, assignment, lease, transfer or delegation is to a single financially and operationally capable party with the power to perform its obligations under the indemnity provisions hereof, provided such party takes such interest subject to all of the Railroad's rights hereunder. A proposed purchaser, assignee, lessee, transferee or delegee shall not be considered financially and operationally capable if it is unable to procure and maintain the insurance required to be maintained by the Commission hereunder. The Commission shall give the Railroad at least 45 days' prior written notice of any such sale, assignment, lease, transfer or delegation and, at the Railroad's request, the Commission shall provide reasonable evidence that any purchaser, assignee, or delegee is financially and operationally capable. Any sale, assignment, lease, transfer or delegation other than to a financially and operationally capable

purchaser, assignee lessee, transferee or delegee shall require the written consent of the Railroad. The Southern California Regional Rail Authority is a permitted assignee, lessee, transferee or delegee provided that LACTC shall remain liable for its indemnity obligations hereunder in connection with any such assignment, lease, transfer or delegation. In connection with any sale by the Commission of its interest in all or any portion of the Shared Use Facilities, the Commission may retain the right to continue to use the Shared Use Facilities, as long as such sale does not add an additional rail user of the Shared Use Facilities.

(b) In no event shall any purchaser, lessee, transferee or delegee of any of the Commission's interests in the Right of Way and Shared Use Facilities or assignee of any of the Commission's rights and duties hereunder be permitted to use the Shared Use Facilities to provide Rail Freight Service.

(c) Any purchaser, assignee, lessee, transferee or delegee of the Commission shall execute an agreement, reasonably satisfactory to the Railroad, pursuant to which such purchaser, assignee, lessee, transferee or delegee agrees to be bound by all the provisions hereof.

#### Section 6.2 Railroad.

(a) The Railroad may sell, assign, lease, transfer or otherwise delegate all (but not less than all) of its rights and duties hereunder without securing the consent of the Commission if such sale, lease, transfer, assignment or delegation is to (i) a single financially and operationally capable party approved by the Commission, which approval shall not be unreasonably withheld (provided that a proposed purchaser, assignee, lessee, transferee or delegee shall not be considered financially and operationally capable if it is unable to procure and maintain the insurance required to be maintained by the Railroad hereunder) or (ii) a single Class 1 Railroad. The Railroad shall give the Commission at least 45 days' prior written notice of any such sale, assignment, lease, transfer or delegation and, at the Commission's request, the Railroad shall provide reasonable evidence that any such purchaser, assignee, lessee, transferee or delegee other than a Class 1 Railroad is a financially and operationally capable party. Any sale, assignment, lease, transfer or delegation other than to a purchaser, lessee, transferee, assignee or delegee described in the first sentence of the Section 6.2(a) shall require the written consent of the Commission. Any sale, assignment, lease, transfer or delegation of the Railroad's rights in the Shared Use Facilities shall be subject to the rights of the Commission under this Agreement. In no event shall the purchaser, assignee, lessee, transferee or delegee of any of the Railroad's rights and duties hereunder be permitted to use the Shared Use Facilities to provide rail passenger service.



(b) The Railroad shall not permit any other person or entity to use the Shared Use Facilities except (i) the Railroad's Operator designated in accordance with Section 3.3, or (ii) pursuant to a transaction permitted under Section 6.2(a).

(c) Any purchaser, assignee, lessee, transferee or delegee of the Railroad shall execute an agreement, reasonably satisfactory to the Commission, pursuant to which such purchaser, assignee, lessee, transferee or delegee agrees to be bound by all the provisions hereof.

(d) Notwithstanding any other provision of this Section 6.2, if the Railroad sells, leases or otherwise disposes of all (but not less than all) of either its freight or Intercity rights on the Ventura Line (as defined in the Ventura Shared Use Agreement) to (i) a financially and operationally capable party or parties approved by the Commission, which approval shall not be unreasonably withheld (provided that a proposed purchaser, assignee, lessee, transferee or delegee shall not be considered financially and operationally capable if it is unable to provide and maintain the insurance required to be maintained by the Railroad hereunder) or (ii) a Class 1 Railroad, such party or parties (each a "New Ventura Owner") shall have the right to use the Burbank-Alhambra Segment upon and subject to the following terms and conditions:

(i) The New Ventura Owner shall have executed and delivered to the Commission a written agreement in form and substance reasonably acceptable to the Commission whereby the New Ventura Owner assumes and agrees to be bound by the provisions of this Agreement applicable to its operation on the Burbank-Alhambra Segment.

8820 (ii) The New Ventura Owner may use the Burbank-Alhambra Segment only for a purpose for which the Railroad would be permitted to use the Burbank-Alhambra Segment pursuant to this Agreement if the Railroad itself were conducting the activities of New Ventura Owner; provided, however, that if the sale, lease or disposition is of Intercity rights, the New Ventura Owner may operate over the Burbank-Alhambra Segment for that purpose.

(iii) The New Ventura Owner's use of the Burbank-Alhambra Segment shall be subject to all of the provisions of this Agreement. References in this Agreement to the Railroad shall be deemed to be references to the New Ventura Owner to the extent necessary to implement the provisions of this Section 6.2(d);

provided, however, that if the sale, lease or disposition is of Intercity rights, the New Ventura Owner may operate over the Burbank-Alhambra Segment for that purpose.

- (iv) The permitted use of the Burbank-Alhambra Segment by the New Ventura Owner shall not relieve Railroad of any of its obligations hereunder./ The sale, lease or other disposition solely of the Railroad's Intercity rights to a New Ventura Owner shall not deprive the Railroad of its right to provide Rail Freight Service on the Burbank-Alhambra Segment./ The sale, lease or other disposition solely of the Railroad's Rail Freight Service rights to a New Ventura Owner shall not deprive the Railroad of its right to provide Intercity service on the Burbank-Alhambra Segment.

Railroad may only sell, lease or otherwise dispose of its Intercity rights to a single party and its freight rights to a single party.

### Section 6.3 Right of First Offer. <sup>199 20</sup>

(a) Subject to the exemptions or limitations set forth in subsections 6.3(b) and (c), if the Commission proposes to sell all or any portion of the Right of Way to any person other than a financially and operationally capable governmental agency, the Commission shall provide notice to Railroad of such intention to sell (the "Notice"). The Notice shall set forth a description of the property to be sold and the terms and conditions under which the Commission is willing to sell such property./ The Railroad shall have the option to purchase the property described in the Notice upon the terms and conditions described in the Notice. Railroad's option shall be exercisable only in writing received by the Commission within 45 days after Railroad's receipt of the Notice. Railroad's exercise of the option shall state Railroad's agreement to be bound by the terms and conditions specified in the Notice. If Railroad fails to exercise its option as provided above in the prescribed 45-day period, Commission shall have the right to sell the property described in the Notice on terms and conditions substantially as described in the Notice. If thereafter, Commission attempts to sell such property on terms and conditions substantially less favorable to the Commission from those described in the Notice, Railroad shall be entitled to an additional 15-day option to purchase the property exercisable in accordance with the provisions specified above. Railroad's failure to exercise its purchase option for any portion of the Right of Way shall not constitute a waiver of such option for the sale by Commission of any other portion of the Right of Way.

(b) Notwithstanding the provisions of Section 6.3(a), the Commission may sell to any party without triggering the Railroad's right of first offer any portion of the Right of Way not located within 25 feet of any Track, as long as such property is not required for the Railroad to conduct Rail Freight Service.

(c) If the provisions of Section 6.3(a) are subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation, such provision shall continue and remain in full force and effect only for a period of 21 years following the death of the last survivor of the now living descendants of Philip F. Anschutz of Denver, Colorado, or until this Agreement is terminated as hereinafter provided, whichever first occurs.

## ARTICLE VII LIABILITY AGREEMENT

### Section 7.1 Assumption of Responsibility.

(a) Except as otherwise provided in Section 3.6(c), each of the parties hereto shall assume, bear and pay all the liabilities allocated to it as the responsible party under the terms of this Article VII. For purposes of this Article VII, the term "liability" shall include all loss, damage, cost, expense (including costs of investigation and attorney's fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature arising out of an incident described in the applicable provision of this Article VII. Except as otherwise expressly provided in Sections 7.2(b), 7.2(d), 7.2(e) and 7.4, the responsibility for liabilities undertaken by each party under this Article VII is without respect to fault, failure, negligence, misconduct, malfeasance or misfeasance of any party or its employees, agents or servants.

(b) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the liability for which responsibility is assumed under the terms of this Article VII, including salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

### Section 7.2 Allocation of Responsibilities.

(a) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid

solely by that party regardless of the cause of such loss or the fault of either party or whose Train was involved, except as specifically provided in paragraph (b) of this Section 7.2 and Section 7.4 below. For purposes of this paragraph, and without limitation, consultants and contractors of a party and any person who is on a Train operated by or for the account of a party (other than an employee of a party engaged in performing duties for that party) shall be deemed to be an invitee of that party. All persons at or adjacent to a passenger station or loading platform shall be deemed to be invitees of the Commission (other than employees, contractors and consultants, including employees of such contractor, of the Railroad or of any tenant or Operator of the Railroad engaged in performing duties for the Railroad or for any such tenant or Operator of the Railroad). Other than Amtrak, any trackage tenant of either party shall be deemed to be bound by the provisions of this Article VII; provided, that if it is determined for any reason that such tenant is not so bound, such tenant shall be deemed to be an invitee of that party.

(b) After the Commission shall have incurred aggregate liability in an amount equal to \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, the Railroad shall bear a share of that portion of the aggregate liability to the Commission's invitees for that year that is in excess of \$25.0 million in proportion to the Railroad's relative degree of fault, if any; provided, that the Railroad shall not bear liability to the Commission's invitees in an amount in excess of \$125.0 million for incidents occurring in such calendar year. / In computing the \$25.0 million base amount payable by the Commission prior to any participation by the Railroad, there shall be excluded any liabilities incurred due to the Excluded Conduct (defined below in Section 7.4(a)) of the Commission. / After the Railroad shall have incurred aggregate liability in an amount equal to \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, the Commission shall bear a share of that portion of the aggregate liability to the Railroad's invitees for that year that is in excess of \$25.0 million in proportion to the Commission's relative degree of fault, if any; provided, that the Commission shall not bear liability to the Railroad's invitees in an amount in excess of \$125.0 million for incidents occurring in such calendar year. In computing the \$25.0 million base amount payable by the Railroad prior to any participation by the Commission, there shall be excluded any liabilities incurred due to the Excluded Conduct of the Railroad. Liability shall be deemed incurred on the date of the incident giving rise to such liability regardless of the date on which liability is paid or established. The determination of the relative fault of the parties in any proceeding establishing the liability shall be binding on the parties.

(c) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, persons



Other than invitees of either the Commission or the Railroad and casualty losses to property owned by the Commission and/or the Railroad shall be the responsibility of and borne and paid by the parties as follows regardless of the cause of such loss or the fault of either party except as provided in paragraphs (d) and (e) of this Section 7.2 and Section 7.4 below:

(i) Loss to equipment and other personal property owned by the Commission shall be the responsibility of the Commission and borne by it.

(ii) Loss to equipment and other personal property owned by and freight transported by the Railroad shall be the responsibility of the Railroad and borne by it.

(iii) Loss to the Shared Use Facilities and property jointly owned by the Commission and the Railroad shall be the responsibility of and borne (A) totally by the single party whose Train was involved in the incident giving rise to the loss, and (B) equally by the parties if no Train was involved in the incident or Trains of both parties were involved.

(iv) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any employee of either party which occurs during the course of employment or while traveling to or from employment (an "employee") shall be the responsibility of and borne solely by the party employing such employee.

(v) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any person who is not an employee or invitee of either party (including persons using vehicular and pedestrian crossings and trespassers) shall be the responsibility of and borne (A) totally by the party whose Train was involved in such loss if the Train of only one party was involved, and (B) equally by the parties if no Train was involved in the incident.

(d) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, a person who is not an employee or invitee of either party shall be the responsibility of and borne by both parties in proportion to their relative degrees of fault if Trains of both parties were involved in the incident giving rise to such injury or damage.

(e) Liability due to the release of hazardous materials shall be the responsibility of and borne by the party who transported the hazardous materials unless Trains of both parties were involved, in which case the parties shall bear the loss or liability in proportion to their relative degrees of fault.

(f) For purposes of calculating the \$25,000,000 and \$125,000,000 limits set forth in this Section 7.2, liability relating to the Saugus Line shall be aggregated with liability relating to the Ventura Line in any calendar year. As used herein, "Ventura Line" shall have the meaning given to such term in the Ventura Shared Use Agreement.

### Section 7.3 Insurance.

(a) The Commission and the Railroad shall each maintain general liability insurance in the amount of at least \$100,000,000 per occurrence and shall either include all of their respective Operators and tenants (other than Amtrak) as insureds under their respective policies or furnish evidence of separate insurance of the same amount and type for each Operator or tenant (other than Amtrak). Insurance shall be placed with a company or companies authorized to conduct business in California. The Commission and the Railroad (and an Operator or tenant if such Operator or tenant demonstrates to the reasonable satisfaction of the Commission and the Railroad sufficient financial capacity) may self insure to a level not to exceed \$10.0 million.

(b) The general liability insurance required by Section 7.3(a) shall provide coverage for personal injury, bodily injury, death and property damage with respect to all operations of the Railroad, the Commission, Operators and tenants, respectively. Such insurance shall include blanket contractual coverage, including coverage for written, oral and implied contracts and specific coverage for the indemnity provisions set forth in this Article VII. Each policy of general liability insurance obtained by the Commission and the Railroad shall name the other as an additional insured with respect to any liability to be borne by the party obtaining such insurance pursuant to the provisions of this Article VII.

(c) For any claims arising out of activities, products or operations resulting from or related to this Agreement, the insurance obtained pursuant to Section 7.3(a) shall be primary with respect to the obligation under this Agreement of the party obtaining the insurance and with respect to the interests of all parties added as additional insureds. Any other insurance maintained by an additional insured shall be excess of this coverage herein defined as primary and shall not contribute with it.

(d) Unless otherwise agreed by the Commission and the Railroad, the insurance required by Section 7.3(a) shall be maintained by each of the parties specified therein for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed except upon 60 days' notice to the other parties. Each insurance policy required by Section 7.3(a) shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or

limits except after 60 days' prior written notice has been given to all insureds.

(e) Each of the Commission and the Railroad shall cause its and/or its Operator's and tenant's (other than Amtrak's) insurers to provide the other with certificates of insurance and endorsements evidencing the provisions specified above in this Section 7.3 prior to commencement of operations on the Shared Use Facilities under this Agreement.

(f) A failure of any party to maintain the insurance required by this Section 7.3 shall not relieve such party of any of its liabilities or obligations under this Agreement.

#### Section 7.4 Limitations on Indemnification.

(a) The provisions of this paragraph (a) shall apply notwithstanding the provisions of Section 7.2 above. "Excluded Conduct" shall mean (i) an entire failure of care or the exercise of so slight a degree of care as to raise a presumption that there was a conscious indifference to the things and welfare of others, (ii) conduct constituting a reckless or wanton disregard of the probable results of such conduct, (iii) wilful misconduct, or (iv) conduct which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any loss or liability resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear loss or liability in proportion to its relative degree of fault and such party shall be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If any of the provisions of Section 7.2 would otherwise indemnify a party against liability, loss or damage that would be prohibited by or unenforceable under the laws of the State of California (including a determination that indemnification under the circumstances involved is against the public policy of the state), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined that any law or public policy of the State of California prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of Section 7.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in Section 7.2, if both parties were negligent. In the case of any liability, loss or damage for which the provisions of this paragraph (a) would prevent the indemnification of a party, such party shall be responsible for and bear such liability, loss or damage.

(b) Notwithstanding Section 7.2 above, the Railroad and the Commission shall bear liability in proportion to their relative degrees of fault in connection with an accident involving one of the Railroad's Trains while using (i) the Shared



Use Tracks to follow the last scheduled peak direction commuter train during a Peak Commuter Period as provided in Section 2.2(b)(i), or (ii) the Shared Use Tracks during a Peak Commuter Period as provided in Section 2.2(b)(iii), but in the case of either clause (i) or clause (ii) above only if the Railroad's use of the Shared Use Tracks involved in the incident at those times would not have been permitted but for the provisions of Section 2.2(b)(i) or Section 2.2(b)(iii).

Section 7.5 Scope of Indemnification. In any case where a party is required under the provisions of this Article VII to bear a loss or liability, it shall pay, satisfy and discharge such liability and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, directors, officers, agents, employees, shareholders, parent corporation and affiliated companies or governmental entities from, against and with respect to any and all liabilities which arise out of or result from the incident giving rise thereto. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct. It is the intent of the parties that the indemnification provisions of this Article VII shall apply to both the passive negligence and the active negligence of an indemnified party.

88.24  
Section 7.6 Procedure.

(a) If any claim or demand shall be asserted by any person against an indemnified party under this Article VII, the indemnified party shall, within 30 days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Article VII, except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, at its own expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims which might give rise to liability on the part of the indemnifying party under this Article VII without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld. If any claim or demand relates to a matter for which the parties, under

the terms of Section 7.2, are to share liability equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend itself against the claim at its own expense, and neither party shall make any settlement of any such claims without the prior written consent of the other party, which consent shall not be unreasonably withheld.

(b) Subject to the provisions of Section 7.6(a), on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Article VII, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Article VII, and the indemnifying party shall not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

(c) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Article VIII.

Section 7.7 Tenants and Operators. Any new tenant or Operator on the Shared Use Facilities shall agree to be bound by the provisions of this Article VII unless otherwise agreed by the Railroad and the Commission. ~~The parties will use reasonable~~ efforts to extend the benefits of existing Amtrak indemnities to the Commission.

Section 7.8 Dollar Amount Adjustments. Each of the dollar amounts set forth in Section 7.2(b) and Section 7.3(a) above shall be adjusted annually and every three years, respectively, for changes in the Consumer Price Index, but shall not be reduced below their initial levels. As used in this Section 7.8, the term "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, All Urban Wage Earners and Clerical Workers, All Items, for the Los Angeles area (1967=100). If the base year for the Consumer Price Index is changed from 1967, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor's Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

ARTICLE VIII  
ARBITRATION

Section 8.1 Arbitrable Matters.

(a) If any dispute arises between the Commission and the Railroad as to their respective rights and obligations under this Agreement, including failure to reach mutual agreement as to any matters set forth in this Agreement as being subject to the mutual agreement of the parties, and they cannot resolve the dispute within 30 days after it arises, then either may submit the dispute to arbitration under the Commercial Arbitration Rules of the American Arbitration Association as provided in this Article VIII. In the case of monetary disputes relating to amounts billed for the payment of operating, maintenance or capital costs and expenses under the terms of this Agreement, the party from whom a payment is allegedly owing shall make such payment notwithstanding such dispute and may submit the dispute to arbitration under this Article VIII only by seeking a refund through such arbitration.

(b) If either of the Commission or the Railroad (the "non-defaulting party") considers the other (the "defaulting party") to be in default with respect to any of its obligations under this Agreement, the non-defaulting party shall give the defaulting party written notice of the alleged default and 30 days from the date of the notice to cure such default (unless such default is not reasonably curable within such 30 day period, in which event the defaulting party must commence to cure such default within such 30 day period and must diligently prosecute such cure). If the defaulting party fails, refuses or neglects to cure the default (or to commence cure of the default in the case of a default which is not reasonably curable within 30 days and thereafter diligently prosecute such cure) within such time to the satisfaction of the non-defaulting party, the aggrieved party shall have the right to (i) cure the default, and charge the costs and expenses thereof to the defaulting party; provided however, that in emergency situations, the non-defaulting party, immediately and in a reasonable manner, may act to cure the default or mitigate losses, or (ii) submit the matter to arbitration pursuant to the procedures set forth in this Article VIII.

(c) Arbitration in accordance with the procedures set forth in this Article VIII shall be the only available recourse for any disputes or defaults arising with respect to the respective rights and obligations of the Commission and the Railroad under this Agreement.

Section 8.2 Submission to Arbitration. The party entitled to submit any arbitrable matter to arbitration under the terms Section 8.1 (the "demanding party") shall do so by delivering written notice of its desire to submit a matter to

arbitration to the other party (the "noticed party"). Such written notice shall state the question or questions to be submitted for decision or award by arbitration.

Section 8.3 Appointment of Arbitration Board. The written notice provided pursuant to Section 8.2 also shall name the arbitrator selected by the demanding party. The noticed party shall have 20 days after receipt of said notice to select its arbitrator and provide written notice thereof to the demanding party. If the noticed party fails to select an arbitrator, such arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia (the "Chief Judge") upon application of either party after ten days' written notice to the other party. The two arbitrators so chosen shall select a third arbitrator or, if they fail to agree on a third arbitrator, the third arbitrator may be appointed by the Chief Judge in the manner set forth above. The three arbitrators so chosen shall comprise the arbitration board.

Section 8.4 Arbitration Procedures. The arbitration board constituted pursuant to Section 8.3 shall set the date, time and place for each hearing, shall give to each of the parties at least ten days' prior written notice of the date, time and place of the initial hearing and shall proceed without delay to hear and determine the matters in dispute. The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitration board may deem necessary to an understanding and determination of the dispute. The books and papers of the parties hereto, so far as they relate to matters submitted to arbitration, shall be open to the investigation of the arbitration board. The arbitration board or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party. The award shall be made promptly by the arbitration board and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing. Each of the parties hereto may be represented by counsel or other authorized representative at any hearing. The party intending to be so represented shall notify the arbitration board and the other party of the name and address of the representative at least three days prior to the date set for the hearing.

Section 8.5 Compliance with Decisions.

(a) Any award of an arbitration board made in accordance with Section 8.4 shall be final and binding upon the parties to such arbitration, and each party shall immediately make such changes in the conduct of such party's business or such payment as restitution, as the case may be, as in and by such award may be required.



(b) The parties agree that the arbitration board's award may be entered with any court having jurisdiction and the award may then be enforced as between the parties, without further evidentiary proceedings, the same as if entered by the court at the conclusion of a judicial proceeding in which no appeal was taken.

Section 8.6 Available Remedies. With respect to any decision rendered pursuant to Section 8.4 that determines that the noticed party is in default with respect to any of its obligations under this Agreement, actual damages, specific performance and the penalties set forth on Exhibit 2.2(b) attached hereto shall be the only remedies that the arbitration board has authority to grant. In no event shall the arbitration board have the authority to award exemplary or punitive damages. In addition, with respect to any dispute regarding dispatching, the arbitrators shall have the right to award dispatching responsibilities to the other party in accordance with Section 4.2(g).

Section 8.7 Costs and Expenses. Each party shall pay the compensation required and costs and expenses incurred by the member of the arbitration board selected by it or on its behalf and the fees, costs and expenses for its counsel, witnesses and exhibits. The compensation required and the costs and expenses incurred by the third member of the arbitration board shall be shared equally by the parties.

## ARTICLE IX TERM

Section 9.1 Commencement and Termination. This Agreement shall become effective on the date of this Agreement and shall continue in effect for the applicable portions of the Saugus Line in perpetuity, unless and until terminated in accordance with the provisions of this Section 9.1.

If the Railroad shall not have used the Shared Use Facilities associated with the Saugus Line or any substantial contiguous portion thereof for a period of five years, then at the Commission's request, the Railroad shall promptly notify the Commission in writing and seek authority from the ICC to either abandon or transfer the Railroad's Rail Freight Service on the Saugus Line or such substantial contiguous portion thereof. Upon the approval of the ICC, the Railroad shall consent to the termination of this Agreement as to the Shared Use Facilities associated with the Saugus Line or such substantial contiguous portion thereof. In addition to the foregoing, the Railroad may at any time seek ICC approval or exemption of the Railroad's abandonment of Rail Freight Service upon any portion of the Saugus Line.

Immediately upon the effective date of any ICC approval or exemption of the Railroad's abandonment of Rail Freight Service over a portion of the Saugus Line, this Agreement shall terminate as to the abandoned portion of the Saugus Line. Upon any such termination, (i) the amounts to be paid by the Railroad to the Commission for dispatching pursuant to Section 4.2(f) shall be adjusted based upon the percentage of the route miles of the Saugus Line originally subject to this Agreement as to which this Agreement has been terminated, and the amounts paid by the Railroad to the Commission for maintenance pursuant to Section 5.3 shall be equitably adjusted based upon the provisions of Section 5.3 and the methodology of Exhibit 5.2(b).

#### Section 9.2 No Termination by Commission; Remedies.

The Commission shall have no right to terminate this Agreement. In case of breach of this Agreement by Railroad, the Commission's sole remedies shall be (a) to seek monetary damages, or (b) to seek specific performance of the terms of this Agreement in accordance with the provisions of Article VIII. In case of breach of this Agreement by the Commission, the Railroad sole remedies shall be (a) to seek monetary damages or (b) to seek specific performance of the terms of this Agreement in accordance with the provisions of Article VIII. Each party acknowledges that specific performance of this Agreement in accordance with the provisions of Article VIII is an appropriate remedy because this Agreement cannot be terminated except as set forth in Section 9.1.

#### Section 9.3 Removal of Improvements. Upon any

termination of the Shared Use Agreement, the Railroad shall, at its sole cost and expense, remove any improvements to such line or contiguous portion owned by the Railroad from the property of the Commission.

### ARTICLE X BREACHES AND DEFAULT

Section 10.1 Costs of Enforcement. In any action to enforce this Agreement and/or any of its terms, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, the prevailing party also shall be entitled to collect all its reasonable costs in such action, including the costs of investigation, settlement, expert witnesses and reasonable attorneys' fees and costs, together with all additional costs incurred in enforcing or collecting any judgment rendered.

Section 10.2 Penalties and Fines. If any failure on the part of any party to perform in accordance with this Agreement shall result in a governmental fine, penalty, cost or charge being imposed or assessed on or against the other party, such other party shall give prompt notice to the non-complying

party, and the non-performing party shall promptly reimburse, defend and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith.

## ARTICLE XI MISCELLANEOUS

Section 11.1 Force Majeure. Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder, except obligations involving the payment hereunder of money to the other party or to a third party, during the time when such non-performance is occasioned by fire, earthquake, flood, explosion, wreck, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, inability to obtain labor, materials or supplies, or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable, to staff its operations so as to minimize disruptions with the Train service on the Shared Use Facilities provided by the other party.

### Section 11.2 Property Taxes.

(a) To the extent any real property taxes are payable with respect to any portion of the ~~Right-of-Way or any Shared Use Facility~~ by reason of the Railroad's use thereof, the Railroad shall pay such real property taxes prior to delinquency and shall protect, defend, indemnify and hold the Commission harmless from and against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees) the Commission may sustain or incur on account of any such real property taxes.

(b) To the extent that any real property taxes are payable with respect to any Shared Use Facility owned or used by the Commission by reason of its use by the Commission or its Operator or the Commission becoming a taxable entity, the Commission shall pay such real property taxes prior to delinquency and shall protect, defend, indemnify and hold the Railroad harmless from and against any and all liability, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) the Railroad may sustain or incur on account of any in such real property taxes.

### Section 11.3 Billing.

(a) Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to by the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made under this Agreement. Unless



otherwise specifically provided herein, billing shall be prepared in accordance with the schedules of Customary Additives, Materials Additives, material prices and equipment rental rates as agreed upon by the Chief Accounting Officers of the parties hereto from time to time. The Railroad shall pay to the Commission at the Office of the Treasurer of the Commission or at such other location as the Commission may from time to time designate, all the compensation and charges of every name and nature which in and by this Agreement the Railroad is required to pay in lawful money of the United States within 30 days after the rendition of bills therefor. Any amounts not paid within such 30 day period shall bear interest at a rate equal to the lesser of the prime rate of Bank of America plus 2% and the maximum rate permitted by law until paid. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

(b) Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment in full subject to the right to seek a refund through arbitration pursuant to Article VIII; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) after the amount is settled and/or the liability is established if in connection with a project for which a roadway completion report is required or in the case of claims disputed as to amounts of liability. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

(c) So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

(d) Should any payment become payable by the Commission to the Railroad under this Agreement, the provisions of paragraphs (a) through (c) of this Section 11.3 shall apply with the Railroad as the billing party and the Commission as the paying party, and payments by the Commission to the Railroad shall be made at such location as the Railroad may from time to time designate.

Section 11.4 Considered Actions. All references in this Agreement to actions that may or shall be "considered" or "investigated" by both or either of the parties hereto shall not be interpreted as creating a binding obligation of either party to take such action.

Section 11.5 Preferences. Except as hereafter determined by the mutual agreement of the Commission and the Railroad, neither of them nor their respective Operators shall seek in any administrative, legislative or judicial proceeding or otherwise to obtain preferences in the use of the Shared Use Facilities in excess of those provided to it, or seek to diminish such preferences provided to the other, under Articles II and IV. Notwithstanding the provisions of Article VIII, the Commission and the Railroad shall have recourse to the courts or any governmental agency having jurisdiction in the event of a violation of this Section 11.5, and, in addition to any available remedies for damages, the remedy of specific enforcement shall be available with respect thereto.

Section 11.6 Amendment or Waiver. Modifications or amendments to the scope, terms and conditions of this Agreement may be considered annually at the request of either party. No provision of this Agreement shall be altered, amended, modified, revoked or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, modification, revocation or waiver.

Section 11.7 Headings. The article and section headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

Section 11.8 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed as follows:

To the Railroad:

Southern Pacific Transportation Company  
 1515 Arapahoe Street  
 Denver, Colorado 80202  
 Attention: Mr. Glenn P. Michael  
 Vice President-Operations  
 Telecopy No.: 303-595-2015

*I. V. Fullerton*  
*Director - Accounts Payable*  
*and Collections*  
*One Park Plaza*  
*San Francisco, CA*

and

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105  
Attention: Cannon Y. Harvey, Esq.  
Vice President and General Counsel  
Telecopy No.: 415-495-5436

with a copy to:

Holme Roberts & Owen  
1700 Lincoln, Suite 4100  
Denver, Colorado 80203  
Attention: G. Kevin Conwick, Esq.  
Telecopy No.: 303-866-0200

To the Commission:

Los Angeles County Transportation Commission  
818 West Seventh Street, Suite 1100  
Los Angeles, California 90017  
Attention: Mr. Neil Peterson,  
Mr. Richard Stanger and  
Mr. James Wiley  
Telecopy No.: 213-236-9504

with a copy to:

Dewey Ballantine  
333 South Hope Street  
Los Angeles, California 90071  
Attention: Alan Wayte  
Telecopy No.: 213-625-0562

Section 11.9 Memorandum of Agreement. The parties shall cause a memorandum of this Agreement in the form attached hereto as Exhibit 11.9 to be recorded in the real property records of Los Angeles County, California.

Section 11.10 Superseding Agreement. This Agreement supersedes, and renders null and void, the Shared Use Agreement (Saugus and Ventura Lines) dated April 18, 1991 between the Railroad and the Commission as it applies to the Saugus Line, except with respect to obligations or other matters arising prior to the date hereof. This Agreement also supersedes, and renders null and void the following agreements, except with respect to obligations or other matters arising prior to the date hereof: (i) the Temporary Shared Use Agreement (Taylor Yard) dated October 26, 1992 between the Railroad and the Commission except for the obligations of the Commission under Section 2.5 thereof, (ii) as between the parties hereto, the Mission Tower Agreement and (iii) the East Bank Agreement to the extent that agreement relates to that portion of the Saugus Line between and including Alhambra Junction and Bridge 5.

Section 11.11 Survivability. Articles VII and VIII shall survive termination of this Agreement as to matters arising from events occurring prior to termination, and any and all obligations to make payments in respect of costs incurred at or prior to the date of termination shall survive termination of this Agreement.

Section 11.12 Interpretation. As used herein, the word "including" shall mean "including without limitation."

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on this 16th day of December, 1992.

THE RAILROAD:

SOUTHERN PACIFIC  
TRANSPORTATION COMPANY,  
a Delaware corporation

By: [Signature]

Name: S. D. STEEL

Title: Vice-President

THE COMMISSION:

LOS ANGELES COUNTY  
TRANSPORTATION COMMISSION

By: [Signature]

Name: Neil Peterson

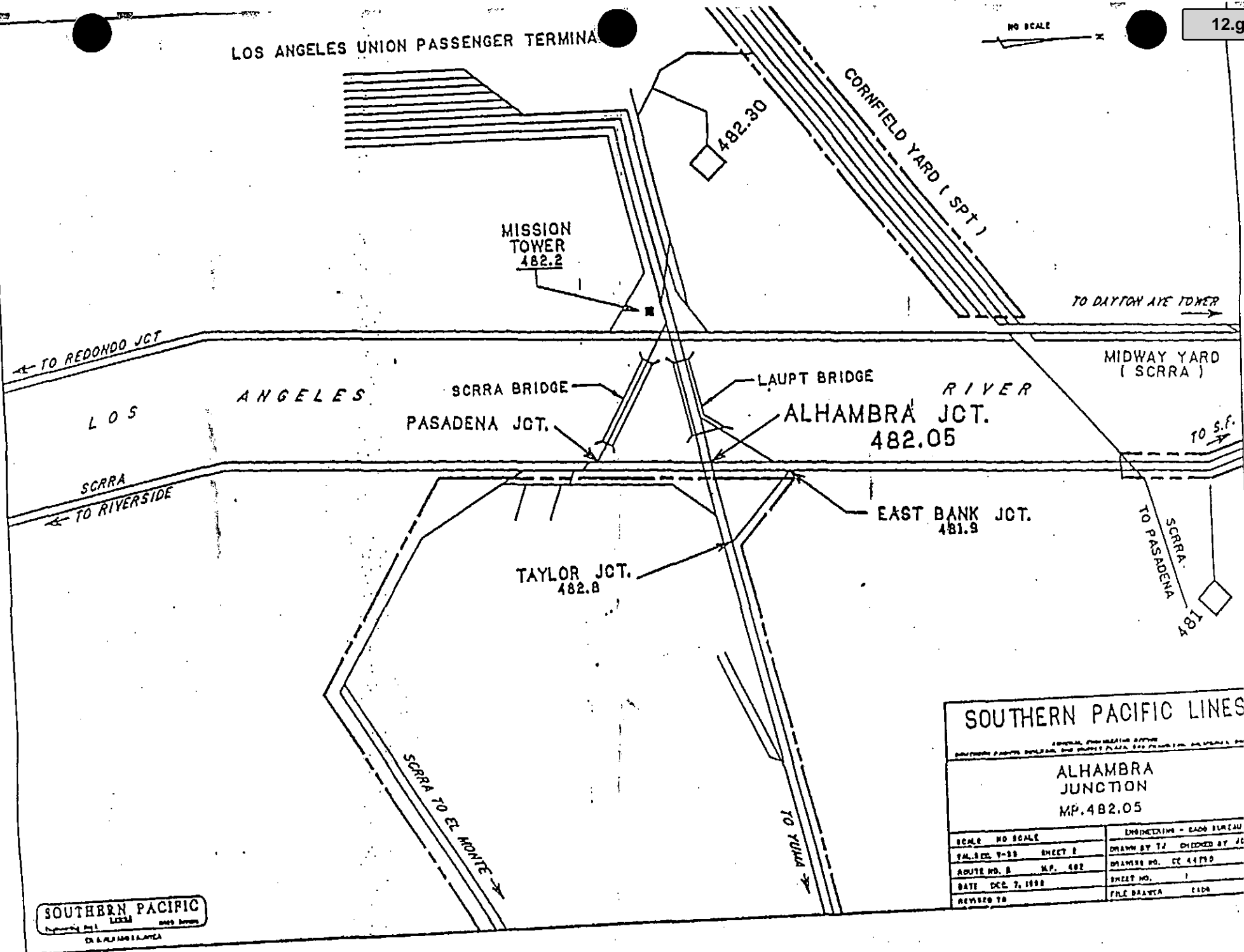
Title: Executive Director

EXHIBIT 1.5

LOS ANGELES UNION PASSENGER TERMINAL

NO SCALE

12.g



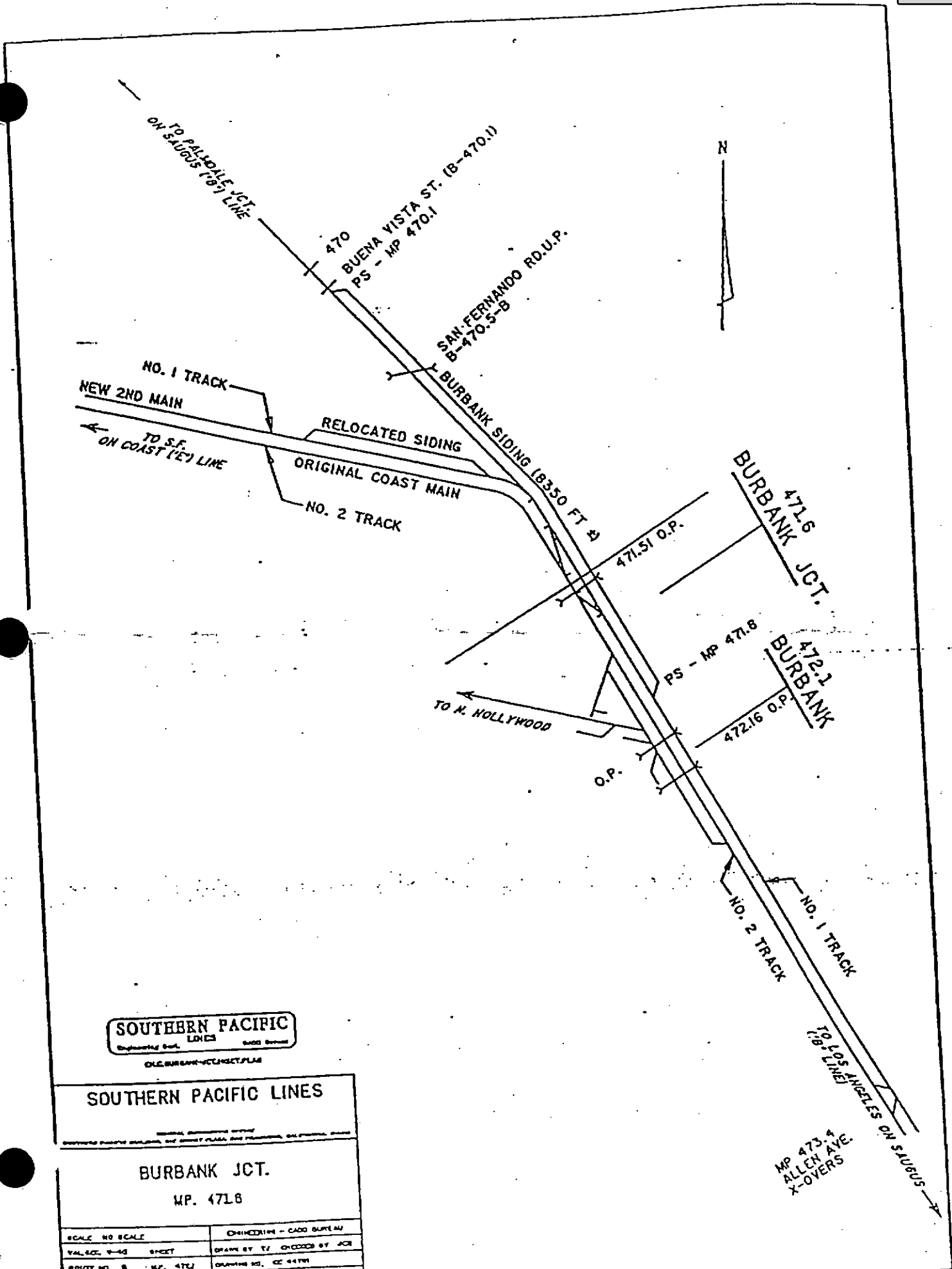
SOUTHERN PACIFIC  
10000  
CH. 6.0000000000000000

SOUTHERN PACIFIC LINES			
GENERAL INFORMATION SHEET			
ALHAMBRA JUNCTION			
MP. 482.05			
SCALE	NO SCALE	ENGINEERING	BY BUREAU
PAL. 800	Y-30	SHEET	2
ROUTE NO.	8	MP.	482
DATE	DEC. 7, 1900		SHEET NO.
REVISED TO			FILE DRAWN

Attachment: Exhibit C - Shared Use Agreement Saugus Line (8162 : SBCTA/SCRRRA Acknowledgement

EXHIBIT 1.13



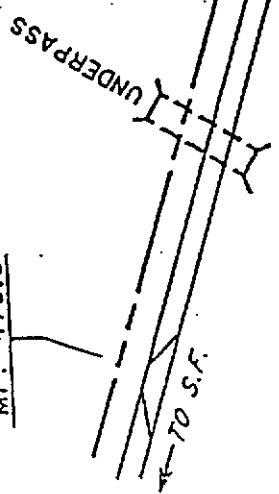


Attachment: Exhibit C - Shared Use Agreement Saugus Line (8162 : SBCTA/SCRRRA Acknowledgement Agreement for Rail ROW & UPRR Billing

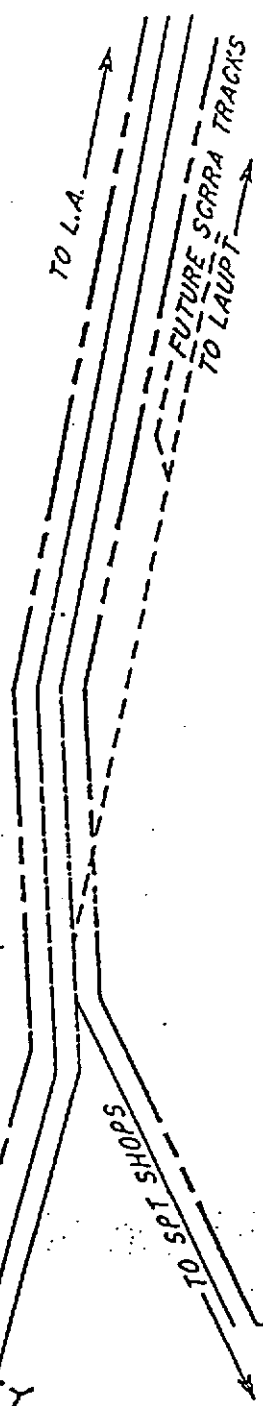
**EXHIBIT 1.19**

N  
NO SCALE

UNIVERSAL  
CROSSOVER  
MP. 479.3



COMMUTER RAIL  
INTERLOCKER  
MP. 479.7



SOUTHERN PACIFIC LINES	
COMMUTER RAIL INTERLOCKER MP. 479.7	
SCALE: NO SCALE	ENGINEERING - ELM TUGLOW
PA. DES. 8-51	SHEET 5
DATE: MAR. 8	NO. 479.7D
DATE: DEC. 7, 1992	SHEET NO.
FIRE DRAWER 64076	

SOUTHERN PACIFIC  
Engineering Dept.  
LORAIN  
DATE: 10/92  
BY: C.E. 103 - LORAIN L.A. 11/92

EXHIBIT 1.23

RAILROAD CUSTOMARY ADDITIVES FOR THE YEAR 1989

<u>MAINT. OF WAY - AGREEMENT</u>	<u>PERCENT</u>	<u>BASE</u>	<u>AMOUNT</u>
ACTUAL LABOR (straight and overtime)	7.36%	\$100.00	7.36
VACATIONS	4.30%	\$100.00	4.30
PAID HOLIDAYS	0.69%	\$100.00	0.69
PERSONAL LEAVE DAYS	29.12%	\$112.35	32.72
PAYROLL TAXES	18.12%	\$100.00	18.12
HEALTH AND WELFARE	38.07%	\$100.00	38.07
SUPV. ADMIN. & USE OF TOOLS*			<u>101.26</u>
COMPENSATION INSURANCE	3.00%	\$100.00	3.00
PERSONAL LIABILITY AND PROPERTY DAMAGE (PL&PD)	1.00%	\$100.00	<u>1.00</u>
			<u>105.26</u>

\* Supervision Administration and Use of Tools shall include the following:

Supervision shall mean the officers who do not charge their time to individual projects but who are directly supervising the labor being performed (i.e. Roadmasters and various supervisors).

Administration shall mean the salaries of District Engineers, Construction Engineers, etc. associated with the Engineering Department.

Use of tools shall mean the use of Railroad owned small tools (including, but not limited to, wrenches, mauls, claw tools, etc. but not charged for individually.

EXHIBIT 1.37

RAILROAD MATERIALS ADDITIVES FOR THE YEAR 1989

PERCENT

STORE EXPENSE\*  
FOREIGN LINE FREIGHT  
ON-LINE FREIGHT

PURCHASING EXPENSE  
HANDLING EXPENSE\*\*  
SALES AND USE TAX

13%  
6%  
\$.0375 per  
net ton miles  
1%  
5% FHWA  
(as governed by  
specific city  
and state)

---

\* Store Expense shall be added to other track material and non-track material handled by Railroad that is not a direct vouchered item.

\*\* Handling Expense shall be a charge for Federal Highway Administration ("FHWA") projects covering all material used on



EXHIBIT 1.38

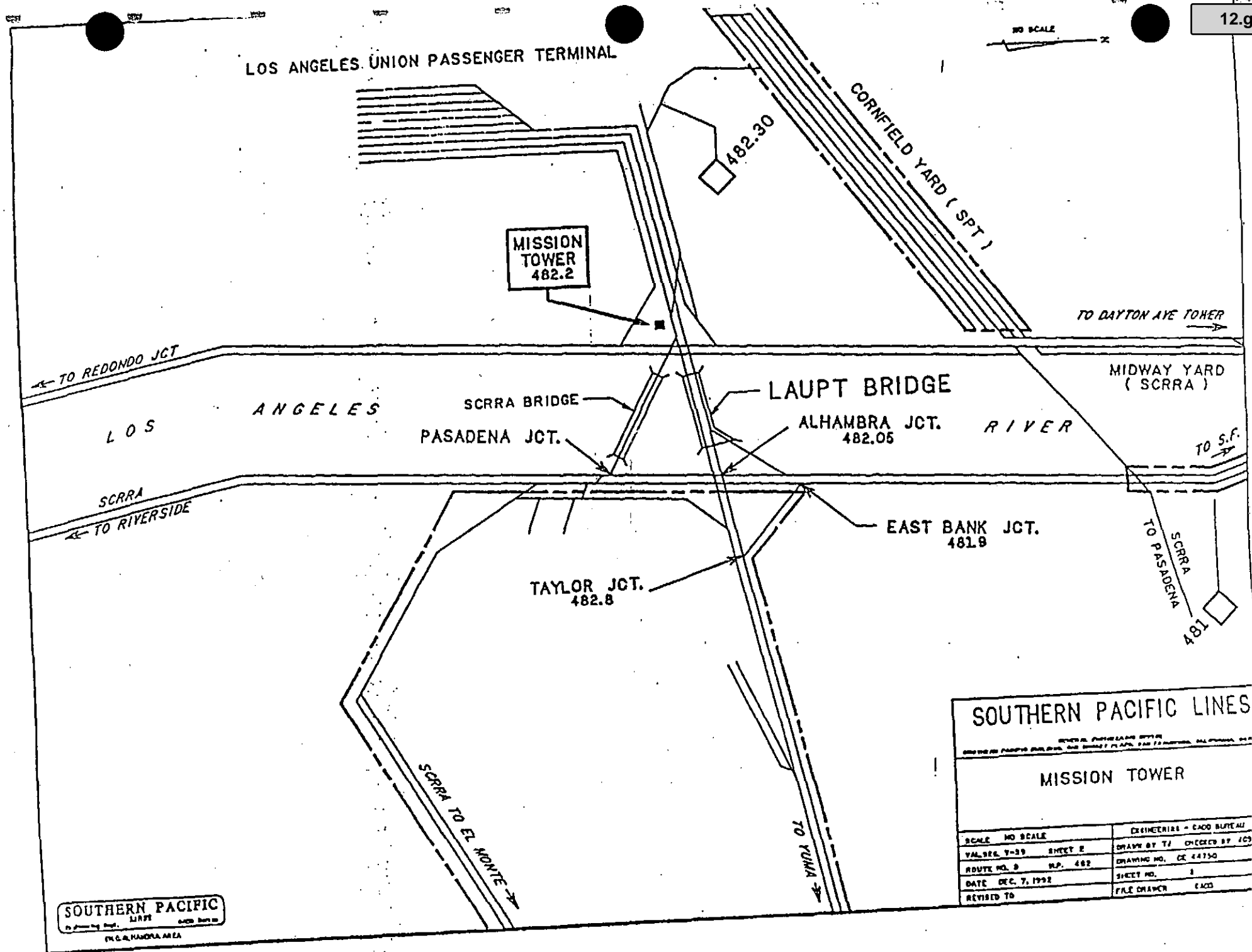


EXHIBIT 1.43

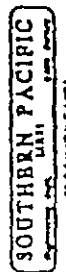
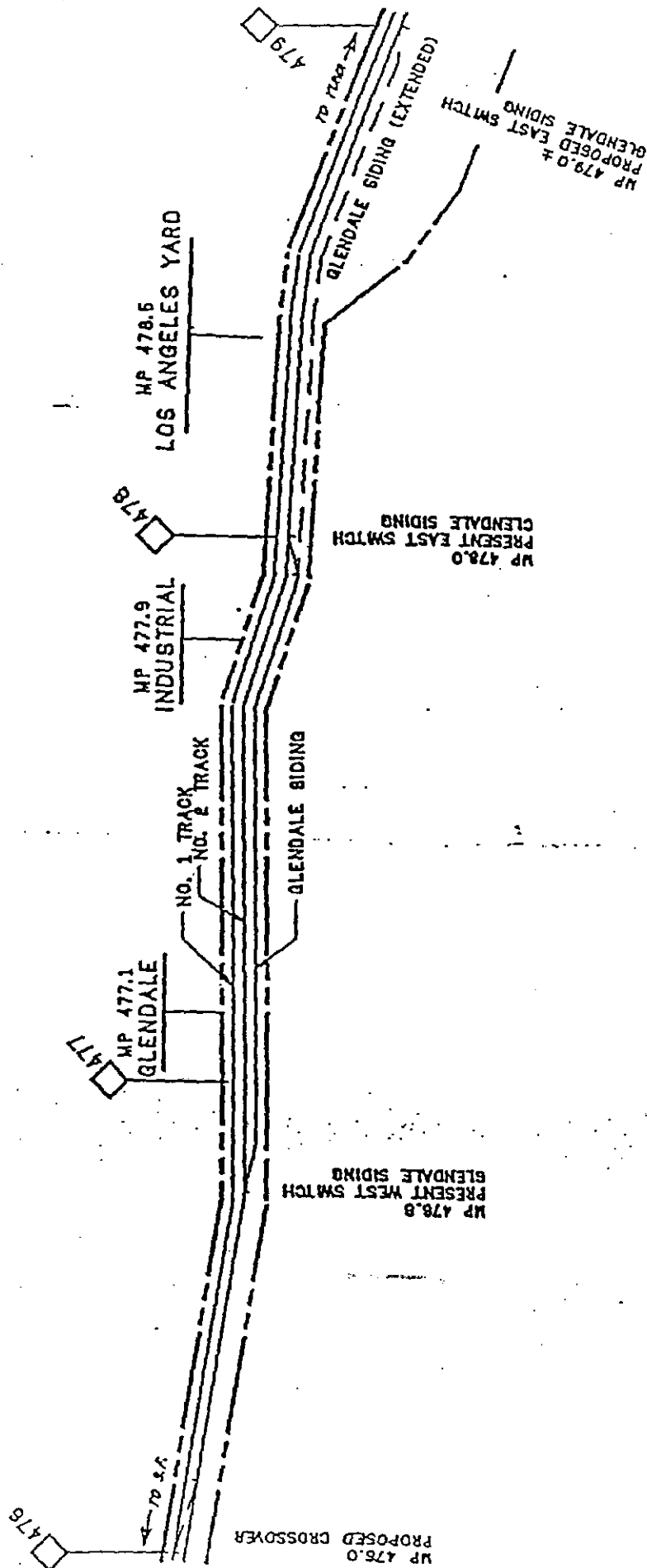


EXHIBIT 1.56



NO SCALE



# SOUTHERN PACIFIC LINES

STANDARD TRACKING OFFICE  
CONSTRUCTION PLANS, TRACKS, AND SIGNALS, SAN FRANCISCO, CALIF.

## LOS ANGELES

### LOCATION OF GLENDALE SIDING

SHEET NO. 3242	ENGINEERING - LEO B. BUREAU
VALLEY V-33	SHEET 1
ROUTE NO. 8	M.P. 476-479
DATE DEC. 7, 1991	SHEET NO. 1
REVISED TO	FILE DATED

SOUTHERN PACIFIC  
Engineering Dept. 12700  
San Francisco, CA 94115-12700

EXHIBIT 2.2 (b)



## PENALTIES FOR DELAYS

The Railroad shall pay to the Commission penalties, as specified below, for each time that a freight train moving in the predominant direction of Commuter Service during a Peak Commuter Period that would not have been permitted to do so at that time but for the provisions of Section 2.2(b)(iii) is the sole and proximate cause of a delay, as indicated below, in arriving at the final destination of a scheduled Commuter Train moving in the predominant direction of Commuter Service during a Peak Commuter Period.

Number of Minutes of Delay  
Caused Solely by Railroad's Train

<u>equal to or more than</u>	<u>but less than</u>	<u>Penalty per Late Commuter Train</u>
0	10	\$ -0-
10	15	200
15	20	400
20	25	600
25	30	800
30	any delay over 30	1,000

EXHIBIT 2.2(i)

LOS ANGELES UNION PASSENGER TERMINAL

NO SCALE

12.g

MISSION  
TOWER  
482.2

482.30

CORNFIELD YARD (SPT)

TO DAYTON AVE TOWER

MIDWAY YARD  
(SCRR)

LOS ANGELES

SCRR BRIDGE  
PASADENA JCT.

LAUPT BRIDGE

ALHAMBRA JCT.  
482.08

RIVER

SCRR  
TO RIVERSIDE

EAST BANK JCT.  
481.9

TAYLOR JCT.  
482.8

TO PASADENA  
SCRR  
481

SCRR TO EL MONTE

TO YUMA

SOUTHERN PACIFIC LINE

GENERAL ENGINEERING DIVISION  
SOUTHERN PACIFIC RAILROAD, SAN FRANCISCO, CALIF.

LAUPT BRIDGE  
AND CONNECTING TRACKS

SCALE	NO SCALE	ENGINEERING - CADD BUREAU
VALUED Y-30	SHEET 2	DRAWN BY TJ CHECKED BY
ROUTE NO. 8	M.P. 482	DRAWING NO. 22 14780
DATE	DEC. 7, 1922	SHEET NO. 2
REVISED TO		FILE DRAWER C-200

SOUTHERN PACIFIC  
LOS ANGELES  
DIA. ALHAMBRA AREA

Attachment: Exhibit C - Shared Use Agreement Saugus Line (8162 : SBCTA/SCRR Acknowledgement

**EXHIBIT 4.2 (b)**



May 7, 1992

Mr. Richard Stanger  
Executive Director  
Southern California Regional Rail  
Authority  
818 West Seventh Street  
Los Angeles, California 90017

RE: Relative Operating Priorities of Amtrak and  
SCRRA Trains

Dear Mr. Stanger:

The purpose of this letter is to set forth the agreement of the parties concerning operating priorities and the impact on incentive/penalty performance arrangements governing Amtrak trains operated on rail lines over which SCRRA commuter trains are also operated; provided, however, that it does not govern operations of trains for the benefit of either Amtrak or SCRRA within the rail yard at Los Angeles Union Passenger Terminal ("LAUPT"), which is governed by a separate agreement between the parties.

Amtrak and SCRRA agree that trains of either party operating toward LAUPT in the morning peak hours (i.e., 6:00 a.m. to 9:00 a.m.) and away from LAUPT in the afternoon peak hours (i.e., 4:30 p.m. to 7:00 p.m.) shall be given preference over trains operating in the opposite direction. When trains are operating in opposing directions in periods other than the peak hours identified in the preceding sentence and one train is operating later than its scheduled time, the train that is operating on-time shall be given preference. When trains of both parties are operating in the same direction at any time, the trains will be handled in the order presented without regard to whether they are operating on-time or late.

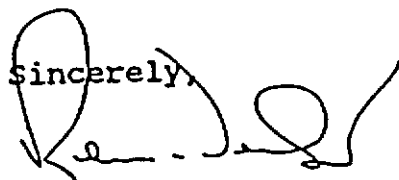
Amtrak agrees that it will undertake to amend the performance incentive/penalty provisions of its operating agreements with freight railroads to the extent they apply to operation of Amtrak trains on rail lines owned or formerly owned by such freight railroads that are still operated or maintained by such freight railroads. The purpose of the amendments will be to provide the freight railroad relief in measuring on-time performance for delays to Amtrak trains 1) as a result of the preference accorded pursuant to the first sentence of the preceding paragraph, 2) as a result of an Amtrak train being required to operate behind a commuter train operating in the same direction in the morning or afternoon peak hours because it was operating more

Mr. Richard Stanger  
SCRRA  
Page 2

than five minutes later than its scheduled time and the commuter train was operating within five minutes of its scheduled time, or 3) as a result of a commuter train being given preference pursuant to the second sentence of the preceding paragraph, but only if the Amtrak train that was operating late had not been delayed by actions of the contracting freight railroad.

If the provisions set forth above accurately describe your understanding of the agreement between Amtrak and SCRRA with respect to operating priorities and freight railroad performance arrangements, please have the extra copy of this letter signed on behalf of SCRRA in the space provided below, and return one copy to me.

Sincerely,



Robert C. VanderClute

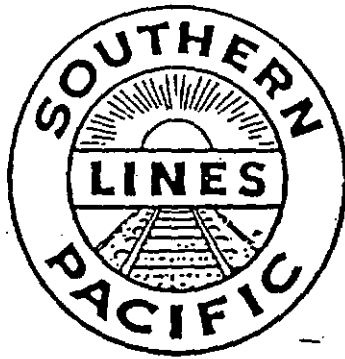
Agreed by Southern California  
Regional Rail Authority

By: 

Title: EXECUTIVE DIRECTOR

EXHIBIT 5.1





# PACIFIC REGION TIMETABLE

# 1

EFFECTIVE SUNDAY, OCTOBER 25, 1992  
AT 12:01 A.M.

G. P. MICHAEL  
*Vice President - Operations*

L. L. PHIPPS  
*General Manager*

## MOJAVE DISTRICT

speed, the train must be STOPPED and sufficient hand brakes set to prevent movement. The train must not proceed until additional dynamic braking is obtained, tonnage reduced, or retainers on all cars placed in operative position. The train must not proceed except as instructed by a Manager-Crew Development and Performance or other proper authority. Refer to Rule 919 for retainer use instructions.

WESTWARD ↓		STATIONS		↑ EASTWARD	
Station Numbers	Siding Feet	Saugus Line			Mile Post
20965		BURBANK JCT			471.3
18290	8000	BRIGHTON		C	470.7
.....		CP BRIGHTON		T	470.1
18280		SUN VALLEY		C	467.9
18275	3070	PACOMA		D	463.4
		SAN FERNANDO (Metrolink)		T	460.9
18265	6050	SYLMAR		C	459.2
18250	5040	SAUGUS			450.6
.....	....	SANTA CLARITA		A	448.7
18240		HUMPHREYS		B	443.1
18235	4990	LANG		S	438.8
18225	6090	RAVENNA			429.0
18215		PARIS		QT	425.0
18210		VINCENT		DTC	420.5
18155		PALMDALE JCT		ABS	414.4
(56.9) (Route B)					

## Lone Pine Branch

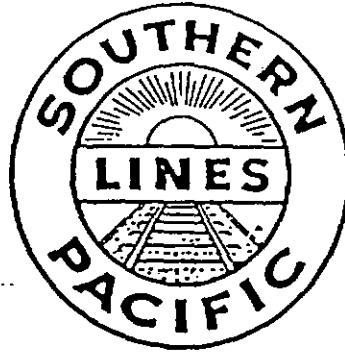
...		END OF BRANCH	Y		431.7
17955		SEARLES	TY		428.4
17935		CANTIL		D	402.5
17930		CHAFFEE		T	380.8
17900		MOJAVE	QT	C	379.5
(52.2) (Route 8AM)					

## MAXIMUM AUTHORIZED SPEED FOR TRAINS

BETWEEN		SAUGUS LINE		ALL TRAINS	
PALMDALE JCT and BURBANK JCT					
	PSGR	FRT		PSGR	FRT
414.4 and 417.3 .....	50	50	457.2 and 459.0 .....	40	40
417.3 and 427.0 .....	30	30	459.0 and 471.0 .....	60	50
427.0 and 450.0 .....	25	25	471.0 and 471.5 .....	50	35
450.0 and 454.8 .....	40	40	471.5 to No. 1 Track .....	50	40
454.8 and 456.3 .....	25	25	471.5 Turnout to		
456.3 and 457.2 .....	30	30	No. 2 Track .....	35	35

## LONE PINE BRANCH

MOJAVE and END OF BRANCH		40
Exceptions:		
422.0 and 426.0	..... 30	Exceptions: Westward
		422.0 and 412.9
		..... 30



# **SOUTHWEST REGION TIMETABLE**

# **1**

**EFFECTIVE SUNDAY, OCTOBER 25, 1992  
AT 12:01 A.M.**

---

**G. P. MICHAEL**  
*Vice President - Operations*

**M. L. WELLS**  
*General Manager*

## BASIN DISTRICT

WESTWARD ↓		STATIONS		↑ EASTWARD	
Station Number	Siding Feet	West Line			Mile Post
...		SANTA FE INTERLOCKING	M		538.7
25000		3.7 WEST COLTON	QT		535.0
24920	6259	5.3 SOUTH FONTANA	T		529.7
24795		2.2 KAISER			527.5
24520	5914	3.7 QUASTI		C	523.8
24515	5621	3.6 ONTARIO		T	520.2
24510	6173	2.4 MONTCLAIR			517.8
24245	14706	3.5 POMONA		C	514.3
24215	6231	7.5 WALNUT			506.8
24205	5691	3.3 MARNE			503.5
...		0.9 MARNE X-OVERS			502.6
24000	14909	1.1 CITY OF INDUSTRY	QT		501.5
...		0.5 TWENTY-SEVEN X-OVER			501.0
23995	7029	3.7 BASSETT			497.3
23677	7238	2.7 EL MONTE			494.6
23624		6.9 ALHAMBRA		2 MT	487.7
...		0.8 AURANT X-OVER		CTC	486.9
...		1.3 VALLEY BLVD X-OVERS			485.6
23500		2.7 LATC	QT	2 MT	482.9
23610		0.1 TAYLOR JCT	MT	No. 1 CTC	482.8
21089		0.6 MISSION TOWER	MQT	2	482.2
21087		0.3 EAST BANK JCT	M	M	481.9
21085		1.2 DAYTON AVE TOWER	MO	T	480.7
....		1.3 CP METRO			479.4
....		0.8 CP TAYLOR		2MT	478.6
21000		0.1 LOS ANGELES YD	QT		478.5
....		1.1 CP FLETCHER		CTC	477.4
20985		0.3 GLENDALE			477.1
...		3.7 ALLEN AVE X-OVERS			473.4
....		1.3 BURBANK (AMTK-METRO)			472.1
....		0.2 CP OLIVE			471.9
20965		0.3 BURBANK JCT	T		471.6 462.4
(67.4)		(Route B)			

POMONA: Clearance point East end to clearance point East end of crossover 8290 feet. Clearance point West end to West end of crossover 5710 feet.

CITY of INDUSTRY: New siding 5240 feet. Extension 7862 feet.

CP Olive: Located on No. 1 track.

**BASIN DISTRICT**  
**MAXIMUM AUTHORIZED SPEED FOR TRAINS**

<b>WEST LINE</b>			
<b>Between SANTA FE INTERLOCKING and BURBANK JCT. via WEST LINE</b>			
<b>LIMITS</b>	<b>PSGR</b>	<b>FRT</b>	
539.0 and 538.7 No. 1 Track .....	30	30	Mission Tower and East Bank Jct. .... 10 10
538.7 and 538.6 No. 1 Track (ATSF xing) .....	20	20	Pasadena Jct. and East Bank Jct. .... 15 15
538.6 and 537.6 No. 1 Track .....	50	50	482.8 and 481.9 ..... 10 10
539.0 and 538.7 No. 2 Track .....	30	30	481.9 and 480.6 ..... 20 20
538.7 and 537.6 No. 2 Track .....	20	20	Exception Eastward 480.4 and 481.0 ..... 15 15
537.6 and 536.5 ..... 50 50			Crossovers between No. 1 and No. 2 tracks at Dayton Ave. Tower
536.5 and 532.4 ..... 60 50			MP 480.7 ..... 15 15
532.4 and 495.0 ..... 60 60			480.6 and 477.4 ..... 40 40
495.0 and 494.4 ..... 65 60			477.4 and 471.5 ..... 50 40
494.4 (Bridge) ..... 40 40			473.2 Through X-over ..... 25 25
494.4 and 491.3 ..... 65 60			To Saugus Line
491.3* and 489.9* ..... 30 30			Via No. 1 Trk ..... 50 40
489.9 and 485.8 ..... 50 50			Via No. 2 Trk ..... 35 35
485.8 and 484.0 No. 1 Track .....	30	30	To Coast Line ..... 35 35
484.0 and 482.8 No. 1 Track .....	20	20	
485.8 and 483.0 No. 2 Track .....	20	20	
483.0 and 482.8 No. 2 Track .....	10	10	
Taylor Jct. and Pasadena Jct. ....	10	10	
Taylor Jct. or East Bank Jct. and Mission Tower .....	15	15	

**WEST COLTON:**  
 Balloon Track and both legs of wye ..... 15

**Maximum Authorized Speed Exceptions:**

Light engines with less than 12 axes must not exceed 45 MPH between: MP 483.0 and MP 525.0 on West Line.

"Key" trains must not exceed 30 MPH between:

West Line ..... Burbank Jct, MP 462.4 and Walnut, MP 505.0.  
 Pomona, MP 512.0 and MP 516.0.  
 South Fontana, MP 530.0 and West Colton, MP 535.7.

Loaded unit steel slab train must not exceed 30 MPH

No. 2 Track (Rule 94 Territory —  
 MP 482.8 and MP 485.5) ..... Restricted Speed  
 Eastward (via No. 1 Track) MP 473.4 and MP 479.4  
 (Against Current of Traffic) ..... 20  
 Westward (via No. 2 Track) MP 479.4 and MP 473.4  
 (Against Current of Traffic) ..... 20

\*Rule 10(E) At these locations, speed may be increased as soon as lead engine has passed increase speed sign.

EXHIBIT 5.2(b)

# COST BREAKDOWN OF AGREED ANNUAL SHARE

Page 1 of 4

## I. Saugus-Ventura Shared Use Agreement (existing agreement)

- (1) Saugus (MP 449.4)  
to  
Commuter Rail Interlocker (C.R.I.) -  
(MP 479.71) = 30.31 miles
- (2) Second Main-Burbank Jct. to C.R.I.  
8.21 miles equated to = 6.81 miles
- (1)+(2) Saugus (MP 449.4) to C.R.I.  
(MP 479.4) = 37.12 miles
- (3) Moorpark (MP 426.4)  
to  
Burbank Jct. (MP 462.45) = 36.05 miles
- Total (1)+(2)+(3) = 73.17 miles

% of mileage on Saugus Line = 50.73%

% of mileage on Ventura Line = 49.27%

As Stated in Agreement:

Car Mile Component (CMC)	= 976,950
Route-Mile Component (RMC)	= 275,550
Agreed Annual Share (AAS)	= 1,252,500

### Adjusted Agreed Annual Share for Corrected Mileage:

	<u>Ventura Line</u>	<u>Saugus Line</u>	<u>Total</u>
CMC	485,028	499,401	984,429
RMC	<u>136,813</u>	<u>140,867</u>	<u>277,680</u>
AAS	621,841	640,268	1,262,109

Cost/Mile		
CMC	13,455	13,454
RMC	<u>3,795</u>	<u>3,795</u>
Total		
Cost/Mile	17,250	17,249

Cost per Mile = 17,249

*what is the corrected mileage*



Page 2 of 4

Additional Mileage on Saugus Line  
Saucus to Santa Clarita

Saugus (MP 449.4)		
to		
Santa Clarita (MP 448.55)	=	0.85 mile
Original Mileage	=	37.12 miles
New Mileage	=	37.97 miles

New Saugus Line AAS  
 Santa Clarita (MP 448.55)  
 to  
 C.R.I. (MP 479.71)

CMC	13,454 X 37.97	=	510,848
RMC	3,795 X 37.97	=	144,096
New Total AAS for Saugus Line		=	654,944

II. Maintenance Cost for New Agreements

A. Saugus Line

1. a. Santa Clarita (MP 448.55)		
to		
Palmdale Jct. (MP 414.42)	=	34.13
b. Double Track at Vincent		
MP 419.98 to MP 421.33 = 1.35		
Equated Mileage - 1.35 X .83	=	1.12
Mileage Santa Clarita to		
Palmdale Jct.	=	35.25 miles

Increased because of curvature:

- Saugus - Ventura Agreement
  - Average Curvature - 0.35 degree
  - Area Maintenance Factor - 1.05
- Santa Clarita - Palmdale Jct.
  - Average Curvature - 2.20 degrees
  - Area Maintenance Factor - 1.30
- Relative Maintenance Factor -  $\frac{1.30}{1.05}$  1.24

II. Maintenance Cost for New Agreements (continued)

Agreed Annual Share (AAS)  
from Santa Clarita-Palmdale Jct. = 721,848

b. Second Main Track  
Equated Mileage  $2.33 \times 0.83 = \frac{1.93}{4.26}$

Agreed Annual Share  
from C.R.I - Alhambra Jct. = 73,481

CMC	485,028
RMC	<u>136,813</u>
AAS	621,841

Page 4 of 4

## III. Summary

## A. Maintenance Cost - Santa Clarita-Alhambra Jct.

	<u>CMC</u>	<u>RMC</u>	<u>AAS</u>
1. Santa Clarita-C.R.I.	510,848	144,096	654,944
C.R.I.-Alhambra Jct.	<u>57,314</u>	<u>16,167</u>	<u>73,481</u>
Total Santa Clarita-Alhambra Jct.	568,162	160,263	728,425

## 2. Cost Per Mile:

$$\begin{aligned} \text{CMC} &= 13,454/\text{mile} \\ \text{RMC} &= \underline{3,795/\text{mile}} \end{aligned}$$

$$\text{Total Cost Per Mile} = 17,249/\text{mile}$$

## B. Maintenance Cost - Palmdale-Santa Clarita

$$\begin{aligned} \text{CRC} &= 588,074 \\ \text{RMC} &= \underline{133,774} \end{aligned}$$

$$\text{Total Palmdale-Santa Clarita} = 721,848$$

## 2. Cost Per Mile:

$$\begin{aligned} \text{CMC} &= 13,454 \times 1.24 = 16,683/\text{mile} \\ \text{RMC} &= 3,795 = \underline{3,795/\text{mile}} \end{aligned}$$

$$\text{Total Cost Per Mile} = 20,478/\text{mile}$$

Revised December 2, 1992

EXHIBIT 11.9

RECORDING REQUESTED BY AND  
AFTER RECORDING RETURN TO:

Dewey Ballantine  
333 South Hope Street,  
Suite 3000  
Los Angeles, California 90071  
Attention: Alan Albright, Esq.

This instrument is exempt from  
Recording Fees (Govt. Code § 27383)  
and from Documentary Transfer Tax  
(Rev. & Tax Code § 11922)

**MEMORANDUM OF SHARED USE AGREEMENT (SAUGUS LINE)**  
**(LOS ANGELES COUNTY)**

THIS MEMORANDUM OF SHARED USE AGREEMENT (SAUGUS LINE) (this "Memorandum"), dated as of December \_\_, 1992, is entered into by SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Railroad") and LOS ANGELES COUNTY TRANSPORTATION COMMISSION (the "Commission"), with reference to the following facts:

A. During the past two years, the Commission has acquired from the Railroad, and from the Union Pacific Railroad Company, certain real property and real property rights making up a contiguous rail right-of-way from and including the Alhambra Junction (as defined below) north to and including the Palmdale Junction (as defined below) (the "Right of Way"), located in Los Angeles County, California and more particularly described in Exhibit A attached hereto. As used herein, the term "Alhambra Junction" means the junction located at milepost 482.05, at the intersection of the Railroad's Alhambra line and the Commission's East Bank line, including all Crossovers at present and future locations in the vicinity thereof; and the term "Palmdale Junction" means the clear point of the junction switch located at milepost 414.42.

B. The Railroad owns an easement and trackage rights on and over the Saugus Line (as defined below) to provide Rail Freight Service, as set forth in the Shared Use Agreement (Saugus Line), dated of even date herewith, between the Railroad and the Commission (the "Agreement"). As used herein, the term "Saugus Line" means all existing main line Tracks, Crossovers, passing sidings, bridges and signal systems between and including Alhambra Junction and Palmdale Junction (excluding the Glendale

Siding), as well as the LAUPT Bridge and future main line Tracks, Crossovers and passing sidings constructed over the term of the Agreement pursuant to Sections 2.3, 2.4, 2.5 and 2.7 thereof. Capitalized terms used herein without definition shall have the meanings given to such terms in the Agreement.

C. Pursuant to the Agreement, the Railroad and the Commission agreed, subject to the terms and conditions set forth therein, to share the use of all existing Saugus Line railroad tracks and related improvements and all other Saugus Line railroad tracks and related improvements constructed pursuant to the Agreement (except in each case (i) passenger stations, passenger loading platforms and layover facilities to be constructed by the Commission, (ii) the yards and the industrial, switching and storage tracks identified in the Agreement, and (iii) the Glendale Siding) and to share the use of the LAUPT Bridge and connecting Tracks (collectively, the "Shared Use Facilities"). Pursuant to the Agreement, the Railroad and the Commission also agreed as to certain maintenance and repair obligations regarding the Shared Use Facilities and other improvements located in the Right of Way.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Railroad and the Commission hereby agree as follows:

1. The Agreement is hereby incorporated herein by reference with the same force and effect as if fully set forth herein. In the event of any conflict between the terms of this Memorandum and the terms of the Agreement, the terms of the Agreement shall prevail. The term of the Agreement is perpetual unless sooner terminated in accordance with its terms.

2. Pursuant to and as more fully set forth in the Agreement, the Railroad and the Commission shall each have the right to use all the Shared Use Facilities, subject to the terms and conditions contained in the Agreement. The Railroad and the Commission shall share the costs of maintenance and repair of the Shared Use Facilities, and any liability that may be incurred in connection with the Shared Use Facilities, in accordance with the provisions of the Agreement.

3. The Shared Use Facilities shall be owned as follows:

(a) The Commission shall own all Shared Use Facilities existing on the date of execution of the Agreement.

(b) The Railroad shall own all future improvements located on the Right of Way that are constructed at the sole cost and expense of the Railroad.

(c) The Commission shall own the future improvements located on the Right of Way that are constructed or installed at the Commission's sole cost and expense.

(d) The ownership of any future improvements funded jointly by the Commission and the Railroad shall be as mutually agreed to by them.

4. Nothing in the Agreement shall be construed as granting or reserving to the Railroad any interest or right in the Right of Way other than the rights expressly provided in the Agreement, and the Commission reserves the right to use the Right of Way for any purpose other than providing freight service, provided that such use does not interfere with the Railroad's ability to provide service-competitive Rail Freight Service (the Commission reserves, however, the right to use the Right of Way for the operation of Commission Non-Revenue Equipment).

5. The Agreement supersedes, and renders null and void, the Shared Use Agreement (Saugus and Ventura Lines), dated April 18, 1991, among the Railroad, the Commission and Ventura County Transportation Commission (a memorandum of which was recorded in the Official Records of the County of Los Angeles, California on June 14, 1991, at Document Number 91-897516) to the extent it applies to the Saugus Line, except with respect to obligations or other matters arising prior to the date of the Agreement that state that they survive the termination thereof.

6. As more fully set forth in the Agreement, the Railroad has a "right of first offer" to purchase all or any portion of the Right of Way located within 25 feet of any Track which constitutes a Shared Use Facility if the Commission proposes to sell such property to any person other than a financially and operationally capable governmental agency.

IN WITNESS WHEREOF, this Memorandum has been executed and delivered by the Railroad and the Commission as of the date first written above.

THE RAILROAD:

SOUTHERN PACIFIC  
TRANSPORTATION COMPANY,  
a Delaware corporation

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

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

THE COMMISSION:

LOS ANGELES COUNTY  
TRANSPORTATION  
COMMISSION

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

39977



STATE OF CALIFORNIA       )  
                                   ) ss:  
 COUNTY OF LOS ANGELES    )

On December \_\_, 1992, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person who executed this instrument, acknowledged to me to be the \_\_\_\_\_ of SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, the corporation that executed the foregoing instrument, further acknowledged to me to be the person who executed said instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same pursuant to its By-Laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

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

STATE OF CALIFORNIA       )  
                                   ) ss:  
 COUNTY OF LOS ANGELES    )

On December \_\_, 1992, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person who executed this instrument, acknowledged to me to be the \_\_\_\_\_ of LOS ANGELES COUNTY TRANSPORTATION COMMISSION, a county transportation commission existing under the authority of §130500 et seq. of the California Public Utilities Code, the county transportation commission that executed the foregoing instrument, further acknowledged to me to be the person who executed said instrument on behalf of said county transportation commission, and acknowledged to me that such county transportation commission executed the same.

WITNESS my hand and official seal.

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

39977

EASEMENT IMPLEMENTATION AGREEMENT  
(Cornfield)

This EASEMENT IMPLEMENTATION AGREEMENT (this "Agreement") dated June 29, 1994, is entered into by SOUTHERN PACIFIC TRANSPORTATION COMPANY ("Railroad") and the LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ("MTA").

In furtherance of the Agreement to Modify Existing Easement in Cornfield Yard by and between the parties dated June 29, 1994, and the Easement Agreement between the parties dated June 29, 1994 executed pursuant thereto (the "Easement Agreement"), the parties agree as follows:

1. All capitalized terms not defined herein shall have the meanings set forth in the Easement Agreement or, if not defined herein or therein, the meanings set forth in the Shared Use Agreement (Saugus Line) between Southern Pacific Transportation Company and the Los Angeles County Transportation Commission dated December 16, 1992 ("Shared Use Agreement").

2. MTA hereby grants to Railroad the right to use those Tracks owned by MTA which have been or will be constructed to service Capitol Milling Company, as shown on Exhibit A attached hereto and incorporated herein by reference (the "Easement Tracks"), as well as those Tracks owned by MTA which connect Tracks covered by the Shared Use Agreement to the Easement Tracks, for the purpose of providing Rail Freight Service from the Tracks covered by the Shared Use Agreement to the Capitol Milling Company facility in Railroad's Cornfield Yard, it being understood that such route shall be a through rail connection

from Tracks covered by the Shared Use Agreement to the Capitol Milling Company facility. These trackage rights shall continue in effect for so long as Capitol Milling Company or its successors or assigns are legally entitled to receive such Rail Freight Service. Nothing herein shall prevent or restrict MTA from using, maintaining, repairing and reconstructing the Easement Tracks and other Tracks owned by MTA as long as MTA does not unreasonably interfere with Railroad's ability to provide Rail Freight Service to Capitol Milling Company.

3. MTA shall design and construct the Easement Tracks at its sole cost and expense, in such a manner that Rail Freight Service can be provided by Railroad to Capitol Milling Company in a manner reasonably satisfactory to all parties. The Easement Tracks shall be constructed in the configuration shown on Exhibit A, or as may otherwise be reasonably approved by Railroad and MTA.

4. If Railroad's labor contracts require that any portion of the Easement Tracks be constructed by Railroad's personnel, then MTA shall, promptly following demand by Railroad, and upon receipt by MTA of reasonably satisfactory proof of costs incurred by Railroad in connection therewith, reimburse Railroad for the cost of construction thereof (including customary additives). During construction, MTA shall not sever rail access to Capitol Milling Company without first providing a route for alternative service reasonably satisfactory to Capitol Milling Company, MTA and Railroad, at MTA's expense (it being understood, however, that such alternative service shall not be provided by MTA).

5. MTA shall manage, operate and maintain the Easement Tracks, and direct and control the movement of trains, cars and locomotives on the Easement Tracks, provided that MTA shall be reasonable in such direction and control.

6. In accordance with the Shared Use Agreement, Railroad's rights under the Shared Use Agreement to access Capitol Milling Company by way of the LAUPT Bridge shall automatically terminate upon (i) the completion of the construction of the Easement Tracks and (ii) the connection of the Easement Tracks with the Tracks covered by the Shared Use Agreement, in the approved configuration described in Section 3 hereof. All of Railroad's other rights and obligations under the Shared Use Agreement shall remain in full force and effect, including without limitation, its trackage rights for Railroad Special Trains to have access to and from LAUPT, and its trackage rights to and from its Cornfield Yard, via the LAUPT Bridge and connecting Tracks described on Exhibit 2.2(i) to the Shared Use Agreement (provided that such trackage rights for access to and from the Railroad's Cornfield Yard shall not include trackage rights to provide Rail Freight Service to Capitol Milling Company). Railroad shall not be required to pay any charge or fee to MTA with respect to the Easement Tracks or the through route from the Tracks covered by the Shared Use Agreement to the Easement Tracks, including, without limitation, any charge or fee with respect to the cost of maintenance, reconstruction, repair, operation, capital expenditures (which shall include without limitation, additions, betterments, improvements, construction, modifications, removals

and additional facilities), labor, material, equipment, supplies and services and customary additions applied to each element, as well as interest rental.

7. Articles VII (Liability Agreement) and VIII (Arbitration) of the Shared Use Agreement are incorporated by reference as if fully set forth herein. In incorporating Article VII herein by reference, and solely for such purpose, the Easement Tracks and the through route from the Tracks covered by the Shared Use Agreement to the Easement Tracks shall be deemed to be a part of the Saugus Line.

8. Nothing contained herein or in the Easement Agreement shall be construed to obligate MTA to provide Rail Freight

Service to any person or entity, including without limitation, Capitol Milling Company or its successors or assigns.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Railroad and MTA as of the date first written above.

RAILROAD:

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

By: [Signature]

Title: Vice-President

MTA:

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION COMMISSION

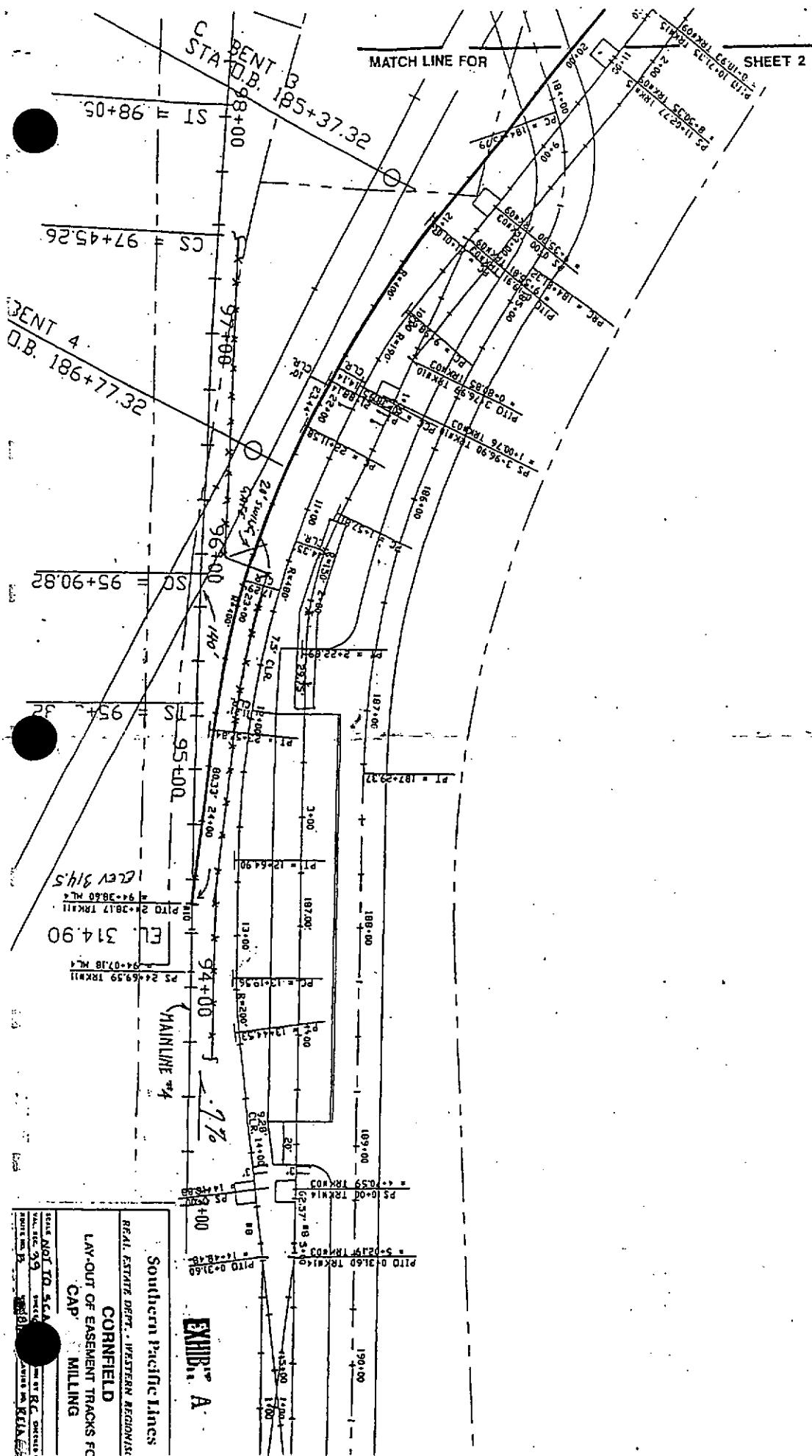
By: Valma C. Marshall

Title: Director of Real Estate

Approved as to Form:

DEWEY BALLANTINE,  
MTA Counsel

By: [Signature]







SHEET 4

MATCH LINE FOR

**Southern Pacific Lines**  
REAL ESTATE DEPT. - WESTERN REGION/ISO  
**CORNFIELD**  
LAY-OUT OF EASEMENT TRACKS FOR  
CAPITOL MILLING

SCALE: NOT TO SCALE  
VAL. FILE 39  
DATE 6-27-94

BY: R.C. ORR  
CHECKED BY: R.C. ORR  
DATE 6-27-94

EXHIBIT A

6 NB TRACK

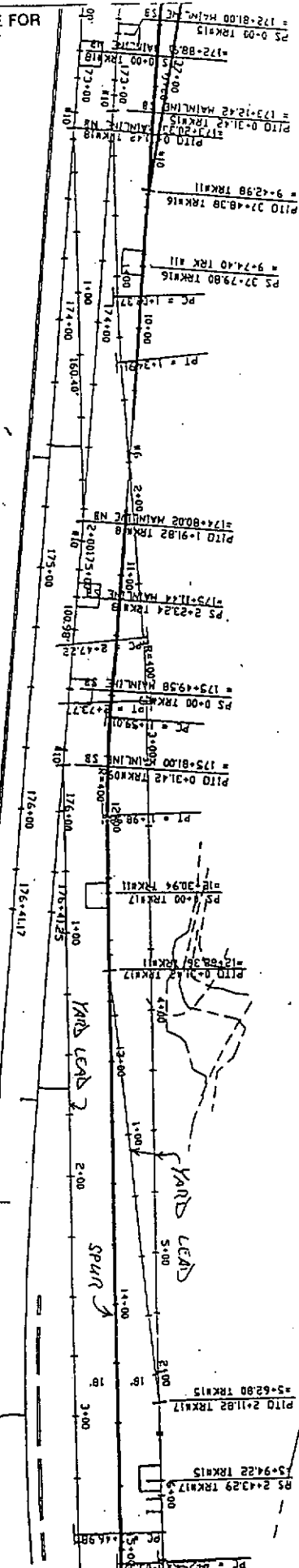
6 SB TRACK

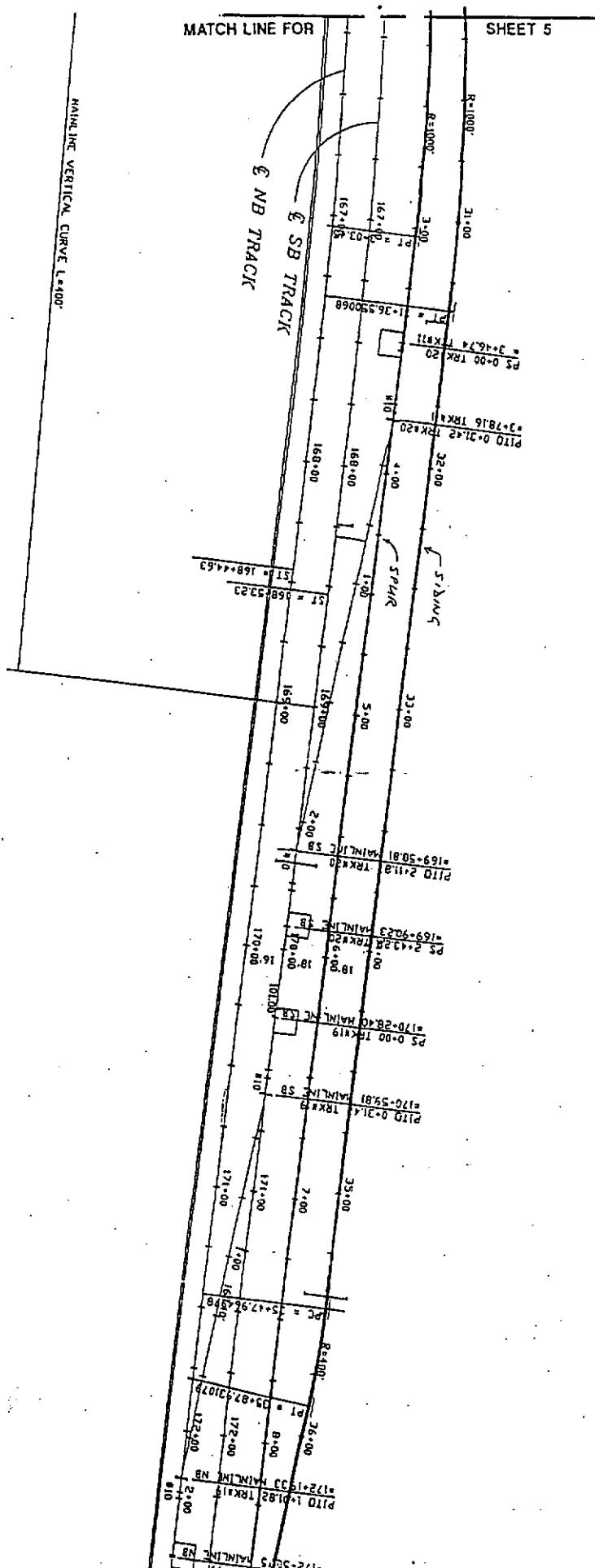
SHEET 2

YARD LEAD 2

SPUR

MATCH LINE FOR





A graphic scale bar labeled "GRAPHIC SCALE" with markings for 0, 20, 40, 60, and 100 feet. The bar is divided into alternating black and white segments.



**EXHIBIT A**

**Southern Pacific Lines**  
REAL ESTATE DEPT. - WESTERN REGION/500

**CORNFIELD**  
LAY-OUT OF EASEMENT TRACKS FOR  
CAPT. MILLING

STATE NOT TO S.A.  
VA. REC. 39  
MOVIE NO. B. 6881.  
R.C. CINCINNATI  
WINDING ROAD  
RELA 1938

SHEET 6

MATCH LINE FOR

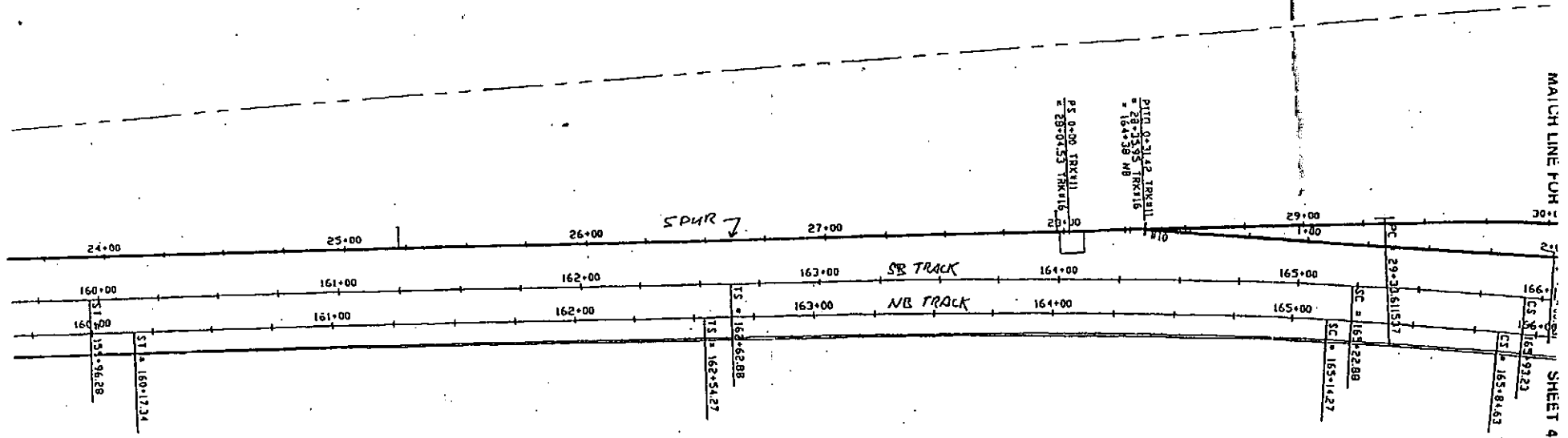


EXHIBIT A

Southern Pacific Lines	
REAL ESTATE DEPT. - WESTERN REGIONAL	
CORNFIELD	
LAY-OUT OF EASEMENT TRACKS FOR	
CAPITAN MILLING	
SCALE NOT TO SCALE	SHEET
VAL. REC. 30	DATE
ROUTE NO. 13	DATE 6-27-93

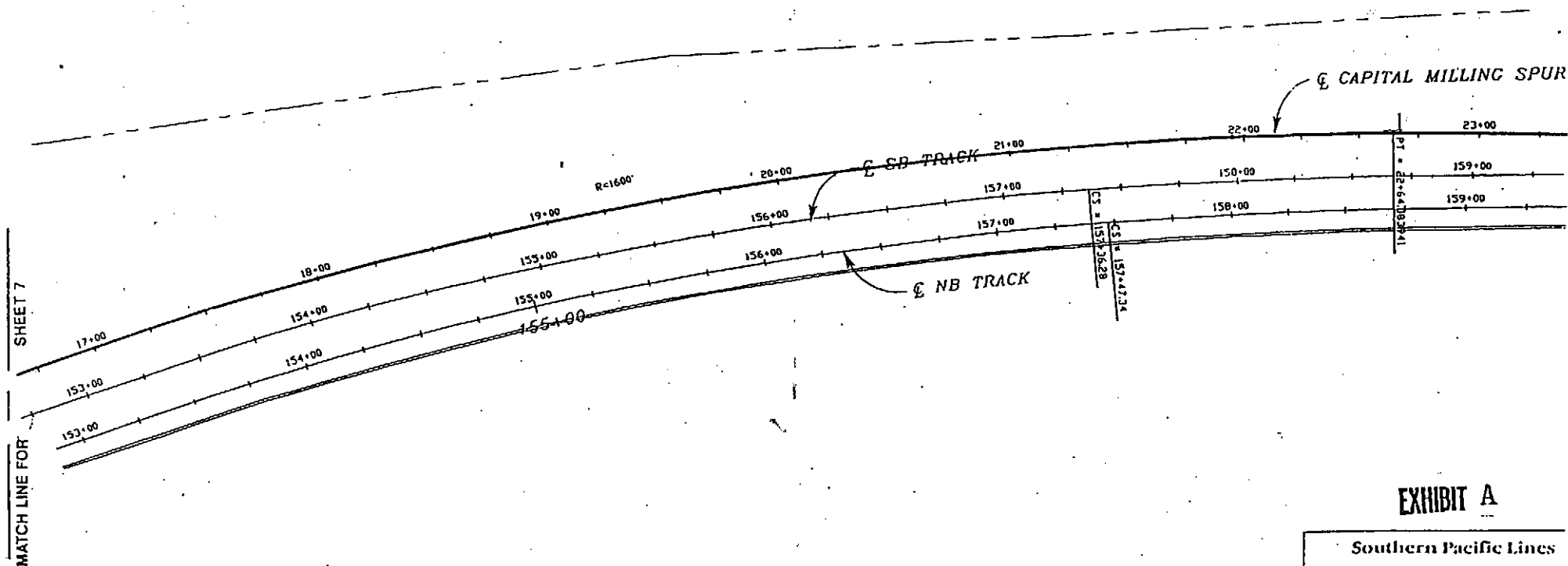


EXHIBIT A

**Southern Pacific Lines**  
REAL ESTATE DEPT. - WESTERN REGION/IS  
**CORNFIELD**  
LAY-OUT OF EASEMENT TRACKS FOR  
CAF MILLING

SCALE NOT TO SCALE  
VIAL REC. 29 SHEET  
ROUTE NO. 13

Packet Pg. 37

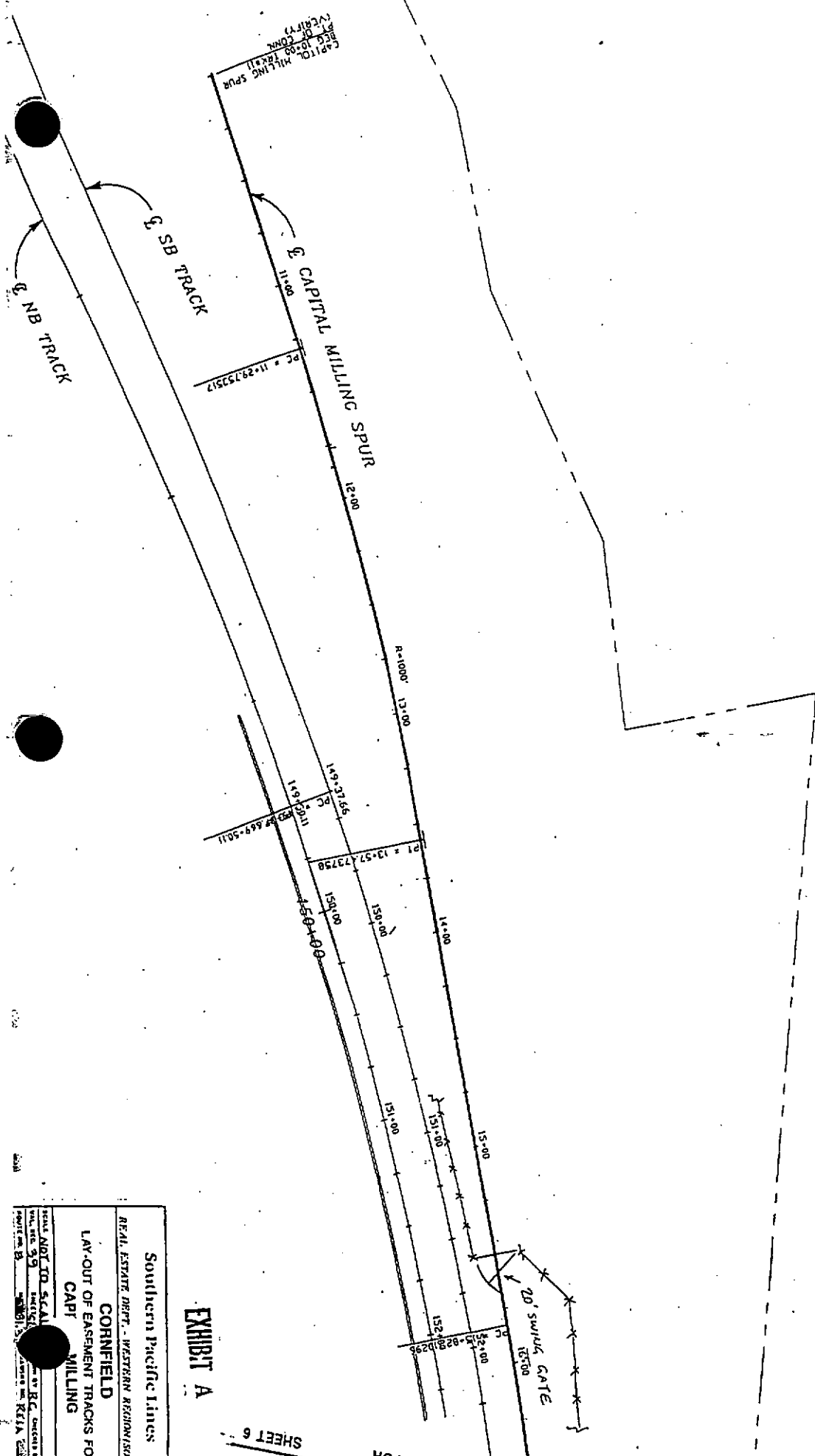


EXHIBIT A

SHEET 6

**Southern Pacific Lines**  
**CORNFIELD**  
 LAY-OUT OF EASEMENT TRACKS FO  
 CAPT MILLING

SCALE NOT TO SCALE  
 DATE: 10/1/83  
 BY: B.C. DUNCAN  
 CHECKED: M. KELLY

**Exhibit D**

<b>Contract Name</b>	<b>Invoice #</b>
Azusa Branch Shared Use Agreement	103113
Azusa Branch Shared Use Agreement	103780
Azusa Branch Shared Use Agreement	104761
Azusa Branch Shared Use Agreement	105437
Baldwin Park Branch Shared Use Agreement	103115
Baldwin Park Branch Shared Use Agreement	103781
Baldwin Park Branch Shared Use Agreement	104762
Baldwin Park Branch Shared Use Agreement	105438
East Bank Joint Facilities Agreement (Capital)	1003433
East Bank Joint Facilities Agreement (Capital)	1004493
East Bank Joint Facilities Agreement (Capital)	1004767
East Bank Joint Facilities Agreement (Capital)	1005421
East Bank Joint Facilities Agreement (Capital)	1006131
East Bank Joint Facilities Agreement (Capital)	1006322
East Bank Joint Facilities Agreement (Capital)	1006897
East Bank Joint Facilities Agreement (Capital)	1008047
East Bank Joint Facilities Agreement (Capital)	1008048
East Bank Joint Facilities Agreement (Capital)	1008058
East Bank Joint Facilities Agreement (Capital)	1008132
East Bank Joint Facilities Agreement (Capital)	1008318
East Bank Joint Facilities Agreement	101706
East Bank Joint Facilities Agreement	102257
East Bank Joint Facilities Agreement	102725
East Bank Joint Facilities Agreement	102761
East Bank Joint Facilities Agreement	102824
East Bank Joint Facilities Agreement	102871
East Bank Joint Facilities Agreement	102943
East Bank Joint Facilities Agreement	103048
East Bank Joint Facilities Agreement	103099
East Bank Joint Facilities Agreement	103179
East Bank Joint Facilities Agreement	103250
East Bank Joint Facilities Agreement	103321
East Bank Joint Facilities Agreement	103354
East Bank Joint Facilities Agreement	103421
East Bank Joint Facilities Agreement	103467
East Bank Joint Facilities Agreement	103499
East Bank Joint Facilities Agreement	103523
East Bank Joint Facilities Agreement	103565
East Bank Joint Facilities Agreement	103632



East Bank Joint Facilities Agreement	103693
East Bank Joint Facilities Agreement	103783
East Bank Joint Facilities Agreement	103800
East Bank Joint Facilities Agreement	103828
East Bank Joint Facilities Agreement	103854
East Bank Joint Facilities Agreement	103918
East Bank Joint Facilities Agreement	103987
East Bank Joint Facilities Agreement	104041
East Bank Joint Facilities Agreement	104096
East Bank Joint Facilities Agreement	104168
East Bank Joint Facilities Agreement	104321
East Bank Joint Facilities Agreement	104444
East Bank Joint Facilities Agreement	104556
East Bank Joint Facilities Agreement	104623
East Bank Joint Facilities Agreement	104699
East Bank Joint Facilities Agreement	104763
East Bank Joint Facilities Agreement	104785
East Bank Joint Facilities Agreement	104846
East Bank Joint Facilities Agreement	104873
East Bank Joint Facilities Agreement	104925
East Bank Joint Facilities Agreement	104987
East Bank Joint Facilities Agreement	105049
East Bank Joint Facilities Agreement	105114
East Bank Joint Facilities Agreement	105157
East Bank Joint Facilities Agreement	105236
East Bank Joint Facilities Agreement	105277
East Bank Joint Facilities Agreement	105343
East Bank Joint Facilities Agreement	105375
East Bank Joint Facilities Agreement	105412
East Bank Joint Facilities Agreement	105439
East Bank Joint Facilities Agreement	105466
East Bank Joint Facilities Agreement	105516
East Bank Joint Facilities Agreement	105522
East Bank Joint Facilities Agreement	105576
East Bank Joint Facilities Agreement	105620
East Bank Joint Facilities Agreement	105653
Mission Tower Agreement Signal Maintenance	101705
Mission Tower Derailment	103194

## ***Minute Action***

### AGENDA ITEM: 13

***Date:*** December 1, 2021

***Subject:***

Release of Request for Proposals No. 22-1002700 for Arrow Maintenance Facility Hydrogen Fuel Upgrade Project: Hydrogen Fuel System

***Recommendation:***

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Authorize the Executive Director, or his designee, to release Request for Proposals No. 22-1002700 for the Arrow Maintenance Facility Hydrogen Fuel Upgrade Project: Hydrogen Fuel System, subject to final review by SBCTA General Counsel, Procurement Manager and Risk Manager.

B. Waive the Vendor Protest requirements of Policy No. 11007 for the RFP, approve the protest procedures in Section 34 of the Design Build Request for Proposals as deemed appropriate and in the best interests of SBCTA, and in accordance with applicable State and Federal law.

***Background:***

The San Bernardino County Transportation Authority (SBCTA) is expanding the public transit network in the San Bernardino Valley with the implementation of the Redlands Passenger Rail Project (RPRP), which facilitates the introduction of the Arrow Service using two-car Diesel Multiple Unit (DMU) rail vehicles. In conjunction with public transit expansion and providing options for our traveling public, SBCTA seeks to reduce greenhouse gas (GHG) emissions and improve air quality. The DMUs purchased for the Arrow Service are powered via a Tier 4 diesel engine “generator” providing power to electric motors at the wheels. SBCTA recognized an opportunity to convert the power generator to an alternative propulsion technology in an effort to produce a low or zero emission multiple unit (ZEMU) that could run on the existing heavy rail infrastructure, thus reducing air quality impacts without necessitating the need to construct separate rail lines.

On May 5, 2021, the SBCTA Board of Directors (Board) was provided a project update regarding the hybrid battery hydrogen-fuel cell ZEMU development, the hydrogen fueling and Arrow Maintenance Facility (AMF) modifications, the Federal Railroad Administration (FRA) coordination, and the circulation for public comment of the proposed AMF Hydrogen Fuel Upgrade Project (Project) focused Environmental Impact Report (EIR). On September 1, 2021, the Board adopted Resolution No. 22-005 that contained the findings required by the California Environmental Quality Act (CEQA) in order to certify the Final EIR (FEIR) and approve the project under California law. The FEIR evaluated the significant or potentially significant environmental impacts associated with the project and addresses appropriate and feasible mitigation measures and alternatives that would mitigate or eliminate those impacts. The FEIR identified no significant and unavoidable environmental impacts as a result of the project.

Staff is seeking authority to release the Request for Proposals (RFP) for the design, construction, and maintenance of the Hydrogen Fueling System (HFS) infrastructure needed to fuel the ZEMU rail vehicle at the AMF; the services procured may also include operations for a training/transition period, consistent with the Local Agency Design-Build law (Public Contract

*Entity: San Bernardino County Transportation Authority*

## Board of Directors Agenda Item

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Code §§ 22160 et seq). The AMF is located at 958 West 3rd Street in the City of San Bernardino. The site abuts existing railroad track infrastructure to the north, west, and south. Vacant, industrial-zoned land borders the AMF site to the east and an active intermodal freight yard owned by the Burlington Northern Santa Fe (BNSF) Railway to the north. A small residential community is located to the south of the AMF site and 3rd Street along North J Street and Kendall Avenue.

SBCTA intends to implement the HFS to support fueling of the one ZEMU prototype vehicle while still considering options for future scalability to four ZEMU vehicles. The system will include the necessary hydrogen fueling infrastructure, mobile, semi-permanent or permanent onsite hydrogen storage and the required safety improvements to the site to meet all applicable codes and standards.

This RFP Scope of Services covers the hydrogen storage and transfer system to be used for both testing & commissioning, and revenue transit service and includes commercial terms and technical data for the HFS. The HFS will be located in an outdoor location and will be required to meet the technical requirements as defined in the RFP document. The RFP provides for the furnishing of the following for a complete assembled HFS:

- i. Engineering design
- ii. Labor
- iii. Equipment and materials (can be leased to SBCTA as part of the overall contract)
- iv. Construction/Fabrication
- v. Permitting and approvals
- vi. Hydrogen fuel supply and delivery
- vii. Startup, testing and commissioning
- viii. Ongoing facility maintenance and technical support
- ix. Training

Staff is requesting the Board authorize the Executive Director to release RFP No. 22-1002700 for Hydrogen Fueling System to support the ZEMU operation.

**Financial Impact:**

This item is consistent with the Fiscal Year 2021/2022 Budget.

**Reviewed By:**

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel, Procurement Manager, and Risk Manager have reviewed this item and the draft RFP.

**Responsible Staff:**

Carrie Schindler, Director of Transit and Rail Programs

Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:

San Bernardino County Transportation Authority



**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**ARROW MAINTENANCE FACILITY HYDROGEN FUEL UPGRADE  
PROJECT: HYDROGEN FUEL SYSTEM (HFS)**

## 1. PROJECT TECHNICAL REQUIREMENTS

The following section of this RFP describes the technical requirements and performance specifications for the HFS, including the hydrogen supply and fueling parameters. The Contractor will be responsible for meeting all technical requirements as outlined in this RFP document. To assist with proposal responses, basic design information for the ZEMU vehicle has been provided below. As elements of the vehicle design are proprietary, detailed technical information related to the vehicle design will be provided to the preferred Proposer upon award for further collaboration during design.

### 1.1 General Requirements

- a. The Contractor will be responsible for providing an onsite hydrogen storage and transfer system which meets the operating conditions outlined in this RFP. This includes other applicable ambient concerns of the site like adjacent infrastructure (active rail yard and diesel fueling) and designing to meet relevant California earthquake codes and standards.

### 1.2 Daily Demand of Hydrogen for One ZEMU Vehicle

- a. The Contractor will be responsible for providing onsite hydrogen storage at the AMF. The hydrogen storage can be mobile or semi-permanent as dictated by their proposed HFS and equipment.
- b. Per the specifications of the ZEMU vehicle and the anticipated duty cycles for the Arrow service, the daily demand of hydrogen is expected to be up to 300 kilograms per day (2100 kilograms per week) of gaseous hydrogen during planned revenue service.
- c. The Contractor shall be responsible for ensuring the supply and onsite storage meet the daily demand of the single ZEMU vehicle (300kg), in addition to having a minimum of 65% additional spare usable capacity of hydrogen. Where possible the Contractor shall seek to maximize onsite storage to reduce the frequency of hydrogen deliveries while considering efficiencies in storage costs and energy usage.
- d. It is anticipated that during testing and commissioning of the ZEMU vehicle, the daily demand of Hydrogen will be less than or equal to 300 kilograms per day. The anticipated period for testing and commissioning is 6 months from the start of testing. The expectation is that the contractor will consider the increase in H2 demand following the testing and commissioning in the overall annual cost per kg.
- e. The storage capacity, equipment and hydrogen source should be sized accordingly to meet the demand of one ZEMU vehicle while still considering options for future scalability to a maximum of four ZEMU vehicles. The Contractor should provide information pertaining to the ease of future expansion or ability to accommodate increased storage capacity and capability to fuel four ZEMU vehicles (sequentially). The Contractor can assume an increase in the total daily consumption of hydrogen for the future operations of a full fleet of ZEMU vehicles on the Arrow Service only. If there are significant costs or upgrades associated with increasing the demand, this should be noted in the RFP responses.

### 1.3 Target Fill Rate and Fueling Protocol

- a. SBCTA's target fueling time for the ZEMU vehicle is 30 minutes to fill all tanks from the minimum tank pressure of 15 bar to a full fill state considered as 350 bar at 20°C (68°F) tank temperature, under normal operating/ambient conditions. For the purpose of the 30 minute fueling time for this RFP, normal ambient condition will be defined as 95°F. Proposers shall assume that fueling will primarily occur in the evenings after the daily Arrow service is complete, however it is possible that fueling could occur at any time of day. Proposers shall assume that the target refueling time needs to be achieved for an ambient temperature range between 20°F to 95°F (-15°C to 35°C).
- b. This target fueling rate assumes that fueling is occurring in both receptacles on the vehicle simultaneously (dual fueling) and that fueling is occurring in Fueling Location A at dispensing Location A.1 or A.2 (refer to Section 1.6).
- c. Based on a preliminary analysis of the HFS, it is anticipated that cooling/compression equipment may be required to achieve this fueling rate. The Contractor will be responsible for selection and sizing of any vaporizing, cooling or compression equipment as needed to meet the target refueling times identified above. Similar to the storage capacity, the Contractor shall size the equipment accordingly to meet the demand of one ZEMU vehicle while considering provisions for future scalability to four ZEMU vehicles. The Contractor should provide information pertaining to the ease of future expansion or ability to accommodate subsequent fueling of the additional three ZEMU vehicles. If there are significant costs associated with meeting the demand of more ZEMU vehicles, this should be noted in the RFP response.
- d. The Contractor shall propose a cost and energy efficient solution that will meet the fueling targets for one ZEMU vehicle. SBCTA may consider accepting longer fueling times if it can be demonstrated to provide significant cost and/or energy savings (e.g., above 20% savings).
- e. Contractor shall describe at a high-level their recommended approach to fueling protocol, to be further developed after award in collaboration with the vehicle supplier. This protocol will be developed in close collaboration with the vehicle supplier and shall, at a minimum, comply with SAE J2601/2\_201409 'Fueling Protocol for Gaseous Hydrogen Powered Heavy Duty Vehicles' and shall prevent over-pressurization, overheating, density discrepancies, or other damage to the on-board hydrogen storage system components as described in Section **Error! Reference source not found..**
- f. Contractor shall incorporate hydrogen detection and monitoring systems to ensure issues such as leaks during fueling or loss of pressure in storage tanks is detected immediately and fueling is halted.

### 1.4 ZEMU Vehicle Technical Specifications and Interface

The following Section 1.4 has been removed from public version of RFP document as it contains sensitive information on the ZEMU vehicle design which is considered proprietary. This information will be available upon request only. Proposers wishing to obtain this information will be required to sign a non-disclosure agreement.

## 1.5 Hydrogen Source Requirements

Liquid vs. Gaseous Supply: The Contractor shall design the HFS based on the most practical storage phase as determined by the restrictions and requirements of this RFP. The design will consider the availability of the Contractor's hydrogen supply to deliver a reliable supply of liquid or gaseous hydrogen to support SBCTA's fueling requirements. The hydrogen must be dispensed into the ZEMU vehicle in a gaseous state at the pressures and temperatures specified. The Contractor shall be responsible for supplying any vaporizers, compression, chilling, or other equipment to achieve these conditions.

- a. Hydrogen Purity (SAE Standards): Hydrogen must be fuel cell grade and meet ISO SO14687:2019, grade D (EC) / SAEJ2719\_201511. Contractor shall provide a hydrogen quality assurance plan meeting the requirements of the latest version of ISO 19880-8 for the fueling process.
- b. Percentage Renewable: Hydrogen must initially be a minimum of 33.3% renewable in order to comply with California SB662, and increasing thereafter to maintain compliance with SB662. Proposer shall provide options to achieve 100% renewable upon commencing operations, if available from Proposer's supply, should SBCTA choose.
- c. Delivery Distance and Delivery Method: It is anticipated that hydrogen will be delivered to the site via 3<sup>rd</sup> street. Refer to the AMF Site Plan included in Part I: Exhibits for additional information on site access and delivery to site. The distance between the AMF site and the hydrogen source(s) as well as the delivery distance should be minimized wherever possible to reduce travel time and the risk of delays. Information on the hydrogen production site(s)/source(s) and delivery route/source should be provided as part of the Proposal.
- d. Delivery Vehicle Constraints Per Existing Site: Initial analyses suggest that a maximum allowable delivery vehicle size will be restricted to a WB40 truck. Refer to the conceptual truck turning templates included in Part I: Exhibits for more details on the delivery vehicle routing within the AMF property. Larger vehicles may be considered if the Contractor can demonstrate that this is technically feasible and safe for daily operations and fuel delivery.
- e. Frequency of Delivery: Hydrogen fuel deliveries to the AMF site will be limited and strictly regulated for safety reasons. The delivery window for hydrogen fuel will be dictated by SCRRA operations within the AMF property. The Contractor or Contractor's fuel delivery provider shall coordinate and schedule all deliveries with SCRRA Operations and provide a minimum 1-hour notice prior to arrival at the AMF.
- f. Backup Supply: The Contractor should have access to a reliable back-up hydrogen source in the event the primary source is not available. Information regarding the back-up source and supply distance should be provided in the Proposal. The back-up supply should adhere to the same hydrogen standards as the primary source as indicated above.

## 1.6 Site Layout and Logistics

- a. Hydrogen Storage and Transfer System Location
  - i. One location within the southern portion of the AMF site has been identified as a potential location to accommodate the hydrogen storage and transfer



system during preliminary site layout evaluations. The location is identified in Part I: Exhibits and labeled as Hydrogen Storage Location A.

- ii. Location A has been identified due to ease of accessibility, limited impact to existing infrastructure and operations within the site, large square footage and flexibility with dispensing locations. The Contractor may propose a solution at an alternate location within the AMF site as long as the proposed layout is feasible, meets required codes and standards, and is safely and easily accessible for regular hydrogen delivery.
- b. Hydrogen Dispensing and Fueling Track Location
  - i. Fuel dispensing into the ZEMU vehicle should occur while the vehicle is parked on a track which is near the HFS under normal fueling operations.
  - ii. Two potential dispensing locations have been identified within the AMF site adjacent to Hydrogen Storage Location A (A.1 and A.2). These locations are identified in Part I: Exhibits and are labeled as Hydrogen Dispensing Locations. Contractor will be required to submit site arrangement drawings to SBCTA in electronic format for review, comment, coordination and approval during the detailed design process.
  - iii. SBCTA requires flexibility in the dispensing location because the tracks provide access to the maintenance facility, wash bay and storage areas. Based on preliminary conceptual planning and engagement with SCRRA, dispensing location A.2 has been identified as the primary dispensing location as it provides the best operational flexibility and can accommodate a longer fueling time, if necessary. SBCTA also requires the option to fuel in Location A.1 as an alternate location, given the close proximity to Hydrogen Storage Location A.
  - iv. The Contractor shall supply interconnecting piping and tubing between the HFS and the dispenser for fueling operations. Interconnecting piping/tubing shall be supplied by contractor and routed underground/overhead to eliminate crossing the rail tracks with hoses to reach dispensing Location A.2. The routing of underground piping/tubing shall be determined by Contractor to avoid clashes with existing underground utilities.
  - v. Contractor will provide additional site infrastructure as appropriate based on-site conditions and to meet NFPA 2 requirements. This may include a canopy, fencing, fire barrier walls, bollards, lighting upgrades, etc. Refer to Section 1.9 for additional site civil requirements.

## 1.7 Materials and Equipment

- i. All materials and equipment delivered by the Contractor shall be new and all workmanship, materials and equipment used in all portions of the work shall be of the best quality and shall be free of all defects which would affect the performance or service life of the equipment, or which would cause unsightly or unworkmanlike appearance. Materials are also required to be compatible with hydrogen and not susceptible to hydrogen embrittlement. Contractor shall submit data sheets for all major equipment and drawings of components to SBCTA in electronic format for review, comment, coordination and approval. Materials should meet all applicable hydrogen

standards as specified by the National Renewable Energy Laboratory. Applicable codes and standards are also indicated in Section 1.10.

- ii. Material delivered or installed that is not in accordance with the drawings and specifications shall be removed and replaced at Contractor's expense. If the progress of the work is such that removal is impractical, SBCTA shall have the right to deduct from the final payment/contract value, the amount of money it considers equivalent to the difference in value received.
- iii. The Contractor shall, if requested to do so, furnish satisfactory evidence as to the kind and quality of all materials furnished by it as well as compatibility of materials with hydrogen. This includes evidence of pressure retaining capacity of piping and fittings by mill certifications identifying the heat and lot of the metal and relating the part to any fabrication tests used to document safety at high pressures.
- iv. Shop testing of all major components shall be witnessed by the Contractor and an SBCTA representative in the fabrication facility of origin. Shop test plans describing the procedures to be followed, the activities to be witnessed, and the form of documentation of acceptance shall be submitted to SBCTA for approval at least two (2) weeks prior to any witnessed shop tests.
- v. Contractor shall select equipment and components that are code compliant, and meet the following requirements:
  - A. Cabinets: Each dispenser cabinet shall be free standing and include sufficient support to remain fully functional in typical weather for the Inland Empire Region. The Gas Management Panel (GMP) cabinet may be attached to a wall with Contractor specified attachments. All components and cabinets shall be suitable to withstand seismic events without physical damage in the Seismic Design Category E area where it will be installed. Each dispenser shall include a pit frame to simplify installation by a general Contractor who may not have experience with hydrogen dispensers.
  - B. Gas Management Panel: All onboard electronics in the GMP shall be suitable for installation and use in a Class I Division II Group B environment. Contractor shall clearly state in their proposal if fail-safe solenoid or ball valves are used for hydrogen isolation and/or flow control. A ground lug shall be provided inside the cabinet for connection to the site ground system. This ground shall be permanently tied to the ground connection that also connects to the vehicle as a permissive prior to fueling.
  - C. Piping and Tubing: Piping and tubing materials selected shall be compatible with the hydrogen fluid in either the gaseous or liquid state, depending on the stage in the process. All pressurized hydrogen piping shall be designed and installed per B31.12, Hydrogen Piping. Piping shall be designed for a minimum 30-year life. Compression connections shall not be used; cone and threaded connection may be accepted; however welded connections are preferred wherever possible to minimize potential for leakage. Connection details are subject to approval by SBCTA.

- D. Valves: Process valves shall be ball-type, non-lubricated with materials compatible with hydrogen fluid in either the gaseous or liquid state, as well as other petroleum products. Valves shall be of fire-safe design meeting the requirements of API 607.
- E. Pressure Relief and Gauges: Pressure relief devices and all pressurized hydrogen piping shall be designed and installed per B31.12, Hydrogen Piping. Relief valve vent piping height and separation distance shall comply with the IFC NFPA 2 and CGA G-5.5. All gauges shall comply with ANSI/UL 404 – Gauges indicating Pressure for Compressed Gas Service. Gauges shall be liquid filled, a minimum of 2.5 inches in diameter, and have a blowout back panel.
- F. Storage Tanks: Hydrogen storage tanks shall be designed to meet the seismic conditions at the site and be ASME code-stamped pressure vessels meeting the requirements of ASME Section VIII Division 1 or 2. All tanks must include relief valves per ASME Section VIII and CGA (for gaseous hydrogen storage). The total recommended storage volume of any tanks shall be determined by Contractor based on daily fueling rates, hydrogen state for delivery, and planned delivery schedule. The Contractor is responsible for the ongoing maintenance and inspection requirements for the tanks for the duration of the O&M Period. The Contractor must also specify the anticipated lifecycle of the storage tanks in their proposal.
- G. Compression: If required for Contractor's proposed design, compressor design shall be coordinated with the overall HFS proposed operating philosophy, including flow rates and pressures to properly fuel the ZEMU vehicle in 30 minutes, while also not exceeding the maximum allowable working pressure of any storage tanks in Contractor's design. Each compressor shall be skid-mounted, electric-motor-driven, fully suitable for the temperature extremes of the site, and enclosed or containerized with interior lighting and HVAC, lubrication, interstage and aftercooling, leak monitoring, and fire safety suitable for mounting on an equipment pad designed for the seismic conditions at the site. Compressors may be diaphragm, reciprocating, ionic fluid or other hydrogen compression technology that meets the technical requirements for fuel delivery to the ZEMU vehicle. All controls, including interface and wiring connections to allow for remote monitoring and control, shall be included.

## 1.8 Inspection and Acceptance

- a. No equipment, supplies, and/or services received shall be deemed accepted until SBCTA has had reasonable opportunity to inspect the equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective, or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection), may be rejected.

- c. SBCTA's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the SBCTA may have.

## 1.9 Site Civil and Electrical Infrastructure

- a. Contractor to design and construct any site re-grading and paving as well as curb alterations as required to accommodate the HFS, fuel delivery and fueling operations.
- b. Contractor will be required to design and construct any mitigations identified as part of the recent CEQA process.
- c. Protective infrastructure: Contractor shall determine if the HFS layout requires additional protective infrastructure to be installed (i.e. canopies, bollards and/or fire barrier walls) based on NFPA, fire marshal, federal, state and other local requirements. Contractor shall take into account the on-site storage volumes and proximity to other equipment, buildings, vehicles or electrical utilities when making this determination.
- d. Site Lighting: The Contractor shall be responsible for any lighting modifications required for the HFS location and dispensing locations. This includes extending cable and conduit runs for any new light fixtures required. All new light fixtures and accessories shall be rated for a class 1, division 2 installation. The hydrogen fueling equipment shall be illuminated to a minimum of 5 ft.-candles and 50 lux for the permanent working area for the hydrogen fueling equipment. Any additional lighting requirements at the interface location between the fueling system and the ZEMU vehicle for fueling operations will be the responsibility of others.
- e. Utilities: The drawings provided show the location of existing utilities based on information provided by the current AMF site civil constructor. This information may not reflect the latest as-built conditions and therefore, the Contractor shall be responsible for field verification and identification as required, in coordination with SBCTA's engineer. The Contractor shall detail as needed, the required relocation of all utilities as part of the design phase work. Any utility connections required by the Contractor for mobilization or construction shall be the responsibility of the Contractor but shall be coordinated with SBCTA. During the construction phase of the work, final connection of utilities to Contractor-supplied equipment shall be made by Contractor.
- f. Power Requirements: As part of the upgrade of the AMF maintenance facility and installation of the new hydrogen storage and transfer system, SBCTA will be replacing the existing transformer or installing a separate second service to the site to provide increased electrical capacity. Coordination with the local electrical utility (Southern California Edison) is already underway. For the pilot phase of the facility operations, Contractor shall assume a 480 V three-phase power feed with a maximum connected electrical load of 665 kVA has been allocated for the HFS. The final allocated electrical capacity shall be confirmed by Southern California Edison. An upgrade to the onsite emergency generator is also planned based on the same loading assumptions for the HFS. For any 208 VAC and 120 VAC electrical loads, Contractor shall include a stepdown transformer. Contractor shall include with the proposal a preliminary electrical load list for all anticipated loads

and indicate whether these are continuous or intermittent loads to assist with coordination with Southern California Edison.

- g. Grounding: Contractor shall include grounding reels or other means for grounding the hydrogen delivery trucks when parked in the offloading areas. All other equipment that is a part of the HFS shall include ground tabs or lugs for connecting to an existing ground grid within the AMF facility.
- h. Operator Communications: SCRRA's current fueling operations implements FuelForce (Product of Multiforce Systems) as a centralized SCADA to automatically monitor Diesel dispensing transactions from terminals at two existing maintenance facility locations. The Contractor will be required to pursue installation of FuelForce-compatible terminal at the AMF to allow for integrated data to automatically capture hydrogen fueling. The Contractor shall prepare an I/O list as part of the detailed design of the HFS that includes the recommended signals and alarms to be communicated in real-time to SCRRA's FuelForce SCADA system.

The fuel dispenser shall communicate the following data:

- i. Vehicle ID
- ii. Grounding confirmation
- iii. Initial pressure at ZEMU fueling interface point
- iv. Initial temperature of supplied hydrogen gas
- v. Ambient temperature
- vi. Fill rate (kg/min) or pulse counter
- vii. Real-time data and final pressure of onboard hydrogen gas storage tanks
- viii. Real-time data and final temperature of supplied hydrogen gas

The dispenser must be capable of processing this data to control and terminate the fill, as well as pass it along to SCRRA's SCADA system along with other dispenser data, including the following:

- i. Date
- ii. Time of day
- iii. Time – start of fueling event and end of fueling event
- iv. Pressure ramp rate (data sampled every 1/10 seconds)
- v. Tank temperature (data sampled every 1/10 seconds)
- vi. Inlet gas temperature (data sampled every 1/10 seconds)

All signals and alarms to be communicated from the hydrogen storage and transfer system, as well as the fueling dispenser, shall be brought back to a common control cabinet within the HFS area. Interconnection of this controls cabinet to the SCRRA's SCADA system will be a requirement and coordination with SCRRA will be required to ensure the system is compatible with their existing FuelForce system. The Contractor should expect to engage with the vehicle supplier regarding fueling protocols during detailed design.

- i. Water and Sewer: Contractor shall refer to the as-built utility documents for locations of existing sewer system inlet catch basins in the vicinity of the proposed hydrogen storage and transfer system. Any equipment drains that may contain oils shall have secondary containment, either within the equipment or a curbed containment to allow SBCTA operations to visually inspect the drains prior to discharging to the sewer system. Utility water hose stations will be provided by others in the hydrogen storage and transfer system area. Utility water consumption for normal operation of the hydrogen storage and transfer system is highly discouraged. Any utility water required for proper operation of the hydrogen storage and transfer system shall be identified in Contractor's proposal.

#### 1.10 Codes and Standards

Reference Standards – The latest edition of the following listed codes and standards, as applicable, shall govern design, manufacture, and quality assurance of equipment and material to be supplied. All devices shall comply with nationally published applicable codes. In general, this includes, but is not limited to:

- a. Applicable Federal, State and Local laws, ordinances, and codes for the equipment being provided and installed.
  - i. For example – California Building (Part 1 & 2), Electrical (Part 3), Energy (Part 6), and Fire Codes (Part 9) - Title 24
- b. American Society of Mechanical Engineers (ASME) B31.3 and B31.12
- c. American Society for Testing Materials (ASTM)
  - i. ASTM A-53 – Material Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless
  - ii. ASTM 106 – Specification for Seamless Carbon Steel Pipe for High-Temperature Service
  - iii. ASTM A269- Seamless and Welded Austenitic Stainless-Steel Tubing for General Service
  - iv. ASTM A 312 – Seamless and Welded Austenitic Stainless-Steel pipe
- d. American National Standard Institute (ANSI)
  - i. ANSI B16.11 - Forged Steel Fittings, Socket - Welding and Threaded
  - ii. ANSI B16.5 – Pipe Flanges and Flanged Fittings
  - iii. ANSI B16.42 – Ductile Iron Pipe Flanges and Flanged Fittings, Class 150 and 300
  - iv. ANSI NGV 4.1-2018 – Natural Gas Vehicle (or updated equivalent)
  - v. ANSI HGV 4.1-2020 – Hydrogen-Dispensing Systems
- e. Institute of Electrical and Electronics Engineers (IEEE)
- f. Certified Welding Inspectors (CWI)
- g. American Welding Society Standard for Qualification and Certification of Welding Inspectors (AWS – QC1)
- h. National Fire Protection Association (NFPA)
  - i. NFPA 2 – Hydrogen Technologies Code



- ii. NFPA 70 (Chapter 5) – National Electric Code
- i. Society of Automotive Engineers (SAE)
  - i. SAE J2601-1 - Fueling Protocols for Light Duty Gaseous Hydrogen Surface Vehicles
  - ii. SAE J2601-2/3 - Fueling Protocols for Heavy Duty Gaseous Hydrogen Surface Vehicles
  - iii. (Optional) SAE J2799 - Hydrogen Surface Vehicle to Station Communications Hardware and Software
- j. National Renewable Energy Laboratory: Hydrogen Vehicle and Infrastructure Codes and Standards
- k. Occupational Safety and Health Standards (OSHA)
- l. Tubular Exchangers Manufacturing Association (TEMA) Standards
- m. International Standards Organization 14687: 2019 Hydrogen Fuel Quality – Product Specification
- n. International Standards Organization 19880-8: 2019 Gaseous Hydrogen – Fueling Stations – Part 8: Fuel Quality Control
- o. Standard under development for hydrogen rail vehicle fueling
  - i. Technical Committee TC 9/PT 63341-2
  - ii. IEC 63341-2

Contractor shall include specific identification of compliance for individual components or subassemblies when specific design, fabrication or installation standards are applicable. Contractor shall identify working group documents and/or ANSI Hydrogen Vehicle standards that have been met to show knowledge of, and likely conformance with, standards that are yet to be issued final in the U.S. Similarly, the fill rates specified herein will dictate and may result in eliminating some of the requirements of otherwise applicable standards. Please confirm by a narrative in the proposal that the designs will conform to all applicable U.S. and California Codes and Standards. Codes and standards from other jurisdictions are not acceptable.

Failure to mention any governing codes in this Specification does not relieve the Seller from adhering to all applicable codes and standards which apply to their equipment and services.

In the event of variance between this Specification and the governing code, the stricter requirements shall take precedence unless explicitly stated otherwise herein.

## **1.11 Health and Safety Requirements**

- a. Contractor shall provide an overarching safety plan: Submit two (2) detailed safety plans (Construction Safety Plan and O&M Safety Plan), after award, including a fire and hydrogen leak detection plan, describing the operation of alarms, the evacuation plan, and any training materials that may be necessary. Contractor shall fully describe the operation and capabilities of its response to incidents, including hydrogen alarms, integration with fire alarms, and coordination with the local fire department. The intent of the Safety Plan is also to ensure that necessary safety issues have been considered by all participants across the entirety of the Project (design, construction, operation and maintenance).



- b. Hazard and Operability (HAZOP) Review: Safe practices in the production, storage, distribution, and use of hydrogen are essential to protect people, equipment, and the environment. The Contractor shall prepare and lead a HAZOP review early in the design stage, followed by a final HAZOP once the design has been substantially completed to validate safe practices. This will be a contractor facilitated meeting in which the design will be analyzed by a qualified board of experts to identify possible failure modes that could result in unacceptable damage to equipment, people or facilities. Following the HAZOP review, a code compliance assessment should be completed by the Contractor in the early or mid-stage of the design phase to ensure all necessary code requirements have been met. This should also include a variety of code checklists to verify NFPA 2 siting requirements, HAZOP safeguard action items, and operational readiness inspections (ORI), among many others. These are used to ensure vulnerabilities have been identified and corrective action items are completed prior to startup. The HAZOP compliance checklists will be owned by the Contractor's Project Engineer who ensures their completion for the HFS. Finally, an Operational and Readiness Inspection is completed prior to startup and owned by the Contractor to verify all checklist items are completed before startup.
- c. Hydrogen Safety Panel (HSP) Coordination: The HSP provides support to SBCTA with a review of the Contractor's proposed design and fueling protocol. The HSP will participate in some project meetings as a stakeholder to further contribute safety inputs from the hydrogen industry, including HAZOP meetings (as appropriate). The HSP will also participate in the review of the HAZOP. The Contractor should not assume any additional meetings or interface with the HSP for purposes of the bid.
- d. Leak and Flame Detection: Consultant shall consider monitoring of internal HFS piping pressure and flows as a means to achieve leak detection. In addition, the HFS must include provisions for a safe shutdown of hydrogen handling equipment by untrained site personnel in the case of a hydrogen leak. An integrated UV/IR detector or multiband IR detector and hydrogen leak detections shall be provided to fully monitor enclosed spaces where hydrogen may leak; including where transfer operations take place, outside spaces and/or equipment producing or containing hydrogen. The Contractor is allowed to propose a preferred method of leak and flame detection if the system meets code requirements and fueling protocol safety standards. The Contractor will need to coordinate with Stadler on any integrated detection systems and to ensure that monitoring during fueling is coordinated between the infrastructure side and vehicle side.
- e. Contractor will be responsible for ensuring that the HFS and fueling areas meet code requirements for ventilation and clearances. Should overhead canopies be added for weather protection, contractor will need to consider the potential for pooling of H<sub>2</sub> in these areas.
- f. Maintenance and Vehicle Access: The Contractor shall be fully capable of responding to unanticipated equipment problems over the life of the contract and discuss in their Proposal how emergency hydrogen supplies can be brought online quickly if the system experiences a problem. Notifications of unanticipated maintenance needs shall be automated so that on-call personnel are notified as soon as a defective parameter, Emergency Stop (ESTOP) or unplanned shutdown occurs that impacts regular fueling of the ZEMU. In addition, all notifications of a leak, fire, or other event requiring an emergency response shall

be communicated to local workers on-site, including audible and visual notification devices at strategic on-site locations. The Contractor shall discuss emergency response times (two (2) hours or less) and how this will be accomplished with consideration of access and egress of emergency response vehicles at both the HFS and within the AMF site. For additional information about the AMF site, refer to Section **Error! Reference source not found.** in this RFP.

- g. In the case of an emergency response/incident, the Contractor shall collect/dispose the large amount of spent fire water per existing environmental discharge requirements.

#### 1.12 Other Site-Specific Requirements

- a. The Contractor shall be responsible for all health and safety requirements and coordination during equipment installation and construction. The Contractor will be required to submit a site-specific Health and Safety plan to SBCTA for review and approval prior to commencing construction. Coordination on the construction safety requirements with SCRRA will also be required to ensure safe installation and construction of equipment during regular Arrow service operations.
- b. The Contractor should be prepared to install and construct equipment within an active operating rail yard. Specific training will be required for personnel to facilitate installation, construction, operations and maintenance and hydrogen delivery, this should be included as part of the overall proposal.
- c. Site Access: The Contractor shall coordinate site access for Contractor personnel and deliveries with SBCTA and/or Metrolink security and maintenance staff. Contractor shall be responsible for maintaining access for Contractor personnel, including providing shuttles for off-site employee parking, if necessary.
- d. Work Schedule: Work may be conducted on-site at hours established by SBCTA and coordinated with Metrolink. Currently rail operations are most active at the site **(Pending Final RFP)**. Contractor will be encouraged to work hours that minimize congestion and interference with rail operations at the site during construction and maximize overlap with SCRRA Operations during the O&M period. Changes in work schedule must be approved by SBCTA in writing at least 48 hours in advance of any change.
- e. Environmental Protection: Contractor shall provide protective measures to control pollution during construction and remedial activities. Construction activities must avoid polluting surface water and groundwater, in accordance with all applicable regulations. Contractor shall drain, collect, transport and properly dispose of any liquids contained in pipelines, conduits or any other components supplied by the Contractor. In addition, Contractor must comply with the mitigation measures outlined in the Arrow Maintenance Facility Hydrogen Fuel Upgrade Project's Final EIR. The Draft EIR is accessible electronically at <https://www.gosbcta.com/>.

## **34. PROTESTS**

### **34.1 Applicability and Process**

- a. This Section 34 sets forth the sole and exclusive protest remedies available with respect to this RFP.
- b. Only Proposers and Major Participants are permitted to file protests regarding the RFP process in accordance with this Section 34.
- c. Any protests regarding the RFP process, including the award of contract, will be addressed to SBCTA and hand delivered to SBCTA's Contact Person no later than 14 calendar days after the public announcement by SBCTA of the identity of the awarded Contractor. Any Proposer or Major Participant submitting such a protest is responsible for obtaining proof of delivery.

### **34.2 Required Early Communication for Certain Protests**

Protests may be filed only after Proposer has informally discussed the nature and basis of the protest with SBCTA, following the procedures prescribed in this Section 34. Informal discussions will be initiated by a written request for a one-on-one meeting delivered to the RFP Procurement Contact as specified in this Section 34. The written request will include an agenda for the proposed one-on-one meeting. SBCTA will meet with Proposer as soon as practicable to discuss the nature of the allegations. If necessary, to address the issues raised in a protest, SBCTA may make appropriate revisions to the RFP documents by issuing addenda.

### **34.3 Content of Protest**

Any protest must include the following in order to be considered complete and delivered by the deadline specified:

- a. the full legal name and address of Proposer or Major Participant(s) that is/are making the protest; and
- b. a succinct statement of the grounds, legal authority and factual basis for such protest; and
- c. all documentation required to establish the merits of the protest.

### **34.4 Burden of Proof**

The protestor has the burden of proving its protest by clear and convincing evidence. SBCTA may discuss the protest with the protestor and other Proposers. No hearing will be held on the protest. The protest will be decided on the basis of written submissions.

### **34.5 Decision on the Protest**

SBCTA's Procurement Manager or designee will issue a written decision regarding the protest within 30 calendar days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, SBCTA may make appropriate revisions to this RFP by issuing an addendum.

The written decision of SBCTA's Procurement Manager will be final and non-appealable.

### **34.6 Protestor's Payment of Costs**

If a protest is denied, Proposer filing the protest will be liable for SBCTA's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and

costs, and any unavoidable damages sustained by SBCTA as a consequence of the protest.

#### **34.7 Rights and Obligations of Proposers**

Each Proposer, by submitting its Proposal, expressly recognizes and agrees to the limitation on its rights to protest provided in this Section 34, and expressly waives all other rights and remedies that may be available to Proposer under Applicable Law. These provisions are included in this RFP expressly in consideration for such waiver and agreement by Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 34, it will indemnify, defend and hold SBCTA and its directors, officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, will be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

## ***Minute Action***

AGENDA ITEM: 14

***Date:*** *December 1, 2021*

***Subject:***

Public Employees' Pension Reform Act of 2013 and Impact on Transit Funding

***Recommendation:***

Receive an update on recent decisions by the US Department of Labor on Public Employees' Pension Reform Act of 2013 (PEPRA) and potential impacts on transit funding.

***Background:***

The Federal Transit Administration provides funding to local agencies through several grant programs for capital projects and operating expenses. The Federal Transit Act requires that the use of these funds be certified by the United States Department of Labor (DOL) to ensure that certain protections are provided to mass transit employees, as specified in Section 13 (c) of the Federal Transit Act, including:

- Preserving their rights and benefits;
- Continuing their collective bargaining rights;
- Protecting them against a worsening of their employment conditions;
- Assuring jobs for employees of acquired mass transit systems;
- Providing priority of reemployment if the employee is laid off or their job is eliminated; and
- Providing paid training.

In 2012, the passage of the Public Employees' Pension Reform Act (PEPRA) reformed California's public employee pension system and applies to most California public employees, including transit employees affected by these grants. Among other requirements, PEPRA mandates that public employees hired after 2013 contribute at least 50% of the cost of their pension benefits and establish minimum time-in-service requirements; it also caps the pension benefits they can receive and prescribes the calculation of their pension benefits at retirement. PEPRA also changes some aspects of pensions for public employees hired before 2013. The passage of PEPRA in California resulted in challenges to California transit agencies' grant applications by the unions representing mass transit employees, who alleged that PEPRA violates Section 13 (c) and their members' collective bargaining rights. As a result, DOL withheld certification of transit grants and grant funding for local agencies was delayed.

In October 2013, the Governor signed AB 1222 (Bloom, D-Santa Monica and Dickinson, D-Sacramento) to temporarily exempt mass transit workers from PEPRA, which allowed the DOL to certify federal grants and local agencies to receive their federal funds. This temporary exemption expired on December 31, 2014.

*Entity: San Bernardino County Transportation Authority*

At the same time as the signing of AB 1222, the Governor announced that the State, in conjunction with Sacramento Regional Transit, had filed a lawsuit in federal courts to challenge the DOL determination that California's pension reform violates federal mass transit labor protections. The assumption was that should the federal court side with the State, PEPRAs would then apply to mass transit employees again, and should the federal court side with DOL, mass transit employees will be permanently exempt from PEPRAs. In December 2014, Federal judge Kimberly Mueller ruled that U.S. Labor Secretary Thomas Perez's application of the 1964 law to block transit funds was "arbitrary" and "capricious" and a misrepresentation of the law. The DOL appealed the court decision but on April 27, 2015, requested that the appeal be dismissed because they interpret the Court decision to leave the decision making in their hands while others interpret the Court decision as recognition that the DOL withholding of federal grants is wrong. The Ninth Circuit denied the Amalgamated Transit Union's (ATU) motion to intervene in the appeal in 2018.

On June 14, 2019, in a letter addressed to the ATU General Counsel, the DOL concluded that *"Based on [its] reexamination, the Department has concluded that PEPRAs does not present a bar to certification under section 13(c)."* This letter became known as the "2019 Determination" (Attachment A) and allowed DOL certifications of FTA grants to continue.

This year, the DOL signaled its intention to reexamine the 2019 Determination and in a letter dated October 28, 2021 (Attachment B), the DOL stated *"the Department, after further deliberation, believes that the 2019 Determination does not reflect the best approach to certification under Section 13(c). Upon reconsideration, the Department has decided that it does not agree with the substance of the 2019 Determination."* The letter, now referred to as the "October 28 Determination" goes on to state that the revised position of the DOL is not retrospective and will not impact grants that have already been certified. It will however, impact future grants, potentially preventing their certification, and with the recent infrastructure bill passed by Congress, could result in a tremendous loss of transit dollars for California.

On November 10, 2021, Governor Newsom, Senator Feinstein and Senator Padilla responded to the DOL's most recent determination in letters (Attachments C & D) to Labor Secretary Marty Walsh, pointing out that state and federal courts, in multiple rulings, have determined that PEPRAs does not violate collective bargaining rights and there are no new rulings upon which to base the October 28 Determination.

Table 1 is a summary of the funds that could be potentially impacted. As urbanized funds are the focus, only Victor Valley Transit Authority (VVTA), Omnitrans, Southern California Regional Rail Authority (SCRRA) and SBCTA project funding has been identified as at risk. Per Caltrans staff, the rural grants provided to Morongo Basin Transit Authority, Mountain Transit, and the City of Needles are not expected to be disrupted.

**Table 1. Potential Impact to Federal Transit Funds in San Bernardino County (\$1,000s)**

Project/Fund Type	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027- FY2031	TOTAL
<b>SBCTA Project Impacts from PEPR</b>							
Redlands Passenger Rail - FTA 5307	8,655						<b>8,655</b>
Arrow Operating - CMAQ Transfer	5,000	7,500	7,000	3,000	2,500		<b>25,000</b>
WVC - Capital - FTA 5309 Small Starts	6,000	57,057	18,000	5,693			<b>86,750</b>
WVC - Capital - ARP (COVID Relief)	7,910	18,179					<b>26,089</b>
WVC - Operating - CMAQ Transfer				1,110	3,000	2,890	<b>7,000</b>
ZEMU Conversion - CMAQ/STIP Transfer						7,500	<b>7,500</b>
Zero Emission Bus Initiative - CMAQ Transfer			10,814	29,385	6,051	91,443	<b>137,693</b>
<b>SBCTA Total</b>	<b>27,565</b>	<b>82,736</b>	<b>35,814</b>	<b>39,188</b>	<b>11,551</b>	<b>101,833</b>	<b>298,687</b>
<b>Omnitrans Grant Impacts from PEPR</b>							
FTA 5307	4,314	20,068	21,980	23,980	23,980	*	<b>94,322</b>
FTA 5339	2,034	2,037	2,045	2,053	2,061	*	<b>10,230</b>
CMAQ Transfer				8,942	9,263	*	<b>18,205</b>
<b>Omnitrans Total</b>	<b>6,348</b>	<b>22,105</b>	<b>24,025</b>	<b>34,975</b>	<b>35,304</b>	<b>*</b>	<b>122,757</b>
<b>VVTA Grant Impacts from PEPR</b>							
FTA 5307	8,337	8,734	8,734	8,734	8,734	*	<b>43,273</b>
FTA 5339	990	1,130	1,130	1,130	1,130	*	<b>5,510</b>
CMAQ Transfer	3,690	2,500	3,389	2,500	3,100	*	<b>15,179</b>
<b>VVTA Total</b>	<b>13,017</b>	<b>12,364</b>	<b>13,253</b>	<b>12,364</b>	<b>12,964</b>	<b>*</b>	<b>63,962</b>
<b>SCRRA Grant Impacts from PEPR</b>							
FTA 5307	10,743	5,027	5,027	5,027	5,027	*	<b>30,851</b>
FTA 5337		9,162	8,612	8,612	8,612	*	<b>34,998</b>
<b>SCRRA Total</b>	<b>10,743</b>	<b>14,189</b>	<b>13,639</b>	<b>13,639</b>	<b>13,639</b>	<b>*</b>	<b>65,849</b>
<b>GRAND TOTAL</b>	<b>57,673</b>	<b>131,394</b>	<b>86,731</b>	<b>100,166</b>	<b>73,458</b>	<b>101,833</b>	<b>551,255</b>

\* Data available for next five years

**Financial Impact:**

This item has no financial impact to the Fiscal Year 2021/2022 Budget.

**Reviewed By:**

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel has reviewed this item.

**Responsible Staff:**

Otis Greer, Director of Legislative and Public Affairs

Approved  
Board of Directors  
Date: December 1, 2021

Witnessed By:



## U.S. Department of Labor

Office of Labor-Management Standards  
Washington, D.C. 20210



June 14, 2019

Robert Molofsky, General Counsel  
Amalgamated Transit Union  
10000 New Hampshire Avenue  
Silver Spring, MD 20903  
Email: [13c@atu.org](mailto:13c@atu.org)

Re: RESPONSE TO OBJECTIONS TO EMPLOYEE PROTECTION TERMS  
FOR PENDING FTA GRANT APPLICATIONS  
CA-03-0806-04 and CA-90-Z117  
Sacramento Regional Transit District and Caltrans *on behalf of* Monterey-Salinas Transit;  
and  
Alameda-Contra Costa Transit District, CA-2017-017-01 and CA-2019-011;  
Golden Gate Bridge, Highway and Transportation District, CA-2019-041;  
Los Angeles County Metropolitan Transportation Authority, CA-2018-012-01 and CA-  
2018-093-01;  
Riverside Transit Agency, CA-2019-048;  
San Francisco Bay Area Rapid Transit District, CA-2019-029;  
San Joaquin Regional Transit District, CA-2019-034;  
San Mateo County Transit District, CA-2017-104-01;  
Santa Clara Valley Transportation Authority, CA-2018-081-01 and CA-2019-047

Dear Mr. Molofsky:

This is in response to your November 29, 2018 letter, in which Amalgamated Transit Union (ATU) Local 1225 and Local 256 registered certain objections to the Proposed Terms for Employee Protection Certification contained in the Department of Labor's (Department) referral letters of November 16, 2018 for CA-03-0806-04 and CA-90-Z117. This letter also responds to ATU's objections to the other above captioned grant applications. Pursuant to Department Guidelines (29 CFR Part 215), all of the objections were timely received.

With regard to grants CA-03-0806-04 and CA-90-Z117, ATU asserted that the Department's sole rationale for proposing to certify the current grant is to comply with the decisions of the U.S. District Court for the Eastern District of California. *See California v. U.S. Dep't of Labor*, 306 F. Supp. 3d 1180 (E.D. Cal. 2018) (final decision). ATU in turn objected to the Department's proposed certification on the basis that it would be premature and improper to certify the grant in order to comply with the district court's decisions given that an appeal is still pending before the United States Court of Appeals for the Ninth Circuit. ATU noted that while the Department moved to voluntarily dismiss the appeal, ATU moved to intervene for the purpose of taking over the Department's appeal.

After ATU submitted its objection, the Ninth Circuit denied ATU's motion to intervene and dismissed the appeal. ATU's objection regarding the pendency of the appeal is therefore moot. As such, the Department determines in accordance with the Guidelines at 29 C.F.R. § 251.3 that ATU's objection to CA-03-0806-04 and CA-90-Z117 is not sufficient.

Regarding the remaining grants, ATU objects to the Department's proposed certification due to PEPRA's (California Public Employees' Pension Reform Act (PEPRA), Cal. Gov't § 7522 et seq.,) effect on transit employees' collective bargaining rights.

In light of the district court's decisions, the Department has reexamined its earlier determinations denying certification pursuant to section 13(c) of the Urban Mass Transportation Act (UMTA), now codified at 49 U.S.C. § 5333(b) (hereinafter "section 13(c)"), to these grants because of the PEPRA's impact on transit employees. Based on that reexamination, the Department has concluded that PEPRA does not present a bar to certification under section 13(c).

### **Background and Procedural History**

The facts were set out in the Department's previous correspondence issued on September 4, 2013, September 30, 2013, and August 13, 2015. As such, only a brief summary of the relevant facts and subsequent procedural history is provided here.

The Sacramento Regional Transit District (SacRTD) and the California Department of Transportation (Caltrans) on behalf of Monterey-Salinas Public Transit System Joint Powers Agency d/b/a Monterey-Salinas Transit (MST) first submitted the grants at issue to the Federal Transit Administration in 2012. The Federal Transit Administration forwarded the grants to the Department with a request for certification pursuant to section 13(c), which requires that the Department certify that "fair and equitable" arrangements are in place to protect the interests of affected employees before state and local transportation agencies can receive federal mass transit funding assistance. *See* 49 U.S.C. § 5333(b). Those arrangements "shall include provisions that may be necessary for," *inter alia*, "the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise," and "the continuation of collective bargaining rights." 49 U.S.C. § 5333(b)(2)(A), (B).

The Department initially denied certification to SacRTD's application on September 4, 2013 and to MST's application on September 30, 2013, on the basis that PEPRA precluded certification. PEPRA, enacted in 2012, reformed California's public employee pension system and applies to most California public employees, including transit employees affected by these grants. Among other requirements, PEPRA mandates that public employees hired after 2013: contribute at least 50% of the cost of their pension benefits; establish minimum time-in-service requirements; cap the pension benefits they can receive; and prescribes the calculation of their pension benefits at retirement. PEPRA also changes some aspects of pensions for public employees hired before 2013, including ending employees' ability to purchase service credit for non-working time ("airtime"). SacRTD and MST transit employees had collective bargaining agreements in place in 2013 that provided defined benefit pension plans with more employee-favorable terms than

those permitted by PEPRRA. The Department determined that PEPRRA's unilateral changes to pension benefits without bargaining were inconsistent with section 13(c)(1)'s mandate to preserve pension benefits under existing collective bargaining agreements and section 13(c)(2)'s mandate to ensure continuation of collective bargaining rights.

The transit agencies sought review of the Department's determination in federal district court. In a December 30, 2014 decision, the court held that the Department's determinations were arbitrary and capricious. *California v. U.S. Dep't of Labor*, 76 F. Supp. 3d 1125 (E.D. Cal. 2014). Among the reasons the court provided was that the Department erred in "reflexively" relying on *Amalgamated Transit Union v. Donovan*, 767 F.2d 939 (D.C. Cir. 1985), in light of the factual differences between that case and the circumstances here, which involved "a state's system-wide changes in some aspects of public employment." 76 F. Supp. 3d at 1143. Additionally, the court found that the Department's conclusion that PEPRRA prevented collective bargaining over pensions was erroneously premised on an assumption that a pension must necessarily be a defined benefit rather than a defined contribution plan. *Id.* at 1143. The court further stated that the Department was arbitrary and capricious in, *inter alia*, "fail[ing] to consider the realities of public sector bargaining," and in determining that not yet hired employees had rights under collective bargaining agreements. *Id.* at 1144-45. The court remanded the matter to the Department for further proceedings consistent with its decision. *Id.* at 1148.

On August 13, 2015, the Department issued new final determinations denying section 13(c) certifications. The Department explained its interpretation that the lessening or diminution of collective bargaining rights as accomplished by PEPRRA violates section 13(c), drawing support from the statute's text, legislative history, and case law establishing that the commonly understood meaning of collective bargaining precludes unilateral changes to mandatory subjects of collective bargaining. The Department also explained its disagreement that the factors and issues identified by the court supported certification of the grants. The transit agencies challenged the new final determinations, and the district court ruled that they were arbitrary and capricious. *California v. U.S. Dep't of Labor*, 306 F. Supp. 3d 1180 (E.D. Cal. 2018) (hereinafter 2018 Decision); *California v. U.S. Dep't of Labor*, No. 2:13-CV-02069-KJM-DB, 2016 WL 4441221 (E.D. Cal. Aug. 22, 2016) (hereinafter 2016 Decision). The court found that the statutory text and legislative history of section 13(c) were ambiguous as to whether section 13(c)(2)'s provision requiring "the continuation of collective bargaining rights" protected those rights from a diminishing or lessening that fell short of elimination. 2016 Decision, 2016 WL 4441221, at \*9-12, 15-17. The court noted, however, that the history of the statute suggested that the provision was "motivated primarily by larger-scale restrictions on collective bargaining rights." *Id.* at \*17. The court also determined the Department erred in relying on case law establishing that even minimal unilateral changes by an employer could violate the statute because Congress' intent was not to apply all National Labor Relations Act (NLRA) law to states through the UMTA. *Id.* at \*19-20. The court determined that PEPRRA was a permissible state law "backdrop" for collective bargaining because it did not substantially interfere with federal labor policy. *Id.* at \*21-26. The court also determined the Department erred in failing to explain why the transit authority's ability to negotiate for other types of benefits did not make up for any change made by PEPRRA. *Id.* at \*27-28.

The district court also ruled that the Department had been arbitrary or capricious in concluding that there were not adequate arrangements in place to preserve the pension rights of MST employees hired before 2013 ( “classic employees”). 2018 Decision, 306 F. Supp. 3d 1180. The court reasoned that section 13(c)(1)’s obligation to preserve rights and benefits was intended “to prohibit only those changes that harm or diminish bargained-for rights” in a manner that is not trivial. *Id.* at 1186-87. The court determined that PEPRAs change to classic employees’ airtime rights “was not sufficiently meaningful to trigger § 13(c)(1).” *Id.* at 1189. The court enjoined the Department from relying on PEPRAs to deny California’s application of funding for MST or SacRTD under section 13(c)(1) or (2). *Id.* at 1190. The Department initially appealed the court’s decisions, but on November 5, 2018, moved voluntarily to dismiss the appeal. On December 19, 2018, the Ninth Circuit denied ATU’s motion to intervene and dismissed the appeal.

Pursuant to its Procedural Guidelines, 29 C.F.R. § 215, the Department refers grant applications and proposed protective arrangements and terms and conditions to: the recipient and any subrecipient of the funding, and any unions representing employees of the recipient(s), its contractors, and/or other service area providers. Following these guidelines, on November 16, 2018, the Department re-referred the grant applications at issue in the litigation on the basis of the previously certified protective arrangements.

Once a grant application is referred to the parties, the parties have fifteen days to inform the Department of any objection to the recommended terms. For the Department to find an objection sufficient, it must “raise” material issues that “may require alternative employee protections,” or “concern changes in legal or factual circumstances that may materially affect the rights or interests of employees.” 29 C.F.R. § 215.3(d)(3). If no party objects or the Department does not find the objection sufficient, the Department certifies the proposed terms. The Department then provides FTA with a certification specifying the protective arrangements and terms and conditions to be made applicable to the federal assistance. 29 C.F.R. § 215.3(d)(5). After reviewing the above listed objections, the Department concludes that no sufficient objections have been raised.

## Analysis

### Analysis of sections 13(c)(1) and (2)

After the district court’s decisions, the Department independently reexamined the scope of its authority under section 13(c) and the best way to provide fair and equitable employee protective arrangements. The Department now concludes that Section 13(c) grants the Secretary broad discretion in determining whether there are adequate “employee protective arrangements.” 49 U.S.C. § 5333(b). The protective arrangements required as a condition of financial assistance are those that “the Secretary concludes are fair and equitable.” *Id.* (emphasis added). The plain terms of the statute make clear the deference to be afforded to the Secretary’s judgment of what provisions are fair between an employer and employees. *See Kendler v. Wirtz*, 388 F.2d 381, 384 (3d Cir. 1968) (“It is for the reasonable accommodation of unavoidably conflicting interests . . . that the Congress has seen fit to make the judgment of the Secretary of Labor as to what is fair and equitable controlling.”); *cf. City of Los Angeles v. U.S. Dep’t of Commerce*, 307 F.3d 859,

870-71 (9th Cir. 2002) (holding that statute providing that the Secretary of Commerce “shall, if he considers it feasible,” use statistical sampling, vests “meaningful discretion” on the Secretary to set a standard for feasibility and to determine whether the standard has been met); *Connecticut Dep’t of Children & Youth Servs. v. Department of Health & Human Servs.*, 9 F.3d 981, 985-86 (D.C. Cir. 1993) (statute requiring that specified procedures and programs must be implemented to the “satisfaction of the Secretary” constituted an “extraordinary grant of discretion” to the Secretary, subject to reversal only for an “egregious claim”); *Marshall County Health Care Auth. v. Shalala*, 988 F.2d 1221, 1224-25 (D.C. Cir. 1993) (statute empowering Secretary to provide “such other exceptions and adjustments \* \* \* as the Secretary deems appropriate” grants “broad delegation of discretion” subject to “quite narrow” judicial review).

The statutes provides that the Secretary must conclude that each of the five<sup>1</sup> different varieties of protective provisions that must be included among the § 13(c) arrangements are fair and equitable. But the Secretary still retains broad discretion in evaluating fairness and equity vis-à-vis each of the five objectives. *Kendler v. Wirtz*, 388 F.2d 381, 383 (3d Cir. 1968). Section 13(c) directs that the “[a]rrangements . . . shall include provisions that may be necessary” to meet these five objectives. 49 U.S.C. § 5333(b)(2) (emphasis added). The use of the permissive term “may be necessary” underscores the breadth of the Secretary’s discretion under section 13(c) to determine what provisions are needed to satisfy the five requirements. *See Amalgamated Transit Union Int’l, AFL-CIO v. Donovan*, 767 F.2d 939, 944 n.7 (D.C. Cir. 1985) (differentiating requirement that the Secretary determine all five objectives are satisfied prior to certification from Secretary’s discretion to determine “whether or not a specific provision within a labor agreement satisfies one of section 13(c)’s express objectives”).

In this case, the Secretary must determine whether arrangements satisfy section 13(c)’s objectives of “preservation of . . . benefits . . . under existing collective bargaining agreements” and “continuation of collective bargaining rights.” 49 U.S.C. § 5333(b)(2)(A)&(B). As the district court correctly recognized, the terms “continuation” and “preservation” could be construed strictly to mean that no changes can be made to employees’ collective bargaining rights, or more leniently to mean that the rights must only be substantially continued or preserved. *See* 2016 Decision, 2016 WL 4441221, at \*10-12; *see also Random House Webster’s Unabridged Dictionary* 440 (2d ed. 2001) (“continuation” means “something that continues some preceding thing by being of the same kind or having a similar content”). The statutory text permits either interpretation.

Although courts and the Department have looked to the legislative history of section 13(c), that history does not fully resolve the ambiguity in the meaning of “continuation” and “preservation.” As the Department explained in its earlier determinations, Senator Wayne Morse, section 13(c)’s sponsor, indicated that the provision was designed to avoid a “lessening” or “worsening” of rights, suggesting Congress could have been concerned about any diminishment of rights. *See* 109 Cong. Rec. 5671-72 (1963). Senator Morse’s reference to “lessening” or “worsening” may be considered in context as opposition to a committee bill’s mere encouragement of the continuation of collective bargaining rights, however. In that context, he could have been using

<sup>1</sup> As previously codified, section 13(c) enumerated five subsections. *See* 49 U.S.C. § 1609(c) (1988). In 1994, the text of the statute as codified was revised to separate the fourth assurance into two separate lettered paragraphs, which is how it remains today. *See* 49 U.S.C. § 5333(b)(2)(d) and (e) (1994).



the terms at a high level of generality to oppose the “lessening” or “worsening” that would result if states were only encouraged to continue collective bargaining rights, *i.e.*, a system in which collective bargaining rights would not be entirely eliminated but preserved only partially and to varying degrees in different states. The legislative history does not show that legislators had a settled conception that any lessening in rights in a particular collective bargaining relationship, no matter how minor, would necessarily fail to preserve rights under an existing collective bargaining agreement or discontinue the right to bargain collectively.

The purpose and context of the statute, however, do suggest that an appropriate interpretation is that the statute does not preclude certification in all circumstances where there may be diminishment in collective bargaining rights and benefits. Section 13(c)’s purpose was to allow the Secretary to accommodate states’ unique circumstances while ensuring fairness and equity and the “legislative history stress[es] the need for flexibility and discretion.” *Local Div. 589, Amalgamated Transit Union, AFL-CIO, CLC v. Mass.*, 666 F.2d 618, 634 (1st Cir. 1981). It would be contrary to this flexible design to conclude that any change in state law over the years that affects bargaining rights or benefits of its public sector employees means the Secretary would lose any discretion in determining whether the requirements of the statute are met.

It is also revealing that section 13(c)’s purpose was not to “subject local government employers to the precise strictures of the NLRA.” *Donovan*, 767 F.2d at 949; *see also Jackson*, 457 U.S. at 28 (“Congress designed § 13(c) . . . to accommodate state law to collective bargaining, not as a means to substitute a federal law of collective bargaining for state labor law.”). During debate, Senator Morse assured Senator Goldwater that section 13(c) did not disturb the NLRA’s exemption of state and local governments from its requirements. *See* 109 Cong. Rec. 5674 (1963). Senator Morse also clarified that workers would not retain the right to strike after becoming employed by a state that forbade strikes by public employees. *See id.* at 5672. Despite the loss of this economic weapon, Congress did not explicitly require workers be given some other right to compensate for the loss. *See Donovan*, 767 F.2d at 953-55. In fact, the *Donovan* court suggested that it may be proper under 13(c) to allow wage disputes, which are universally acknowledged to lie at the heart of collective bargaining, *id.* at 950-51, to be resolved through “good faith” collective bargaining supported, if necessary, by non-binding mandatory, meaningful fact-finding. This indicates that Congress did not intend that the Department apply with rigidity the requirements of the NLRA when interpreting section 13(c) requirements and recognized that the transition from private workers protected by the NLRA to public employees exempt from it would necessarily entail a loss of some collective bargaining rights, including the right to bargain over a no-strike clause. Consequently, it is reasonable not to apply with rigidity to section 13(c) arrangements the rule that private employers may violate the NLRA by making “[e]ven minimal unilateral changes to terms and conditions of employment.” *See* 2016 Decision, 2016 WL 4441221, at \*19. Rather, section 13(c)’s purpose and context suggest that not all changes to bargaining rights and benefits accomplished through state law preclude certification.

This more lenient interpretation of the meaning of “continuation” and “preservation” provisions in section 13(c) is not inconsistent with the relevant case law. It follows the California district court’s decisions. *See* 2018 Decision, 306 F. Supp. 3d at 1187 (explaining section 13(c) protects affected employees against “meaningful negative changes to rights and benefits conferred by their then-existing collective-bargaining agreements”). It also does not conflict with the D.C.

Circuit's opinion in *Donovan*. The D.C. Circuit explained Senator Morse's reference to "[m]aintaining the status quo" as usually meaning "*substantially* preserving collective bargaining rights that had been established by federal labor policy." *Donovan*, 767 F.2d at 948 (emphasis added). The D.C. Circuit therefore recognized that section 13(c) did not require the absolute preservation of all collective bargaining rights.

This interpretation is also consistent with case law recognizing that the Department's role is to ensure the arrangements are fair and equitable as opposed to ensuring the perpetuity of certain benefits or rights. Under section 13(c), the Department must certify as of the time of a pending grant application that the "protective arrangements" are "fair and equitable" under the five objectives, and, if the state were to change its law "contrary to the policy of 13(c)" and "halt the flow of funds or take other appropriate action." *Donovan*, 767 F.2d at 948 n.9 (quoting *Local Div. 589*, 666 F.2d at 634). Only a change that is "basically unfair or inequitable" would be problematic since "Congress's general intent to secure fair arrangements does not require the implementation of any *particular* set of detailed provisions." *Local Div. 589*, 666 F.2d at 634 (emphasis added). These courts recognized that Congress granted the Department discretion to determine whether the agreement is fair and equitable, but section 13(c) does not require the Department to go beyond that role.

#### Application of section 13(c) in this case

The discussion above shows that section 13(c) does not compel the results the Department reached in 2013 and 2015. Instead, it shows that key statutory terms can be interpreted in different ways and that the Secretary has broad discretion to determine which fair and equitable arrangements may be necessary for "preservation of . . . benefits . . . under existing collective bargaining agreements" and "continuation of collective bargaining rights." 49 U.S.C. § 5333(b)(2)(A)&(B). As explained below, there are several reasons why the Department now determines that such arrangements exist despite PEPPRA's impact on affected employees.

While PEPPRA does make significant reforms to California's public employee pension system, the reforms do not substantially affect transit employees' benefits under existing collective bargaining agreements. PEPPRA addresses only one substantive term of employment (pensions). PEPPRA imposes few, if any, restrictions on other subjects of collective bargaining. Moreover, PEPPRA does not preclude bargaining over pensions altogether, but rather caps defined benefit plans and their eligibility criteria prospectively while allowing bargaining over defined contribution plans. As attorneys representing California noted, "PEPPRA does not stand as an obstacle to substantive bargaining over participation in, and contributions to, defined contribution qualified retirement plans such as a 401(k) or 457(b) plan, or other forms of deferred compensation as the parties may bargain." AR 001323. "In fact, nothing in PEPPRA prohibits the negotiation of an actuarially equivalent retirement benefit to that which may have been allowable through a defined benefit pension prior to PEPPRA." *Id.* Additionally, since some of PEPPRA's changes to defined benefit plans only go into effect after the expiration of a collective bargaining agreement in effect on January 1, 2013, *see* Cal. Gov. Code § 7522.30(f), the law allowed time and opportunity for such negotiations. Therefore, the Department concludes that, despite PEPPRA, the section 13(c) arrangements meet section 13(c)(2)'s standard



of “preservation of . . . benefits . . . under existing collective bargaining agreements.” 49 U.S.C. § 5333(b)(2)(A).

PEPRA also does not impermissibly impair collective bargaining rights in violation of section 13(c)(2)’s standard of “continuation of collective bargaining rights.” PEPRA does not interfere with the collective bargaining process. It leaves agencies and employees “free to negotiate around [PEPRA’s] effects and within [its] restrictions.” *See* 2016 Decision, 2016 WL 4441221, at \*25. In fact, as the court noted, transit agencies and employees “have continued collective bargaining over other complementary pension strategies in the wake of PEPRA’s enactment.” *Id.* Such a determination is consistent with Congress’ implicit acknowledgement that collective bargaining rights remain even if state law takes away an employee right without replacing it with an equivalent benefit. *See Donovan*, 767 F.2d at 953-55 (explaining that Congress recognized transition from private to public would result in the loss of the right to strike, but did not necessarily require employees be provided with some equivalent economic weapon).

Moreover, the Department concludes that the section 13(c) arrangements are “fair and equitable” despite PEPRA’s requirements. As the court noted, even the NLRA “allows private employers to follow the dictates of economic necessity, so long as they bargain over the effects of management’s decisions.” 2016 Decision, 2016 WL 4441221, at \*25. Section 13(c) therefore allows California some latitude to address a problem of economic necessity concerning its budget, especially given that the legislative history indicates that Congress did not intend the provision to result in a strict application of NLRA precedent and intended more flexible dealings with states. *See id.* at \*24; *see also Local Div. 589*, 666 F.2d at 639 (explaining “[t]he state’s ‘paramount authority . . . extends to economic needs as well,’” and “the importance of allowing states to legislate freely on social and economic matters of importance to their citizens, modifying the law to meet changing needs and conditions” (quoting *Veix v. Sixth Ward Ass’n*, 310 U.S. 32, 39 (1940))).

In this instance, PEPRA was not aimed at undermining this collective bargaining system but at alleviating the state’s serious financial problem of pension funding. The Department considers both PEPRA’s unique purpose and its limited effect in deciding to certify the grants at issue. Since PEPRA’s effect is limited to one area of collective bargaining, and that area remains open for bargaining over significant aspects of pensions, PEPRA does not prevent the parties from meeting their statutory minimum and the employee protective arrangements appear fair and equitable. Thus, the Department determines that PEPRA does not preclude certification of the grants at issue.

The Department recognizes the ATU’s desire to defend the Department’s 2013 and 2015 determinations not to certify the grants at issue based on PEPRA. The Department does not consider that position a sufficient reason to deny certification. Since the 2013 and 2015 determinations, the Department has changed its position in a number of ways. First, as the district court concluded, the Department previously improperly treated *Donovan* as controlling even though the law at issue in *Donovan* was materially different from PEPRA. The law in *Donovan* applied to one transit authority, was aimed at collective bargaining, and removed five subjects from the collective bargaining process. *Donovan*, 767 F.2d at 942-43. In contrast, PEPRA is a state-wide law applicable to public employees generally and is not directed to the

process of collective bargaining but rather addresses the substantive terms of employment in one respect (pensions), an area where states traditionally have latitude, and, as discussed above, it does not preclude bargaining over pensions altogether. In light of the district court's decision, and on reexamination of *Donovan*, the Department concludes that its earlier determinations should not have treated *Donovan* as controlling.

Second, the Department's earlier determinations gave insufficient consideration to terms in section 13(c), discussed above, that give discretion to the Department to interpret section 13(c)'s requirements. Third, the earlier determinations adopted definitions of statutory terms such as "continuation" and "preservation" that were not compelled by the statutory language or legislative history. As explained above and in the district court's decisions, section 13(c) grants the Secretary broad discretion to determine whether arrangements continue bargaining rights and preserve benefits even if a state law has made certain changes impacting collective bargaining rights and benefits of transit employees. *See* 2016 Decision, 2016 WL 4441221, at \*20; 2018 Decision, 306 F. Supp. 3d at 1187. Fourth, the 2015 determination focused on NLRA precedents concerning the duty to bargain and preemption without sufficient consideration of UMTA's purpose and context, which indicate that the Department should not apply section 13(c) in a manner that reflexively incorporates NLRA precedent to a public sector setting.

Finally, the Department's earlier determinations gave too little weight to what the district court termed the realities of public sector collective bargaining. The district court's decisions and the statutory purpose and context of section 13(c) indicate that Congress intended the Department to exercise flexibility when accommodating state's public sector collective bargaining. The provisional purpose of Congress in enacting section 13(c) – to cushion the impact on transit employees of a change from private to public sector employment – is relevant in interpreting the scope of section 13(c)'s protections. The Department considered that purpose in more carefully examining the changes made by PEPRA to determine if there is still a sufficient continuation of rights and preservation of benefits. The Department determines that PEPRA's effects are sufficiently limited in scope and purpose so as to allow the Department to conclude the arrangements continue to exist that meet section 13(c)'s requirements for the continuation of collective bargaining rights and the preservation of rights, including continuation of pension rights and benefits under existing collective bargaining agreements.

Sincerely,



Arthur F. Rosenfeld, Director  
Office of Labor-Management Standards

cc: See certifications

## U.S. Department of Labor

Office of Labor-Management Standards  
Washington, D.C. 20210



October 28, 2021

Ray Tellis, Regional Administrator  
Federal Transit Administration, Region IX  
201 Mission Street, Suite 2210  
San Francisco, California 94105

Re: Reconsideration of June 14, 2019 Determination Responding to Objections to Employee Protection Terms for Pending FTA Grant Applications  
Alameda-Contra Costa Transit District, CA-2017-017-01 and CA-2019-011;  
Golden Gate Bridge, Highway and Transportation District, CA-2019-041;  
Los Angeles County Metropolitan Transportation Authority, CA-2018-012-01 and CA-2018-093-01;  
Riverside Transit Agency, CA-2019-048;  
San Francisco Bay Area Rapid Transit District, CA-2019-029;  
San Joaquin Regional Transit District, CA-2019-034;  
San Mateo County Transit District, CA-2017-104-01;  
Santa Clara Valley Transportation Authority, CA-2018-081-01 and CA-2019-047

Dear Mr. Tellis:

Before state and local transportation agencies can receive certain federal mass transit funding assistance, Section 13(c) of the Urban Mass Transportation Act of 1964 (“UMTA”) requires that the U.S. Secretary of Labor certify that “fair and equitable” arrangements are in place to protect the interests of affected employees. 49 U.S.C. § 5333. Those arrangements “shall include provisions that may be necessary for” “the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise” and “the continuation of collective bargaining rights.” *Id.* § 5333(b)(2)(A), (B) (commonly referred to as Section 13(c)(1) and (c)(2)).

In 2013, the Department<sup>1</sup> determined that the enactment of the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”), Cal. Gov’t § 7522 *et seq.*, precluded Section 13(c) certification of grants to two California transit agencies. The transit agencies had received federal transit funding for decades and committed to abide by Section 13(c)’s requirements. Nevertheless, the transit agencies unilaterally reduced their employees’ pension benefits in order to comply with the substantial restrictions imposed by PEPRA on public employers in California.

<sup>1</sup> The Secretary of Labor delegated his authority under Section 13(c) to the Office of Labor-Management Standards (OLMS). See Secretary’s Order 8-2009, § 5.A(4), 74 Fed. Reg. 58835 (Nov. 13, 2009). For simplicity, this reconsideration uses the term “the Department” generally to refer to those at the U.S. Department of Labor given authority for Section 13(c) certification.

The Department reasoned that PEPPRA substantially diminished the affected unions' ability to bargain over future pension benefits in violation of Section 13(c)(2)'s requirement to continue collective bargaining rights and reduced benefits provided under the agreements for employees in contravention of Section 13(c)(1)'s preservation of existing benefits requirement. California and the transit agencies successfully challenged the Department's position in the U.S. District Court for the Eastern District of California and ultimately obtained an injunction that precluded the Department from relying on PEPPRA to withhold certification of the grant funds intended to benefit those two transit agencies.

On June 14, 2019, the Department issued a determination ("2019 Determination") reevaluating its prior determinations and acquiescing to the district court's conclusions that PEPPRA's impact on transit employees did not preclude Section 13(c) certification. In light of litigation brought by transit employees' unions regarding the 2019 Determination, the Department, after further deliberation, believes that the 2019 Determination does not reflect the best approach to certification under Section 13(c). Upon reconsideration, the Department has decided that it does not agree with the substance of the 2019 Determination, which represents a deviation in the Department's long-standing interpretation and application of Section 13(c).

The Department hereby nullifies that 2019 deviation and returns to its original superior position. The Department finds that PEPPRA effectively precludes certification under Section 13(c) for those transit agencies subject to its reforms. The reasons for the Department's return to its longstanding position are set forth at length below. The Department, however, is not rescinding or otherwise taking retrospective action as to the particular grant certifications addressed in the 2019 Determination. The Department's certifications pursuant to its 2019 Determination included no conditions indicating that funds could be de-obligated or that transit agencies might incur other obligations in the event of a change in the Department's application of Section 13(c). Therefore, the Department does not believe it would be fair and equitable, in light of all the circumstances, to issue a decision that could de-obligate the funds that have been obligated as a result of these particular grant certifications. The Department's conclusion to this effect accounts for any reliance interests that the State of California and its transit agencies may have in the 2019 Determination; the State's interests in the funds already committed are protected, and the State is now apprised of the approach that the Department will take with respect to Section 13(c) for grant applications prospectively.<sup>2</sup>

## **Background and Procedural History**

### **The California Public Employees' Pension Reform Act (PEPPRA)**

California enacted PEPPRA in 2012 to reform the state's public employee pension system. PEPPRA affects the vast majority of California transit system employees because most participate in affected public retirement systems, such as the California Public Employees' Retirement System ("CalPERS"), a retirement system established under the County Employees Retirement

<sup>2</sup> While the Department will change its approach going forward, it will of course continue to comply with the injunction entered by the Court in the prior case. *See California v. U.S. Dep't of Labor*, 306 F. Supp. 3d 1180, 1190 (E.D. Cal. 2018) (granting injunctive relief but limiting scope of injunction to the two transit agencies at issue in that case).

Law of 1937 (“1937 Act System”), or an independent public retirement system plan. *See* Cal. Gov’t § 7522.02(a)(1); AR<sup>3</sup> 64-001325 n.1.<sup>4</sup> PEPPRA’s most significant revisions are for those hired on or after January 1, 2013 (“new employees”), but certain provisions also affect those hired before that date (“classic employees”).

PEPPRA makes significant reductions to the maximum pension benefits that can be offered by public agencies participating in affected California retirement systems. Among other changes, PEPPRA lays the groundwork for increased cost-sharing of defined benefit pensions. PEPPRA requires that employees hired on or after January 1, 2013 pay at least 50% of the normal costs of any defined benefit pension plan and prohibits employers from paying any of the statutory employee contribution. Cal. Gov’t § 7522.30(c). PEPPRA extends that goal to all employees, declaring that “[t]he standard shall be that employees pay at least 50 percent of normal costs.” *Id.* § 7522.30(a); *see also id.* § 20516.5(a). As of January 1, 2018, PEPPRA also allows employers that contract with CalPERS to require all employees pay 50 percent of the normal costs, although for employees represented by labor unions, the employer can unilaterally impose this requirement only after bargaining to impasse. *Id.* § 20516.5(b) & (c).

PEPPRA also makes changes to pension formulas and how benefits are calculated. PEPPRA establishes minimum retirement ages and length-of-service requirements, and sets the maximum percentage of compensation to which a retiree will be entitled. *Id.* §§ 7522.20, 7522.25. PEPPRA defines the final compensation that will be used to calculate pension benefits, providing for a three-year period for compensable income calculations, excluding certain income such as bonus payments and overtime pay, and capping the total amount of eligible income. *Id.* §§ 7522.10, 7522.32, 7522.34, 7522.42. It phased out the ability of public employees to purchase nonqualified service time (service credit for non-working time) or “airtime.” *Id.* § 7522.46. It requires that enhancements to a public employee’s retirement formula or benefit can only apply prospectively. *Id.* § 7522.44(a)-(b). PEPPRA limits the ability of public employee retirees to work and simultaneously collect a pension. *Id.* § 7522.56.

PEPPRA also places limits on the types of plans that public agencies can offer. It bars a public employer from offering a defined benefit pension plan to new employees that would cost more or be riskier to the employer than statutory benefit formulas. *Id.* § 7522.15. PEPPRA bars a public employer that did not offer a supplemental defined benefit plan before January 1, 2013, from doing so after that date or from including any new employee in an existing supplemental defined benefit plan. *Id.* § 7522.18(a), (c).

<sup>3</sup> AR refers to the Administrative Record compiled for the challenge to the Department’s 2019 Determination. *See* Certified List of the Contents of the Administrative Record, ECF# 15, filed in *ATU v. U.S. Dep’t of Labor*, No. 2:20-CV-00953-KJM-DB, 2021 WL 2003104 (E.D. Cal. May 19, 2021).

<sup>4</sup> Transit agencies in California may choose between various options for retirement systems for their employees. Many transit agencies in California choose to contract with CalPERS or the 1937 Act systems, and by doing so, they are subject to the limitations mandated by PEPPRA for those systems. Other transit agencies participate in pension trusts governed by the Employee Retirement Income Security Act of 1974 or have established their own locally administered retirement system. *See* AR 64-001325 n.1. Some transit systems in California use private contractors for the operation of all service and vehicle maintenance and so are not affected by PEPPRA’s restrictions on public employers and employees.



## Prior Related Administrative and Court Proceedings

### 2013 and 2015 Determinations and Related Litigation

Related prior administrative proceedings began in 2012 when two public transit agencies, the Sacramento Regional Transit District (“SacRTD”) and the California Department of Transportation (“Caltrans”) on behalf of Monterey-Salinas Public Transit System Joint Powers Agency d/b/a Monterey-Salinas Transit (“MST”), submitted grants for Section 13(c) certification. *See California v. U.S. Dep’t of Labor (“Cal. II”)*, 2016 WL 4441221, at \*4 (E.D. Cal. 2016). The Amalgamated Transit Union (ATU), whose locals represented affected transit workers, filed objections to certification due to PEPRAs effects on transit workers collective bargaining rights. The Department denied certification of SacRTD’s grant application on September 4, 2013 and of MST’s application on September 30, 2013, finding, *inter alia*, that PEPRAs prevented “continuation of collective bargaining rights” under Section 13(c)(2) and thus precluded certification. *See* AR 5-000126; AR 6-000144; AR 14-000196 (“2013 Determinations”).

California and the transit agencies sought review of the 2013 Determinations in the U.S. District Court for the Eastern District of California. In a 2014 decision, the court held that the 2013 Determinations were arbitrary and capricious. *California v. U.S. Dep’t of Labor (“Cal. I”)*, 76 F. Supp. 3d 1125 (E.D. Cal. 2014). Among the reasons the court provided was that the Department erred in “reflexively” relying on *Amalgamated Transit Union, AFL-CIO v. Donovan*, 767 F.2d 939 (D.C. Cir. 1985), in light of the factual differences between that case and the circumstances presented by PEPRAs, which involved “a state’s system-wide changes in some aspects of public employment.” 76 F. Supp. 3d at 1143. Additionally, the court found that the Department’s conclusion that PEPRAs prevented collective bargaining over pensions was erroneously premised on an assumption that a pension must necessarily be a defined benefit rather than a defined contribution plan. *Id.* The court further stated that the Department was arbitrary and capricious in, *inter alia*, “fail[ing] to consider the realities of public sector bargaining,” and in determining that not yet hired employees had rights under collective bargaining agreements. *Id.* at 1144-45. The court remanded the matter to the Department for further proceedings consistent with its decision. *Id.* at 1148.

On August 13, 2015, the Department reaffirmed its denial of the Section 13(c) certifications, providing additional explanation to address the issues raised by the court. *See* AR 94-001645; AR 99-001677 (“2015 Determinations”). California and the transit agencies returned to court to challenge the new determinations, and the court once again ruled that they were arbitrary and capricious. *California v. U.S. Dep’t of Labor (“Cal. III”)*, 306 F. Supp. 3d 1180, 1190 (E.D. Cal. 2018); *Cal. II*, 2016 WL 4441221. The court found that the statutory text and legislative history of Section 13(c) were ambiguous as to whether Section 13(c)(2)’s provision requiring “the continuation of collective bargaining rights” protected those rights from a diminishing or lessening that fell short of elimination. *Cal. II*, 2016 WL 4441221, at \*9-12, 15-17. The court noted, however, that the history of the statute suggested that the provision was “motivated primarily by larger-scale restrictions on collective bargaining rights” not present in this case. *Id.* at \*17.

The court also determined that the Department erred in relying on case law establishing that even minimal unilateral changes by an employer could violate the statute because Congress' intent was not to apply all National Labor Relations Act (NLRA) law to states through the UMTA. *Id.* at \*19-20. The court determined that PEPR was a permissible state law "backdrop" for collective bargaining because it did not substantially interfere with federal labor policy. *Id.* at \*21-26. In making this determination, the court analyzed whether a private analog of PEPR would be subject to preemption under the NLRA. *Id.* The court created a test with the following five factors to evaluate this preemption issue: (1) Does the state law concern state interests deeply rooted in local feeling and responsibility and are those interests a merely peripheral concern of federal policy?; (2) Is the state law one of general applicability?; (3) Does the law protect workers' interests, for example, by establishing minimum labor standards?; (4) Does the state law essentially dictate the substantive result of collective bargaining?; (5) Does the law otherwise clash with the federal goal of encouraging the employer and the representative of the employees to establish, through collective negotiation, their own charter for the ordering of industrial relations? The court's application of this test resulted in one factor favoring the Department (the fifth), one factor favoring the transit agencies (the fourth), and the remaining three factors being neutral or uncertain. Within the context of this test and also as an independent basis, the court found the Department erred in failing to explain why the transit authority's ability to negotiate for other types of benefits did not make up for any change made by PEPR. *Id.* at \*25, 27-28.

The court also ruled that the Department had been arbitrary or capricious in concluding that there were not adequate arrangements in place to preserve the pension rights of classic employees given the less significant changes to these employees' benefits. *See Cal. III*, 306 F. Supp. 3d 1180. The court enjoined the Department from relying on PEPR to deny California's application of funding for MST or SacRTD under Section 13(c)(1) or (2). *Id.* at 1190. The Department appealed the court's decisions, but, on November 5, 2018, moved voluntarily to dismiss the appeal. *See AR 162-002563*. On December 19, 2018, the Ninth Circuit denied ATU's motion to intervene and dismissed the appeal. *See id.*

#### June 14, 2019 Determination and Related Litigation

On November 16, 2018, the Department re-referred the SacRTD and MST grant applications to ATU and the recipients. Between January and May 2019, the Department also referred eleven other grant applications by California transit agencies. *See AR 163-002569* (2019 Determination). ATU objected to the proposed certifications of the SacRTD and MST grants on the basis that it would be premature and improper to certify the grant to comply with the district court's decision given that an appeal was still pending.<sup>5</sup> *See id.* at 1-2. ATU objected to the other proposed certifications due to PEPR's effect on transit employees' collective bargaining rights. *See id.* at 2.

On June 14, 2019, the Department issued the 2019 Determination responding to ATU's objections to certification of multiple California grants due to PEPR's effect on transit employees' collective bargaining rights. The 2019 Determination explained that the Department had "reexamined" its earlier position, and "[i]n light of the [California] district court's

<sup>5</sup> At that time, ATU's motion to intervene was still pending.



decisions,” had “concluded that PEPRA does not present a bar to certification under section 13(c).” *Id.* at 2. The 2019 Determination first explained that it had reexamined the scope of its certification authority under Section 13(c) and determined that the provision grants the Secretary “broad discretion” to determine the adequacy of protective arrangements under Section 13(c). *Id.* at 4-5.

The Department further acknowledged that while the statute requires the Secretary to assess whether each of the enumerated statutory objectives has been satisfied, “the Secretary still retains broad discretion in evaluating fairness and equity vis-à-vis each of the five objectives.” *Id.* at 5. Turning specifically to the provisions for the preservation of benefits and continuation of collective bargaining rights, the Department found that they could be read “strictly to mean no changes can be made to employees’ rights, or more leniently to mean that rights must only be substantially continued or preserved.” *Id.* at 5-6. The 2019 Determination noted that the purpose and context of the statute suggest, however, that the more lenient interpretation is appropriate. *Id.* at 6-7. The Department explained that Section 13(c) was designed to give the Secretary the flexibility to consider states’ unique circumstances and not rigidly incorporate the strictures of the NLRA that preclude an employer from making even minimal unilateral changes to terms and conditions of employment. *Id.*

The 2019 Determination applied this interpretation to the grants at issue, finding that PEPRA did not substantially affect transit employees’ benefits under existing collective bargaining agreements or impermissibly impair collective bargaining rights in violation of Section 13(c). *Id.* at 7-9. The Department explained that PEPRA only impacts bargaining over one substantive term of employment, pensions, and does not foreclose bargaining altogether but leaves employees free to negotiate around its restrictions. *Id.* at 7-8. It further explained that PEPRA was not aimed at the collective bargaining process but at alleviating the state of California’s “serious financial problem of pension funding.” *Id.* at 8. In light of PEPRA’s unique purpose and limited effect, the Department concluded that it did not preclude certification of the grants at issue. *Id.*

On August 22, 2019, ATU and some of its affiliated California local unions filed suit against the Department in the U.S. District Court for the District of Columbia, challenging the Department’s certification of grants to the California transit agencies in the 2019 Determination. California filed a motion to intervene along with a proposed motion to transfer venue to the U.S. District Court for the Eastern District of California, which were granted by the U.S. District Court for the District of Columbia on December 19, 2019 and April 29, 2020, respectively. *See ATU v. U.S. Dep’t of Labor*, No. 2:20-CV-00953-KJM-DB, 2021 WL 2003104 (E.D. Cal. May 19, 2021). ATU moved for summary judgment, and the Department and California separately filed oppositions and cross-motions for summary judgment.

Prior to the filing of the Department’s reply, there was a change in administration that resulted in new leadership assuming responsibility for the Department. The Department sought and received stays from the court so that new leadership would have time to become familiar with the issues in this case and decide whether to reconsider the Department’s position regarding PEPRA. The Department now issues this reconsideration of its 2019 Determination.

## Analysis

### Understanding Collective Bargaining

PEPRA substantially interferes with the scope of permissible collective bargaining by transit workers and transit agencies such that Section 13(c)(2)'s requirement regarding "the continuation of collective bargaining rights" is not met. PEPRA places limits on the maximum pension benefits obtainable by transit workers, making defined benefit plan terms less favorable and shifting investment risk from employer to employee. As noted above, PEPRA established a minimum contribution amount for new employees, set the formula for time-in-service requirements, capped pensionable compensation, excluded certain compensation from pensionable compensation, and placed limitations on supplemental defined benefit plans. After PEPRA, unions and the transit agencies can no longer bargain freely about the calculation of defined benefit pensions, the service requirements for qualification, the compensation to be used for calculating pension amounts, the percentage of costs to be paid by new employees, or the addition of a new defined benefit plan. In essence, PEPRA largely removed the subject of defined benefit pensions from collective bargaining.

In doing so, PEPRA significantly interferes with transit employees' ability to bargain over pension rights, which is a mandatory subject of collective bargaining. *See Allied Chem. & Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.*, 404 U.S. 157, 159 (1971) ("Under the National Labor Relations Act, as amended, mandatory subjects of collective bargaining include pension and insurance benefits for active employees."); *S. Nuclear Operating Co. v. NLRB*, 524 F.3d 1350, 1356 (D.C. Cir. 2008) (explaining that the Supreme Court has "made clear that retirement benefits for current employees are mandatory bargaining subjects"). While PEPRA does not restrict collective bargaining procedures themselves, it predetermines significant aspects about the outcome of any such procedures with respect to defined benefit pensions. The state law places new limits on the potential solutions that transit agencies and transit workers can reach to the question of appropriate wages and benefits. In the Department's assessment, this constitutes a significant interference with transit workers' collective bargaining rights such that they are not "continued" within the meaning of Section 13(c) and the Department cannot certify that fair and equitable arrangements are in place to protect transit workers affected by assistance in California.

California and its transit agencies have received federal transit funding for decades and committed to abide by Section 13(c)'s requirement that changes to transit employees' wages and benefits be brought about by collective bargaining rather than state fiat. PEPRA violated this agreement, mandating that transit agencies make changes to workers' benefits and resulting in collective bargaining agreements that are consistent with the new limits. California and the transit agencies have not remedied the violation and continue to allow PEPRA to impede transit workers' collective bargaining rights with its significant limits on obtainable defined benefit pension plans. In limiting potential solutions that employers and employees can reach regarding the question of deferred compensation, PEPRA continues to interfere with the collective

bargaining process regardless of the specific terms of workers' collective bargaining agreements now in existence.<sup>6</sup>

The Department remains convinced of the accuracy of this assessment of PEPRA's impact after reviewing the 2019 Determination and the district court decisions finding the 2013 and 2015 Determinations to be in violation of the Administrative Procedure Act. For the reasons explained below, the Department disagrees with the exercise of discretion under Section 13(c) reflected in the 2019 Determination, notwithstanding the arguments made in those decisions that Section 13(c) certification is appropriate despite PEPRA. First, the Department does not agree that PEPRA's changes are so insignificant and unsubstantial that they do not impermissibly interfere with the continuation of collective bargaining rights for purposes of Section 13(c). Second, the Department does not believe that any of the complexities inherent in the interrelationship of public sector bargaining, state law, and federal labor law provide a justification for overlooking PEPRA's impact on transit workers' collective bargaining rights.

### **PEPRA's Impact on Collective Bargaining Rights**

The 2019 Determination and district court decisions portray PEPRA's impact as insignificant and minimal by focusing on the ways in which collective bargaining rights were continued. The Department does not agree that PEPRA's substantial impact on pension benefits can be minimized by simply focusing on aspects of transit workers' collective bargaining rights that were untouched by the law.

First, the Department is not convinced that PEPRA's impacts are minor because they affect defined benefit plans but not defined contribution plans. *See* 2019 Determination at 7; *Cal. I*, 76 F. Supp. 3d at 1143. In order for a state or transit agency to significantly interfere with collective bargaining over pensions, it is not necessary that it affect bargaining about all types of pension plans. PEPRA's restrictions on defined benefit plans are sufficient alone, especially given the advantages such plans offer employees, including putting investment risk on the employer. *See* 2015 Determinations at 19-20.<sup>7</sup>

<sup>6</sup> PEPRA significantly interferes with collective bargaining rights for employees of affected public retirement systems, despite gradations in its effect. PEPRA's practical impact on transit employees depends on the particulars of each employee's situation, including the benefits enjoyed by the employee at PEPRA's enactment, the public retirement system that the transit agency participates in and the pension plan(s) it offers employees, and potentially the existence and contents of a collective bargaining agreement separately negotiated by a union to which the employee belongs.

<sup>7</sup> A defined benefit plan provides for a fixed periodic payment at retirement, which can be funded by contributions from the employer and employee. In a defined benefit plan, the employer is obligated to make up any shortfall in payouts to employees and so "typically bears the entire investment risk." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439 (1999); *Hurlie v. Southern California Gas Co.*, 539 F.3d 1024, 1029 (9th Cir. 2008). In contrast, defined contribution plans typically operate by having an employee contribute a fixed amount to their individual account, sometimes with employer contributions. At retirement, the employee is entitled to benefits based on the gains, losses, and expenses that investment of the contributions have incurred. *See Hughes Aircraft*, 525 U.S. at 439; *Hurlie*, 539 F.3d at 1029. Defined contribution plans shift the investment risk to the employee, and often require the employee to make decisions about contribution amounts, types of investment, and how to convert the funds to retirement income. *See, e.g.*, U.S. Government Accountability Office, Retirement Income, Ensuring Income Throughout Retirement Requires Difficult Choices, GAO-11-400 (June 7, 2011), available at <http://www.gao.gov/products/GAO-11-400>.

Second, the Department now finds untenable the 2019 Determination's conclusion that PEPPRA's impact is diminished because it is not aimed at collective bargaining procedures themselves. *See* 2019 Determination at 8. Continuation of collective bargaining rights logically requires that an employer abide by the procedures in place and not be able to dictate terms and conditions of employment by fiat. An employer's unilateral change to terms and conditions of employment is a violation of the collective bargaining process and procedures. *See USC Univ. Hosp. & Nat'l Union of Healthcare Workers*, 358 NLRB 1205, 1213 (2012) ("It is, of course, long, well established Board and court authority that an employer violates Section 8(a)(5) and (1) of the [NLRA] if it makes a unilateral change in the wages, hours, working conditions, or other terms and conditions of employment of its employees without first giving a union representing a unit of employees notice and an opportunity to bargain." (citing *NLRB v. Katz*, 369 U.S. 736, 743 (1962))). As the D.C. Circuit observed in *Donovan*, "[c]ollective bargaining does not exist if an employer retains the power to establish wages, hours and other conditions of employment without the consent of the union or without at least first bargaining in good faith to impasse over disputed mandatory subjects." 767 F.2d at 951. In enacting PEPPRA, the state unilaterally dictated certain substantive results of the collective bargaining process by preventing employees from obtaining certain favorable terms for defined benefit pension plans.<sup>8</sup> PEPPRA's unilateral changes to obtainable pension benefits is inconsistent with the continuation of collective bargaining rights, just as changes to aspects of collective bargaining procedures may be as well.

Third, the Department finds unsupported the 2019 Determination's conclusion that PEPPRA's effects are mitigated by the fact that employees and employers are free to bargain around PEPPRA's effects and within its restrictions. *See* 2019 Determination at 8; *Cal. II*, 2016 WL 4441221, at \*25, 28. In theory, employees may be able to coax an employer to offer certain benefits to mitigate the effect of PEPPRA's restrictions. But this will always be true in any situation where the state or employer takes away rights or benefits but does not completely eliminate collective bargaining. The logical result of this type of reasoning is that the employer will always be able to shape by state fiat the types of benefits obtainable in favor of employers and chip away at collective bargaining rights. For collective bargaining rights to continue, state employers cannot have authority to unilaterally diminish significant terms and conditions of employment of transit workers. As the D.C. Circuit in *Donovan* recognized, "the substantive provisions of collective bargaining agreements may change, but section 13(c) requires that the changes be brought about through collective bargaining, not by state fiat." 767 F.2d at 953.

Moreover, in practice, PEPPRA places a hand on the scale in favor of the employer in a manner that is inconsistent with the process of collective bargaining. Under the rules of collective bargaining, an employer would need to negotiate with employees if it wished to place new restrictions on obtainable pension benefits and would likely need to offer some compensatory benefits to employees in exchange. In contrast, by enacting PEPPRA, the state unilaterally

<sup>8</sup> As explained in the 2015 Determinations, pension plans are one of the terms and conditions of employment over which an employer must bargain collectively. Pensions were understood to be a mandatory subject of collective bargaining at the time of Section 13(c)'s passage. *See* 2015 Determinations at 11-12. Indeed, Section 13(c) itself specifically notes pensions rights among those protected. *See* 49 U.S.C. § 5333(b)(2)(A) (requiring "the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise").

removed certain outcomes from the process that were considered unfavorable to public employers in the state. PEPRA creates a result in favor of the employer without the prerequisite negotiations, which typically is what encourages employers to offer compensatory benefits to induce an agreement from employees. As such, the Department is not persuaded that PEPRA's effects can so easily be mitigated. It is not reasonable to base an assessment of whether collective bargaining rights have continued on speculation that some employees *may* have been able to obtain some compensatory benefits in exchange for restrictions mandated by state law. In the Department's judgment, PEPRA's restrictions constitute a significant interference with collective bargaining rights, regardless of the results of subsequent negotiations regarding pensions and other benefits.

Fourth, the Department does not view PEPRA's restrictions as less impactful because the most significant changes apply to recently hired employees. *See Cal. I*, 76 F. Supp. 3d at 1144-45. It is well established that new employees are entitled to the rights granted under collective bargaining agreements. *See* 2013 Determinations at 12-13; *see also J.I. Case Co. v. NLRB*, 321 U.S. 332, 334-36 (1944); *Gvozdenovic v. United Air Lines*, 933 F.2d 1100, 1106-07 (2d Cir. 1991). Employers may not unilaterally change wages and benefits of new employees. *See, e.g., Mississippi Power Co.*, 332 NLRB 530, 532 n.10 (2000), *enfd. in relevant part*, 284 F.3d 605 (5th Cir. 2002); *Triple A Fire Prot., Inc.*, 315 NLRB 409, 422 (1994). The Ninth Circuit has specifically held that an employer violates federal labor law when it refuses to collectively bargain over new employees or refuses to apply the terms of existing agreements to the new employees. *NLRB v. Big Bear Supermarkets No. 3*, 640 F.2d 924, 931 (9th Cir. 1980). Given this basic principle of collective bargaining, it is appropriate to consider PEPRA's provisions affecting new employees when assessing the impact of the law on the continuation of collective bargaining rights. Additionally, Section 13(c)'s protections could soon become meaningless if the Department were to ignore employers' actions affecting the rights and benefits of recently hired or new employees, and there is "nothing in the text of the provision to suggest that the essential process entailed in 'the continuation of collective bargaining rights' should come to mean less as time goes by." *Donovan*, 767 F.2d at 957 (Ginsburg, J., concurring). As such, the Department is not persuaded by the district court decisions' and the 2019 Determination's assessment of PEPRA's effect on collective bargaining rights as trivial or unsubstantial.

### **Interrelationship of Public Sector Bargaining, State Law, and Federal Law**

As explained below, upon further reflection, the Department finds the arguments in the 2019 Determination and district court decisions related to the dynamics involved in applying principles of federal labor law to state or local government to be unpersuasive. The Department looks to federal labor law in assessing these arguments about the intended relationship between Section 13(c) and state laws in order to understand the general scope of the duty to bargain collectively. As the D.C. Circuit recognized in *Donovan*, the Department now finds that the legislative history to the Urban Mass Transportation Act "reveals Congress' clear intent to measure state labor laws against the standards of collective bargaining established by federal labor policy." 767 F.2d at 948. Nevertheless, the Department uses NLRA precedent as guidance below and is not suggesting its rigid application to Section 13(c). *See* 2019 Determination at 6; *Cal. II*, 2016 WL 4441221, at \*19.



### Public Sector Realities

First, the Department does not find that the “realities of public sector bargaining” require the Department to excuse PEPPRA’s impact. *See Cal. II*, 2016 WL 4441221, at \*21. The Department is familiar with the “realities of public sector bargaining” and that the process entails additional actors, considerations, and complications. Transit agencies need to consider “taxes, legislative policies, constitutional requirements, civil service principles, municipal codes, and other concerns in addition to the ordinary concerns of private employment, like budgets or competitors’ practices.” *See id.* Here, transit agencies were placed in an additional federal-state bind because California enacted a law that interfered with collective bargaining relationships that its transit agencies had agreed to preserve and continue as a condition of continued receipt of federal transit assistance.

As the 2019 Determination stated, Section 13(c) gives the Secretary of Labor a degree of flexibility and ability to adapt state and local circumstances to collective bargaining. *See* 2019 Determination at 6. But the Department does not view this flexibility as meaning that it is obligated to ignore or excuse all state or local government’s unilateral changes to transit workers’ rights because of “the many rocks and hard places between which [transit agencies] must navigate.” *See Cal. II*, 2016 WL 4441221, at \*21. Rather, Section 13(c) contemplates that the Department be allowed to conclude that a law impermissibly interferes with Section 13(c)’s protections, and “seek changes in state law and ultimately to refuse financial assistance when state law prevented compliance with § 13(c).” *See Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15, 25 n.8 (1982); *see also Donovan*, 767 F.2d at 947 (“Section 13(c) does not prescribe mandatory labor standards for the states, but rather dictates the terms of federal mass transit assistance. States are free to forego such assistance and thus to adopt any collective bargaining scheme they desire . . . . But the statute does not allow states to eliminate collective bargaining rights and still enjoy federal aid.”). In the Department’s estimation, PEPPRA’s effects are significantly negative and cannot be disregarded simply because of the additional difficulties that public sector bargaining often entails.

### Accommodation to Local Circumstances

Second, the Department does not conclude that PEPPRA’s impact should be overlooked as part of accommodating collective bargaining principles to California’s and local agencies’ unique circumstances. PEPPRA was enacted to respond to the state’s budgetary concerns. *See Cal. I*, 76 F. Supp. 3d at 1138 (“In 2012, California’s Governor signed the PEPPRA into law ‘to reform California’s public employee pension systems and to bring the staggering cost of funding such systems under fiscal control.’” (quoting California’s First Amended Complaint)). The 2019 Determination granted undue latitude to California, drawing support from NLRA law that “‘allows private employers to follow the dictates of economic necessity, so long as they bargain over the effects of management’s decisions.’” 2019 Determination at 8 (quoting *Cal. II*, 2016 WL 4441221, at \*25). But “effects bargaining” under the NLRA refers to decisions employers may make unilaterally because they are solely within the province of management, and does not apply to mandatory subjects of bargaining, like retirement benefits for current employees. *See First Nat’l Maint. Corp. v. NLRB*, 452 U.S. 666, 674-77 (1981).

Moreover, NLRA case law does not generally excuse unilateral actions regarding a mandatory subject of collective bargaining simply because “such action was compelled by economic need or that it may have served what may appear to us to be a desirable economic objective.” *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), *enfd.*, 505 F.2d 1302 (5th Cir. 1974); *see also Air Convey Industries*, 292 NLRB 25, 26 (1988) (finding employer’s financial inability to make the required benefit fund payments and that it has ceased operations to be no defense to a violation of the NLRA’s requirement to abide by provisions of a collective bargaining agreement); *NLRB v. Manley Truck Line, Inc.*, 779 F.2d 1327, 1330-32 (7th Cir. 1985) (upholding NLRB’s rejection of employer’s argument for an economic necessity exception to the NLRA’s prohibition against unilateral modifications of an existing collective bargaining agreement); *Milwaukee Terminal Servs.*, 282 NLRB 637, 639 (1987) (rejecting economic necessity defense to employer’s unilateral changes made after expiration of an existing contract). NLRA precedent does recognize an exception to bargaining requirements where there are extraordinary unforeseen economic exigencies having a major economic effect that require the employer to take immediate action. *See* NLRB, GC 20-04: Case Summaries Pertaining to the Duty to Bargain in Emergency Situations (Mar. 27, 2020), *available at* <https://www.nlrb.gov/guidance/memos-research/general-counsel-memos>.

With this background in mind, the Department finds there is insufficient justification to merit exercising any flexibility accorded to the Department to accommodate the unique circumstances of states and localities to collective bargaining procedures. The 2019 Determination did not set forth evidence establishing that California’s budget constraints constituted compelling economic circumstances that would justify excusing the requirement to collectively bargain with transit workers about significant aspects of defined benefit plans. There is insufficient evidence to support its conclusion that the budgetary concerns behind PEPRAs enactment were such that they merited special consideration when determining whether collective bargaining rights have been continued within the meaning of Section 13(c). As such, unique state and local circumstances here do not justify overlooking the limitations that PEPRAs imposes on the collective bargaining relationship between transit agencies and workers.

### State Law Backdrops

Lastly, the Department does not conclude that PEPRAs should more properly be considered a permissible state law backdrop for collective bargaining rather than an intrusion on collective bargaining rights. *See Cal. II*, 2016 WL 4441221, at \*21-26; *Cal. I*, 76 F. Supp. 3d at 1143. Section 13(c) does not preempt PEPRAs, and an NLRA-preemption analysis is unnecessary. *See Jackson Transit Auth.*, 457 U.S. at 25 n.8, 27 (explaining legislative history that clarifies that “Section 13(c) would not supersede state law,” and reflects “congressional intent that the Federal Government be able to seek changes in state law and ultimately to refuse financial assistance when state law prevented compliance with § 13(c)”). To the extent preemption cases can be useful in determining whether a state law violates Section 13(c), they support the conclusion that PEPRAs improperly intrudes on collective bargaining rights, as thoroughly discussed in the 2015 Determinations. *See* 2015 Determinations at 13-16.



As the 2015 Determinations explain, PEPRRA does not resemble the kind of law that survives the NLRA preemption analysis under the doctrine set forth in *Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 140 (1976). PEPRRA cannot properly be characterized as a state law setting minimum labor standards or mandating certain benefits that does not intrude into the processes of collective bargaining. See *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 727, 751-58 (1985) (upholding a state law requiring insurance policies to provide mental health coverage where the law had only the most indirect effect on employees' self-organization and collective bargaining); *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 21-22 (1987) (finding not preempted a state law requiring employers to provide a one-time severance payment to employees affected by a plant closing). PEPRRA establishes ceilings and prohibits negotiation over aspects of defined benefit pensions; it does not set minimum standards. With its substantive mandates, PEPRRA "virtually dictate[s] the results" of defined benefit pension provisions of collective bargaining agreements. See *Chamber of Commerce v. Bragdon*, 64 F.3d 497, 501 (9th Cir. 1995) (finding preempted a county ordinance that imposed a detailed wage and benefit scheme for construction projects within the county).

PEPRRA differs from the state laws noted above in another manner: it is not a general law seeking to regulate all state citizens, private and public. Rather, PEPRRA involves the state "acting as an employer," an area where the state "has a much narrower latitude to enact laws that trench upon the terms of a collective bargaining agreement negotiated under the regime of federal labor laws." See *Hull v. Dutton*, 935 F.2d 1194, 1198 (11th Cir. 1991). Ignoring PEPRRA's intrusion on collective bargaining and treating it as only a backdrop would "give the State tremendous liberty to abrogate collective bargaining contracts with its own employees under the guise of enacting a 'minimum labor standard.'" *Id.* at 1199. States could eviscerate Section 13(c)'s protections merely by passing laws defining benefits available to public employees. Section 13(c) was clearly enacted to prevent such a result. See *Jackson Transit Auth.*, 457 U.S. at 25 n.8 (noting "congressional intent that the Federal Government be able to seek changes in state law and ultimately to refuse financial assistance when state law prevented compliance with § 13(c)"); *Donovan*, 767 F.2d at 948 (explaining it was "Congress' clear intent to measure state labor laws against the standards of collective bargaining established by federal labor policy").

The Department is not persuaded by the district court's contrary conclusion that PEPRRA presents "no substantial inconsistency with federal labor policy." *Cal. II*, 2016 WL 4441221, at \*21-26. The Department does not base its decision-making on the five factor test the court constructed and used to reach this conclusion. None of the Department's recent in-depth examinations of the statutory language and legislative history of Section 13(c) yielded the conclusion that Congress intended a preemption analysis to govern the Secretary's conclusions about what arrangements are fair and equitable. See 2019 Determination, 2015 Determinations, 2013 Determinations. Moreover, most of the factors, as applied by the district court, seem ill-suited to making any necessary nuanced distinctions between state laws affecting transit employee rights to varying degrees. Only the last factor (whether the law clashes with the goal of encouraging collective negotiation) seems directly aligned with Section 13(c)'s purpose, and this was the only factor the court found weighed in favor of finding PEPRRA impermissibly intruded on collective bargaining. See *id.* at 25. The other four factors (the first, second, third, and fourth) seem unhelpful when

evaluating the significance of state laws affecting transit workers' rights as they will likely not weigh in favor of finding a violation of Section 13(c) no matter the impact of the state law.

The district court found the first factor (whether the state law concerns deeply-rooted state interests) could not resolve in favor of the Department's position because PEPRAs reflected "an overarching concern with a broad and traditional state interest: the budget." *Id.* at \*24. A state's budget will likely be implicated whenever a state enacts cost-saving measures cutting employee benefits. Taken to its logical conclusion, this factor provides no protection against a state law that dramatically cuts benefits bargained for by transit workers.

The court found that the second factor (whether the state law is generally applicable) could not weigh in favor of the Department's position because California enacted PEPRAs rather than the transit agencies, with whom the transit workers directly bargained. *Id.* at \*25. Thus, this factor would never weigh in favor of finding a state law significant so long as public transit workers fall under the authority of a sub-agency of the state. Taken to the logical conclusion, it would mean Section 13(c) provides no protection against generally applicable state law unless there is a direct relationship between the state and the transit worker. This interpretation would be contrary to Section 13(c)'s purpose to protect transit workers against state laws that interfere with collective bargaining rights. *See Jackson Transit Auth.*, 457 U.S. at 25 n.8; *Donovan*, 767 F.2d at 948.

The court found that PEPRAs were neutral as to the third factor (whether the state law is directed toward the protection of workers' interests) even though "PEPRAs' changes increase the share of pension costs borne by employees and are intended to alleviate California's financial burdens as employer." *Cal. II*, 2016 WL 4441221, at \*25. Still, the district court found that the third factor did not support the Department's position because "[i]t is not clear . . . that a state law conflicts with federal policy simply because its substantive result may tend to favor employers" and since transit agencies and employees could still engage in negotiations to offset PEPRAs' effects. *Id.* This factor, at least as applied by the district court, does not seem useful in measuring intrusion on employees' collective bargaining rights if it returns an inconclusive result as to a law clearly and admittedly directed at improving the employer's interests at the cost of workers' interests.

Lastly, the court found that the fourth factor (whether the state law essentially dictates the substantive result of collective bargaining) was not met because transit workers could bargain around and within the restrictions of PEPRAs. *Id.* at \*25. Laws like PEPRAs capping allowable benefits do dictate a substantive result: they dictate an agreement with benefits lower than the cap. As applied by the district court, the effect of these caps cannot be taken into account. Presumably, this factor could only weigh in favor of recognizing a significant intrusion if the state removed entire subject(s) of collective bargaining from the table or prohibited any further collective bargaining. This factor, like the first and second, therefore is not capable of making nuanced distinctions between state laws impacting transit workers' rights. As such, the Department does not find the district court's preemption analysis to provide a workable standard for evaluating state law's interference with collective bargaining relationships protected by federal law. Nor, as explained above, does the Department believe that the realities of public sector bargaining or California's unique circumstances provide a justification for PEPRAs' interference with collective bargaining rights.

## Conclusion

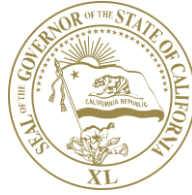
In enacting PEPRA, California placed new and significant limits on the scope of permissible pension benefits for its public transit workers, affecting the collective bargaining relationships that its transit agencies had agreed to preserve and continue as a condition of continued receipt of federal transit assistance. For many years following the enactment of PEPRA, the Department took the position that PEPRA constituted an impermissible interference with the collective bargaining rights protected by Section 13(c). The Department changed positions in 2019, relying on district court opinions enjoining the Department from denying certification and reasoning that Section 13(c) granted the Department the discretion to certify despite PEPRA's effects.

As explained above, the Department believes that its original position was better reasoned and supported. PEPRA's impact on transit workers' collective bargaining rights is material and significant even if it does not eliminate collective bargaining over pension benefits altogether or alter collective bargaining procedures. The Department does not find it appropriate to overlook PEPRA's impact as an accommodation to the realities of public sector bargaining, as part of the complexities of adapting principles of federal labor policy to state law or local circumstances, or by characterizing the law as simply a state "backdrop." The Department arrives at its assessment of PEPRA as an impermissible interference with collective bargaining rights even following a permissive view of the Department's discretion under Section 13(c). As such, the Department determines, on a prospective basis, that it is not appropriate for it to certify that there are fair and equitable arrangements in place to protect the employees of California transit agencies, and it accordingly overrules the legal positions expressed in its 2019 Determination.

Sincerely,

Andrew D. Auerbach  
Deputy Director

cc: See Certifications



## OFFICE OF THE GOVERNOR

November 10, 2021

The Honorable Marty J. Walsh  
Secretary of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Walsh,

The recent decision by the Department of Labor's Office of Labor-Management Standards (OLMS) to cut off California transit agencies from billions of dollars in federal transit funding, on the purported basis of Section 13(c) of the Urban Mass Transportation Act of 1964, is extremely concerning. That OLMS is doing this during the national emergency caused by the COVID-19 pandemic and in disregard of multiple federal judicial decisions is even more troubling. For the reasons below, I urge you to restore California's access to federal transit grants.

OLMS's decision deprives financially beleaguered California public transit agencies that serve essential workers and our most vulnerable residents of critical support, including American Rescue Plan Act funds that those agencies need to survive through the pandemic. Because of a dramatic decline in ridership, public transit agencies rely more than ever on these federal grants just to keep trains and buses running and their workforces employed. The grants being withheld also help provide vital mobility to low-income seniors, individuals with disabilities, and other transit-dependent riders.

This decision is a complete reversal of OLMS's final determination in 2019 that California's statewide pension reform legislation, the Public Employees' Pension Reform Act of 2013 (PEPRA), "does not present a bar to certification under section 13(c)"—a determination upon which California and local transit agencies have justifiably relied for budgeting, planning, and strategy. By reversing itself, OLMS has created tremendous confusion and uncertainty for

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November 10, 2021  
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numerous infrastructure projects on which California has closely partnered with the federal government and local transit agencies, and in which it has already invested hundreds of millions of dollars in state funding. For example, the Transbay Corridor Core Capacity Program—which is intended not only to improve service and increase system ridership in the Bay Area, but also to improve regional air quality and lower greenhouse gas emissions—cannot be completed as planned without continued federal funding. Other major transit infrastructure projects in California will suffer similar adverse impacts. Furthermore, OLMS's decision directly undermines the goals of the recently enacted infrastructure bill by cutting off transit agencies in the nation's most populous state from the very infrastructure funds just approved by Congress.

The Department's approach also disregards its past assurances to California that it would abide by the federal judiciary's resolution of the PEPPRA/Section 13(c) issue and work cooperatively to avoid disrupting California's access to federal funding during litigation. After multiple years of litigation, the reviewing federal court found in California's favor three times, and the Department did not pursue appeals. The Department's own lawyers noted that the federal court's decisions were "thoroughly reasoned," and in 2019 OLMS formally concluded that PEPPRA "does not impermissibly impair collective bargaining rights." That should conclude the matter. In addition, far from merely reverting to its prior position under the Obama-Biden Administration (as OLMS has claimed), the Department has taken the extraordinary step of cutting off California's access to federal transit grants—something the Obama-Biden Administration avoided.

The Department's decision rests on the false premise that PEPPRA has impaired collective bargaining in California. But federal and state courts alike have repeatedly rejected this argument, finding that PEPPRA does not impair collective bargaining agreements or collective bargaining rights. The numerous agreements successfully negotiated over the last nine years by transit workers utilizing collective bargaining processes under PEPPRA further directly refute OLMS's position. And it is undisputed that California's public employees continue to enjoy some of the most robust collective bargaining rights in the country, which I have championed as Governor. In fact, in 2019, I signed legislation expanding collective bargaining rights to tens of thousands of childcare workers.

Finally, OLMS's central position—that PEPPRA conflicts with federal labor policy—is no sounder now than when the federal district court rejected it. Among other

The Honorable Marty Walsh  
November 10, 2021  
Page 3

things, OLMS continues to base that position on the National Labor Relations Act, which by its terms does not apply to public employees. OLMS's position is also surprising given that the federal government itself instituted similar pension reforms after the Federal Employees' Retirement System Act was enacted in 1986 by Congress with broad bipartisan support. OLMS has never explained why the same kinds of reforms that the federal government adopted (which apply to the Department's own employees) are inconsistent with federal labor policy.

California objects in the strongest possible terms to the premature and inappropriate effort to unilaterally implement OLMS's deeply flawed decision pending federal judicial review. I respectfully urge you instead to restore California's access to federal transit grants pending judicial resolution of these issues. Withholding billions of dollars in crucial funding on the basis of a nine-year-old state law, while California wrestles with the COVID-19 pandemic, does great harm and injustice to the people of California. If not set aside by the federal court or otherwise corrected, California will be forced to ask its delegation in Congress to remedy this situation as a matter of highest priority.

Sincerely,



Gavin Newsom  
Governor of California

cc: Merrick Garland, Attorney General, U.S. Department of Justice  
Pete Buttigieg, Secretary, U.S. Department of Transportation  
Ron Klain, Chief of Staff to the President



# United States Senate

November 10, 2021

The Honorable Marty Walsh  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, D.C. 20210

Dear Secretary Walsh:

We write to express our concern over the U.S. Department of Labor's October 28, 2021 determination regarding California state pension law, which would have the effect of making California ineligible for federal transit grants.

We strongly support Governor Gavin Newsom's request in the attached letter asking that the Department of Labor restore California's access to federal transit grants. As the Governor noted, state and federal courts have ruled multiple times against the Department's efforts to strip transit funding from California. California's pension law was passed in 2013 and transit grants were made during each of the past two administrations. We are not aware of any new court action or change in state law that would lead the Department to suddenly reverse its compliance with previous court decisions.

To be clear, we also strongly support federal and state labor laws that protect workers' rights, including the right to collectively bargain. As Governor Newsom wrote in his letter to you, "... it is undisputed that California's public employees continue to enjoy some of the most robust collective bargaining rights in the country[.]" While this matter remains subject to ongoing litigation, we agree with the Governor that nothing should preclude California from receiving federal transit grants while the case proceeds.

As you know, California is leading the way on reducing carbon emissions, and increasing transit use is a key part of that effort and supporting the Biden-Harris Administration's climate goals. For this and other longstanding reasons, we have serious concerns that the Department of Labor's new determination will put billions of dollars in transit grants, as well as continued emission reductions, for California at risk. Further, the Department's determination was made just after Congress passed major COVID economic relief and infrastructure legislation to fund billions of dollars in new transit grants. We have grave concerns with such a



determination that puts California transit agencies and millions of Californians at such a disadvantage.

We are available to discuss this matter at your convenience, and we urge you to take rapid action to ensure the eligibility of California to receive transit grants. We stand ready to assist in any way that we can.

Sincerely,



Dianne Feinstein  
United States Senator



Alex Padilla  
United States Senator

Enclosure: Letter from Governor Newsom dated November 10, 2021

cc: The Honorable Merrick Garland, Attorney General  
The Honorable Pete Buttigieg, Secretary of Transportation  
Mr. Ron Klain, Chief of Staff to the President  
The Honorable Gavin Newsom, Governor of California

## ***Minute Action***

### AGENDA ITEM: 15

***Date:*** *December 1, 2021*

***Subject:***

2021 Update to the 10-Year Delivery Plan

***Recommendation:***

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

Approve the 2021 Update to the 10-Year Delivery Plan.

***Background:***

The Strategic Plan serves as the policy manual for the delivery of Measure I Programs by the San Bernardino County Transportation Authority (SBCTA) and its member agencies for the 30-year life of the Measure. The Strategic Plan addresses significant policy, fiscal, and institutional issues associated with the administration and implementation of the Measure, including managing the different goals and priorities among the Valley, Victor Valley, and Rural Mountain/Desert Subareas of the County. One of the key requirements of the Strategic Plan was the preparation of a 10-Year Delivery Plan (Delivery Plan) for Measure I Programs.

The SBCTA Board of Directors (Board) adopted the first Measure I 2010-2040 10-Year Delivery Plan in January 2012. The Delivery Plan provides a list of projects to be developed during a ten-year period and identifies project scopes, schedules, and budgets. Additionally, it enables SBCTA to meet the requirements of bond rating agencies for the future sale of bonds and provides the basis for the preparation of SBCTA's annual budget for capital projects. The Delivery Plan is a living document that is updated every two years in order to capture revisions to the projects and assumptions, actual Measure I revenue figures, and relevant Board actions.

The Board received the current status of projects and major programs in the Measure and assumptions for revenue and bonding going into the 2021 Update in October 2021 and November 2021. Staff has incorporated project and policy changes since the adoption of the 2019 Update to the 10-Year Delivery Plan (2019 Update) and has worked extensively to develop a bonding strategy that will accelerate project delivery in accordance with Board-defined priorities. The 2021 Update analysis determined that many critical projects that will bring congestion relief and improved mobility and safety can be delivered over the next ten years of the Measure under current delivery assumptions and without changes to current SBCTA policies. The 2021 Update has been finalized and is presented here for final Board review and approval. The 2021 Update is chiefly focused on the projects that were identified in the 2019 Update, but there are some items of note in this update:

### **Valley Freeway Projects Program**

In accordance with the Measure I 2010-2040 Ordinance and Expenditure Plan, 29% of the Measure I revenue collected in the Valley Subarea funds the Valley Freeway Projects Program, which for Fiscal Year 2021/2022 is estimated to be about \$47.3 million. Since the adoption of the 2019 Update, construction has progressed on the Interstate 10 (I-10) Corridor Contract 1 and State Route 210 (SR 210) Widening Projects, and SBCTA has secured full funding through construction for the I-10 Truck Climbing Lane Project in the City of Yucaipa and the I-15 Entity: San Bernardino County Transportation Authority

Corridor Contract 1 Project, which will connect with the I-15 express lanes in Riverside County and continue to Foothill Boulevard. SBCTA has evaluated options for the next express lanes project to be developed for construction, but significant construction cost increases over the last several years has led to a sequenced approach to construction on I-10 and I-15, with the 2019 Update including partial funding for what was referred to as the I-10 Corridor Contract 2A Project providing for two express lanes in each direction from the terminus of the I-10 Corridor Contract 1 Project to Sierra Avenue. In October 2021 the Board approved a single lane strategy for the next segment of the I-10 Corridor Project, consistent with the State's Guiding Principles for Transportation Investment that would provide a single lane express lane in each direction from I-15 to Pepper Avenue in the City of Colton, now referred to as I-10 Corridor Contract 2. The 2021 Update includes project development for this project and an assumed match for future grant funding for construction. The 2019 Update indicated the need to bond for \$446 million through 2028 to construct projects on the schedule provided. That amount has been reduced to \$304 million in the 2021 Update as a result of increased revenue and changes to project schedules. Freeway projects identified in the 2021 Update total \$2.3 billion from Measure I and other sources. Including these projects, 79% of the Valley Freeway Projects Program funds through 2040 have been committed, leaving a remainder of \$338 million for future freeway projects.

### **San Bernardino Valley Freeway Interchange Program**

In accordance with the Measure I 2010-2040 Ordinance and Expenditure Plan, 11% of the Measure I revenue collected in the Valley Subarea funds the Valley Freeway Interchange Projects Program, which for Fiscal Year 2021/2022 is estimated to be about \$17.9 million. Approval of the 2019 Update included construction of all of the ten highest priority interchanges. In addition to the top ten interchanges, two Tier 2 interchanges were added to the Delivery Plan in the 2017 Update as a result of the on-going development of the I-10 Corridor Contract 1 Project, which will result in improvements to the I-10/Monte Vista Avenue, I-10/Euclid Avenue, and I-10/Vineyard Avenue Interchanges, and a \$40 million reserve was established for the Interchange Phasing Program. Since establishment of the Interchange Phasing Program, only the City of Yucaipa has entered the program for their I-10/Wildwood Canyon Road Interchange, although agreements are currently under development with the City of San Bernardino for a phased approach at the SR 210/Waterman Avenue Interchange and with the City of Highland for improvements at the SR 210/5<sup>th</sup> Street Interchange. No other changes are proposed to the project list for the 2021 Update.

As is typically the case, projects have experienced some delays in progress towards construction and the funding picture has changed since the 2019 Update, with significant estimated cost increases in the I-10/Mount Vernon Avenue Interchange that is largely funded with Measure I. The 2019 Update indicated the need to bond for \$120 million through 2024 to construct projects through 2024. Although there have been cost increases overall in this program, schedule delays, increased revenue, and strategic use of internal cash-flow borrowing have decreased the need for bonding to \$97 million through 2026. Interchange projects identified in the 2021 Update total \$451 million from Measure I and other sources. Of the total Interchange Projects Program projected revenue through 2040, 74% has been committed and \$161 million remains for future interchange projects.

### **San Bernardino Valley Major Street Projects Program**

In accordance with the Measure I 2010-2040 Ordinance and Expenditure Plan, 17% of the Measure I revenue collected in the Valley Subarea funds the Valley Major Streets Projects Program, of which the Rail-Highway Grade Separation Sub-program receives 20% and the Arterial Sub-program receives 80%. For Fiscal Year 2021/2022 the total Valley Major Streets Program revenue is estimated to be about \$27.7 million. The near-term revenue for the Rail-Highway Grade Separation Sub-program is almost entirely dedicated to debt service. Of the total Rail-Highway Grade Separation Sub-program projected revenue through 2040, 73% has been committed and \$54 million remains for this Sub-program.

The Arterial Sub-program is a pay-as-you-go, reimbursement program with project selection consistent with the Nexus Study but at the local level. Only projects where SBCTA is acting as the lead agency are included in the 10-Year Delivery Plan at this time. As such, no new projects are proposed in the Arterial Sub-program from the projects that were included in the 2019 Update: the Mount Vernon Avenue Viaduct Project, which reconstructs the Mount Vernon Avenue bridge over the BNSF Railroad intermodal yard in the City of San Bernardino, and the 4th Street bridge at I-10 in the City of Ontario, which is being reconstructed as part of the I-10 Corridor Contract 1 Project.

### **San Bernardino Valley Metrolink/Rail Service Program**

In accordance with the Measure I 2010-2040 Ordinance and Expenditure Plan, 8% of the Measure I revenue collected in the Valley Subarea funds the Valley Metrolink/Rail Service Program, which for Fiscal Year 2021/2022 is estimated to be about \$13 million. Since the adoption of the 2019 Update, construction is nearing completion on the Redlands Passenger Rail Project and passenger service is expected to begin in summer 2022; funding has been identified for the design phase of the Double Track Project to better position the project to seek competitive grant funding; and the Gold Line Project is still on hold as the Gold Line Authority (GLA) is seeking funding to close the funding gap for the Pomona to Montclair segment. In the 2019 Update there was an unfunded need of \$88 million for the Gold Line to Montclair and San Bernardino Line Double Track projects. At this time, SBCTA does not have enough information from the GLA to present an updated need for the Gold Line, but the unfunded need of \$97 million shown in the 2021 Update includes a \$3 million known increase for right-of-way for the Gold Line, and a \$15 million increase for the San Bernardino Line Double Track that is offset by \$9 million in funding that was added to the design phase. Funding opportunities are still being pursued for both projects. The 2019 Update included another project under the Valley Metrolink/Rail Service Program section, the Diesel Multiple Unit (DMU) rail vehicle conversion to Zero or low emission multiple unit (ZEMU) project, better known as the DMU to ZEMU. The DMU to ZEMU will now be included in a new section of the 2021 Update titled "Other Projects of Interest" that is further described below.

The 2019 Update indicated the need to bond for \$12 million through 2022 to construct projects on the schedule provided. However, increased revenue coupled with strategically spending other funding sources prior to Measure I revenue on the Redlands Passenger Rail Project and limited use of internal cash flow borrowing has made future bonding unnecessary in this program. Metrolink/Rail Service Program projects identified in the 2021 Update total \$726 million from Measure I and other sources, which includes costs necessary to operate new service through Fiscal Year 2030/2031. Of the total Metrolink/Rail Service Program projected revenue through

2040, 98% has been committed and \$10 million remains for future projects and/or operating costs.

### **San Bernardino Valley Express Bus/Bus Rapid Transit (BRT) Service Program**

In accordance with the Measure I 2010-2040 Ordinance and Expenditure Plan, the Valley Express Bus/Bus Rapid Transit Service Program initially received 2% of revenue collected in the Valley until March 31, 2020. Effective April 1, 2020, the Board approved an increase to 5% through the end of the Measure in 2040, with the 3% coming from the Valley Major Streets Program. Program revenue for Fiscal Year 2021/2022 is estimated to be about \$8 million. Since the adoption of the 2019 Update, environmental was completed on the West Valley Connector project, design has been substantially completed, and right of way activities are underway. SBCTA and Omnitrans collaborated on several competitive grant submissions, and were successful in securing \$193 million in State and Federal awards, including \$87 million from the Federal Transit Administration (FTA) Small Starts Program, \$65 million from State Solutions for Congested Corridors Program, and \$15 million from Transit and Intercity Rail Capital Program. The project also received an additional \$26 million in Federal funding that will flow through the FTA from stimulus funds under the American Rescue Plan Act. The project is fully funded with a current estimated capital project cost of \$287.5 million.

The 2019 Update indicated the need to bond for \$54 million through 2022 to deliver the West Valley Connector Project. However, increased revenue coupled with the capital grant awards and limited use of internal cash flow borrowing has made future bonding unnecessary in this program. The total cost for the West Valley Connector Project construction and operation during this 10-year period is \$328 million from Measure I and other sources. Of the total Express Bus/Bus Rapid Transit Service Program projected revenue through 2040, 49% has been committed, leaving an uncommitted balance through 2040 of \$125 million for this program.

The estimated uncommitted balance of State and Federal funds through 2040 is \$585 million for the San Bernardino Valley Subarea, which is generally shared between San Bernardino Valley Freeway Projects, Metrolink/Rail Service, and Express Bus/Bus Rapid Transit Service Programs, and excludes State and Federal funds dedicated solely to transit purposes. However, this estimate and all other estimates below for the Mountain/Desert Subareas assume State and Federal reauthorization and distribution of funding in approximately the same structure and at the same level of funding that exists today.

### **Victor Valley Major Local Highway Projects Program**

In accordance with the Measure I 2010-2040 Ordinance and Expenditure Plan, 25% of the Measure I revenue collected in the Victor Valley Subarea funds the Major Local Highway Projects Program (MLHP), which for Fiscal Year 2021/2022 is estimated to be about \$5 million. The list of proposed projects for the 2021 Update is comprised of the projects that were identified but not yet completed in the 2019 Update or those that have been defined as priorities since adoption of that plan. SBCTA staff works extensively with City, Town, and County staff from the Victor Valley Subarea and has incorporated project changes, additions, or deletions for the 2021 Update project lists. Unlike the Valley Programs discussed above, these projects are locally prioritized and in most cases delivered by the local jurisdiction. Since the 2019 Update, the US 395 Widening Phase 1 from SR 18 to Chamberlaine Way in the City of Adelanto has been completed and the Green Tree Boulevard section of the Yucca Loma Corridor in the City of

Victorville, Ranchero Road Widening in the City of Hesperia, and Apple Valley Road/SR 18 Realignment in the Town of Apple Valley are under construction. Based on the costs and schedules received from jurisdiction staff, sufficient funding has been identified between MLHP and state and federal sources to fully fund all but two of the projects listed as priorities to the Subarea: the US 395 Phase 2 Widening from I-15 to Palmdale Road Project and the County of San Bernardino (County) Phelan Road Widening Project.

The US 395 Phase 2 Widening Project is currently estimated at \$75 million and has an unfunded need of \$30 million that will be targeted for competitive funding through Senate Bill 1 grant programs. If these grant proposals are not successful, SBCTA staff will reevaluate the use of state and federal funds countywide for an opportunity to move funds between Subareas. The Phelan Road Widening Project is currently estimated at \$61 million and is estimated to be eligible to receive \$57 million in funding from SBCTA. However, based on all of the projects committed to the County to date, this allocation would exceed the County's share of funding through 2031 from SBCTA by \$24 million and allocate almost 100% of the funding currently available for County projects through 2040. Because the project is in the early stages of project development and construction is not scheduled to begin until 2026, a \$24 million funding gap has been left in the project until further information is gathered about regional needs in the Subarea. This is largely because in June 2021 the Board adopted a prioritized list of regional/interregional projects for the Subarea, with the first priority being the US 395 Phase 2 Widening Project from I-15 to Palmdale Road. The list is extensive and identifies important improvements to US 395, SR 138, I-15, and potentially SR 18 after completion of the Feasibility Study currently underway; unfortunately this list is not financially constrained and many of the projects will not likely be fully funded without other competitive state and federal transportation funds. If jurisdictions are allowed to get too far ahead of their share of funding, it essentially cuts out the opportunity for these regional/interregional projects to receive funding. As this list was just recently adopted, more time is needed to evaluate potential funding strategies and implementation schedules, and it would be premature to undercut the ability to move forward on these projects without more thoughtful consideration of the overall impact.

Although bonding was used in the past, every effort is made to deliver this program on a pay-as-you-go basis. Victor Valley MLHP projects identified in the 2021 Update total \$383 million from Measure I and other sources. Of the total Program projected revenue through 2040, 50% has been committed and \$92 million remains for future projects. Because the Valley Subarea was using beyond its share of State and Federal funds early in the Measure, which caused bonding to be required in the Victor Valley Subarea to advance several interchange projects, the Board approved an additional allocation of State and Federal funds to the Victor Valley Subarea to compensate for the debt service incurred in this program. Additionally, developer fees loans are being reimbursed by local jurisdictions over the next ten years, which increases the MLHP funding available for other projects. As such, the percent committed is more in line with the time progress through the Measure than in the Valley Subarea Programs where bonding has been required.

### **Rural Mountain/Desert Major Local Highway Projects Programs**

In accordance with the Measure I 2010-2040 Ordinance and Expenditure Plan, 25% of the Measure I revenue collected in the Rural Mountain/Desert Subareas funds the MLHP. The list of proposed projects for the 2021 Update is comprised of the projects that were identified but not

yet completed in the 2019 Update or those that have been defined as priorities since adoption of that plan. SBCTA staff works extensively with City, Town, and County staff from each of the Rural Mountain/Desert Subareas and has incorporated project changes, additions, or deletions for the 2021 Update project lists. Much like the Victor Valley MLHP discussed above, these projects are locally prioritized and in most cases delivered by the local jurisdiction. Because these programs are delivered on a pay-as-you-go basis, the percent committed is more in line with the time progress through the Measure. Staff has made considerable effort to assign State and Federal funds to projects that were eligible, which begins to bring balance to the equitable distribution of State and Federal funds between Subareas.

**North Desert** – In addition to several road rehabilitation projects, the City of Barstow has two significant bridge reconstruction projects underway through the Highway Bridge Program. SBCTA will begin coordinating with the City of Barstow to deliver the first of these projects, the North First Avenue Bridge over BNSF, on their behalf subject to execution of a High Cost Agreement between SBCTA and California Department of Transportation (Caltrans). The County will be focusing their share of funding on the Baker Boulevard Bridge replacement over the Mojave River. Additionally, the County will be constructing bridge replacements on National Trails Highway around Amboy Road, which is an important alternative corridor to I-40 and identified as the #1 regional priority in the North Desert Subarea. North Desert MLHP projects identified in the 2021 Update total \$249 million from Measure I and other sources. Of the total Program projected revenue through 2040, 45% has been committed and \$23 million remains for future projects. The estimated uncommitted balance of State and Federal funds through 2040 is \$6 million for this Program.

**Mountains** – The County has deprioritized a planned bridge replacement at the Arrowbear spillway on Arrowbear Drive and is focusing their share of funding on the construction of a roundabout at the intersection of Stanfield Cutoff and SR 38 (North Shore Drive). Because the City of Big Bear Lake received all of the available MLHP funds at the start of the Measure, the City is advancing improvements on Moonridge Road with SBCTA repaying a portion of their costs as their share of funding becomes available. Regional priority projects in the Mountains Subarea are being discussed by stakeholders as to the appropriate agency to act as project lead and reasonable costs and schedules. Project identification will follow adoption of the 2021 Update as little data exists on the scope of these projects. Mountains MLHP projects identified in the 2021 Update total \$14 million from Measure I and other sources. Of the total program projected revenue through 2040, 45% has been committed and \$11 million remains for future projects. The estimated uncommitted balance of State and Federal funds through 2040 is \$37 million for this program.

**Morongo Basin** – The City of Twentynine Palms continues to deliver street improvements on SR 62, such as curb, gutter, and pedestrian improvements and construction of a bridge on Split Rock Avenue at the Twentynine Palms Flood Control Channel, in both cases using Measure I and local funds to leverage investment of State and Federal funds. The Town of Yucca Valley has deprioritized several projects planned to correct missing links or alignment issues on local roads for the planned widening of SR 62 around SR 247 to six lanes, which has been determined to be a regional priority by the North Desert Subarea. The County was able to complete the planned resurfacing projects identified in the 2019 Update with other sources of funds. Morongo Basin MLHP projects identified in the 2021 Update total \$67 million from Measure I



and other sources. Of the total program projected revenue through 2040, 53% has been committed and \$11 million remains for future projects. The estimated uncommitted balance of State and Federal funds through 2040 is \$32 million for this program.

**Colorado River** – The City of Needles is coordinating with Caltrans and the Arizona Department of Transportation on the rehabilitation of the US 95 bridge over the Colorado River, and the County is completing the realigning and reconstructing a 2.3-mile long segment of Needles Highway from David Drive to about Not'cho Road, which is the first regional priority in the Subarea. SBCTA will reimburse the County for the design funds needed for this project as funds become available. Colorado River MLHP projects identified in the 2021 Update total \$11 million from Measure I and other sources. Of the total program projected revenue through 2040, 54% has been committed and \$1 million remains for future projects. The estimated uncommitted balance of State and Federal funds through 2040 is \$16 million for this Program.

### Revenue Forecast

The 2019 Update assumed that revenue would be increasing between 3.3% and 3.6% through 2029 and then between 3.0% and 3.5% through 2040 based on a study completed in December 2018 by the University of California, Riverside School of Business. The proposed inflation and real growth rate for the 2021 Update is between 3.2% and 3.5% with an overall average of 3.3% through 2040 based on a study completed in June 2021 by Dr. John Husing, Economics & Politics, Inc. However, despite the pandemic and the initial concern about potential impacts to program revenue, the 2021 Update starts with a higher base value than projected in the 2019 Update, resulting in increased cumulative collections, increasing the \$6.5 billion total revenue in the 2019 Update to \$6.9 billion projected in the 2021 Update. A comparison of the forecasts in the 2019 Update to those in the 2021 Update is presented in Table 1.

**Table 1. Measure I Revenue Comparison  
2019 Update vs 2021 Update (1,000s)**

	FY2010/2011 – 2020/2021		FY2021/2022 – 2030/2031		FY2010/2011 – 2039/2040	
Subarea	2019 Update	2021 Update	2019 Update	2021 Update	2019 Update	2021 Update
Cajon Pass	\$47,412	\$48,503	\$61,331	\$66,941	\$184,034	\$197,374
San Bernardino Valley	\$1,355,102	\$1,387,606	\$1,751,209	\$1,922,957	\$5,234,268	\$5,647,025
Victor Valley	\$177,944	\$180,737	\$231,821	\$241,464	\$716,234	\$734,821
North Desert	\$58,090	\$56,447	\$56,009	\$49,348	\$185,180	\$168,671
Mountains	\$20,780	\$21,106	\$24,858	\$26,762	\$75,802	\$80,692
Morongo Basin	\$24,285	\$24,530	\$29,013	\$31,313	\$87,646	\$93,522
Colorado River	\$2,444	\$2,595	\$3,023	\$3,623	\$9,188	\$10,475
<b>Total</b>	<b>\$1,686,058</b>	<b>\$1,721,525</b>	<b>\$2,157,264</b>	<b>\$2,342,407</b>	<b>\$6,492,352</b>	<b>\$6,932,581</b>

### Bonding Analysis

In response to the SBCTA Board's desire to advance delivery of priority projects, the 2019 Delivery Plan indicated a need to bond for an additional \$632 million in Measure I revenue bonds through 2028. Analysis of the updated project information indicates that only an additional \$401 million in Measure I revenue bonds through 2028 is required. This reduction is primarily a result of increased Measure I revenue and capital grants received, as well as the San Bernardino County Transportation Authority

strategic timing of the use of Measure I funds. Current schedules and revenue forecasts indicate that bonding is not required until 2026, but that will be re-examined with each subsequent 10-Year Delivery Plan update. It should be noted that funding of the projects listed on the current delivery timeline requires a very aggressive use of Federal funds that may require borrowing arrangements with other regional agencies in California, which is a common practice and has been done in the recent past.

The bonding analysis was developed with the following criteria:

- Minimum Agency-wide debt coverage ratio: 2.0X
- The individual Programs must have a positive cash flow over the term of the bond
- Bond interest rate: 5% for all future bond issuances
- Latest bond issuance: 2028

To minimize the costs associated with bonding, cash flow will be addressed with interim cash flow borrowing between Measure I Programs. These strategies are used as interim financing where the bonding amount needed in a year is less than \$100 million and could be either paid off with program revenue or combined with a bond issuance in the next year.

### **Other Projects of Interest**

This new section of the Delivery Plan highlights projects that are significant to SBCTA and the region, but do not use funding from a specific Measure I Program. The DMU to ZEMU is the only project in this section that was included in the 2019 Update. Since that time, final design of the ZEMU is nearly complete, manufacturing of the car bodies and power pack body has begun, and SBCTA anticipates awarding the first of two construction contracts necessary to complete the infrastructure for the hydrogen fueling station and the retrofit to support hydrogen vehicle operations in spring 2022. When the State initially awarded a \$30 million Transit and Intercity Rail Capital Program grant to develop the ZEMU technology, the State requested SBCTA also convert the initial three DMUs procured for the Arrow service. The 2021 Update includes a new project to convert all three Arrow DMUs to meet the goal of operating the entire Arrow corridor as a zero emission revenue operation.

Two other transit projects included in this section that were not a part of the 2019 Update are: 1) the Ontario International Airport (ONT) Loop, an innovative four-mile sub-surface bi-directional tunnel system that will serve as an on-demand direct connection to ONT from the Metrolink Cucamonga station along the Metrolink San Bernardino Line using electric vehicles aspiring to be autonomous and 2) the Zero Emission Bus Initiative that will replace current transit buses with zero emission buses to meet the California Air Resources Board's Innovative Clean Transit regulation mandate. While the Zero Emission Bus Initiative procurements and costs will be expended by the transit operators in San Bernardino County, SBCTA directly receives and allocates the majority of transit funding to the operators. Prior to the mandate, \$131 million was being reserved for replacement of buses and infrastructure currently in use, and now the estimated need to meet the mandate is an additional \$138 million, which doubles the funding traditionally reserved for bus purchases and replacements. Congestion Mitigation and Air Quality (CMAQ) funds have been reserved in SBCTA's programming documents for most of this cost, although SBCTA is hopeful that competitive funding may replace a portion of the CMAQ funding.

## Board of Directors Agenda Item

December 1, 2021

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Attachment A contains summary information regarding the Measure I remaining uncommitted through 2040 for each program and the State and Federal funds expected to be available for each Subarea through 2040. Because the amount of Measure I dedicated to regional improvements in the Mountain/Desert Subareas is relatively small at 25% of the Measure I Subarea revenue, these Subareas could benefit greatly from leveraging Measure I to access their share of State and Federal funds; however, it is critical that eligibility requirements be considered in developing projects in order to receive this benefit.

The complete final draft 2021 Update to the 10-Year Delivery Plan is provided as an attachment to the agenda under separate cover.

***Financial Impact:***

This item is consistent with the adopted Fiscal Year 2021/2022 Budget.

***Reviewed By:***

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

***Responsible Staff:***

Andrea Zureick, Director of Fund Administration


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Approved  
Board of Directors  
Date: December 1, 2021


Witnessed By:

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San Bernardino County Transportation Authority



# 2021 Update to the 10-Year Delivery Plan

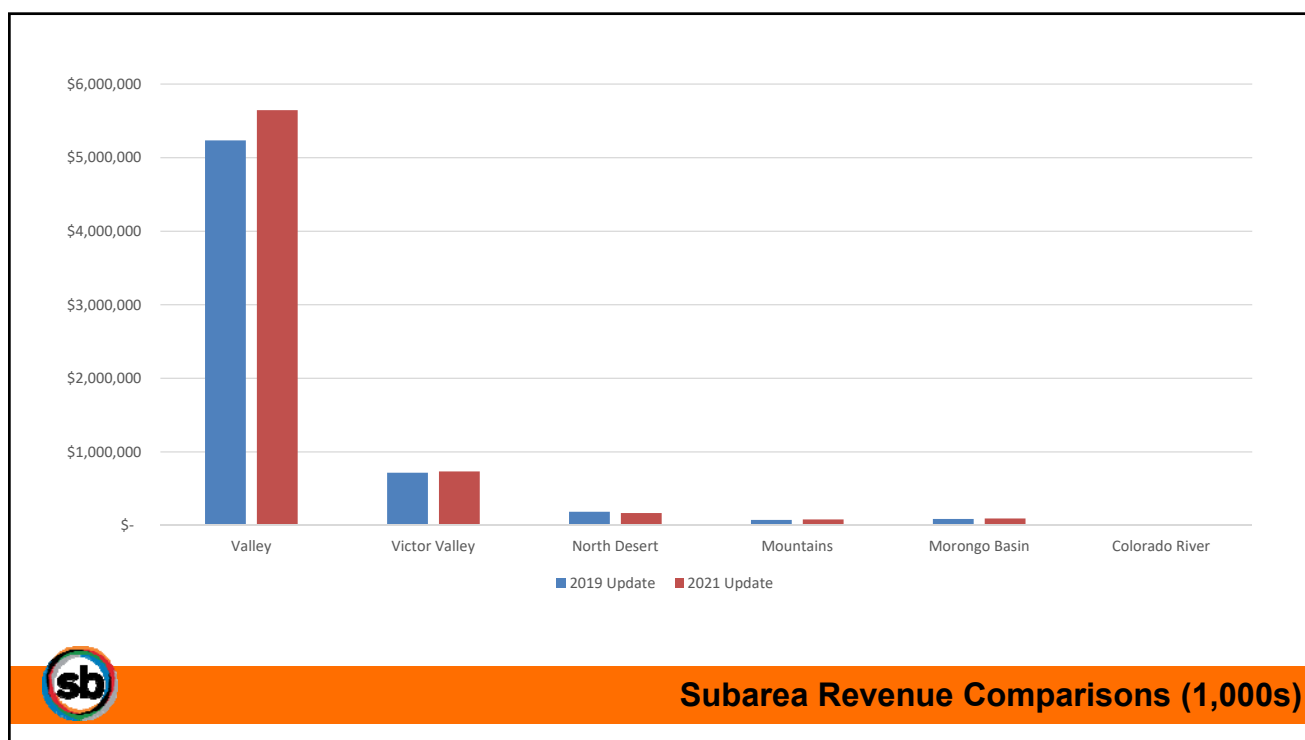
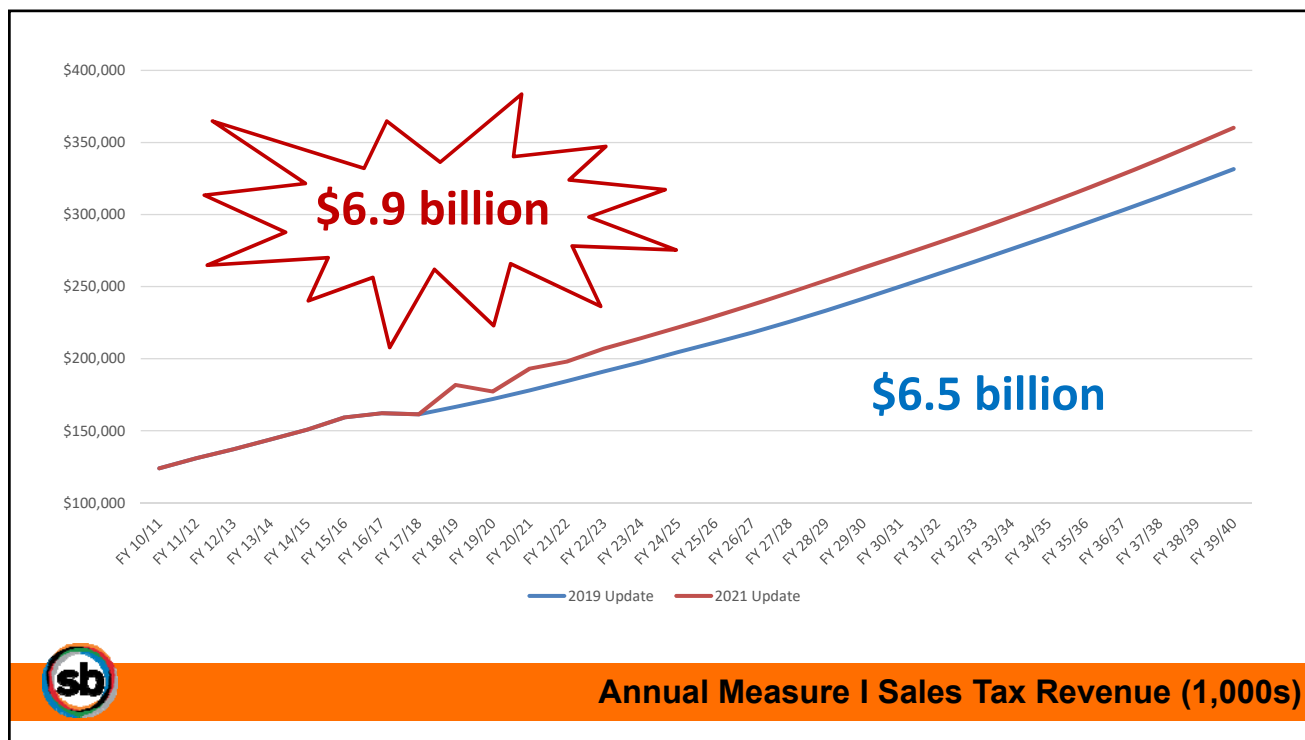


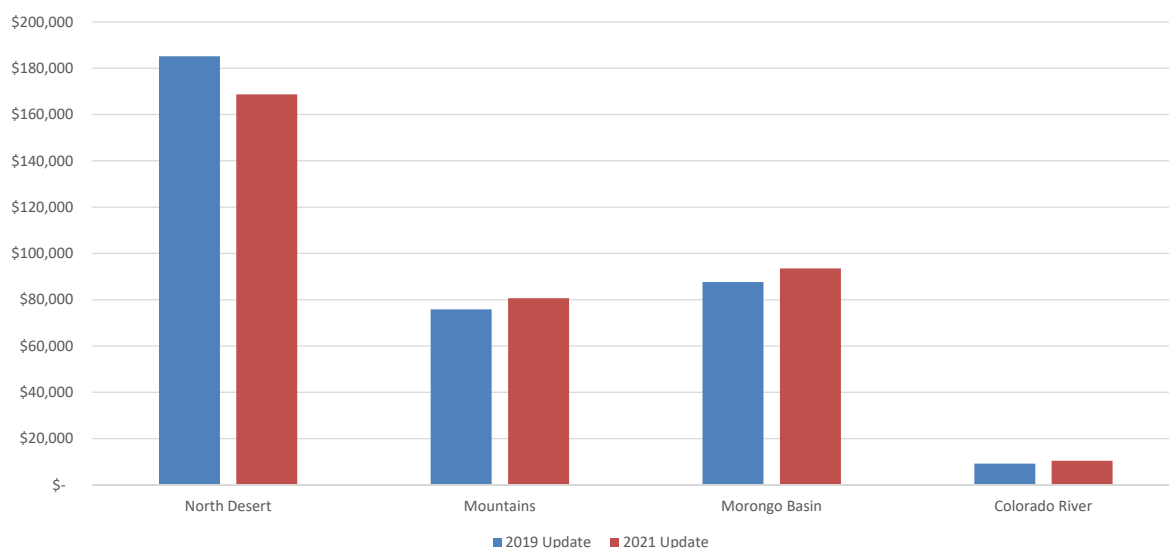
San Bernardino County  
Transportation Authority



- \$5.1 billion in regional improvements
- \$1.6 billion from Measure I revenue
- 64 freeway, interchange, regional arterial, and transit projects

**2021 Update to the 10-Year Delivery Plan**





### Rural Subarea Revenue Comparisons (1,000s)

PROJECT	COST
1 I-215 Bi-County Landscaping	\$11,035
2 SR 210 Widening	\$156,701
3 I-10 Corridor Contract 1	\$929,097
I-10 Contract 1 Measure I Investment	\$25,656
4 I-10 Truck Climbing Lane	\$35,848
I-15 Corridor Freight and Express Lanes Project - Contract 1	\$317,685
6 I-10 Corridor Freight and Express Lane Project - Contract 2*	\$796,000
7 I-215/Mount Vernon/Washington Bridge	\$28,388
<b>TOTAL:</b>	<b>\$2,300,410</b>

PROJECT	COST
1 Redlands Passenger Rail - Capital	\$375,113
Arrow - Operations	\$152,071
2 San Bernardino Line Double Track*	\$90,152
3 Gold Line to Montclair*	\$97,800
Gold Line to Montclair - Operations	\$11,049
<b>TOTAL:</b>	<b>\$726,185</b>

PROJECT	COST
1 West Valley Connector - Capital	\$287,514
West Valley Connector - Operations	\$40,740
<b>TOTAL:</b>	<b>\$328,254</b>



### Valley Projects

PROJECT	COST
1 I-10/Cedar Avenue Interchange	\$109,834
2 SR 210/Base Line Interchange	\$32,070
3 SR 60/Central Avenue Interchange	\$36,034
4 I-10/University Street Interchange	\$5,843
5 I-215/University Parkway Interchange	\$18,568
6 I-10/Alabama Street Interchange	\$14,379
7 SR 60/Archibald Avenue Interchange	\$27,701
8 I-10/Mount Vernon Avenue Interchange	\$71,590
9 SR 210/Waterman Avenue Interchange	\$5,885
10 SR 210/5th Street Interchange	\$15,827
11 I-10/Wildwood Canyon Road Interchange	\$1,750
12 I-10/Riverside Avenue Interchange Phase 2*	\$37,952
13 I-15/Base Line Road Interchange - AEA	\$48,974
14 I-10/Euclid Avenue Interchange**	\$0
15 I-10/Monte Vista Avenue Interchange**	\$0
16 I-10/Vineyard Avenue Interchange**	\$0
Interchange Phasing Program	\$24,923
<b>TOTAL:</b>	<b>\$451,330</b>

PROJECT	COST
1 Mount Vernon Viaduct	\$228,000
2 I-10/Fourth Street Bridge Undercrossing*	\$0
<b>TOTAL:</b>	<b>\$228,000</b>

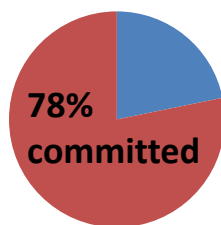
\* Project costs are included in the I-10 Corridor Contract 1 project.

**Freeway Program**  
**79% committed**  
**\$338M remains**

**Interchange Program**  
**74% committed**  
**\$161M remains**

**Rail Program**  
**98% committed**  
**\$10M remains**

**Bus Rapid Transit Program**  
**49% committed**  
**\$125M remains**



**Grade Separation Program**  
**73% committed**  
**\$54M remains**

*(State and Federal Funds Uncommitted: \$585M)*



**Project Funds Remaining – Valley Subarea**

PROJECT	COST
1 El Mirage Road from US 395 to Koala Road	\$2,531
2 Apple Valley Road and SR 18 Realignment	\$9,860
3 Stoddard Wells Road Widening from I-15 to Johnson Road	\$2,655
4 Bear Valley Road Bridge Over Mojave River	\$47,362
5 Central Road Widening from SR 18 to Bear Valley Road	\$2,987
6 Johnson Road Widening from Stoddard Wells Road to Navajo Road	\$3,477
7 Dale Evans Parkway Phase 1 (Waalew Realignment)	\$1,666
8 Ranchero Road Corridor Widening	\$52,696
9 Main Street Widening from US 395 to 11th Avenue - Phase 1	\$13,306
10 Main Street Widening from US 395 to 11th Avenue - Phase 2	\$29,060
11 Yucca Loma Corridor - Green Tree Boulevard Extension	\$46,843
12 Bear Valley Road Overhead at BNSF	\$13,528
13 Rock Springs Road Bridge over Mojave River	\$21,745
14 Phelan Road Widening from SR 138 to Hesperia City Limits*	\$60,820
15 US 395 - Phase 2 Freight Mobility and Safety Project*	\$74,583
<b>TOTAL:</b>	<b>\$383,119</b>

**Victor Valley  
MLHP**

**50% committed**  
**\$92M remains**

*State and Federal  
Funds Uncommitted:  
\$134M*



**Victor Valley Projects and Projected Funds Remaining**



PROJECT	COST
1 North First Avenue Bridge over BNSF	\$84,589
2 North First Avenue Bridges over Mojave River & Overflow	\$59,780
3 Rimrock Road Rehabilitation from Barstow Road to Avenue J	\$749
4 Irwin Road Rehabilitation from First Avenue to Old Highway 58	\$630
5 Baker Boulevard Bridge Replacement over Mojave River	\$16,938
6 National Trails Highway Bridges Replacements	\$85,955
TOTAL:	\$248,641

### North Desert MLHP

**45% committed**

**\$23M remains**

*State and Federal  
Funds Uncommitted:  
\$6M*

PROJECT	COST
1 Moonridge Road Realignment and Roundabouts - AEA	\$9,318
2 Stanfield Cutoff Roundabout	\$4,527
TOTAL:	\$13,845

### Mountains MLHP

**45% committed**

**\$11M remains**

*State and Federal  
Funds Uncommitted:  
\$37M*



## Rural Subarea Projects and Projected Funds Remaining

PROJECT	COST
1 Split Rock Avenue at Twentynine Palms Flood Control Channel	\$3,201
2 SR 62 Street Improvements from Encelia Avenue to Larrea Avenue, Phase 2A Median Only	\$997
3 SR 62 Street Improvements from Encelia Avenue to Larrea Avenue, Phase 2B Widening	\$4,935
4 SR 62 Widening from Sage Avenue to Airway Avenue	\$35,733
5 Yucca Trail Widening from Sage to La Contenta	\$22,047
TOTAL:	\$66,913

### Morongo Basin MLHP

**53% committed**

**\$11M remains**

*State and Federal  
Funds Uncommitted:  
\$32M*

COLORADO RIVER MAJOR LOCAL HIGHWAY PROGRAM	COST
1 US 95 Colorado River Bridge	\$1,775
2 Needles Highway Improvements, Segment 1C	\$9,400
TOTAL:	\$11,175

### Colorado River MLHP

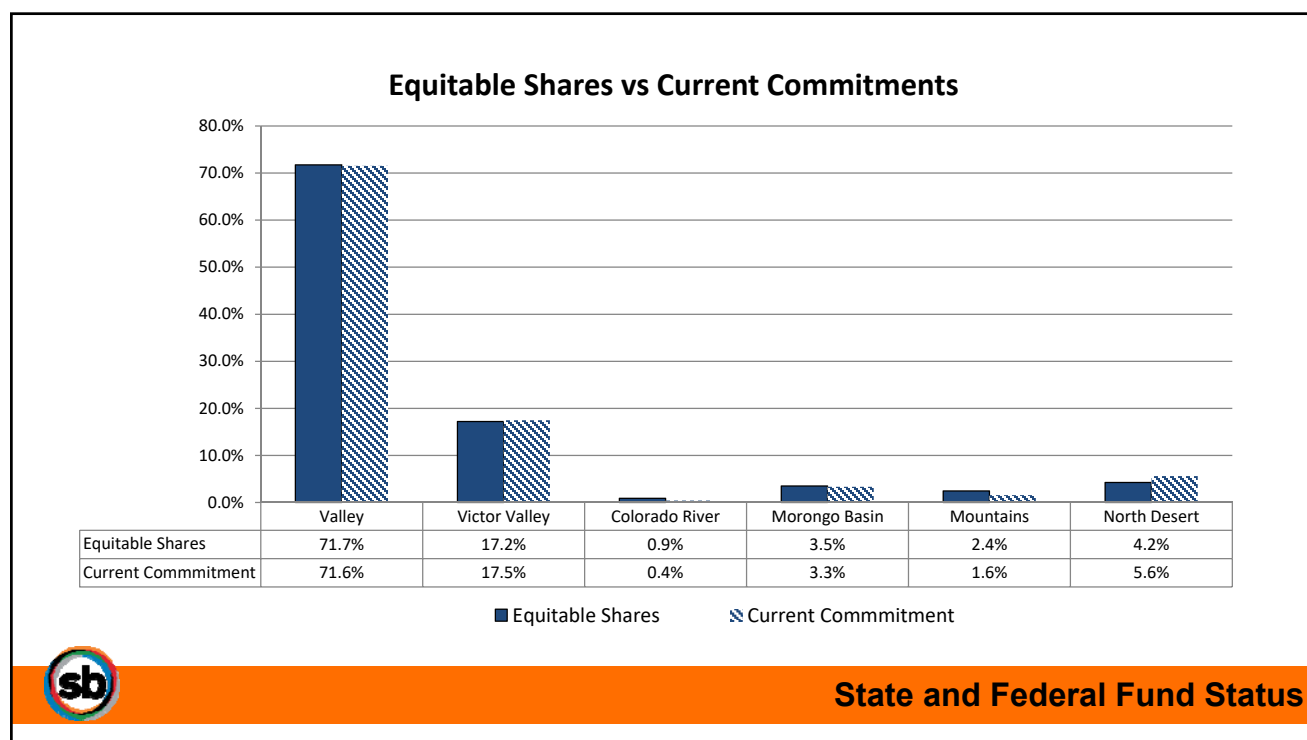
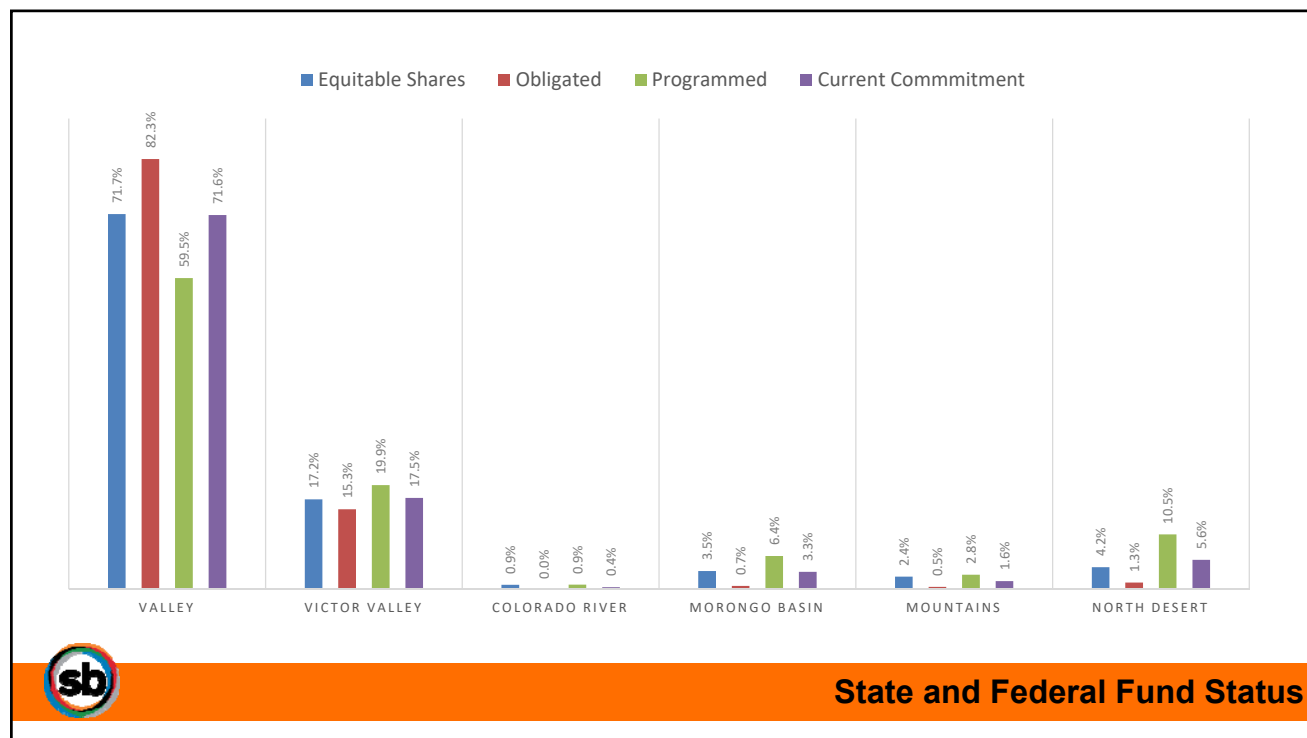
**54% committed**

**\$1M remains**

*State and Federal  
Funds Uncommitted:  
\$16M*



## Rural Subarea Projects and Projected Funds Remaining



PROGRAM	FISCAL YEAR OF BOND ISSUE										Estimated 10 YDP Bond Issues	TOTAL BOND ISSUES
	2012	2014	Previous Bonds Issued	2022	2023	2024	2025	2026	2027	2028		
Cajon Pass	\$35,000	\$20,000	\$55,000									\$55,000
Victor Valley Major Local Highway	\$20,000	\$6,000	\$26,000									\$26,000
North Desert												
Mountains												
Morongo Basin												
Colorado River												
San Bernardino Valley Programs:												
Freeway Projects								\$153,068		\$151,235	\$304,303	\$304,303
Freeway Interchange*		\$24,000	\$24,000					\$96,791			\$96,791	\$120,791
Major Street	\$39,000	\$43,000	\$82,000									\$82,000
Local Street												
Metrolink/Rail		\$27,000	\$27,000									\$27,000
Express Bus/Bus Rapid Transit*												
Senior & Disabled Transit												
Traffic Management Systems												
Total Per Issue	\$94,000	\$120,000	\$214,000					\$249,859		\$151,235	\$401,094	\$615,094

- **\$230 million** reduction in bonding need from 2019 Update
- **\$111 million** savings in associated interest



## Bonding Summary

PROJECT	COST
1 Ontario International Airport (ONT) Loop - Capital*	\$132,009
ONT Loop - Operations	\$15,071
2 DMU to ZEMU	\$37,492
3 ZEMU Conversion of Three Arrow DMUs	\$7,875
4 Zero Emission Bus Initiative*	\$137,694
5 Enterprise Resource Planning - Capital	\$3,100
Enterprise Resource Planning - Annual Maintenance	\$1,105
TOTAL:	\$334,346



DMU<sup>2</sup>ZEMU



## Other Projects of Interest

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San Bernardino County  
Transportation Authority

# **ADDITIONAL INFORMATION**

# BOARD OF DIRECTORS ATTENDANCE RECORD – 2021

Name	Jan	Feb	March	April	May	June	July	Aug DARK	Sept	Oct	Nov	Dec
<b>Paul Cook</b> Board of Supervisors	X	X	X	X	X	X	X		X	X	X	
<b>Janice Rutherford</b> Board of Supervisors	X	X	X	X	X		X		X	X	X	
<b>Dawn Rowe</b> Board of Supervisors	X	X	X	X	X	X	X		X	X		
<b>Curt Hagman</b> Board of Supervisors	X	X	X	X	X	X	X		X	X	X	
<b>Joe Baca, Jr.</b> Board of Supervisors	X	X	X	X	X	X	X		X	X	X	
<b>Daniel Ramos</b> City of Adelanto									X			
<b>Gerardo Hernandez</b> City of Adelanto												
<b>Art Bishop</b> Town of Apple Valley	X	X	X	X	X	X	X		X	X	X	
<b>Paul Courtney</b> City of Barstow		X			X	X			X	X	X	
<b>Rick Herrick</b> City of Big Bear Lake	X	X	X	X	X	X			X			
<b>Eunice Ulloa</b> City of Chino	X	X	X	X	X	X	X		X		X	
<b>Ray Marquez</b> City of Chino Hills	X	X	X	X	X	X	X		X	X	X	
<b>Frank Navarro</b> City of Colton	X	X	X	X	X	X	X		X	X		
<b>Acquanetta Warren</b> City of Fontana	X	X	X	X	X	X	X		X	*	X	
<b>Darcy McNaboe</b> City of Grand Terrace	X	X	X	X	X	X	X		*	X	X	
<b>Cameron Gregg</b> City of Hesperia	X	X	X	X		X			X			

X = member attended meeting. \* = alternate member attended meeting. Empty box = did not attend meeting. Crossed out box = not a Board Member at the time. Shaded box=no meeting

# BOARD OF DIRECTORS ATTENDANCE RECORD – 2021

Name	Jan	Feb	March	April	May	June	July	Aug DARK	Sept	Oct	Nov	Dec
<b>Larry McCallon</b> City of Highland	X	X	X	X	X	X	X		X	X	X	
<b>Rhodes ‘Dusty’ Rigsby</b> City of Loma Linda	X	X	X	X	X	X	X		X		X	
<b>John Dutrey</b> City of Montclair	X	X	X	X	X	X	X		X	X	X	
<b>Edward Paget</b> City of Needles		X	X		X	X	X			X	X	
<b>Alan Wapner</b> City of Ontario	X	X	X	X	X	X	X		X		X	
<b>L. Dennis Michael</b> City of Rancho Cucamonga	X	X	X	X	X	X	X		X	*	X	
<b>Paul Barich</b> City of Redlands	*			X	X	X	X					
<b>Deborah Robertson</b> City of Rialto	X	X	X	X	X		X		X	X	X	
<b>John Valdivia</b> City of San Bernardino	X	X	X	X	X	X	X		X		X	
<b>Joel Klink</b> City of Twentynine Palms	X	X	X	X	X	X			X	X	X	
<b>Carlos A. Garcia</b> City of Upland				X			X					
<b>Bill Velto</b> City of Upland	X	*										
<b>Debra Jones</b> City of Victorville	X	X	X	X	X	X	X		X	X	X	
<b>David Avila</b> City of Yucaipa	X	X	X	X	X	X	X		X	X	X	
<b>Rick Denison</b> Town of Yucca Valley	X	X	X	X	X	X			X	X	X	
<b>Michael Beauchamp</b> Ex-Official Member	Rebecca Guirado	X	X	Diane Morales	David Bricker	X	Diane Morales		Diane Morales	X	Diane Morales	

X = member attended meeting. \* = alternate member attended meeting. Empty box = did not attend meeting. Crossed out box = not a Board Member at the time. Shaded box=no meeting



This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist Board Members and partners as they participate in deliberations at Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. Staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
SRTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

# AGENCY REPORTS



REPORT: Mobile Source Air Pollution Reduction Review Committee

FROM: Larry McCallon, SBCTA Representative to the MSRC

SYNOPSIS: The Mobile Source Air Pollution Reduction Review Committee held a remote Joint Retreat with its Technical Advisory Committee after its regular meeting on Thursday, October 21, 2021. The following is a summary of the meeting.

### **Joint MSRC & MSRC-TAC Annual Retreat**

On October 21, 2021, the MSRC conducted a remote Joint Retreat with its Technical Advisory Committee to discuss the opportunities and results of prior Work Programs and initiate development of its upcoming FYs 2021-24 Work Program. A few highlights from the Retreat include the following:

South Coast AQMD, CARB, and CEC discussed air quality issues and priorities. The Better World Group presented on new Work Program outreach opportunities. MSRC staff provided Work Program suggestions and feedback from members. The MSRC consensus was to pursue a three-year Work Program.

*The following actions were taken at the regular meeting.*

### **FYs 2016-18 and FYs 2018-21 Work Programs**

#### **Hydrogen Infrastructure Partnership Program**

In March 2018, the MSRC approved release of a Program Opportunity Notice (PON) for the Hydrogen Infrastructure Partnership Program under the FYs 2016-18 Work Program. The PON, with an initial targeted funding level of \$3,000,000, seeks to expand the availability of hydrogen refueling as a means to accelerate the deployment of large numbers of zero emission hydrogen vehicles. In order to allow adequate time for technologically sophisticated refueling station designs and potentially complex station implementation partnerships to be formed, the PON included an open solicitation period which commenced with its release on April 6, 2018 and which was subsequently extended to April 9, 2021. The MSRC has previously approved two awards totaling \$2,662,000 in response to this solicitation. Following extensive review, the MSRC-TAC recommended that the MSRC allocate an additional \$3,322,000 to the Hydrogen Infrastructure Partnership Program. The MSRC considered the last of the proposals submitted and approved three contract awards totaling \$3,660,000 under the Hydrogen Infrastructure Partnership Program, using \$338,000 of funds previously allocated under the FYs 2016-18 Work Program and \$3,322,000 of funds previously unallocated under

the FYs 2018-21 Work Program, as part of approval of the FYs 2016-18 and 2018-21 Work Programs, as follows:

- a. A contract with Air Products and Chemicals, Inc. in an amount not to exceed \$1,000,000 to install a publicly accessible hydrogen fueling station in Paramount;
- b. A contract with Nikola Energy, Inc. in an amount not to exceed \$1,660,000 to install a publicly accessible hydrogen fueling station in Ontario; and
- c. A contract with Clean Energy in an amount not to exceed \$1,000,000 to install a publicly accessible hydrogen fueling station in San Bernardino.

### **FYs 2018-21 Work Program**

#### **Trade Up Program**

In November 2019, the MSRC allocated \$4,000,000 to partner with South Coast AQMD to implement a Market Acceleration Program to encourage the early deployment of near-zero emission natural gas trucks. In August 2020, the MSRC reallocated \$3,000,000 of this funding to a separate South Coast AQMD program. This program is designed to offer incentives via a trade approach involving two parties and three trucks. Some terms of the Trade Up Program (formerly known as the Trade Down Program) have recently been identified as different to what was previously presented to the MSRC. Additionally, South Coast AQMD is proposing adjustments to the Trade Up Program which would a) allow necessary repair costs up to \$10,000 to be deducted from the value of the traded-in truck; and b) allow the collection of a non-refundable deposit from the purchaser of the new near-zero truck. The MSRC considered and approved the proposed changes.

#### **Contract Modification Requests**

The MSRC considered four contract modification requests and took the following actions:

1. City of Yucaipa, Contract #ML16057, which provides \$380,000 to implement a “complete streets” pedestrian access project, a one-year no-cost term extension;
2. County of Los Angeles, Contract #ML18060, which provides \$1,367,610 to purchase 29 light-duty zero emission vehicles (ZEVs), 1 heavy-duty ZEV, 6 heavy-duty near-zero emission vehicles, and install EV charging stations, a two-year no-cost term extension;
3. City of Palm Springs, Contract #ML18147, which provides \$60,000 to install EV charging stations, a 30-month no-cost term extension; and
4. City of Colton, Contract #ML18020, which provides \$67,881 to purchase one medium-duty and one heavy-duty ZEV, a 32-month no-cost term extension.

#### **Contracts Administrator’s Report**

The MSRC AB 2766 Contracts Administrator’s report provides a written status report on all open contracts from FY 2007-08 to the present.

# COMMITTEE MEMBERSHIP

**San Bernardino County Transportation Authority (SBCTA)**  
**Representatives on SCAG Committees**

APPOINTING/ELECTING AUTHORITY	REGIONAL COUNCIL (12:15 p.m.)	POLICY COMMITTEES (Regional Council Members Serve on One Each) (Subregional Appointments) (County Commissions Appoint One to TC) (10:00 a.m.)		
		Community, Economic, and Human Development	Energy and Environment	Transportation
District 6 (Grand Terrace, Colton, Loma Linda, Redlands, Yucaipa) District 7 (San Bernardino, Highland) District 8 (Rialto, Fontana) District 9 (Rancho Cucamonga, Upland, Montclair) District 10 (Chino, Chino Hills, Ontario) District 11 (Barstow, Big Bear, Needles, Twentynine Palms, Yucca Valley) District 65 (Adelanto, Apple Valley, Hesperia, Victorville) San Bernardino County † Community of Concern Appointee	F. Navarro L. McCallon D. Robertson L. Michael R. Marquez R. Putz L. Becerra C. Hagman G. Reyes	G. Reyes	D. Robertson     R. Putz	F. Navarro L. McCallon     L. Michael R. Marquez   L. Becerra C. Hagman
†† San Bernardino County Transportation Authority Appointee	A. Wapner			A. Wapner
SBCTA Subregional Appointees* *One appointee to each policy committee for a total of three appointees per subregion, plus one additional appointee for every SCAG District over three in the subregion. SBCTA has a total of seven subregional appointees to the policy committees. Terms of appointment expire December 31 of odd-numbered years.		David Avila Ed Paget Acquanetta Warren	Cynthia Moran John Valdivia Rick Denison	John Dutrey

**Rules of Appointment**

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

**Terms of Appointment**

Terms of appointment are two years, commencing on adjournment of the annual General Assembly in May of each year. Even-numbered District representatives' terms expire in even-numbered years; odd-numbered District representatives expire in odd-numbered years. † Community of Concern appointee, appointed by the County Regional Council representative for a two-year term. †† SBCTA Regional Council Representative serves a two-year term from the date of appointment.

**Stipend Summary**

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

**Meeting Information**

The regular meetings of SCAG Regional Council and Policy Committees are on the 1<sup>st</sup> Thursday of each month at the SCAG offices located at 900 Wilshire Blvd., Ste. 700, Los Angeles. Generally, the Policy Committee meetings start at 10 AM and Regional Council meetings start at 12:15 PM.

**Policy Committees**

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

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

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



## Appointments to External Agencies

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

The following table lists some of the regional bodies upon which SBCTA and SBCOG representatives serve.

Committee	Appointee	Appointing Authority	Purpose	Term
California Association of Councils of Governments	Alan Wapner, Ontario	President	CALCOG facilitates communication and information sharing among its members. Most members of CALCOG are Councils of Governments (COGs), while some are transportation commissions and others are the large Metropolitan Planning Organizations like SCAG and SANDAG. CALCOG is governed by a Board of Directors comprised of a representative from each member's Board of Directors.	12/31/22
Inland Empire Economic Partnership (IEEP)	Dennis Michael, Rancho Cucamonga	President	The IEEP is a partnership that includes business, government and academic leaders to develop and carry out initiatives to benefit the region.	
The Sam and Alfreda L. Maloof Foundation for Arts and Crafts	Janice Rutherford, Supervisor	Board of Directors	A non-profit corporation that participates in the preparation of the Conservation Plan and oversees the activities and assets of the Foundation. A payment of stipend for participation has not been authorized.	12/31/21
Gold Line Phase II Joint Powers Authority	John Dutrey, Montclair, Primary Ray Marquez, Chino Hills, Alternate	Board of Directors	The Gold Line Phase II Construction Authority is a Joint Powers Authority (JPA) formed by 14 cities along the corridor and SBCTA. The JPA serves as a forum for the review, consideration, study, development and recommendation of policies and plans for the extension of the Gold Line from Pasadena to Montclair. Members receive \$100 payment from Gold Line Authority for participation.	12/31/21 12/31/22
Metro Gold Line Foothill Extension Construction Authority	Alan Wapner, Ontario, Primary John Dutrey, Montclair, Alternate	President	The Authority is responsible for the development of a light rail project from the City of Los Angeles into San Bernardino County. The Authority board meets on the second and fourth Wednesday of the month at 7:00 p.m. at the Authority's office in Monrovia. Members receive \$150 for each day spent on Authority business, not to exceed \$600 per month.	12/31/22 12/31/22
Mobile Source Air Pollution Reduction Review Committee	Larry McCallon, Highland, Primary John Valdivia, San Bernardino, Alternate	Board of Directors	Develops and implements work programs which reduce mobile source emissions, funded by AB2766 (portion of the \$4 motor vehicle registration fee). County Commissions, SCAQMD, and ARB have one appointment with alternates. In April 2005, SBCTA authorized a stipend of \$100 per day. The MSRC meets on the third Thursday of the month at 2:00 p.m. at South Coast Air Quality Management District in Diamond Bar.	12/31/22 12/31/22

## Appointments to External Agencies

Committee	Appointee	Appointing Authority	Purpose	Term
One Water One Watershed (OWOW) Steering Committee of the Santa Ana Watershed Project Authority	Deborah Robertson, Rialto	Board of Directors	<p>Responsible for developing the integrated Regional Water Management Plan for the Santa Ana River.</p> <p>The term of the appointment is for four years for a city representative from San Bernardino County.</p> <p>Officers leaving elected office after appointment are still eligible to serve. Beginning January 2016, the OWOW meets on the 4<sup>th</sup> Thursday of every other month at 11:00 a.m. at the Santa Ana Watershed Project Authority (SAWPA). Members of the Steering Committee do not receive a stipend.</p>	12/31/22
SCAG Policy Committees	See associated table.	The Board has authorized the President to make appointments to SCAG Policy Committees.	SBCTA also has authority to appoint up to seven appointees to the three SCAG Policy Committees: i.e., Community Economic and Human Development, Energy and Environment, and Transportation. SCAG pays appointees to policy committees a stipend of \$120 per meeting.	See associated table – Representatives on SCAG Committees
Southern California Regional Rail Authority	Alan Wapner, Ontario, Primary Larry McCallon, Highland, Primary Ray Marquez, Chino Hills, Alternate John Dutrey, Montclair, Alternate	Board of Directors (Recommendation made by the Transit Committee)	<p>SCRRA serves as the governing body for Metrolink, the regional commuter rail system serving the five Southern California Counties.</p> <p>Members receive payment of \$100 per day from SCRRA for participation.</p>	Indefinite
SR 91 Advisory Committee	Ray Marquez, Chino Hills, Ex-Officio Member	Board of Directors	<p>The Committee reviews issues and makes recommendations to OCTA regarding the transportation facilities acquired, including tolls imposed, operations, maintenance, use of toll revenues, and improvements in the area of SR 91 between I-15 and SR 55, including the identification and siting of alternate highways.</p> <p>SBCTA has not authorized payment of stipend for participation.</p>	12/31/22
Regional Rideshare Agency - Mobile Source Air Pollution Reduction Review Committee	John Dutrey, Montclair, Primary Ray Marquez, Chino Hills, Alternate	Board of Directors	The County Transportation Commissions within the South Coast Air Basin operating a rideshare program are identified as the Regional Rideshare Agencies. Ride share programs consist of providing resources and ride matching to commuters to reduce single occupancy vehicle trips, as well as employer support for implementing rideshare programs and reduction plans for the South Coast Air Quality Management District's Rule 2202. In April 2005, SBCTA authorized a stipend of \$100 per day. The MSRC meets on the third Thursday of the month at 2:00 p.m. at South Coast Air Quality Management District in Diamond Bar.	4/30/22 4/30/22

**Communication: Appointments to External Agencies (Committee Membership)**

## San Bernardino County Transportation Authority (SBCTA) Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<b>General Policy Committee</b> Membership consists of the following: SBCTA President, Vice President, and Immediate Past President 4 East Valley (3 City, 1 County) 4 West Valley (3 City, 1 County) 4 Mt/Desert (3 City, 1 County) City members shall be SBCTA Board Members elected by caucus of city SBCTA Board Members within the subarea. Policy Committee and Board Study Session Chairs are members of this policy committee. All City members serving as Board officers, Committee chairs, or Board Study Session Chair, are counted toward their subareas City membership. Supervisors collectively select their representatives. The SBCTA Vice President shall serve as Chair of the General Policy Committee.	Makes recommendations to Board of Directors and: (1) Provides general policy oversight which spans the multiple program responsibilities of the organization and maintains the comprehensive organization integrity; (2) Provides policy direction with respect to administrative issues, policies, budget, finance, audit, and personnel issues for the organization; (3) Serves as policy review committee for any program area that lacks active policy committee oversight. Committee has authority to approve contracts in excess of \$25,000 with notification to the Board of Directors.  (Brown Act)	<u>West Valley</u> Ray Marquez, Chino Hills (Chair TC) Acquanetta Warren, Fontana Alan Wapner, Ontario Curt Hagman, Supervisor (Vice Chair/ President)  <u>East Valley</u> Frank Navarro, Colton (Past President) Darcy McNaboe, Grand Terrace Larry McCallon, Highland Dawn Rowe, Supervisor (Chair MVSS & MDC)  <u>Mountain/Desert</u> Art Bishop, Apple Valley (Chair/Vice President) Edward Paget, Needles Debra Jones, Victorville Paul Cook, Supervisor  Should the chairs of each Committee and the Officers all be from the East Valley, West Valley or Mountain/Desert, additional members may be added to maintain geographical balance. Additional Board Members may be appointed annually at the discretion of the Board President.	6/30/2022 6/30/2022 6/30/2022 6/30/2022  6/30/2022 6/30/2022 6/30/2022 6/30/2022  6/30/2022 6/30/2022 6/30/2022 6/30/2022  Indeterminate (6/30/2022) 12/31/2022 (6/30/2022) 12/31/2021 12/31/2021 Indeterminate Indeterminate Indeterminate 12/31/2021 12/31/2022 12/31/2022 12/31/2022 12/31/2022
<b>Transit Committee</b> Membership consists of 12 SBCTA Board Members: 10 Valley-members, two being Southern California Regional Rail Authority (SCRRA) primary (*) and two being SCRRA alternate (**) members, and 2 Mountain/Desert Board Members. SCRRA members and alternates serve concurrent with their term on the SCRRA Board of Directors as appointed by the SBCTA Board. Other members are appointed by the SBCTA President for 2-year terms.	Provides policy guidance and recommendations to the SBCTA Board of Directors and Southern California Regional Rail Authority (SCRRA) delegates with respect to commuter rail and transit service.  * SCRRA Primary Member ** SCRRA Alternate Member  (Brown Act)	Ray Marquez, Chino Hills** (Chair) David Avila, Yucaipa (Vice Chair) Frank Navarro, Colton Acquanetta Warren, Fontana Larry McCallon, Highland* John Dutrey, Montclair** Alan Wapner, Ontario* L. Dennis Michael, Rancho Cucamonga Deborah Robertson, Rialto John Valdivia, San Bernardino Rick Denison, Yucca Valley Dawn Rowe, Supervisor	Indeterminate (6/30/2022) 12/31/2022 (6/30/2022) 12/31/2021 12/31/2021 Indeterminate Indeterminate Indeterminate 12/31/2021 12/31/2022 12/31/2022 12/31/2022 12/31/2022

Communication: Committee Membership (Committee Membership)

## San Bernardino County Transportation Authority (SBCTA) Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<b>Mountain/Desert Committee</b> Membership consists of 12 SBCTA Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, Second, and Third Districts.	Provides ongoing policy level oversight related to the full array of SBCTA responsibilities as they pertain specifically to the Mountain/Desert subregion.  The Committee also meets as the Mountain/Desert Measure I Committee as it carries out responsibilities for Measure I Mountain/Desert Expenditure Plan.  (Brown Act)	Dawn Rowe, Supervisor (Chair) Art Bishop, Apple Valley (Vice Chair) Daniel Ramos, Adelanto Paul Courtney, Barstow Rick Herrick, Big Bear Lake Cameron Gregg, Hesperia Edward Paget, Needles Joel Klink, Twentynine Palms Debra Jones, Victorville Rick Denison, Yucca Valley Janice Rutherford, Supervisor Paul Cook, Supervisor	Indeterminate (6/30/2022) Indeterminate (6/30/2022) Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate
<b>Legislative Policy Committee</b> Membership consists of the following: President, Vice-President, Immediate Past President and four Board members appointed by the Board President. - 1 East Valley member - 1 West Valley member - 1 Mountain/Desert member - 1 County member  Members shall serve for the duration of the State and Federal two-year legislative session in which they were appointed, with terms expiring December 31 of odd-numbered years. The SBCTA Board President shall serve as Chair of the Legislative Policy Committee.	Provide guidance and recommendations to the Board of Directors regarding issues and actions relating to the executive, legislative or judicial branches of the State and Federal government, or any other local governing body.  Review and provide input on drafting of State and Federal legislative platform, which will serve as guiding principles to support or oppose State and Federal legislation and regulations.  (Brown Act)	Curt Hagman, Supervisor (President) Art Bishop, Town of Apple Valley (Vice President) Frank Navarro, Colton (Past President) Larry McCallon, Highland Alan Wapner, Ontario Rick Denison, Yucca Valley Janice Rutherford, Supervisor	Indeterminate Indeterminate Indeterminate 12/31/2022 12/31/2022 12/31/2022 12/31/2022

<b><u>Policy Committee Meeting Times</u></b>	General Policy Committee	Second Wednesday, 9:00 a.m., SBCTA Office
	Legislative Policy Committee	Second Wednesday, 9:30 a.m., SBCTA Office
	Transit Committee	Second Thursday, 9:00 a.m., SBCTA Office
	Mountain/Desert Committee	Third Friday, 9:30 a.m., Victorville, CA

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

STUDY SESSION	PURPOSE	MEMBERSHIP	TERMS
Board of Directors Study Sessions for Metro Valley Issues Refer to SBCTA Policy 10007.	To review, discuss, and make recommendations for actions to be taken at regular meetings of the Board on issues relating to Measure I Projects in the Valley.  (Brown Act)	Board of Directors Dawn Rowe, Supervisor (Chair) John Valdivia, San Bernardino (Vice Chair)	6/30/2022 6/30/2022

**Meeting Time:** Second Thursday, 9:30 a.m., SBCTA Office

**I-10 and I-15 Corridor Joint Sub-Committee**

Joint Sub-Committee	PURPOSE	MEMBERSHIP	TERMS
<b>I-10 and I-15 Corridor Joint Sub-Committee of the Board of Directors Metro Valley Study Session and the Mountain/Desert Policy Committee</b> Members of the committee will be members of the SBCTA Board of Directors and will be appointed by the SBCTA Board President. The President will appoint the Chair and Vice-Chair of the Sub-Committee. The Sub-Committee will include a minimum of nine and a maximum of fourteen SBCTA Board members. Membership will be composed of a minimum of three representatives from the East Valley; and a minimum of two representatives from the Victor Valley. The Sub-Committee will meet as necessary immediately following the Metro Valley Study Session.	The purpose is to consider and make recommendations to the Board of Directors on the development of express lanes in San Bernardino County, in particular on the I-10 and I-15 Corridors.  (Brown Act)	Alan Wapner, Ontario (Chair) Art Bishop, Town of Apple Valley (Vice Chair) Joe Baca Jr., Supervisor Paul Cook, Supervisor Larry McCallon, Highland L. Dennis Michael, Rancho Cucamonga Frank Navarro, Colton Deborah Robertson, Rialto Acquanetta Warren, Fontana	12/31/2022 12/31/2022 12/31/2022 12/31/2022 12/31/2022 12/31/2022 12/31/2022 12/31/2022

**Public and Specialized Transportation Advisory and Coordinating Council (PASTACC)**

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Public and Specialized Transportation Advisory and Coordinating Council (PASTACC)  Membership consists of 11 members appointed by the SBCTA Executive Director. 5 representing Public Transit Providers 1 representing County Dept. of Public Works 2 representing the Consolidated Transportation Services Agency - Omnitrans and VVTA also represent CTSA for the Valley and High Desert respectively. 5 At Large Members representing Social Service Providers	Subject to the Transportation Development Act (TDA) Section 99238 – establishes PASTACC’s statutory responsibilities; (1) Review and make recommendations on annual Unmet Transit Needs hearing findings (2) Score and make recommendations for Federal Transit Administration Section 5310 Capital Grant Program applications (3) Assist SBCTA in developing public outreach approach on updating the Coordinated Public Transit/Human Services Transportation Plan (4) Review call for projects for Federal Transit Administration Section 5310 grant applications (5) Monitor and make recommendations on Federal regulatory processes as they relate to transit and specialized transit (6) Monitor and disseminate information in reference to State level law and recommendations as they relate to transit and specialized transit (7) Receive annual reports on funded specialized programs funded through FTA Section 5310 and Measure I (8) Identify regional or county level areas of unmet needs (9) Address special grant or funding opportunities (10) Address any special issues of PASTACC voting and non-voting members  (Brown Act)	Standing Membership – Morongo Basin Transit Authority Mountain Transit City of Needles Transit Services Omnitrans Victor Valley Transit Authority County of San Bernardino Dept. of Public Works  At Large Membership – San Bernardino Dept. of Aging and Adult Services Foothill Aids OPARC Option House Loma Linda University Health	On-going On-going On-going On-going On-going On-going  5/31/2024 9/30/2023 9/30/2023 6/30/2022 5/31/2024

**Meeting Dates and Time:** Bi monthly, beginning in January, 2<sup>nd</sup> Tuesday of the month, 10:00 a.m., (Location rotates: SBCTA Office, VVTA, MBTA)

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

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
<p>Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan</p> <p>The ITOC shall provide citizen review to ensure that all Measure I funds are spent by the San Bernardino County Transportation Authority (hereby referred to as the Authority) in accordance with provision of the Expenditure Plan and Ordinance No. 04-01. The ordinance specifies that each member of the ITOC have certain credentials or experience as follows:</p> <ol style="list-style-type: none"> <li>One member who is a professional in the field of municipal audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector.</li> <li>One member who is a licensed civil engineer or trained transportation planner with at least five years of demonstrated experience in the fields of transportation and/or urban design in government and/or the private sector. No member shall be a recipient or sub-recipient of Measure "I" funding.</li> <li>One member who is a current or retired manager of a major publicly financed development or construction project, who by training and experience would understand the complexity, costs and implementation issues in building large scale transportation improvements.</li> <li>One member who is current or retired manager of a major privately financed development or construction project, who by training and experience would understand the complexity, costs and implementation issues in building large scale transportation improvements.</li> <li>One public member, who possesses the knowledge and skills which will be helpful to the work of the ITOC.</li> </ol> <p>In addition to the appointed members, the SBCTA President and Executive Director will serve as ex-officio members.</p>	<p>The ITOC shall review the annual audits of the Authority; report findings based on the audits to the Authority; and recommend any additional audits for consideration which the ITOC believes may improve the financial operation and integrity of program implementation.</p> <p>The Authority shall hold a publicly noticed meeting, which may or may not be included on the agenda of a regularly scheduled Board meeting, with the participation of the ITOC to consider the findings and recommendations of the audits.</p> <p>(Brown Act)</p>	<p>Vacant (A)  Gerry Newcombe (B)  Wayne Hendrix (C)  Rick Gomez (D)  Mike Layne (E)  Curt Hagman, Ex-Officio  Ray Wolfe, Ex-Officio</p>	<p>12/31/24  12/31/22  12/31/22  12/31/22</p>

### SBCTA Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
<p><b>Equity Ad Hoc Committee</b></p> <p>On October 7, 2020, the Board approved the establishment of this ad hoc committee composed of seven Board members appointed by the Board President. Membership consists of the following:</p> <ul style="list-style-type: none"> <li>- 2 East Valley member</li> <li>- 2 West Valley member</li> <li>- 2 Mountain/Desert member</li> <li>- 1 County member</li> </ul>	<p>To look broadly at equity and inequity region-wide both within the practices, policies and projects of SBCTA, as well as policies and issues facing SBCOG's member agencies.</p>	<p>L. Dennis Michael, Rancho Cucamonga  Acquanetta Warren, Fontana  John Valdivia, San Bernardino  Rick Denison, Yucca Valley  Darcy McNaboe, Grand Terrace  Art Bishop, Apple Valley  Joe Baca Jr., Supervisor</p>

Communication: Committee Membership (Committee Membership)



<b>Emerging Technology Ad Hoc Committee</b> On October 6, 2021, the Board approved the establishment of this ad hoc committee composed of Board members appointed by the Board President.	To look broadly at Transportation Technology. This ad hoc has a term ending December 31, 2022.	Art Bishop, Apple Valley Frank Navarro, Colton Acquanetta Warren, Fontana Carlos A. Garcia, Upland John Dutrey, Montclair L. Dennis Michael, Rancho Cucamonga David Avila, Yucaipa Curt Hagman, Supervisor
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### SBCTA Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
<b>Transportation Technical Advisory Committee (TTAC)</b> Committee membership consists of a primary staff representative of each SBCTA member agency designated by the City Manager or County Administrative Officer.	SBCTA's Transportation Technical Advisory Committee was formed by SBCTA management to provide input to SBCTA staff on technical transportation-related matters and formulation of transportation-related policy recommendations to the SBCTA Board of Directors.  The TTAC is not a Brown Act committee.	Generally meets on the first Monday of each month at 1:30 PM, at SBCTA.
<b>City/County Manager's Technical Advisory Committee (CCM TAC)</b> The committee is composed of up to two representatives of the County Administrator's Office and the city manager or administrator from each city and town in the County.	SBCTA's City/County Manager's Technical Advisory Committee was established in the Joint Powers Authority that established San Bernardino Associated Governments (SANBAG). The primary role of the committee is to provide a forum for the chief executives of SANBAG's member agencies to become informed about and discuss issues facing SANBAG/SBCTA. It also provides a forum for the discussion of items of mutual concern and a way to cooperate regionally in addressing those concerns.  The CCM TAC is a Brown Act Committee.	Meets on the first Thursday of each month at 10:00 AM, at SBCTA.
<b>Planning and Development Technical Forum (PDTF)</b> Committee membership consists of a primary staff representative of each SBCTA member agency designated by the City Manager or County Chief Executive Officer.	The SBCTA Planning and Development Technical Forum was formed by SBCTA management to provide an opportunity for interaction among planning and development representatives of member agencies on planning issues of multijurisdictional importance.  The PDTF is not a Brown Act Committee.	Meets the 4th Wednesday of each month at 2:00 p.m. at the Santa Fe Depot (in the SCAG Office).
<b>Project Development Teams</b>	Project Development Teams (PDTs) are assembled for all major project development activities by SBCTA staff. Teams are generally composed of technical representatives from SBCTA, member jurisdictions appropriate to the project, Caltrans, and other major stakeholder entities that have significant involvement in the project. PDTs make recommendations related to approaches to project development, evaluation of alternatives, and technical solutions. PDTs meet on a regular basis throughout the project phase to review progress and to provide technical input required for project development.  The PDTs are not Brown Act Committees.	Varies with the PDT.





## MISSION STATEMENT

Our mission is to improve the quality of life and mobility in San Bernardino County. Safety is the cornerstone of all we do.

We achieve this by:

- Making all transportation modes as efficient, economical, and environmentally responsible as possible.
- Envisioning the future, embracing emerging technology, and innovating to ensure our transportation options are successful and sustainable.
- Promoting collaboration among all levels of government.
- Optimizing our impact in regional, state, and federal policy and funding decisions.
- Using all revenue sources in the most responsible and transparent way.

Approved December 4, 2019