

**AGREEMENT  
(Pasadena Subdivision, Los Angeles County)**

This Agreement (“Agreement”) effective as of \_\_\_\_\_, 201\_\_ is entered into between BNSF Railway Company (“BNSF”), a Delaware corporation that is the successor following merger to The Atchison, Topeka and Santa Fe Railway Company and Los Angeles County Metropolitan Transportation Authority (“LACMTA”), a government agency organized under the laws of the state of California, formerly known as the Los Angeles County Transportation Commission.

A. BNSF and LACMTA are parties to that certain Shared Use Agreement (Pasadena Subdivision, Los Angeles County) dated as of October 30, 1992 as amended by that certain Agreement (the “First Amendment”) dated as of March 31, 2011 (as amended, the “SUA”) which governs their respective rights and obligations in and to the Property.

B. All capitalized terms used herein and not otherwise defined shall have the meanings specified in the SUA. LACMTA shall have the same meaning as the term “Agency” as it is used in the SUA, and BNSF shall have the same meaning as the term “Santa Fe” as it is used in the SUA.

C. As contemplated in the First Amendment LACMTA extended its current light rail service eastward over the Pasadena Subdivision from Pasadena, California to Azusa, California (“Phase 2A”).

D. Phase 2A required that BNSF cease Freight Rail Service and quitclaim and release any rights in and to the Reserved Freight Rail Service Easement as to that portion of the Property between the western end of the Pasadena Subdivision at Milepost 124.2, just east of the Santa Anita Blvd. at-grade crossing in Arcadia, California, and Milepost 119.35, just east of the San Gabriel River, in Irwindale, California (this rail line segment being referenced hereinafter as the “West End Segment”).

E. Phase 2A also required the relocation of the existing BNSF main line and other rail facilities, as described in the Conceptual Plan, as defined herein, starting with MP 119.35, the area near the Miller Brewery in Irwindale, and ending near MP 115.8, near the Azusa/Citrus Station (this rail line segment being referenced hereinafter as the “East End Segment”).

F. The parties contemplated in the First Amendment that LACMTA would subsequently further extend its light rail service from Glendora to Montclair, CA (“Phase 2B”), which will require the relocation of the existing BNSF main line and other rail facilities between mileposts \_\_\_\_\_ and \_\_\_\_\_ (the “Phase 2B Segment”).

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants contained herein BNSF AND LACMTA agree as follows:

1. Except as provided below in this Paragraph, BNSF, its assigns, investors, parent companies, subsidiaries, successors and related or associated persons or entities of any type, and each past or present employee, agent, representative, officer, director, stockholder, partner, attorney, or any other person, firm or corporation now, previously or hereafter affiliated in any manner with BNSF, hereby releases and discharges LACMTA, and each of its present or former directors, officers, agents, employees, attorneys, successors and assigns, from any and all claims, debts, liabilities, causes of action, known or unknown, which any such releasing party now owns or holds, or has at any time owned or held, against any of the released parties by reason of any act, omission, matter, cause or thing whatsoever relating to or arising out of the relocation of BNSF tracks in accordance with the terms of this Agreement. Except as provided below in this Paragraph, LACMTA, its assigns, parent entities, subsidiaries, successors and related or associated persons or entities of any type, and each past or present employee, agent, representative, officer, director, stockholder, partner, attorney, or any other person, firm or government agency now, previously or hereafter affiliated in any manner with LACMTA, hereby releases and discharges BNSF, and each of its present or former directors, officers, agents, employees, attorneys, successors and assigns, from any and all claims, debts, liabilities, causes of action, known or unknown, which any such releasing party now owns or holds, or has at any time owned or held, against any of the released parties by reason of any act, omission, matter, cause or thing whatsoever relating to or arising out of the relocation of BNSF tracks in accordance with the terms of this Agreement. Notwithstanding the foregoing provisions of this Paragraph, nothing in this Agreement is intended to release any claims, rights or indemnifications that either Party may have as a result of any incidents of damage to property (including contamination of any real property) or injury or death to persons that occur prior to the date of this Agreement; it being agreed that as between the Parties, the terms of the SUA in effect prior to the date of this Agreement shall continue to apply with respect to any such incidents that occur prior to the Closing.
  
3. LACMTA shall construct on the Phase 2B Segment in accordance with the conceptual plans approved by BNSF and attached hereto as Exhibit A (the “Approved Conceptual Plans”) and in accordance with the construction phasing plan attached hereto as Exhibit B (the “Construction Phase Plan”) in order to avoid interrupting Freight Rail Service.
  
4. As the Approved Conceptual Plans evolve into 100% design level plans, BNSF shall have the right to review, comment and approve plans for track work on the Phase 2B Segment in accordance with the same process described in Exhibit “D” to the First Amendment. The Parties will work cooperatively and coordinate their respective activities during the design and construction process to minimize any impacts to their respective operations and activities. In addition, BNSF will support LACMTA (at LACMTA’s expense) in filing and obtaining any regulatory approvals necessary for construction or operation of the Light Rail Tracks and the Freight Track, including California Public Utilities Commission (CPUC) crossing approvals and Federal Railroad Administration (FRA) petition approval.
  
5. Effective as of the date of this Agreement, the SUA is amended such that the term East End Segment is amended to include the Phase 2B Segment and the Exhibit “E” terms shall apply with respect to the Phase 2B Segment as well as the remainder of the East End

Segment. With respect to all other portions of the Property, the SUA shall remain unmodified.

6. Prior to construction of any further extensions of the light rail system over the Pasadena Subdivision, the parties will meet to discuss the implementation of Phase 2B, which discussions will include, without limitation, indemnity and insurance obligations between the parties. Each party reserves any and all rights they might have under the SUA with respect to.
7. All rights and obligations of BNSF and LACMTA in the SUA that are not expressly amended by this Agreement shall remain unchanged by this Agreement.
8. This Agreement shall be binding upon BNSF, LACMTA and their respective successors and permitted assignees.
9. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
10. This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, authorized representatives of BNSF and LACMTA have duly executed this Agreement as of the day and year first written herein.

BNSF RAILWAY COMPANY

LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION  
AUTHORITY

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

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

**EXHIBIT A**  
**Approved Conceptual Plans**

**EXHIBIT B**  
**Construction Phasing Plan**