

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 115.4, 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 104 and 115.4 (the “Phase 2B Segment”). In negotiating the extension, the parties agreed Exhibit E of the SUA had to be amended to express the agreement of the parties regarding subrogation.

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 (and particularly, the First Amendment) is amended such that the term East End Segment is amended to include the

Phase 2B Segment and Exhibit "E" is amended and restated as set forth in Exhibit E hereto (so named for consistency with the First Amendment), and shall apply with respect to the Phase 2B Segment as well as the remainder of the East End Segment. With respect to any other portions of the Property, the SUA shall remain unmodified.

6. 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.
7. This Agreement shall be binding upon BNSF, LACMTA and their respective successors and permitted assignees.
8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
9. 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:

Acknowledged and agreed to as to paragraphs 5, 7, 8, 9 and Exhibit E only by:
SOUTHERN CALIFORNIA REGIONAL
RAILROAD AUTHORITY

By: _____
Title:

EXHIBIT A

Approved Conceptual Plans

EXHIBIT B

Construction Phasing Plan

EXHIBIT E

The SUA is hereby amended by adding new Article 18 which shall apply only to the East End Segment (starting with MP 119.35 on the Pasadena Subdivision, the area near the Miller Brewery in Irwindale, and ending at MP 104.

1. “ARTICLE 18. EAST END SEGMENT

18.1 With respect to the East End Segment, all terms and conditions of the SUA shall apply except as specifically set forth in this Article 18.

18.2 Section 3.5 of the SUA is amended by adding after the third sentence thereof the following: “Notwithstanding the foregoing, Liability for injury or death of persons on such cars and Trains occurring on the East End Segment shall be governed by Article 19 (see Sections 19.1.1 and 19.3(b)).”

18.3 Section 4.1(a) of the SUA is amended by deleting the third sentence thereof.

18.4 Personal and Property Liability on the East End Segment shall be governed by Article 19 of the SUA; Article 8 of the SUA shall not apply to the East End Segment (except to the extent specifically incorporated into Article 19 below).

18.5 Insurance on the East End Segment shall be governed by Article 20 below, Article 9 of the SUA shall not apply to the East End Segment (except to the extent specifically incorporated into Article 20 below).”

2. The SUA is hereby amended by adding new Article 19 which shall apply only to the East End Segment.

“ARTICLE 19. EAST END SEGMENT: PERSONAL AND PROPERTY
LIABILITY

19.1 The parties shall allocate Liability as between them as follows to the extent allowed by law:

19.1.1 Santa Fe shall be responsible for all Liability incurred by Santa Fe, or any Santa Fe Party, or their respective Employee, customer, shipper, receiver, supplier, or Santa Fe Invitee;

19.1.2 Agency shall be responsible for all Liability incurred by Agency, any Agency Party, or their respective Employee, Agency Invitee,

Commuter or Passenger; and

19.1.3 If Amtrak operates on the East End Segment in the future, as between the Agency and Santa Fe, the party who grants Amtrak the right to operate on the East End Segment shall be responsible for all Liability incurred by Amtrak and notwithstanding the definition of “Passenger” under the SUA, if Santa Fe grants Amtrak the right to operate on the East End Segment, a passenger of Amtrak shall be deemed to be a Santa Fe Party and if Agency grants Amtrak the right to operate on the East End Segment, a passenger of Amtrak shall be deemed to be an Agency Party. For purposes of this Article 19, a Santa Fe Train shall be defined to include an Amtrak train if Santa Fe grants Amtrak the right to operate on the East End Segment and an Agency Train shall be defined to include an Amtrak train if the Agency grants Amtrak the right to operate on the East End Segment.

19.2 Further, to the extent allowed by law, the parties shall allocate Liability (as between them only and this provision shall not grant any rights to any Third Party) incurred as to a Third Party, as follows:

19.2.1 Liability to a Third Party arising out of an incident involving only a Santa Fe Train and not an Agency Train shall be Santa Fe’s responsibility;

19.2.2 Liability to a Third Party arising out of an incident involving only Agency Trains shall be Agency’s responsibility;

19.2.3 Liability to a Third Party arising out of an incident involving both (i) a Santa Fe Train, and (ii) an Agency Train shall be allocated 10 % to Santa Fe and 90 % to Agency; and

19.2.4. Liability to a Third Party not arising out of an incident involving a Santa Fe Train, Agency Train shall be allocated to the Party responsible under this Agreement for maintaining the area or facility on the East End Segment on which the incident occurred.

19.3 For purposes of this Article 19, (a) Agency Train shall include any light rail vehicle operated by Agency, (b) any person aboard freight customer Trains, board of directors Trains, employee excursion Trains, or Trains with government officials (including business cars at the end of freight Trains) as contemplated in Section 3.5 shall be considered a Santa Fe Party and not a Passenger or Commuter, (c) “Santa Fe Invitee” shall be defined as a person who comes onto the Property upon invitation by Santa Fe (which shall include persons present at the express or implied invitation of BNSF) and (d) “Agency Invitee” shall be defined as a person who comes onto the Property upon invitation by Agency (which shall include persons present at the express or implied invitation of

Agency). SCRRA or any other Operator of Agency is an Agency Party and shall not be considered a Santa Fe Invitee for any reason.

19.4 Santa Fe shall indemnify, defend and hold Agency harmless from and against all Liabilities which are Santa Fe's responsibilities pursuant to Sections 19.1.1, 19.1.3, 19.2.1, 19.2.3 and 19.2.4, as applicable, and the terms of this Article 19; provided, however, that such indemnification and agreement to defend and hold harmless shall apply only to the extent: (i) allowed by applicable laws or governmental regulations; (ii) that Santa Fe can legally obtain insurance coverage for the Liabilities covered by such indemnification and agreements to defend and hold harmless; and (iii) the Liabilities do not include punitive or exemplary damages. In reviewing applicable laws or governmental regulations, the parties will consider California Civil Code section 1668, California Insurance Code section 533 and 49 U.S.C. section 28103(b). The Parties agree that this Agreement is not intended to be a construction contract.

19.5 Agency shall indemnify, defend and hold Santa Fe harmless from and against all Liability which are Agency's responsibilities pursuant to Sections 19.1.2, 19.1.3, 19.2.2, 19.2.3 and 19.2.4, as applicable, and the terms of this Article 19; provided, however, that such indemnification and agreement to defend and hold harmless shall apply only to the extent: (i) allowed by applicable laws or governmental regulations; (ii) that Agency can legally obtain insurance coverage for the Liabilities covered by such indemnification and agreements to defend and hold harmless; and (iii) the Liabilities do not include punitive or exemplary damages. In reviewing applicable laws or governmental regulations, the parties will consider California Civil Code section 1668, California Insurance Code section 533 and 49 U.S.C. section 28103(b). The Parties agree that this Agreement is not intended to be a construction contract.

19.6 The provisions of this Article 19 concerning Liability shall bind and inure to the benefit of only Agency and Santa Fe, and no other person or entity shall be entitled to rely upon or benefit from any of such provisions, except during construction of the Agency's light rail line on the East End Segment, the Pasadena Gold Line Construction Authority shall have the same benefits as the Agency under this Article 19. Nothing contained in this Agreement shall impose any liability upon the Agency or Santa Fe in favor of any such other person or entity, relieve any such other person or entity from any liability it may have for any Liabilities described in this Agreement, or obligate the Agency or Santa Fe to defend, indemnify or hold harmless any such other person or entity against any such Liabilities.

19.7. Sections 8.2 (h), (i), (j) and (k), which subsection 8.2(k) refers to Section 3.5 of the SUA as modified herein, of the SUA and Section 8.3 of the SUA are hereby incorporated into this Article 19 by reference and shall apply to the East End Segment.”

3. The SUA is hereby amended by adding new Article 20 which shall apply only to the East End Segment.

“ARTICLE 20. EAST END SEGMENT: INSURANCE

20.1. During the period of time Agency, or Gold Line on behalf of the Agency, is constructing its light rail line on the East End Segment, Agency shall acquire and maintain general liability coverage of \$100 million per occurrence for Agency, Contractor and Santa Fe. Once Agency commences passenger rail service for its light rail line on the East End Segment, Agency shall acquire and maintain general liability coverage of \$200 million per occurrence for Agency, its Operator and Santa Fe, or an amount as set forth by federal legislation as a limit on liability for commuter and passenger operations.

20.2 Agency shall maintain coverage for: (i) Agency and Agency Parties and/or Santa Fe’s conduct that give rise to Liability where Agency is required to indemnify Santa Fe against such Liability as set forth in Article 19 above, and (ii) other liabilities of Agency as may be covered by such policies.

20.3 Agency shall be responsible for paying a self insured retention or deductible and Agency’s policy of insurance shall have a self insured retention or deductible of no more than \$20 million, increasing annually at the national CPI-U or such higher amount as mutually agreed by the parties. The amount of any self insured retention or deductible below \$20 million will be determined by Agency.

20.4 The Parties may renegotiate of the limits of coverage of both Parties every 5 years upon 1 year notice, or if federal legislation limiting liability for passenger rail service is overturned, revoked or otherwise becomes ineffective as the result of a federal statutory change or a final, non-appealable, court ruling, or if federal legislation reduces liability limits. Except with respect to a change in insurance caused by the events regarding federal legislation described in the preceding sentence, any renegotiation shall be based on the national CPI-U and prevailing conditions in the liability insurance market, take into account any safety improvements or enhancements implemented by one or both parties or installed on one or more of the covered rail lines, and any dispute shall be resolved by arbitration in accordance with the procedures set forth in Article 12 of the SUA; such adjustments shall also apply to the self insured retention or deductible.

20.5 Agency shall not be required to maintain liability coverage above limits set by federal legislation applicable to passenger or commuter rail operations, but in no event shall Agency maintain coverage of less than \$200 million per occurrence, except as expressly provided in Section 20.1 above. Agency also shall not be required to maintain liability coverage in excess of \$200 million for any year that would result in its having to pay 125% of the prior year’s premium amounts (except for the initial purchase pursuant to this Article 20).

20.6 Agency's insurance shall be primary and non-contributing.

20.7 Santa Fe shall be a named insured under Agency's policy, however, Agency's insurance coverage described herein will only be available to Santa Fe where Agency is required to be responsible for claims handling or to indemnify Santa Fe under the terms of Articles 19 and 20 of the SUA.

20.8 If Agency's required coverage lapses or is not obtained when required, upon reasonable notice and an opportunity to cure, Santa Fe may, but will not be required to, obtain such coverage, and Agency shall reimburse Santa Fe for all costs associated with such procurement of insurance and premiums. Any dispute regarding coverage shall be resolved by arbitration in accordance with the procedures set forth in Article 12 of the SUA.

20.9 Agency's insurance is intended to apply to all liability against which Agency is required to be responsible for claims and to indemnify Santa Fe under the terms of Article 19 and 20 of the SUA (but such coverage shall only apply to the extent permitted by law, including but not limited to California Civil Code section 1668, California Insurance Code Section 533 and 49 U.S.C. section 28103(b), and shall not include punitive damages).

20.10 During the period of time Agency or Gold Line is constructing its light rail line on the East End Segment, Santa Fe shall acquire and maintain general liability insurance coverage of \$150,000,000 per occurrence for Santa Fe and Agency. Once Agency commences passenger rail service for its light rail line on the East End Segment, Santa Fe shall acquire and maintain general liability coverage of \$200 million per occurrence for Santa Fe and Agency, or an amount as set forth by federal legislation as a limit on liability for commuter and passenger operations.

20.11 Santa Fe shall maintain coverage for: (i) Santa Fe and Santa Fe Parties and/or Agency's conduct that give rise to Liability where Santa Fe is required to indemnify Agency against such Liability as set forth in Article 19 above, and (ii) other liabilities of Santa Fe as may be covered by such policies

20.12 Santa Fe shall be responsible for paying a self insured retention or deductible and Santa Fe's policy of insurance shall have a self insured retention or deductible of no more than \$20 million, or such higher amount as mutually agreed by the parties. The amount of any self insured retention or deductible below \$20 million will be determined by Santa Fe.

20.13 Santa Fe's insurance shall be primary and non-contributing.

20.14 Agency shall be a named insured under Santa Fe's policy, however, Santa Fe's insurance coverage described herein will only be available to Agency where

Santa Fe is required to be responsible for claims handling or to indemnify Agency under the terms of Articles 19 and 20 of the SUA.

20.15 Santa Fe's insurance is intended to apply to all liability against which Santa Fe is required to be responsible for claims and to indemnify Agency under the terms of Article 19 and 20 of the SUA (but such coverage shall only apply to the extent permitted by law, including but not limited to California Civil Code section 1668, California Insurance Code Section 533 and 49 U.S.C. section 28103(b), and shall not include punitive damages).

20.16 Agency will require all other passenger railroads using the East End Segment to maintain insurance similar to Agency.

20.17 Agency and Santa Fe shall look first to available insurance proceeds to pay any claims covered by the indemnity provisions in this SUA, and insurance payments will be applied against any such indemnity obligations to reduce or eliminate such indemnity obligations.

20.18 Section 9.2 of the SUA is hereby incorporated herein by reference and shall apply to the East End Segment.

20.19 Nothing in this Agreement limits the right of Agency to pursue any other third party (other than a Santa Fe Party or their respective Employee, customer, shipper, receiver, supplier, or Santa Fe Invitee), or of Santa Fe to pursue any other third party (other than an Agency Party or their respective Employee, Agency Invitee, Commuter or Passenger), for indemnity, contribution or otherwise as may be permitted by law or in equity, in the payment of any Liabilities. Agency, SCRRA, and Santa Fe waive subrogation against each other.

4. Except as expressly amended hereby, the SUA remains in full force and effect as originally executed. All rights and obligations of the parties under the SUA that are not expressly amended hereby shall remain unchanged by this Amendment.

