

**AGENDA**  
**Transit Committee Meeting**

**December 12, 2024**

**9:00 AM**

**Location**

San Bernardino County Transportation Authority  
*First Floor Lobby Board Room*  
1170 W. 3rd Street, San Bernardino, CA 92410

***Transit Committee Membership***

**Chair**

John Dutrey, Mayor  
*City of Montclair*

Larry McCallon, Mayor Pro Tem  
*City of Highland*

**Vice Chair**

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

Alan Wapner, Council Member  
*City of Ontario*

Eunice Ulloa, Mayor  
*City of Chino*

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

Ray Marquez, Council Member  
*City of Chino Hills*

Rick Denison, Council Member  
*Town of Yucca Valley*

Frank Navarro, Mayor  
*City of Colton*

Dawn Rowe, Supervisor  
*County of San Bernardino*

Acquanetta Warren, Mayor  
*City of Fontana*

Vacant  
*Valley Board Member*

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

**AGENDA**

**Transit Committee Meeting**

**December 12, 2024**

**9:00 AM**

**Location**

**SBCTA Office**

**First Floor Lobby Board Room**

**1170 W. 3rd Street, San Bernardino, CA 92410**

**Items listed on the agenda are intended to give notice to members of the public of a general description of matters to be discussed or acted upon. The posting of the recommended actions does not indicate what action will be taken. The Board may take any action that it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.**

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 John Dutrey)

- i. Pledge of Allegiance
- ii. Attendance
- iii. Announcements
- iv. Agenda Notices/Modifications - Sandra Castro

**Public Comment**

**Brief Comments from the General Public**

**Note: Public Comment on items listed on this agenda will be allowed only during this committee meeting. No public comment will be allowed on committee items placed on the Consent Agenda at the Board of Directors meeting. If an item has substantially changed after consideration during the committee meeting, the item will be placed on Discussion for Board and public comment will be allowed.**

## **Possible Conflict of Interest Issues**

Pg. 9

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**

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 of Directors and Committee members.**

## **INFORMATIONAL ITEMS**

Items listed are receive and file items and are expected to be routine and non-controversial. Unlike the Consent Calendar, items listed as Informational Items do not require a vote.

### **2. Transit and Rail Programs Contract Change Orders to On-Going Contracts**

Pg. 10

Receive and file Change Order Report.

**Presenter: Victor Lopez**

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

## **DISCUSSION ITEMS**

### **Discussion - Administrative Matters**

#### **3. Southern California Regional Rail Authority Appointment Terms**

Pg. 12

A. Review current appointments to the Southern California Regional Rail Authority.

B. Determine which primary and alternate will have a term expiration of December 31, 2025; and which primary and alternate will have a term expiration of December 31, 2026.

**Presenter: Marleana Roman**

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

### **Discussion - Transit**

#### **4. Fiscal Year 2024/2025 Operator Allocation - Mountain Transit**

Pg. 14

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

Allocate an additional \$180,000 of Mountain/Desert State Transit Assistance Fund-Population Share to Mountain Transit for a new total of \$7,180,000.

**Presenter: Nancy Strickert**

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

**5. License Agreement No. 24-1003231 - Property One, LLC**

Pg. 16

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

Approve License Agreement No. 24-1003231 with Property One, LLC for the maintenance of landscaping and irrigation water lines from west of Tennessee Street to Texas Street in the City of Redlands.

**Presenter: Sheila DeGidio**

**This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Enterprise Risk Manager has reviewed this item and the draft agreement.**

**6. City of Upland Pacific Electric Trail License on Baldwin Park Branch Right-of-Way**

Pg. 64

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

A. Adopt Resolution No. 25-057, reaffirming that the Baldwin Park Branch Right-of-Way (ROW) is reserved for future transportation facility use.

B. Approve Amendment No. 2 to SBCTA License Agreement No. 25-1003216 with the City of Upland for the Pacific Electric Trail located within the Baldwin Park Branch ROW.

**Presenter: Ryan Aschenbrenner**

**This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Enterprise Risk Manager have reviewed this item, the draft resolution, and the draft amendment.**

**Discussion - Transportation Programming and Fund Administration**

Pg. 75

**7. 2025 Update to the 10-Year Delivery Plan - Valley Transit Programs**

Receive report and provide comments on the planned update to the 10-Year Delivery Plan for the San Bernardino Valley Metrolink/Rail Service Program and San Bernardino Valley Express Bus/Bus Rapid Transit Service Program.

**Presenter: Andrea Zureick**

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

**Comments from Board Members**

**Brief Comments from Board Members**

**ADJOURNMENT**

**Additional Information**

Attendance

Pg. 82

Acronym List

Pg. 83

Mission Statement

Pg. 85

**The next Transit Committee meeting is scheduled for January 16, 2025.**

## 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 & Language Assistance** - The meeting facility is accessible to persons with disabilities. A designated area is reserved with a microphone that is ADA accessible for public speaking. A designated section is available for wheelchairs in the west side of the boardroom gallery. If assistive listening devices, other auxiliary aids or language assistance 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.

Service animals are permitted on SBCTA's premises. The ADA defines service animals as dogs or miniature horses that are individually trained to do work or perform tasks for people with disabilities. Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work, or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

**Accesibilidad y asistencia en otros idiomas** - Las personas con discapacidad pueden acceder a la sala de reuniones. Se reserva una zona designada con un micrófono accesible que cumple con los requisitos de la ADA para hablar en público. Una sección designada está disponible para sillas de ruedas en el lado oeste de la galería de la sala de reuniones. Si se necesitan dispositivos de ayuda auditiva, otras ayudas auxiliares o servicios de asistencia en otros idiomas para participar en la reunión pública, las solicitudes deben presentarse al Secretario de la Junta al menos tres (3) días hábiles antes de la fecha de la reunión de la Junta. Puede comunicarse con el Secretario llamando al (909) 884-8276 o enviando un correo electrónico a [clerkoftheboard@gosbcta.com](mailto:clerkoftheboard@gosbcta.com). La oficina se encuentra en 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA.

Los animales de servicio están permitidos en las instalaciones de SBCTA. La ADA define a los animales de servicio como perros o caballos miniatura que son entrenados individualmente para hacer trabajo o realizar tareas para personas con discapacidades. Según la ADA, los animales de servicio deben tener un arnés o ser atados, a menos que estos dispositivos interfieran con el trabajo del animal de servicio, o que la discapacidad de la persona impida el uso de estos dispositivos. En ese caso, la persona debe mantener el control del animal a través de su voz, señales u otros controles efectivos.

**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 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 President of the Board or Committee Chair (“President”) will announce the subject matter of the closed session. If reportable action is taken in closed session, the President shall 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, except Board agenda items that were previously considered at a Policy Committee meeting where there was an opportunity for public comment. Individuals in attendance at SBCTA who desire to speak on an item may complete and turn in a "Request to Speak" form, specifying each item an individual wishes to speak on. Individuals may also indicate their desire to speak on an agenda item when the President asks for public comment. When recognized by the President, speakers should be prepared to step forward and announce their name 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 President 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. Any individual who wishes to share written information with the Board may provide 35 copies to the Clerk of the Board for distribution. If providing written information for distribution to the Board, such information must be emailed to the Clerk of the Board, at [clerkoftheboard@gosbcta.com](mailto:clerkoftheboard@gosbcta.com), no later than 5:00 pm the day before the meeting in order to allow sufficient time to distribute the information. Information provided as public testimony is not read into the record by the Clerk. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda. Any consent item that is pulled for discussion shall be treated as a discussion item, allowing further public comment on those items.

**Public Comment** –An opportunity is also provided for members of the public to speak on any subject within the Board’s jurisdiction. Matters raised under “Public Comment” will not be acted upon at that meeting. See, “Public Testimony on an Item,” above.

**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 President 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 President of the Board or Chair of a Policy Committee (Chair) has the option of taking attendance by Roll Call. 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.
- 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.
- Votes at teleconferenced meetings shall be by roll call, pursuant to the Brown Act, or, at any meeting, upon the demand of five official representatives present or at the discretion of the presiding officer.

**The Vote as specified in the SBCTA Administrative Code and 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. (Note that Alternates may vote only at meetings of the Board of Directors, Metro Valley Study Session and Mountain/Desert Policy Committee.)

### **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 Chair shall ask the maker of the original motion if he or she would like to amend the 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 may require deviation from general practice (but not from the Brown Act or agency policy).
- 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*

*Revised June 7, 2023*



### *Minute Action*

AGENDA ITEM: 1

**Date:** *December 12, 2024*

**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>
4	Allocation	Mountain Transit	None
5	24-1003231	Property One, LLC <i>Donald J. Berry, Jr.</i>	None
6	25-1003216-02	City of Upland	None

**Financial Impact:**

This item has no direct impact on the annual budget.

**Reviewed By:**

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

**Responsible Staff:**

Victor Lopez, Director of Transit & Rail Programs

Approved  
Transit Committee  
Date: December 12, 2024

Witnessed By:

*Entity: San Bernardino County Transportation Authority*

## *Minute Action*

AGENDA ITEM: 2

**Date:** *December 12, 2024*

**Subject:**

Transit and Rail Programs Contract Change Orders to On-Going Contracts

**Recommendation:**

Receive and file Change Order Report.

**Background:**

San Bernardino County Transportation Authority (SBCTA) Department of Transit and Rail Programs has two ongoing construction contracts, one procurement of major equipment contract and one vehicle procurement contract, of which one had a Construction Change Order (CCO) approved since the last reporting to the Transit Committee on November 14, 2024. The CCO are listed below:

A. Contract No. 23-1002891 with Griffith Company for the West Valley Connector Project (WVC) Mainline Construction:

1) CCO 009: Hydrant and Water Improvement Revisions. (-\$66,380)

B. Contract No. 23-1002922 with Metro Builders & Engineers Group, Ltd. for the Arrow Maintenance Facility (AMF) Hydrogen Fuel Upgrade Project: AMF Retrofit Construction: There are no newly executed CCOs since the last report.

C. Contract No. 23-1002961 with Proterra Builders, Inc. for the AMF Hydrogen Fuel Upgrade Project: Procurement of Major Equipment: There are no newly executed CCOs since the last report.

D. Contract No. 20-1002310 with Stadler US, Inc. for Zero Emission Multiple Unit Rail Vehicle Procurement: There are no newly executed CCOs since the last report.

**Financial Impact:**

This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

**Reviewed By:**

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

**Responsible Staff:**

Victor Lopez, Director of Transit & Rail Programs

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Approved  
Transit Committee  
Date: December 12, 2024

Witnessed By:

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*Entity: San Bernardino County Transportation Authority*

**Transit and Rail Programs Contracts  
Executed Change Orders**

Number	Description	Amount
West Valley Connector Mainline Construction, Griffith Company (23-1002891)		
	Description	Amount
9	Hydrant & Water Improvement Revisions	(\$66,380.00)
	CCO Total	(\$15,746.74)
	Approved Contingency	\$11,995,991.00
	Remaining Contingency	\$12,011,737.74
ZEMU - Arrow Maintenance Facility (AMF) Construction Upgrade Project, Metro Builders & Engineers Group, Ltd. (23-1002922)		
	Description	Amount
	CCO Total	\$0.00
	Approved Contingency	\$962,657.10
	Remaining Contingency	\$962,657.10
ZEMU - Arrow Maintenance Facility (AMF) Procurement Upgrade Project, Proterra Builders, Inc. (23-1002961)		
	Description	Amount
	CCO Total	\$0.00
	Approved Contingency	\$56,280.21
	Remaining Contingency	\$56,280.21
ZEMU- Vehicle Procurement Stadler (20-1002310)		
	Description	Amount
	CCO Total	\$2,592,169.12
	Approved Contingency	\$3,487,482.12
	Remaining Contingency	\$895,313.00

Attachment: Contract Change Order 10176 November 2024final (10176 : Transit and Rail Programs Contract Change Orders to On-Going

## ***Minute Action***

AGENDA ITEM: 3

***Date:*** December 12, 2024

***Subject:***

Southern California Regional Rail Authority Appointment Terms

***Recommendation:***

- A. Review current appointments to the Southern California Regional Rail Authority.
- B. Determine which primary and alternate will have a term expiration of December 31, 2025; and which primary and alternate will have a term expiration of December 31, 2026.

***Background:***

With the outcome of the recent election and the turnover of San Bernardino County Transportation Authority (SBCTA) Board Members, staff took the opportunity to look at how expiring terms and appointments are managed. An item was presented at the December 4, 2024 Board of Directors (Board) meeting, which listed all Board Member appointment opportunities to serve and provided notice of intent to define terms of Board Member appointments to the Southern California Regional Rail Authority (SCRRA) Board, which governs Metrolink.

SBCTA appoints two primary members and two alternate members to serve on SCRRA, which is a Joint Powers Authority made up of an 11-member Board representing the Transportation Commissions of Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. The SCRRA primary and alternate members serve on the Transit Committee concurrent with their term on the SCRRA Board of Directors, as appointed by the SBCTA Board; however, there is no defined term for these appointments. Members continue to serve until they are no longer serving on the SBCTA Board. Members of the SCRRA Board receive a stipend of \$100, paid by SCRRA, for participation.

The current members appointed by SBCTA to serve on SCRRA's Board are as follows:

- Mayor Pro Tem Larry McCallon, City of Highland, primary member since February 2014.
- Council Member Alan Wapner, City of Ontario, primary member since January 2018.
- Council Member Ray Marquez, City of Chino Hills, alternate member since April 2018.
- Mayor John Dutrey, City of Montclair, alternate member since March 2019.

It is recommended that the Transit Committee apply a term expiration of December 31, 2025 to one primary and one alternate appointment, and apply a term expiration of December 31, 2026 for the other primary and alternate appointments. The appointed members may request reappointment.

In accordance with the SCRRA Bylaws, the Chair, Vice-Chair, and 2<sup>nd</sup> Vice-Chair assignments rotate between its five member agencies, with each having two-year terms. Considering the SCRRA leadership rotation and the importance of ensuring SBCTA is well-represented on the SCRRA Board, perhaps four- or six-year terms may be more appropriate. However, because the four appointments to SCRRA comprise one-third of the Transit Committee, staff felt it was important to bring this issue forward for discussion.

*Entity: San Bernardino County Transportation Authority*

Transit Committee Agenda Item  
December 12, 2024  
Page 2

***Financial Impact:***

This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

***Reviewed By:***

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

***Responsible Staff:***

Marleana Roman, Clerk of the Board

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Approved  
Transit Committee  
Date: December 12, 2024  
Witnessed By:

## *Minute Action*

AGENDA ITEM: 4

**Date:** December 12, 2024

**Subject:**

Fiscal Year 2024/2025 Operator Allocation - Mountain Transit

**Recommendation:**

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

Allocate an additional \$180,000 of Mountain/Desert State Transit Assistance Fund-Population Share to Mountain Transit for a new total of \$7,180,000.

**Background:**

Last year Mountain Transit purchased two new Ford E-450 buses for their service in the Big Bear area. Unfortunately, one was in an accident and was totaled within one week of receiving the vehicle. The second vehicle had total engine failure after only 60,000 miles, although the vehicle's useful life is approximately five years or 130,000 miles. Currently, Mountain Transit is working with the bus company to resolve the warranty issue; however, the process is slow and will take several months to resolve. To prepare for the upcoming peak season and to alleviate future vehicle shortages, Mountain Transit requested an additional allocation to purchase one or possibly two used vehicles. After the warranty issues are resolved and Mountain Transit receives new replacement vehicles, the vehicles purchased with the additional funds will become part of their contingency fleet.

Staff is recommending a supplemental allocation of \$180,000 from the Mountain/Desert unallocated State Transit Assistance Fund-Population Share to Mountain Transit to purchase one or two used vehicles. The revised Fiscal Year 2024/2025 allocation to Mountain Transit is presented in Table 1 below.

**Table 1 – Revised Allocation to the Mountain Transit**

<b>Fund Source</b>	<b>Original Allocation</b>	<b>Supplemental Allocation</b>	<b>Revised Allocation</b>
Local Transportation Fund	\$3,936,886		\$3,936,886
State Transit Assistance - Op	\$46,164		\$46,164
State Transit Assistance - Pop	\$7,000,000	<b>\$180,000</b>	<b>\$7,180,000</b>
SGR - Op	\$6,414		\$6,414
SGR - Pop	\$86,486		\$86,486
Measure IS & D	\$134,400		\$134,400
FTA Section 5311	\$384,018		\$384,018
SB125 - TIRCP	\$2,579,132		\$2,579,132
SB125 – ZETCP	\$174,849		\$174,849
CMAQ	\$1,469,675		\$1,469,675
LCTOP – Op	\$10,225		\$10,225
LCTOP - Pop	\$132,140		\$132,140
<b>Total Allocation</b>	<b>\$15,960,389</b>	<b>\$180,000</b>	<b>\$16,140,389</b>

Entity: San Bernardino County Transportation Authority

Transit Committee Agenda Item  
December 12, 2024  
Page 2

**Financial Impact:**

The necessary budget to support the recommended allocation is included in the adopted Budget for Fiscal Year 2024/2025 in Program 30, Transit.

**Reviewed By:**

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

**Responsible Staff:**

Nancy Strickert, Transit Manager

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Approved  
Transit Committee  
Date: December 12, 2024

Witnessed By:

**Minute Action**

AGENDA ITEM: 5

**Date:** December 12, 2024

**Subject:**

License Agreement No. 24-1003231 - Property One, LLC

**Recommendation:**

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

Approve License Agreement No. 24-1003231 with Property One, LLC for the maintenance of landscaping and irrigation water lines from west of Tennessee Street to Texas Street in the City of Redlands.

**Background:**

Pursuant to Real Property, Policy No. 31602, the Executive Director has the authority to approve and execute Grants of Use within the San Bernardino County Transportation Authority (SBCTA) Right-of-Way (ROW) under specific circumstances, on template forms approved as to form by General Counsel. Where the proposed use is a longitudinal use of more than 1,000 feet in length, the Grant of Use requires Board approval. This license is for a longitudinal installation totaling approximately 4,480 feet.

Property One, LLC has requested a license for the installation and maintenance of landscaping and irrigation drip systems within SBCTA ROW, adjacent to the ESRI Station. The improvement limits are from approximately 1,450 feet west of Tennessee Street to Texas Street in the City of Redlands.

An application fee of \$2,230 and appeal fee of \$900 have been paid (SBCTA Finance Deposit Reference No. D25-153). Fees paid in accordance with this license include an annual administration fee of \$1,200 and a use fee of \$709 imposed under Policy No. 31602 and Resolution No. 14-027. The administration and use fees described herein will be due annually commencing on January 1, 2025.

**Financial Impact:**

The License Application, Administration, and Use fees are included in the adopted Budget for Fiscal Year 2024/2025 and will be received in the Rail Assets Fund in Program 30, Transit.

**Reviewed By:**

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Enterprise Risk Manager has reviewed this item and the draft agreement.

**Responsible Staff:**

Sheila DeGidio, Right of Way Specialist

Approved  
Transit Committee  
Date: December 12, 2024

Witnessed By:

Entity: San Bernardino County Transportation Authority



**SBCTA Contract No. 25-1003231**

**LICENSE AGREEMENT**

**BETWEEN**

**SBCTA**

**AND**

**PROPERTY ONE, LLC**

DRAFT

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)

## LICENSE AGREEMENT

This License Agreement (“LICENSE”) is made and entered into as of the date executed by SBCTA, by and between SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a county transportation authority pursuant to Public Utility Code §§130800 et seq. (“SBCTA”), and, PROPERTY ONE, LLC (“LICENSEE”), upon and in consideration of the agreements, covenants, terms and conditions below.

### PART I – BASIC LICENSE PROVISIONS

The Basic License Provisions provided in this Part I and the Standard License Provisions set forth in Part II of this License, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this License. In the event of conflict between Part I and Part II or of any Exhibits and Attachments, Part I shall control.

#### 1. *Parties*

##### SBCTA’s Address:

Attn: Transit and Rail Programs  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715  
909-884-8276

##### LICENSEE’s Address:

PROPERTY ONE, LLC  
PO Box 7538  
Redlands, CA 92375

Point of Contact: Brendon Carroll  
Telephone: (951) 310-6369  
E-mail: bcarroll@esri.com

#### 2. *Recitals*

2.1 SBCTA. SBCTA is the owner in fee of certain properties located throughout San Bernardino County.

2.2 Licensee. LICENSEE wishes to enter certain properties owned by SBCTA in order to do the following: (1) maintain existing utilities and appurtenant facilities in, on, over, under or across such properties; and/or (2) install and maintain new utilities and appurtenant facilities in, on, over, under or across such properties.

2.3 Scope of License. The LICENSE will serve as an agreement permitting the LICENSEE to maintain and install existing utilities and appurtenant facilities, which are preliminarily approved by SBCTA. A Map of the Premises and Improvements is attached, substantially in the form of EXHIBIT “A”.

2.4 Consideration. This LICENSE is made in consideration of the terms, conditions and mutual covenants herein, the sufficiency of which are hereby acknowledged.

3. **Description of the Premises.**

City: Redlands Subdivision: San Gabriel

Address and/or Milepost Location:

Longitudinal installation along the north side from 650 feet east of Tennessee Street to 675 feet west of Texas Street, Milepost 64.67 to Milepost 64.94

AND

Longitudinal installation along the south side between 1,450 feet west of Tennessee Street and Texas Street, Milepost 64.28 to Milepost 65.07

Approximate Area: 75,832 square feet: 1.74 acres

[See EXHIBIT A - Map/Site Depiction]

Description and Dimensions of the Premises Area:

Landscaping and underground irrigation lines running longitudinally 38 feet north of the main track of SBCTA's San Gabriel subdivision for 940 linear feet, more or less, 12 feet in width.

AND

Landscaping and underground irrigation lines running longitudinally 20 feet south of the main track of SBCTA's San Gabriel subdivision for 3,540 linear feet, more or less, 21 feet in width.

4. **Allowable Improvements, Facilities and Uses. LICENSEE shall construct only the following improvements and/or facilities and conduct or permit only the following uses on the Premises:**

Description of the Improvements, Utility and/or Appurtenances:

Landscaping and irrigation lines and appurtenant facilities for landscaping purposes.

Use of the Premises:

Operation, maintenance and repair of Improvements.

5. **Term.**

Commencement Date: The date upon which SBCTA executes this License Agreement

Term (check one):

A. Month-to-month

B. Until End Date: \_\_\_\_\_ (subject to termination pursuant to the terms of this License – see especially Standard License Provisions §2.2)

6. **Fees.**

A. Administration Fee: \$ 1,200 per year or portion thereof, payable annually in advance, beginning on January 1<sup>st</sup>, and, notwithstanding and in lieu of the anniversary described in Section 3.1.1, on January 1<sup>st</sup> each year thereafter.

B. Base Use Fee (check one):

- i. \$\_\_\_\_\_ per month, payable monthly in advance
- ii. \$ 709 per year, payable annually in advance

C. Additional Use Fee (check one):

- i. One-time fee: \$\_\_\_\_\_
- ii. Other fee: \$ NONE

D. Base Use Fee Adjustment Dates (check if applicable):

- i. CPI Adjustment: Annually, effective on the first day of the anniversary month of the Commencement Date, based on the published Consumer Price Index (or its successor) (“CPI”) as defined in Section 3.2.1 of the Standard License Provisions.
- ii. Fair Market Rate Adjustment: At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises as set forth in Section 3.2.2 of the Standard License Provisions.
- iii. Other: \_\_\_\_\_

**7. Indemnity and Insurance Requirements.**

LICENSEE shall fully comply with all terms and obligations contained within the LICENSE, which are incorporated herein by this reference, as well as all insurance and indemnity requirements. However, if SBCTA allows, in its sole discretion, LICENSEE to obtain insurance varying from the requirements set forth in the LICENSE, which requirements shall be attached hereto in EXHIBIT “B” Insurance Requirements for License and incorporated herein by reference. Such varying insurance shall be subject to the requirements set forth in Section 9 of the LICENSE

**IN WITNESS WHEREOF**, this LICENSE was duly executed by the Parties identified in Item 1 of this Part I on the dates below, and is effective as of the date executed by SBCTA.

LICENSEE:  
PROPERTY ONE, LLC

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Ray Marquez  
Title: Board President  
Date: \_\_\_\_\_

DRAFT

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)

**PART II – STANDARD LICENSE PROVISIONS**  
**TABLE OF CONTENTS**

<u>Section</u>	<u>Page</u>
1. GRANT AND SCOPE OF LICENSE .....	6
2. TERM, TERMINATION AND SURRENDER .....	7
3. PAYMENTS .....	9
4. TAXES .....	11
5. LIENS .....	11
6. ASSUMPTION OF RISK AND WAIVER .....	12
7. DEFAULT, BREACH AND REMEDIES .....	12
8. INDEMNIFICATION.....	14
9. INSURANCE.....	14
10. MAINTENANCE AND REPAIR .....	15
11. ALTERATIONS AND CONSTRUCTION .....	16
12. CONTRACTORS; APPROVAL AND INSURANCE .....	16
13. REIMBURSEMENT .....	16
14. LANDSCAPING .....	17
15. MARKERS .....	17
16. COMPLIANCE WITH LAWS.....	17
17. SBCTA’S RIGHT OF ACCESS.....	17
18. ENVIRONMENTAL ASSESSMENT .....	18
19. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY .....	18
20. UNDERGROUND STORAGE TANKS .....	19
21. CONDEMNATION .....	19
22. BROKER'S FEES .....	19
23. SUBORDINATE RIGHTS .....	20
24. ABANDONMENT .....	20
25. GENERAL PROVISIONS .....	20

Exhibits:

- “A” Map/Site Depiction
- “B” Insurance Requirements for License
- “C” Permitted Hazardous Material
- “D” Additional Requirements

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)

## PART II - STANDARD LICENSE PROVISIONS

### 1. GRANT AND SCOPE OF LICENSE

- 1.1. Grant of License. SBCTA hereby grants a non-exclusive, revocable license to LICENSEE in, on, over, under, across and along the real property of SBCTA in the location shown in the diagram attached hereto as Exhibit “A” and described in Item 3 of the Basic License Provisions (the “Premises”), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Improvements described in Item 3 of the Basic License Provisions, and any usual and necessary related appurtenances thereto (the “Improvements”), for the purposes described in Item 4 of the Basic License Provisions, together with rights for access and entry onto the Premises as necessary or convenient for the use of the Improvements and for no other purpose. In connection with this grant of license, LICENSEE, its employees, agents, customers, visitors, invitees, licensees, consultants and contractors (collectively, “LICENSEE’s Parties”) subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SBCTA if necessary for the use of the Improvements or the Premises, with the time and manner of such entry and access to be subject to SBCTA’s prior written approval. The Premises, adjoining real property of SBCTA and personal property of SBCTA located thereon shall hereinafter collectively be referred to as “SBCTA Property.”
- 1.2. Condition of Premises. LICENSEE acknowledges that it has inspected the Premises in its present condition, including without limitation, all existing environmental conditions. LICENSEE accepts the Premises “as is” as suitable for the purpose for which the Premises are licensed and assumes all risk with respect to all present conditions of the Premises, whether patent or latent, including, without limitation, all existing environmental conditions. Taking of possession by LICENSEE shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.
- 1.3. Use. The Premises and the Improvements shall be used only for the purposes specified in Item 4 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto, and no other purpose. No change shall be made by LICENSEE in the use of the Premises, the Improvements or the commodity or product being conveyed through the Improvements (if any) without SBCTA’s prior written approval.
- 1.4. Non-exclusive and Revocable Nature of License. The LEASE granted herein is not exclusive and SBCTA specifically reserves the right to grant other licenses within the Premises. LICENSEE agrees that notwithstanding the Improvements made by LICENSEE to the Premises or other sums expended by LICENSEE in furtherance of this LICENSE, the license granted herein is fully revocable by SBCTA in accordance with the terms of this LICENSE.
- 1.5. Easements. SBCTA reserves to itself the right, from time to time, to grant such easements, rights and dedications that SBCTA deems necessary or desirable, and to cause the recordation of parcel maps, easement agreements and covenants, conditions and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the

Premises by LICENSEE. LICENSEE shall sign any of the aforementioned documents upon request of SBCTA and failure to do so shall constitute a material breach of this LICENSE.

## 2. TERM, TERMINATION AND SURRENDER

- 2.1. Term of License. The term of this LICENSE shall commence on the “Commencement Date” specified in Item 5 of the Basic License Provisions. If Item 5.A of the Basic License Provisions is checked, this LICENSE shall continue in full force and effect on a month-to-month basis. If Item 5.B of the Basic License Provisions is checked, then this LICENSE shall be a license for the term specified in said Item 5.B. The term of this LICENSE as provided above is referred to as the “Term.”
- 2.2. Termination.
- 2.2.1. Convenience. If Item 5.A is checked, this LICENSE shall continue in full force and effect on a month-to-month basis until terminated by either Party on ninety (90) days’ prior written notice. If Item 5.B is checked, this LICENSE shall continue in full force and effect until the End Date, unless SBCTA, acting by its Executive Director or his or her designee, for any reason and in its sole and absolute discretion, determines that this LICENSE is no longer in SBCTA’s best interests. In which case, SBCTA may terminate this LICENSE on ninety (90) days’ prior written notice, but SBCTA shall also return to LICENSEE, within thirty (30) days after the termination, the pro-rata portion of any annual Use Fee paid by the LICENSEE for the portion of the agreed term that will not be used by LICENSEE.
- 2.2.2. Cause. SBCTA may terminate this LICENSE for cause in accordance with the provisions hereof, including, without limitation, Section 24 (Abandonment), Section 7 (Default, Breach and Remedies) and Section 25.11 (Assignment). In addition, SBCTA shall have the right to immediately, without notice and at LICENSEE’s expense, terminate this LICENSE upon discovery of any default set forth in Section 7.1(d) and abate any such public nuisance and/or dangerous condition.
- 2.2.3. Public Use. In addition to any and all other termination rights of SBCTA described herein, LICENSEE hereby expressly recognizes and agrees that the Premises are located on SBCTA property that may be developed for public projects and programs which may be implemented by SBCTA or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually “Public Use”); and that LICENSEE’s use of the Premises under this LICENSE is a temporary, interim use as to which LICENSEE has no right to nor expectation of use for any particular length of time that may be terminated by SBCTA by ninety (90) days written notice to LICENSEE as set forth in Section 2.2.1 above. Accordingly, as a condition to entering into this LICENSE, LICENSEE expressly acknowledges and agrees that:



- (a) SBCTA may terminate this LICENSE as set forth above for any Public Use, to be determined in the sole and absolute discretion of SBCTA's Executive Director, or designee;
  - (b) LICENSEE shall **NOT** object to, oppose, or protest at any approval proceeding, nor file suit to prevent or delay, any Public Use when planned, proposed or implemented on or adjacent to the Premises;
  - (c) If SBCTA's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, LICENSEE shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by SBCTA or any parties having operating rights over the Premises, at LICENSEE's sole cost and expense, within ninety (90) days after written notice from SBCTA; and
  - (d) LICENSEE expressly assumes all risk of any future Public Use as determined by SBCTA and in the event SBCTA terminates this LICENSE and requires LICENSEE to vacate the Premises for any Public Use, LICENSEE shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:
    - (i) relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and
    - (ii) compensation under any eminent domain or inverse condemnation law.
- 2.2.4. **Penalty:** If LICENSEE fails to terminate use of the Premises and/or restore the Premises as required in Item 2.3 below, on or before the End Date specified in Item 5.B of the Basic License Provisions or the termination date established as otherwise provided in this License ("Termination Date"), then, in addition to any and all other remedies available to SBCTA under the terms of this LICENSE or at law or equity, SBCTA may so restore the Premises and LICENSEE shall pay a Penalty equal to twice the Base Use Fee in effect on the day prior to the Termination Date, plus twice any Additional Use Fee, calculated and payable on a monthly basis, for the number of months (partial months counting as whole months) from the Termination Date to the date that LICENSEE has terminated use and restored the Premises to the required condition. In the event that any Additional Use Fee is set as a percentage of revenues, or on some other variable basis, it shall be calculated based on the average for the prior twelve month period or if in effect less than one year, the monthly average from the effective date to the day prior to the Termination Date. LICENSEE shall indemnify SBCTA against all liabilities, costs and damages sustained by SBCTA by reason of such failure to terminate and restore.

- 2.3. Termination of Use and Restoration of Premises. Upon the Termination Date, unless otherwise requested in writing by SBCTA prior to the Termination Date, LICENSEE, at its own cost and expense, shall immediately remove all alterations additions and Improvements made by LICENSEE to the Premises and restore the SBCTA Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Improvements. Should LICENSEE fail to comply with the requirements of the preceding sentence, SBCTA may at its option (i) perform the same at LICENSEE's expense (including costs, interest, and fees), which LICENSEE agrees to pay to SBCTA on demand, or (ii) assume title and ownership of said Improvements. No termination hereof shall release LICENSEE from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Improvements are removed and the SBCTA Property is restored.

### 3. PAYMENTS

- 3.1. Fees. As consideration for the rights herein granted, LICENSEE agrees to pay to SBCTA the Administration and Use Fees specified in Item 6 of the Basic License Provisions, adjusted as set forth in Section 3.2.
- 3.1.1. Administration Fee. The Administration Fee set forth in Item 5.A of the Basic License Provisions shall be due and payable, without demand, annually in advance prior to January 1<sup>st</sup> of each year from and after the execution date of this LICENSE.
- 3.1.2. Base Use Fee. If Item 6.B.i of the Basic License Provisions is checked, the first month's Base Use Fee noted therein shall be due and payable, without demand, upon LICENSEE's execution of this LICENSE. Thereafter, the Base Use Fee, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term. The Base Use Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis. If Item 6.B.ii of the Basic License Provisions is checked, the annual Use Fee amount, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, annually in advance on or before January 1<sup>st</sup> for the convenience of both Parties, without affecting the Term of this LICENSE as specified in Section 2.1 of the Basic License Provisions.
- 3.1.3. Additional Use Fee. If Item 6.C.i of the Basic License Provisions is checked, the one-time fee noted therein shall be due and payable upon execution of this LICENSE by LICENSEE. If Item 6.C.ii of the Basic License Provisions is checked, the fee noted therein shall be due and payable as indicated in Item 6.C.ii.

3.2. Use Fee Adjustment.

- 3.2.1. Annual CPI Adjustment. If Item 6.D.i of the Basic License Provisions is checked, then the Base Use Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the Commencement Date occurs unless another date is provided in Item 5 of the Basic License Provisions (the “Adjustment Date”). If no adjustment is made at the annual anniversary date, an adjustment may nevertheless be made at a subsequent date and thereafter at not less than annual intervals. The adjusted Base Use Fee as of each Adjustment Date shall be the greater of the Base Use Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the latest CPI figure as of the month that is three (3) months prior to the month during which the particular Adjustment Date occurs and the denominator of which is the latest CPI figure as of the month that is three (3) months prior to the month containing the prior Adjustment Date or, if there has been no prior Adjustment, three (3) months prior to the first day of the anniversary month of the Commencement Date. As used in this section, the “CPI” means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Riverside/San Bernardino/Ontario, all items (DECEMBER 2017 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics (Bureau) as Series Id: CWURS49CSA0, or if such index is no longer published, the U.S. Department of Labor’s most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period DECEMBER 2017 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by SBCTA.
- 3.2.2. Fair Market Adjustment. If Item 6.D.ii of the Basic License Provisions is checked, then, at intervals of not less than three (3) years, the Base Use Fee (as such fee may be adjusted by Section 3.2.1, above) payable under this Section 3 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Premises as determined by SBCTA in good faith. Such increases shall be effective as of thirty (30) days after written notice from SBCTA to LICENSEE of such adjustment, or the date specified in such written notice, whichever is later. If no adjustment is made at any three (3) year interval, an adjustment may nevertheless be made on any subsequent date and thereafter at intervals of not less than three (3) years apart.
- 3.2.3. Other Adjustment. If Item 6.D.iii of the Basic License Provisions is checked, then, in addition to any adjustments required under Items 6.D.i and 6.D.ii, the adjustment set forth in 6.D.iii shall be applied in accordance with its terms.
- 3.3. Late Charge. LICENSEE acknowledges that late payment by LICENSEE of any payment owed to SBCTA under this LICENSE will cause SBCTA to incur costs not contemplated by this LICENSE, the exact amount of such costs being extremely difficult and impracticable to determine. Therefore, if any payment due from

LICENSEE is not received by SBCTA within thirty (30) days without demand, annually in advance of the anniversary month of the Commencement Date, LICENSEE shall pay to SBCTA an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$500 for each late payment. The Parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that SBCTA will incur by reason of a late payment by LICENSEE. Acceptance of any late payment charge shall not constitute a waiver of LICENSEE's default with respect to the overdue payment, nor prevent SBCTA from exercising any of the other rights and remedies available to SBCTA under this LICENSE, at law or in equity. In addition, any payment not made within thirty (30) days of the anniversary month of the Commencement Date shall bear interest at the rate of fourteen percent (14%) per annum, or the highest legally allowable rate, whichever is lower, until paid in full.

#### 4. TAXES

LICENSEE shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax as described in California Revenue and Taxation Code Section 107, levied by any governmental authority: (a) against the Improvements, the Premises and/or any personal property, fixtures or equipment located on or placed on the Premises, whether owned by LICENSEE or any person or entity acting for or at the request of LICENSEE; or (b) as a result of the LICENSEE's or the Improvements' operations.

#### 5. LIENS

LICENSEE will fully and promptly pay for all materials joined or affixed to the Improvements or Premises, and fully and promptly pay all persons who perform labor upon said Improvements or Premises. LICENSEE shall not suffer or permit to be filed or enforced against the Premises or the Improvements, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance, Work, activities, or operations of LICENSEE, or out of any other claim or demand of any kind. The term "Work" under this LICENSE means any construction, reconstruction, installation, restoration, alteration, repair, replacement, or removal, other than normal maintenance. LICENSEE shall provide SBCTA with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises or the Improvements. LICENSEE shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by SBCTA with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend SBCTA from any and all such obligations and claims, including attorney's fees. LICENSEE shall furnish evidence of payment upon request of SBCTA. LICENSEE may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to SBCTA in compliance with applicable California law. If LICENSEE does not discharge any mechanic's lien or stop notice for works performed for LICENSEE, SBCTA shall have the right to discharge same (including by paying the claimant) and LICENSEE shall reimburse SBCTA for the cost of such discharge, as well as any associated costs and fees, within ten (10) business days after billing. SBCTA reserves the right at any time to post and maintain on the Premises such notices as may be necessary to protect SBCTA against liability for all such liens and claims. The provisions of this section shall survive the termination of this LICENSE.

## 6. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, LICENSEE assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Improvements, the SBCTA Property and any other property of, or under the control or custody of, LICENSEE, which is on or near the Premises, caused by LICENSEE's negligence or intentional misconduct. LICENSEE's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the SBCTA Property, accident or fire or other casualty on the SBCTA Property, and electrical discharge, noise or vibration resulting from SBCTA's transit operations on or near the SBCTA Property, caused by LICENSEE's negligence or intentional misconduct. The term "SBCTA" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SBCTA's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SBCTA. LICENSEE, on behalf of itself and its officers, directors, affiliates, employees, agents, independent contractors and subcontractors and anyone directly or indirectly employed by LICENSEE or for whose acts LICENSEE is liable (collectively, "Personnel"), as a material part of the consideration for this LICENSE, hereby waives all claims and demands against SBCTA for any such loss, damage or injury of LICENSEE and/or its Personnel, except where caused by the negligence or willful misconduct of SBCTA or a third party. **In that connection, LICENSEE expressly waives the benefit of California Civil Code Section 1542, which provides as follows:**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

The provisions of this section shall survive the termination of this LICENSE.

## 7. DEFAULT, BREACH AND REMEDIES

- 7.1. Licensee Default. LICENSEE shall be deemed to have breached and be in default under this LICENSE when any of the following occurs:
- (a) LICENSEE shall fail to make any payment or any reimbursement to SBCTA required herein when due;
  - (b) LICENSEE shall vacate all or a substantial portion of the Premises, whether or not LICENSEE is in default of the payment or other charges due under this LICENSE;
  - (c) LICENSEE shall fail to comply with any other term, provision or covenant of this LICENSE, and shall not cure such failure within thirty (30) days after written notice thereof to LICENSEE; or
  - (d) LICENSEE shall create or maintain, or allow any other person or entity to create or maintain, any public nuisance or any condition that fails to comply with any applicable federal, state, SBCTA or rail operator specifications or safety regulations or that presents a danger to public safety or a safety hazard to any operations, personnel, passengers or property of SBCTA or any rail carrier operating upon the affected rail line(s) on the Premises or SBCTA's adjacent right of way.

- 7.2. SBCTA's Remedies.

- 7.2.1. Termination. Upon the occurrence of LICENSEE's default and breach, is not cured within thirty (30) days (or such longer period as may be necessary in the circumstances and agreed to in writing by SBCTA), SBCTA shall have the right, by giving notice to LICENSEE, to terminate this LICENSE as of the end period specified in the notice to cure, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom LICENSEE and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that SBCTA may have under this LICENSE, at law or equity by reason of LICENSEE's default or of such termination.
- 7.2.2. Corrective Measures. Should LICENSEE default on, breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, SBCTA at its option may perform any corrective measures deemed by SBCTA in its sole and absolute discretion to be necessary or appropriate to protect public health or safety, or SBCTA's legitimate governmental or proprietary interests or the interests of its railroad operators, at LICENSEE's expense (including fees, costs and interest) which LICENSEE agrees to pay to SBCTA upon demand.
- 7.2.3. Costs. If SBCTA incurs any cost or expense occasioned by the default of LICENSEE (including but not limited to attorneys' fees and costs), then SBCTA shall be entitled to receive such costs together with interest on all funds SBCTA expends at the lesser of fourteen percent (14%) per annum or the maximum rate allowed by law, whichever is lower, including without limitation, brokers' fees incurred by SBCTA in connection with relicensing the whole or any part of the Premises; the costs of removing and storing LICENSEE's or other occupant's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SBCTA, rail operators and future licensees; and all reasonable expenses incurred by SBCTA in enforcing or defending SBCTA's rights and remedies, including reasonable attorneys' fees whether or not suit is actually filed.
- 7.2.4. Remedies Cumulative. All rights, privileges and remedies of the parties are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein
- 7.3. SBCTA Default and Licensee's Remedies. SBCTA shall not be in default under this LICENSE unless SBCTA fails to perform obligations required of SBCTA within sixty (60) days after written notice is delivered by LICENSEE to SBCTA specifying the obligation which SBCTA has failed to perform; provided, however, that if the nature of SBCTA's obligation is such that more than sixty (60) days are required for performance, then SBCTA shall not be in default if SBCTA commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. LICENSEE's exclusive remedies shall be an action for specific performance.

## 8. INDEMNIFICATION

- 8.1. LICENSEE, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SBCTA), and hold harmless SBCTA, and its officers, directors, employees, agents, consultants, contractors, permittees, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the LICENSEE or its Personnel (as defined in Section 6 (Assumption of Risk and Waiver) or invitees of LICENSEE in connection with the SBCTA Property or the presence upon or performance of activities by LICENSEE or its Personnel with respect to the SBCTA Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of LICENSEE or its Personnel, or (iii) non-performance or breach by LICENSEE or its Personnel of any term or condition of this LICENSE, in each case whether occurring during the Term of this LICENSE or thereafter.
- 8.2. The LICENSEE acknowledges that any construction allowed on the Premises pursuant to this LICENSE is not being performed for SBCTA's benefit or on SBCTA's account and that this is an agreement allowing LICENSEE and/or its contractor(s) to enter upon SBCTA's Property as an accommodation within the meaning of California Civil Code Section 2782.1. Therefore, the foregoing indemnity shall be effective regardless of any negligence on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees, and is in addition to any other rights or remedies which Indemnitees may have under the law or under this LICENSE. Upon request of SBCTA, LICENSEE shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this LICENSE.
- 8.3. Claims against the Indemnitees by LICENSEE or its Personnel shall not limit the LICENSEE's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for LICENSEE or its Personnel under workers' compensation, disability benefits or other employee benefits laws or insurance.
- 8.4. The indemnification and defense obligations of LICENSEE set forth in this section shall survive the termination and End Date of this LICENSE.

## 9. INSURANCE

- 9.1. SBCTA's Insurance. SBCTA may maintain insurance covering the Premises and SBCTA's ownership and operation thereof in such types and amounts as it deems necessary in its sole discretion. Such insurance shall be for the sole benefit of SBCTA and under its sole control. LICENSEE's insurance policies shall provide primary coverage to SBCTA; when any such policy issued to SBCTA provides duplicate coverage or is similar in coverage, SBCTA's policy will be excess over LICENSEE's policies.

- 9.1.1. Licensee's Insurance. LICENSEE, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this LICENSE insurance as required by SBCTA in the amounts and coverages specified and issued by insurance companies as described in, and meeting all other requirements set forth in EXHIBIT "B". SBCTA reserves the right, throughout the Term of this LICENSE, to review and change the amount and type of insurance coverage it requires at such time LICENSEE requests an amendment or modification to this LICENSE, if applicable, in connection with any Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, LICENSEE shall furnish SBCTA with insurance endorsements and/or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. SBCTA shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by LICENSEE under this LICENSE. Self-insurance is not permitted, however, SBCTA may, in its sole and absolute discretion, permit self-insurance on a case by case, coverage by coverage basis where the LICENSEE has documented, to SBCTA's sole satisfaction, sufficient available assets and/or available funds and sufficient legal security in those assets to assure SBCTA that its risk is not greater than it would have been with acceptable insurance coverage, and otherwise meeting SBCTA's self-insurance requirements. The privilege to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by SBCTA at its sole and absolute discretion at any time. Upon revocation of self-insurance privilege, LICENSEE shall immediately provide all required insurances.
- 9.2. Modifications to Insurance. Should any action by the LICENSEE require SBCTA to increase fire and extended coverage insurance premiums, or if LICENSEE's vacation of the Premises causes any increase in such premiums, then LICENSEE shall pay as an additional fee to SBCTA the amount of such increase upon demand by SBCTA, the amount required to correct at LICENSEE's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

## 10. MAINTENANCE AND REPAIR

LICENSEE, at LICENSEE's sole expense, shall during the Term of this LICENSE maintain the Improvements within the Premises, and the Premises itself, in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises and the Improvements as necessary to keep the Premises and the Improvements in good order and condition to SBCTA's sole satisfaction. If any portion of the SBCTA Property, including improvements or fixtures, suffers damage by reason of the access to or Use of the Premises by LICENSEE or LICENSEE's employees, agents, customers, invitees, licensees, consultants, contractors and subcontractors (collectively, "LICENSEE's Parties"), including but not limited to damage arising from any tests or investigations conducted upon the Premises by LICENSEE or LICENSEE's Parties, LICENSEE shall, at its own cost and expense, immediately repair all such damage and restore the SBCTA Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, re-grading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by LICENSEE or LICENSEE's Parties. LICENSEE shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SBCTA



or the railroads with valid operating authority over SBCTA's lines and compliance with all applicable standards, specifications and safety requirements.

## **11. ALTERATIONS AND CONSTRUCTION**

Except as otherwise provided herein, LICENSEE shall make no alterations, additions or Improvements to the Premises without obtaining the prior written consent of SBCTA in each instance. Any work performed or caused to be performed by LICENSEE on the Improvements or the Premises shall be performed (a) at LICENSEE's sole cost and expense; (b) in accordance with any and all applicable permit requirements, laws, rules, regulations and safety requirements (including SBCTA's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to SBCTA. LICENSEE shall submit written notice and work plans to SBCTA for review and approval at least thirty (30) days prior to commencement of any work on the Premises. Any such work must be carried out pursuant to the work plans approved in writing by SBCTA and in compliance with any and all SBCTA rules, regulations and other requirements. SBCTA shall have the right at any time and from time to time to post and maintain notices of non-responsibility. Unless otherwise requested by SBCTA, upon completion of any work, LICENSEE shall restore the SBCTA Property to its condition immediately preceding the commencement of such work.

## **12. CONTRACTORS; APPROVAL AND INSURANCE**

Any of LICENSEE's Parties performing any Work on the Improvements or the Premises shall first be approved in writing by SBCTA and acquire all required right of entry permits and authorizations from SBCTA and any rail operator utilizing affected or adjacent railroad tracks. With respect to such Work, LICENSEE shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by SBCTA, in the amounts and coverage specified on and issued by insurance companies as described in EXHIBIT "B". Additionally, LICENSEE shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) may, for any reason, need to enter onto the Premises, to obtain and maintain in full force and effect during the Term of this LICENSE, or throughout the term of such Work (as applicable), insurance, as required by SBCTA, in the amounts and coverage specified on, and issued by insurance companies as described in EXHIBIT "B". SBCTA reserves the right, throughout the Term of this LICENSE, to review and change the amount and type of insurance coverage it requires at such time LICENSEE requests an amendment or modification to this LICENSE, if applicable, in connection with any Work to be performed on the Premises.

## **13. REIMBURSEMENT**

LICENSEE agrees to reimburse SBCTA for all reasonable costs and expenses that SBCTA incurs in connection with Work on or maintenance of the Premises or the Improvements, including, but not limited to, costs incurred by SBCTA in furnishing any materials or performing any labor, reviewing LICENSEE's Work plans and inspecting any Work, installing or removing protection beneath or along SBCTA's tracks, furnishing of watchmen, flagmen and inspectors as SBCTA deems necessary and such other items or acts as SBCTA in its sole discretion deems necessary to monitor or aid in compliance with this LICENSE, protect the safety of, and railway operations upon, its tracks and right-of-way, and to otherwise protect its interests. The costs and expenses addressed in this Section 13 shall include all costs that SBCTA incurs in complying with the Work or maintenance requirements of the railroads with valid operating authority over SBCTA's lines.

## 14. LANDSCAPING

If required by SBCTA, then LICENSEE, at its sole cost and expense, shall install barrier landscaping to shield the Improvements from public view. SBCTA shall have the right to review and approve landscaping plans prior to installation. All landscaping activities shall be done in accordance with the provisions of Section 11 above (Alterations and Construction).

## 15. MARKERS

Except as modified by any additional provisions attached at Exhibit “D”, project markers in form and size satisfactory to SBCTA, identifying the Improvements and their owner(s), shall be installed and constantly maintained by and at the expense of LICENSEE at such locations as SBCTA shall designate. Such markers shall be relocated or removed upon request of SBCTA without expense to SBCTA. Absence of markers in or about SBCTA Property does not constitute a warranty by SBCTA of the absence of subsurface installations.

## 16. COMPLIANCE WITH LAWS

LICENSEE shall comply with all applicable federal, state and local laws, regulations, rules and orders in its Work on, or maintenance, inspection, testing or use of, the SBCTA Property, and shall furnish satisfactory evidence of such compliance promptly upon request of SBCTA. LICENSEE shall obtain all required permits or leases required by any governmental authority for its use of the Premises, at its sole cost and expense. LICENSEE shall comply with all SBCTA policies, rules and regulations applicable to its properties. Subject to SBCTA’s approval, LICENSEE shall at its own cost and expense install and construct all physical improvements to or needed to serve the Premises that are required by any federal, state or local building code or other law or regulation applicable to the Premises, or that are made necessary by the nature of LICENSEE’s use of the Premises. LICENSEE shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at LICENSEE’s sole expense.

## 17. SBCTA’S RIGHT OF ACCESS

- 17.1. Inspections. SBCTA shall have the right at any time (upon provision of reasonable notice of inspection to LICENSEE) or in case of emergency (without notice), to inspect the Premises in order to protect SBCTA’s interests therein and to monitor compliance with this LICENSE, including compliance with applicable federal, state and local laws, regulations, rules and orders. Failure to submit to or cooperate with any inspection may result in termination of the LICENSE
- 17.2. Tests. If, in SBCTA’s sole judgment, any installation on, or use or condition of the Premises may have an adverse effect on the Premises or SBCTA Property, adjacent property or SBCTA’s operations, SBCTA shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the Premises, as it determines to be necessary or useful to evaluate the condition of the Premises. LICENSEE shall cooperate with SBCTA in any tests or inspections deemed necessary by SBCTA.
- 17.3. Costs. LICENSEE shall pay or reimburse SBCTA, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective Work, maintenance and inspections thereafter. SBCTA may establish an inspection fee, which

may be changed from time to time, as part of an inspection program. The user shall pay such fee for each such inspection. Failure to pay the fee may result in termination of the LICENSE.

- 17.4. Sale or Lease of Premises. SBCTA may at any time place on or about the Premises (including the Improvements) any ordinary “for sale” and “for lease” signs. LICENSEE shall also permit SBCTA and its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours, to show the Premises to prospective tenants, purchasers or mortgagees.

## 18. ENVIRONMENTAL ASSESSMENT

Upon execution of this LICENSE, SBCTA may, in its sole discretion and if applicable, require LICENSEE to retain a duly licensed environmental consultant acceptable to SBCTA who shall perform an environmental assessment of the Premises and LICENSEE’s and LICENSEE’s Parties’ business activities and prepare a report on LICENSEE’s and/or LICENSEE’s Parties’ compliance with the provisions of this section. If determined by SBCTA to be necessary or useful to evaluate the condition of the Premises, SBCTA may require LICENSEE to cause a similar environmental assessment to be conducted on an annual basis, and/or upon or within one (1) year after the expiration or earlier termination of this LICENSE, the cost of which shall be the sole responsibility of LICENSEE. LICENSEE shall provide a copy of the report or reports from the consultant(s) promptly to SBCTA upon receipt and upon request shall promptly provide to SBCTA a copy of all data, documents and other information prepared or gathered in connection therewith.

## 19. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY

- 19.1. LICENSEE shall operate and maintain the Premises in compliance with all Environmental Laws, and shall not cause or permit the Premises to be in violation of any Environmental Law which is now or may hereafter become applicable to LICENSEE or the Premises. As used herein, “Environmental Law(s)” means any federal, state or local environmental, health and/or safety-related law, regulation, standard, decision of a court, permit or permit conditions, currently existing or as amended or adopted in the future. Except for any Hazardous Material expressly approved by SBCTA in writing as shown on Exhibit “C”, LICENSEE shall not cause or permit, or allow any of LICENSEE’s Parties to cause or permit, any Hazardous Material to be brought upon, stored, used, generated, treated or disposed of on or about the SBCTA Property. Any Hazardous Material on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, “Hazardous Material” means any chemical, substance or material, including any mixture or solution, which by virtue of its properties or effects is potentially harmful to health, safety or property, or which is now or becomes in the future listed, defined or regulated in any manner under any Environmental Law as a hazardous or dangerous material or substance.
- 19.2. LICENSEE shall indemnify, defend (by counsel acceptable to SBCTA) and hold harmless the Indemnitees, as defined in Section 8 (Indemnification), from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys’ fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) LICENSEE’s breach of any prohibition or provision of this section, or (b) any

release of Hazardous Material upon or from the Improvements or the Premises or contamination of the SBCTA Property which: (i) occurs due to the use and occupancy of the Improvements or the Premises by LICENSEE or LICENSEE's Parties, or (ii) is made worse due to the act or failure to act of LICENSEE or LICENSEE's Parties.

- 19.3. The foregoing indemnity shall be effective regardless of any negligence on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive expiration or termination of this LICENSE; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this LICENSE.
- 19.4. In addition, in the event of any release on or contamination of the Premises, LICENSEE, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the SBCTA Property and all affected adjacent property – whether or not owned by SBCTA) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of SBCTA and any governmental authorities having jurisdiction, unless such release or contamination was solely caused by the gross negligence or willful misconduct of SBCTA.

## **20. UNDERGROUND STORAGE TANKS**

- 20.1. NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE PREMISES UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SBCTA, WHICH APPROVAL MAY BE WITHHELD IN SBCTA'S SOLE DISCRETION.
- 20.2. At SBCTA's option, upon the termination of this LICENSE at any time and for any reason, LICENSEE shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment installed by LICENSEE, and clean up and remove all Hazardous Material in, on, under and about the Premises, caused by such installation, in accordance with the requirements of all Environmental Laws and to the satisfaction of SBCTA and any governmental authorities having jurisdiction thereover, and deliver to SBCTA a copy of a certificate of closure issued for such tanks by the appropriate governmental authority. Upon acceptance of the planned use of an underground storage tank, the LICENSEE may be required to obtain an Environmental Liability policy with limits approved by SBCTA's Risk Manager.

## **21. CONDEMNATION**

In the event all or any portion of the Premises shall be taken or condemned for public use by a governmental agency or any other party having the power of eminent domain (including conveyance by deed in lieu of or in settlement of condemnation proceedings), LICENSEE shall receive compensation (if any) only for the taking and damage to the Improvements. Any other compensation or damages arising out of such taking or condemnation awarded to LICENSEE are hereby assigned by LICENSEE to SBCTA.

## **22. BROKER'S FEES**

LICENSEE represents and warrants that it has dealt with no broker, agent or other third party in connection with this transaction and LICENSEE agrees to indemnify and hold SBCTA harmless from and against any claims by any broker, agent or other party claiming a commission or other

form of compensation by virtue of having dealt with LICENSEE with regard to obtaining this LICENSE.

### **23. SUBORDINATE RIGHTS**

This LICENSE is subject and subordinate to the prior and continuing rights and obligation of SBCTA, its successors and assigns, to use the SBCTA Property in the exercise of its powers and in the performance of its duties, including those as a public transportation body, and to all Bonds, and their respective indentures, issued by SBCTA in any of its capacities and/or by any of its affiliated entities now in place or hereafter issued. Accordingly, there is reserved and retained unto SBCTA, its successors, assigns and permittees, the right to construct, reconstruct, operate, maintain, use and/or relocate existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SBCTA Property or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SBCTA Property or the Premises and in the vicinity of the Improvements, regardless of any effect or impact on the Improvements. LICENSEE shall bear all costs and losses it incurs associated with any modifications to the Improvements necessary to accommodate SBCTA's exercise of any right hereunder. This LICENSE is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SBCTA Property now or hereafter. This LICENSE is executed and delivered by SBCTA without any warranty of title, express or implied, and the words "grant" or "convey" as used herein shall not be construed as a warranty of title or a covenant against the existence of any such title exceptions.

### **24. ABANDONMENT**

Should LICENSEE at any time abandon the use of the Improvements or the Premises, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this LICENSE shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SBCTA shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this LICENSE.

### **25. GENERAL PROVISIONS**

- 25.1. Notices. All notices and demands which either of the Parties is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to the other Party at its address set forth in the Basic License Provisions. Either of the Parties may change its address for the receipt of notice by giving written notice thereof to the other Party in the manner herein provided. Notices shall be effective only upon receipt by the Party to whom notice or demand is given.
- 25.2. Governing Law. This LICENSE shall be governed by the laws of the State of California.
- 25.3. Binding Effect. The terms, provisions and covenants and conditions contained in this LICENSE shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. If more than one person executes this

- LICENSE as LICENSEE, then each shall be jointly and severally liable for all obligations of LICENSEE hereunder.
- 25.4. No Third Party Beneficiaries. This LICENSE is not intended by either party to confer any benefit on any third party other than the constituent members of SBCTA, including without limitations any broker, finder, or brokerage firm.
- 25.5. Severability. If any term, covenant, condition or provision of this LICENSE, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this LICENSE, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 25.6. Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SBCTA that is not paid when due shall bear interest, beginning on the 31<sup>st</sup> date of when due, without demand, at the maximum rate then allowable by law. Such interest will be due SBCTA as it accrues. Payment of such interest shall not excuse or cure any default by LICENSEE under this LICENSE, provided, however, that interest shall not be payable on late charges incurred by LICENSEE..
- 25.7. Captions. The captions included in this LICENSE are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this LICENSE or any provision hereof, or in any way affect the interpretation of this LICENSE.
- 25.8. Survival of Obligations. All obligations of LICENSEE hereunder not fully performed as of the expiration or earlier termination of the Term of this LICENSE shall survive the expiration or earlier termination of this LICENSE, including without limitation all indemnity and defense obligations, all payment obligations with respect to Fees and all obligations concerning the condition of the SBCTA Property and the Improvements.
- 25.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this LICENSE shall not invalidate this LICENSE, nor shall it be considered a waiver by it of any other covenant or condition or of the same covenant or condition in another instance. To the extent patterns of practice between the Parties are inconsistent with the terms of this LICENSE, such patterns of practice shall not waive in part or in full SBCTA's right to insist upon strict accordance with any of the provisions of this LICENSE. The subsequent acceptance of payments hereunder by SBCTA shall not be deemed to be a waiver of any preceding breach by LICENSEE of any provisions, covenant, agreement or condition of this LICENSE, other than the failure of LICENSEE to pay the particular payment so accepted, regardless of SBCTA's knowledge of such preceding breach at the time of acceptance of such payment.
- 25.10. Effective Date/Nonbinding Offer. Submission of this LICENSE for examination or signature by LICENSEE does not constitute an offer of or option for a license, and it is not effective as a license or otherwise until executed and delivered by both SBCTA and LICENSEE. Each individual executing this LICENSE on behalf of SBCTA or LICENSEE represents and warrants to the other Party that he or she is authorized to do so.

- 25.11. Assignment. This LICENSE and the license granted herein are personal to the LICENSEE. LICENSEE shall not assign or transfer (whether voluntary or involuntary) this LICENSE in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SBCTA, which may be withheld in SBCTA's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and be a material breach of this LICENSE, which gives SBCTA the right to immediately terminate this LICENSE and seek all other available remedies for breach. Notwithstanding the foregoing, LICENSEE may, with SBCTA's consent, assign or transfer this LICENSE to any entity that it controls, is controlled by, or is under common control with LICENSEE.
- 25.12. Entire Agreement; Amendments. This LICENSE, including all attached Exhibits, constitutes the entire agreement between the Parties and supersedes all prior verbal or written agreements and understandings between the Parties with respect to the items set forth in this LICENSE. The Parties each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by either SBCTA or LICENSEE, or anyone acting on behalf of SBCTA or LICENSEE, other than those contained in this LICENSE. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this LICENSE shall be binding upon the Parties unless they are in writing and executed by the Parties.
- 25.13. Attorneys' Fees. If either SBCTA or LICENSEE commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with this LICENSE or the Premises, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith. If SBCTA becomes involved in any action, threatened or actual, by or against anyone not a party to this LICENSE, but arising by reason of or related to any act or omission of LICENSEE or LICENSEE's Parties, LICENSEE agrees to pay SBCTA's reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.
- 25.14. Nondiscrimination. LICENSEE certifies and agrees that all persons employed by LICENSEE and LICENSEE's affiliates, subsidiaries, or holding companies, and any contractors retained by LICENSEE with respect to the Premises, are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.
- 25.15. Further Acts. LICENSEE agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this LICENSE, including, at SBCTA's sole discretion, the relocation of the Improvements and the license granted hereby.
- 25.16. Time of Essence. Time is of the essence for this LICENSE.

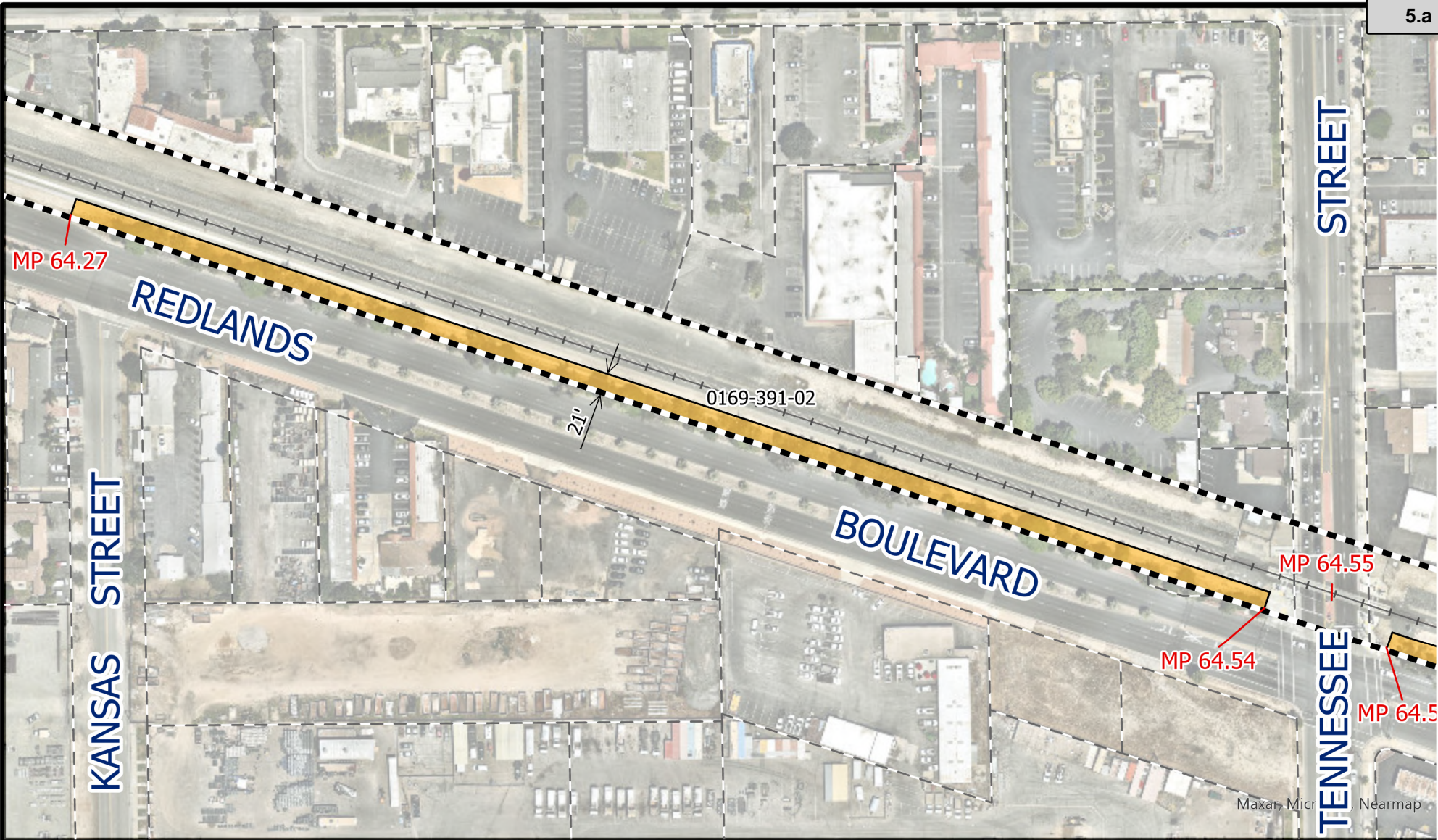
- 25.17. Certificates. LICENSEE agrees from time to time within thirty (30) days after request of SBCTA, to deliver to SBCTA, or SBCTA's designee, an estoppel certificate stating that this LICENSE is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this LICENSE and such other matters pertaining to this LICENSE as may be requested by SBCTA.
- 25.18. Security Measures. LICENSEE hereby acknowledges that the payments payable to SBCTA hereunder do not include the cost of guard service or other security measures, and that SBCTA shall have no obligation whatsoever to provide same. LICENSEE assumes all responsibility for the protection of LICENSEE, LICENSEE's Parties and their property from acts of third parties.
- 25.19. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this LICENSE.
- 25.20. No Recording. LICENSEE shall not record or permit to be recorded in the official records of the county where the Premises are located, this LICENSE, any memorandum of this LICENSE or any other document giving notice of the existence of this LICENSE or the license granted hereby.
- 25.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, LICENSEE shall maintain, at LICENSEE's expense, competent flagmen to protect and control movement of vehicles and equipment of LICENSEE or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection, including the rules and policies of SBCTA and/or any railroad operator having rights to utilize any affected or adjacent railroad tracks.
- 25.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, the provisions in Exhibit "D" shall control.
- 25.23. Counterparts. This LICENSE may be executed in counterparts, which constitute one document. The parties shall execute this LICENSE in duplicate and intend each countersigned original to have identical legal effect.
- 25.24. Supersedure. That certain (Wire Line) (License) Agreement between \_\_\_\_\_ (predecessor in interest to \_\_\_\_\_) Document Number \_\_\_\_\_, and The Atchison, Topeka and Santa Fe Railway Company (predecessor in interest to Burlington Northern Santa Fe Railway Company)/Southern Pacific Company (predecessor in interest to Union Pacific Railroad) Document Number \_\_\_\_\_, which was made and entered into on \_\_\_\_\_ by and between LICENSEE and The Atchison, Topeka and Santa Fe Railway Company



(predecessor in interest to Burlington Northern Santa Fe Railway Company) /Southern Pacific Company (predecessor in interest to Union Pacific Railroad), as predecessor in interest to SBCTA, together with all supplements, amendments, revisions and modifications thereto.

**EXHIBIT “A”**  
**MAP/SITE DEPICTION**

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)



License Agreement - Property One, LLC

**Exhibit "A" - MAP**

APN 0169-391-02	Nearest Cross Street Tennessee Street	City/Community Redlands
ATSF Milepost 64.55	Branch/Line San Gabriel	Agreement Type License
Grade Type Underground	Orientation Longitudinal	Contract Number 25-1003231

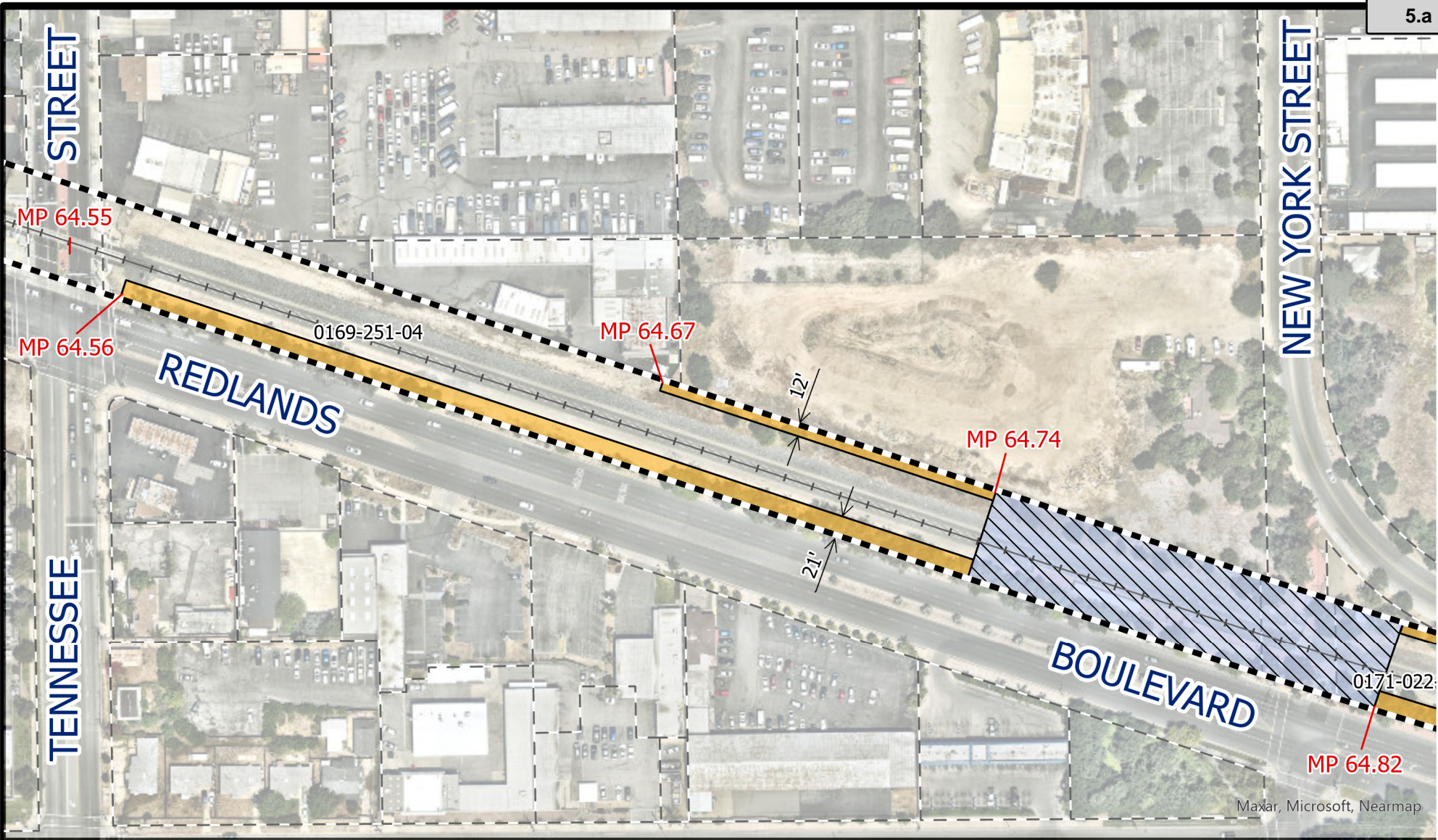


**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, Ca 92410-1715

**N**

- SBCTA Right of Way
- MainTrack
- - - Parcel Boundaries
- License Area

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)



License Agreement - Property One, LLC

**Exhibit "A" - MAP**

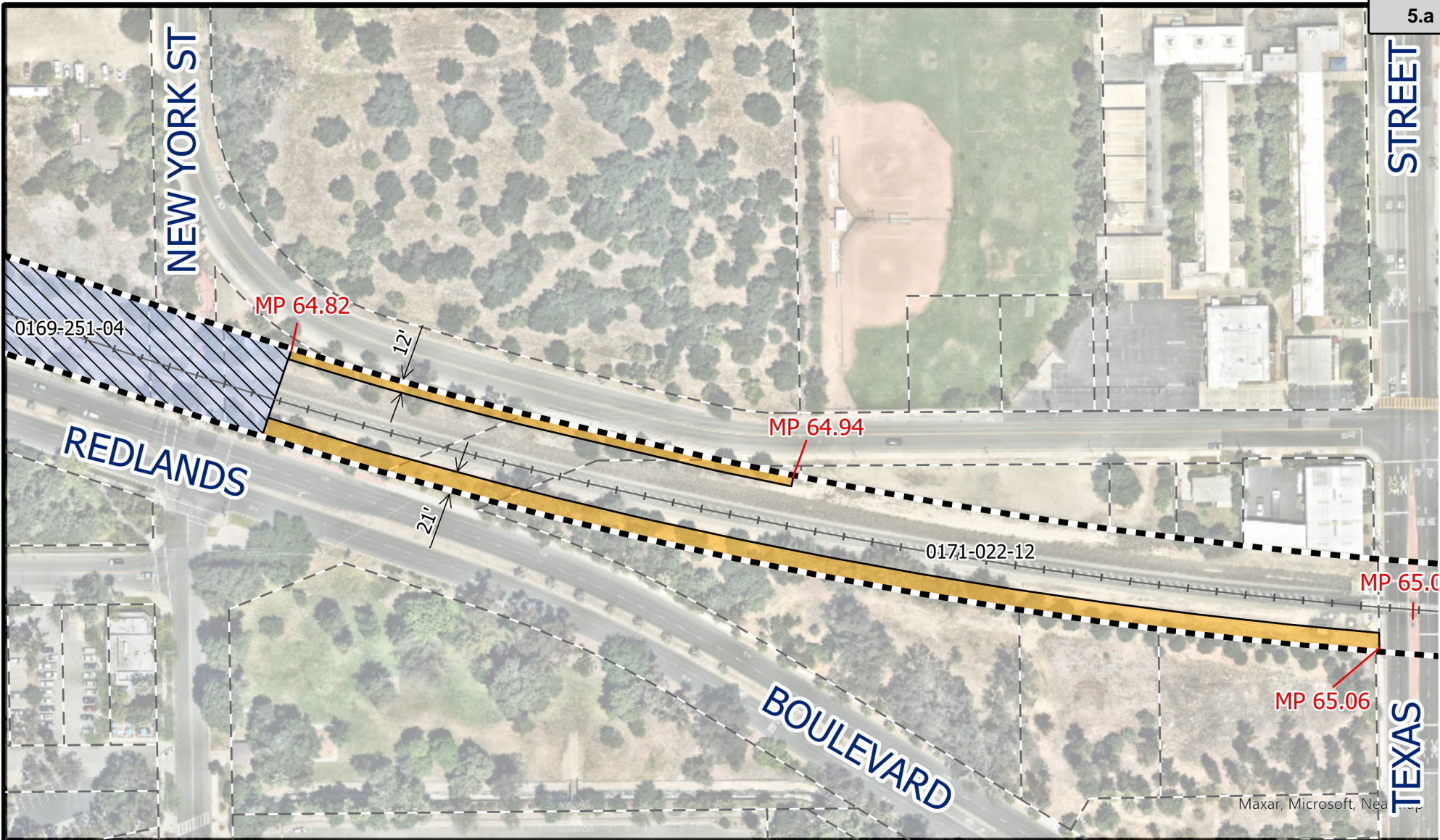
APN	Nearest Cross Street	City/Community
See Map	New York Street	Redlands
ATSF Milepost	Branch/Line	Agreement Type
64.82	San Gabriel	License
Grade Type	Orientation	Contract Number
Underground	Longitudinal	25-1003231



**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, Ca 92410-1715

- SBCTA Right of Way
- MainTrack
- Parcel Boundaries
- ESRI Station Area
- License Area

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)



License Agreement - Property One, LLC

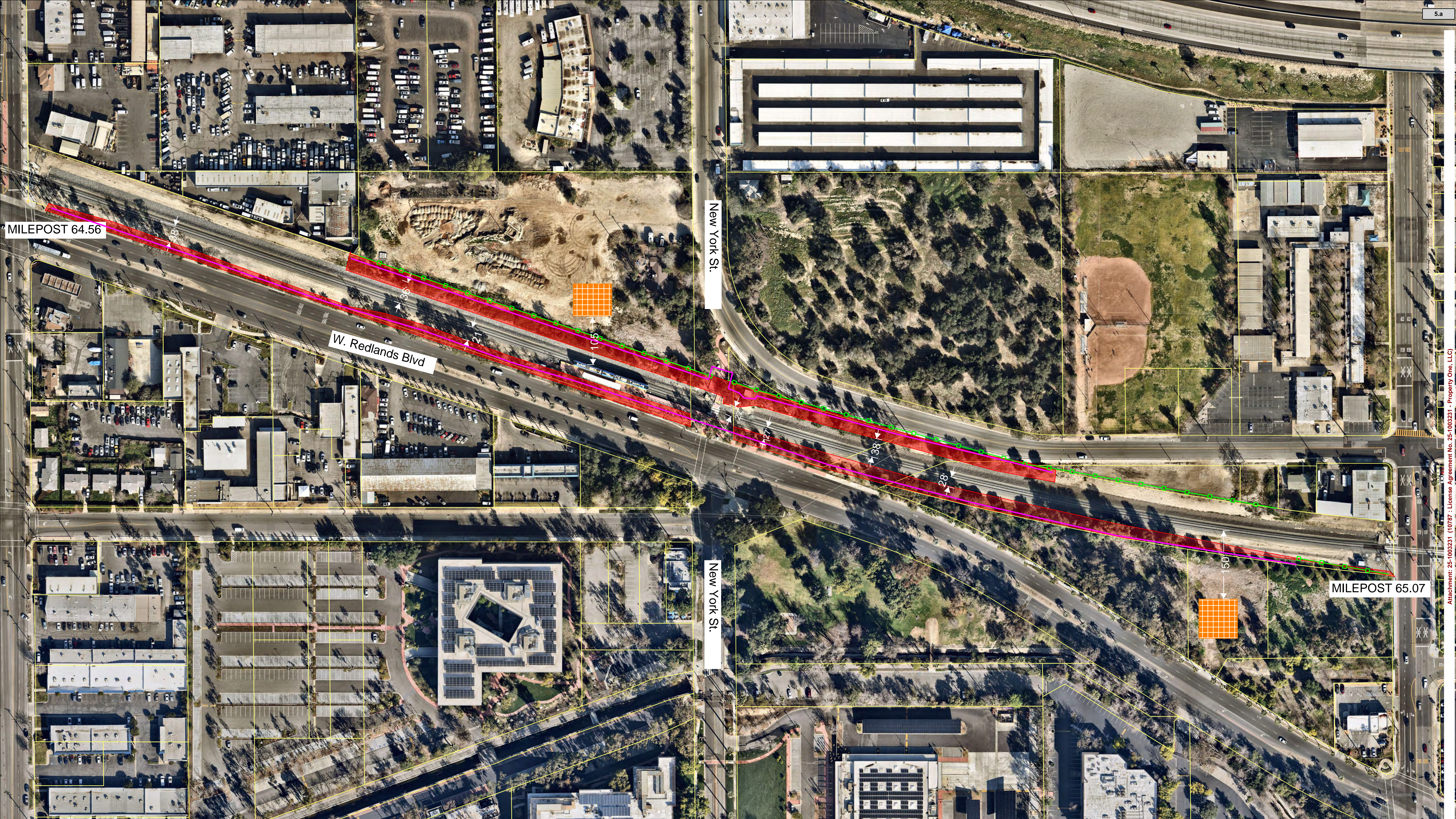
**Exhibit "A" - MAP**

APN	Nearest Cross Street	City/Community
0171-022-12	Texas Street	Redlands
ATSF Milepost	Branch/Line	Agreement Type
65.07	San Gabriel	License
Grade Type	Orientation	Contract Number
Underground	Longitudinal	25-1003231



**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, Ca 92410-1715

- SBCTA Right of Way
- MainTrack
- Parcel Boundaries
- ESRI Station Area
- License Area



Attachment: 25-1003231 (10787 - License Agreement No. 25-1003231 - Property One, LLC)

# Property One, LLC - Landscape Maintenance Areas

## Map 1 of 2

All vehicles, equipment, and materials will be a minimum of 25' away from the nearest track, will be secured to prevent unauthorized movement, and will not block the visibility of any railroad signals, signs or equipment on the ROW. All vehicle, equipment, and material crossings will be made at a public railroad crossing. Vehicles, equipment and materials will not be allowed to be stored on the ROW. Traffic Control is not a part of this permit. Any traffic control near the Tennessee & W. Redlands Blvd intersection will need Metrolink review.

-  Maintenance Area
-  Staging Area
-  Metrolink Fence
-  Irrigation Line
-  Property Lines



MILEPOST 64.29

Tennessee Street




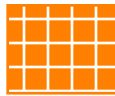
W. Redlands Blvd

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# Property One, LLC - Landscape Maintenance Areas

## Map 2 of 2

-  Irrigation Line
-  Maintenance Area
-  Property Lines
-  Staging Area (Street Parking)

All vehicles, equipment, and materials will be a minimum of 25' away from the nearest track, will be secured to prevent unauthorized movement, and will not block the visibility of any railroad signals, signs or equipment on the ROW. All vehicle, equipment, and material crossings will be made at a public railroad crossing. Vehicles, equipment and materials will not be allowed to be stored on the ROW. Traffic Control is not a part of this permit. Any traffic control near the Tennessee & W. Redlands Blvd intersection will need Metrolink review.

**EXHIBIT “B”**

**INSURANCE REQUIREMENTS FOR LICENSE AGREEMENT**

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)



## Exhibit "B"

**INSURANCE REQUIREMENTS**

1. AGREEMENT shall mean the license to which this Exhibit is attached. WORK shall mean any activity or use permitted under the AGREEMENT. The holder of the AGREEMENT is hereinafter referred to as PERMITTEE. PERMITTEE shall at all times during the term of the AGREEMENT or for such other periods as required herein, procure and maintain broad form insurance against claims for injuries to persons or damages to property that may arise from, or in connection with, the use of SBCTA property hereunder by the PERMITTEE, its agents, representatives, employees, or subcontractors, with coverage at least as broad as the following minimum requirements specified below. Selected subparagraphs to this Paragraph 1 shall apply:

1.1.  Worker's Compensation/Employer's Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the WORK by PERMITTEE, any subcontractor of any tier. All subcontractors of any tier performing any portion of the WORK for PERMITTEE shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of PERMITTEE and all parties named as Indemnitees by the AGREEMENT. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

1.2.  Commercial General Liability. The policy must include the following:

- PERMITTEE shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$7,000,000 each occurrence**. If the AGREEMENT value is equal to or in excess of \$25,000,000, then the combined limit of liability shall be no less than **\$25,000,000 each occurrence**.
- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in the AGREEMENT), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
  - \$2,000,000 per occurrence limit for property damage or bodily injury
  - \$1,000,000 per occurrence limit for personal injury and advertising injury
  - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
  - If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subcontractors of any tier performing any portion of the WORK for PERMITTEE shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: \$1,000,000
- General aggregate limit: \$2,000,000
- Personal injury and advertising limit \$1,000,000
- Products-completed operations aggregate limit \$2,000,000

All subcontractors' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

1.2.1.  Contractual Liability – Railroads. The CGL policy shall not exclude coverage of contractual liability relating to railroads or shall be endorsed by ISO Form CG 24 17, or equivalent acceptable to SBCTA, to remove such exclusions to coverage.

1.3.  Umbrella/Excess CGL. The policy must include the following:

- If the PERMITTEE elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
  - The umbrella or excess policy shall follow form over the PERMITTEE's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
  - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
  - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
  - The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees in the AGREEMENT.

1.4.  Commercial Auto. The policy must include the following:

- A total limit of liability of not less than **\$5,000,000 each accident**. This total limit of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with Section 1.3 (Umbrella/Excess CGL), above.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the WORK.
- Combined Bodily Injury and Property Damage Liability insurance

The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

1.5.  Pollution Liability The policy must include the following:

- \$2,000,000 per claim or occurrence limits/\$4,000,000 in the aggregate
- If the WORK involves mold identification / remediation, the policy shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.
- If the WORK involves lead-based paint or asbestos identification/remediation, the policy shall not contain lead-based paint or asbestos exclusions.

1.6.  Railroad Protective Liability Insurance: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SCRRA with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **\$2 million per occurrence**, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **\$6 million annual aggregate** shall apply. If providing coverage on the London claims-made form, the following provisions shall apply:

- The limits of liability shall be not less than \$3 million per occurrence, combined single limit. A \$9 million aggregate may apply.
- Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.
- If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:
  - It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SBCTA, or its designated representative, in SBCTA's sole and absolute discretion, where SBCTA's agreements and obligations with rail operators allow it.

## 2. General Provisions

- 2.1. Qualifications of Insurance Carriers. If policies are written by insurer carriers authorized and admitted to do business in the state of California, then the insurer carriers must have a current A.M. Best rating of A-VIII or better. If policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA's Risk Manager.
- 2.2. Additional Insurance Coverage. All policies, except those for Workers' Compensation insurance, shall be endorsed by ISO Form CG 20 36, or if not available, then ISO Form CG 20 35, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the PERMITTEE permitted under this AGREEMENT, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.
- 2.3. Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any WORK, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in the AGREEMENT together with Exhibit B; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, PERMITTEE shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.

- 2.4. Deductibles. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its sub-CONTRACTORS to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. At the option of SBCTA, if the deductible or SIR is greater than \$50,000 or five (5) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR.
- 2.5. PERMITTEE's and Subcontractors' Insurance will be Primary. All policies required to be maintained by the PERMITTEE or any subcontractor with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13), to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of PERMITTEE's nor subcontractors' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
- 2.6. Waiver of Subrogation Rights. To the fullest extent permitted by law, PERMITTEE hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, PERMITTEE shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. PERMITTEE shall require all of the policies and coverages required in Exhibit B to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit PERMITTEE from waiving the right of subrogation prior to a loss or claim.
- 2.7. Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, PERMITTEE will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, PERMITTEE will provide SBCTA ten (10) days prior written notice. In any event, PERMITTEE will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which PERMITTEE receives within one business day after PERMITTEE receives it by submitting it to SBCTA at procurement@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of the AGREEMENT.
- 2.8. Enforcement. SBCTA may take any steps as are necessary to assure PERMITTEE's compliance with its insurance obligations as identified within the AGREEMENT and / or Exhibit B. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the PERMITTEE fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the PERMITTEE or

withhold such expense from amounts owed PERMITTEE, or terminate the AGREEMENT. The insurance required or provided shall in no way limit or relieve PERMITTEE of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnites named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve PERMITTEE for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve PERMITTEE, or any subcontractor of any tier, of their obligations to exercise due care in the performance of their duties in connection with the WORK, and to complete the WORK in strict compliance with the AGREEMENT.

- 2.9. No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of Exhibit B shall not act as a waiver to enforcement of any of these provisions at a later date.
- 2.10. Contractors and Subcontractors Insurance. Insurance required of the PERMITTEE shall be also provided by subcontractors, or by PERMITTEE on behalf of all subcontractors, to cover WORK, performed by said subcontractors, permitted under the AGREEMENT. PERMITTEE may reduce types and the amounts of insurance limits provided by subcontractors to be proportionate to the amount of the subcontractor's contract and the level of liability exposure for the specific type of work performed by the subcontractor. PERMITTEE shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractor.
- 2.11. Higher limits. If PERMITTEE maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by PERMITTEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.
- 2.12. Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**EXHIBIT “C”**

**PERMITTED HAZARDOUS MATERIAL**

No hazardous material is permitted to be used or stored on Premises.

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)

**EXHIBIT “D”**  
**ADDITIONAL REQUIREMENTS**

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)

**ADDITIONAL REQUIREMENTS**

The following Additional Requirements are imposed on the Tenant/Licensee/Permittee and all of its contractors, subcontractors, employees, laborers or other persons performing any work upon SBCTA property on behalf of Tenant/Licensee/Permittee, and are made part of the terms of the Lease/License/Permit to which this Exhibit D is attached (“Agreement”).

As used hereinafter, the term “Contractor” shall include the Tenant/Licensee/Permittee and each and every one of its contractors, subcontractors, employees, laborers, agents or other persons performing any work upon SBCTA property on behalf of Tenant/Licensee/Permittee; and the term “railroad operator” or “operating railroad” shall mean Southern California Regional Rail Authority (SCRRA), Burlington Northern Santa Fe Railroad Railway Company (BNSF) and/or any other railroad company or rail carrier having operating rights over rail lines owned or controlled by SBCTA.

Contractor shall fully comply with each and every one of the Additional Requirements below which is in any way applicable to the type of use, construction, installation or facility allowed under the Contractor’s Agreement and approved by SBCTA as required thereunder (“Permitted Use”). The inclusion of an Additional Requirement below that is not in any way applicable to the Contractor’s Permitted Use shall not imply any right, permission or consent to expand the Permitted Use in any way.

1. Contractor agrees to execute and deliver to each railroad operator prior to commencing any work within the rail right-of-way, a railroad Right of Entry Agreement which will include agreement to abide by each railroad operator’s rules and requirements for construction on railway property. Contractor shall secure approval from SBCTA and each railroad operator of the design of any structures and facilities prior to commencing work on their construction or installation.
2. Contractor will acquire and comply with any and all additional permits required by the railroad operator(s), affected public utilities and/or by any government agency having jurisdiction. Any permit fees, inspection fees, flagging fees, or costs associated with the use or maintenance of the Premise by any governmental agency, department, or organization, and any labor expenses for the installation or maintenance of any permitted improvements are the Contractor’s sole responsibility. Fully conformed copies of all permits are to be provided to SBCTA. Additional permits required of the Contractor may include but are not limited to encroachment permits, Storm Water Pollution Prevention Plans, environmental permits, temporary use permits, regulatory permits and third party utility permits. Contractors shall have all original executed agreements and permits on hand while on site and will present them on demand of representative of SBCTA and/or the railroad operator(s). Prior to the commencement of work, the contractor shall submit to SBCTA for review and approval, a description of the work process including a detailed schedule of all work activities to be carried out on SBCTA property.

SCRRA’s Right of Way Engineers Office - (909) 394 - 3418;

BNSF’s Roadmaster Office - (909) 386 - 4061

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)



3. Contractor at its sole cost and expense shall obtain and maintain, in full force and effect, insurance, as required by SBCTA and the railroad operator(s) during the entire construction period. The Contractor shall furnish copies of the insurance certificates to SBCTA and all affected railroad operators.
4. Contractor agrees to comply with instructions of SBCTA and each railroad operator's Employee-In-Charge (EIC) and other representatives in relation to the proper manner of protection of the tracks and the traffic moving thereon, pole lines, signals and other property of SBCTA or its member agencies, tenants or licensees at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operations of railroad operators or of SBCTA's track and other facilities.
5. Contractor will call the appropriate operating railroad to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate schedules, prior notification does not guarantee the availability of protective/flagging services for the proposed date of work. The SCRRA/BNSF flagman/EIC has sole authority to protect safe railroad operations and infrastructure, therefore, only they and their representatives are permitted to perform flagging operations within the railroad right-of-way. At all times the contractor shall follow the flagman/EIC's direction. Contractor's work may not proceed in the absence of a flagman in accordance with applicable rules. At no time shall any contractor be permitted to cross any track or place or maintain any personnel or equipment within the railroad right-of-way without the permission of the railroad flagman.

SCRRA's Flagging Office (213) 305-8424

BNSF's Flagging Office (909) 386-4061

6. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete SCRRA's/BNSF's Third Party Safety Training course, which is required for all work near or within the railroad right-of-way. Evidence of training must be supplied upon request of SBCTA and its representatives. No work may commence on the railroad right-of-way until this training has been completed. The contractor shall make the necessary arrangements for each equipment operator to have constant and direct radio contact with their foreman. The foreman will in turn have constant and direct contact with the SCRRA/BNSF flagman/EIC.
7. Contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines, structures and improvements. Contractor shall not damage, destroy or interfere with any existing encumbrances, licenses and rights (whether public or private), granted upon or relating to the railroad right-of-way. It shall be the Contractor's responsibility to contact Underground Alert and locate all underground facilities prior to the commencement of construction. At the same time, the contractor shall notify the operating railroad for signal and communications cables and conduits mark-outs. Contractor shall obtain permission from the owners of any fiber optic, gas, electrical, water, oil or other lines which may be impacted by work on or any use of the Premises by Contractor.

SCRRA Signal Department (909) 592-1346

BNSF Signal Department (909) 386-4051

**8. In case of signal emergencies or grade crossing problems, the contractor shall call the following emergency numbers.**

**SCRRA Signal Emergency Department (888) 446-9721**

**BNSF Signal Emergency Department (909) 386-4051**

9. Contractor shall prepare and submit traffic control plan for SBCTA/SCRRA approval for projects that will affect vehicular traffic at an existing highway-rail grade crossing.
10. If SBCTA or any of its associated rail entities or railroad operators deem it necessary in the future, to modify, or to build additional, track or tracks or other facilities in connection with the operation of its railroad, at the request of SBCTA, contractor shall modify, at its own expense, any or all of its permitted facilities to conform to the rail facilities.
11. Both Contractor and SBCTA acknowledge that the Premises is Licensed in “AS IS” condition and any track removal, grading, paving and fencing as may be necessary or required to meet Contractor’s needs will be the sole responsibility and at the sole cost of the Contractor and subject to SBCTA’s and any affected operating railroad’s prior review and approval, which may be withheld in SBCTA’s or the affected operating railroad’s sole and absolute discretion. SBCTA or the affected operating railroad may require that any track removal and/or other work within the right-of-way be done by SBCTA or the railroad operator, respectively, but all such work shall remain at the sole cost of the Contractor, who may be required to deposit the estimated cost plus 25% in advance of the work, subject to refund or additional charge at the conclusion of the work. No permanent structures may be constructed on the premises without SBCTA’s prior written approval. Contractor will be responsible for the removal of any or all permitted improvements upon termination of Agreement as directed by SBCTA.
12. Contractor shall pay for any and all utilities for its benefit, security and use.
13. SBCTA makes no warranties as to the suitability of the location for Contractor’s intended use, and Contractor assumes all risks as to environmental compliance, zoning, visibility, or any other factors which may affect Contractor’s intended use of the premises.
14. Boring of carrier or direct burial utilities by directional boring methods is prohibited.
15. Signs are not permitted on or along the perimeter of the Premises unless such signs were requested and approved under Contractor’s original proposal and covered by the required insurance. The contractor shall install permanent signs identifying the location of pipes at the edge of the railroad right-of-way unless within a public grade crossing.
16. Contractor shall not bring upon or use any import soil on the Premises in conjunction with any purposes allowed under this Agreement, until said import soil has been laboratory tested by a certified hazardous waste testing laboratory and the test results have been approved by SBCTA. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as clean soil to the reasonable satisfaction of SBCTA. All soil piles are to be placed on a barrier to prevent intermingling with surface soils.

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)

17. Contractor shall keep the Premises free and clear of weeds, trash, vegetation, unauthorized vehicle parking and graffiti and from occupancy by transients/homeless persons or individuals. Contractor shall be fully responsible for all maintenance and maintenance of adjoining SBCTA property that is required or necessary in connection with Contractor's use of Premises.
18. Prior to commencement of construction, the contractor shall submit to SBCTA / SCRRA a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location and a milestone schedule.
19. For pipelines carrying flammable or hazardous materials, the contractor shall adhere to special conditions stated in the Right of Entry (ROE) Agreement.
20. The jacking and receiving pits shall be constructed outside of the railroad right of way unless shown on the SBCTA approved plans and shall not be located between any track and the automatic signal gate arms. The contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SBCTA/SCRRA inspector has approved the layout will the Contractor be allowed to begin work.
21. Contractor shall construct a temporary fence along the railroad right-of-way, or along the edge of pits closest to the track, on both sides of the pit, extending 50-feet in both directions from the pit, and measuring a minimum of 6-feet high. Fences are not required for work at grade crossings. Contractor shall pave the Premises area with asphalt or concrete, when requested, around the entire perimeter of the property as described in the Agreement in Part I and Exhibit "A". Contractor shall be responsible for total expense of fencing and asphalt.
22. All jack and bore operations within the railroad right-of-way shall be performed continuously on a 24-hour basis until work is completed with a SCRRA/BNSF flagman and SCRRA/BNSF inspector present at all times. Should work begin without the flagman and inspector present, the work will be halted and any casing installed will be abandoned in place, pressure grouted full, and capped to the satisfaction of SBCTA.
23. The contractor shall submit to SBCTA/SCRRA for review, drawings and calculations for any shoring that may affect or be influenced by the railroad tracks. All shoring designs shall comply with the requirements of, and be approved by, SBCTA and/or the affected operating railroad. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
24. Prior to commencement of work, the contractor shall submit to SBCTA/SCRRA for review, load calculations for the proposed jacking casing with applied load as defined by Cooper E-80 with a 50% added impact load. The calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
25. Should ground water or loose or unstable soils conditions be encountered during construction, the contractor shall immediately stop work, notify the railroad flagman, provide necessary structural support to track and other railroad structures, and notify the affected operating railroads and SBCTA. It shall be the responsibility of the contractor to make necessary corrections to the construction process to allow for said conditions.
26. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe". Said casing pipe shall be installed across the entire width of the

railroad right-of-way and shall extend beyond the right of way a minimum of 10-feet. The top of the casing shall have a minimum depth of 6-feet below the top of tie and a minimum depth of 5-feet below ground surface including bottom of ditches and other low points within the railroad right-of-way. All ends of the casing pipe shall be sealed unless otherwise authorized by SBCTA. Casing and carrier pipes shall be constructed to prevent leakage of any substance. When casing pipes are sealed at each end, vent pipes shall be installed. All casing pipes shall be installed with a minimum slope of 1%. Installation of casing pipes by open trenching is prohibited.

27. Abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full for the entire length of the pipe. Should there be no casing pipe; the abandoned pipe shall be pressure grouted full the entire length of the pipe. A SBCTA / SCRRRA inspector must be present during the grouting process.
28. Casing jacking shall adhere to the following requirements:
  - a. This method shall be in accordance with the American Railway Engineering and Maintenance of Way Association recommended practices, Volume 1, Chapter 1, Part 4, "Earth Boring and Jacking Culvert Pipe Through Fills." This operation shall be conducted without hand-mining ahead of the pipe and without the use of any type of boring, augering, or drilling equipment.
  - b. Bracing and backstops and jacks shall be designed and used with sufficient rating so that the jacking can progress without stoppage (except for adding lengths of pipe) until the leading edge of the pipe reaches the receiving pit.
  - c. During jacking, an earth plug 1.5 times the diameter of the casing shall be maintained at all times. Jacking operations shall be continuous on a non-stop, 24-hour per day basis until the jacking operation is completed.
29. Casing boring shall adhere to the following requirements:
  - a. This method consists of pushing the pipe into the fill with a boring auger rotating within the pipe to remove the spoil. When augers or similar devices are used for casing replacement, the front of the pipe shall be provided with mechanical arrangements or devices that will positively prevent the auger from leading the casing so that there will be no unsupported excavation ahead of the casing. The auger and cutting head arrangement shall be removable from within the pipe in the event an obstruction is encountered. The over-cut by the cutting head shall not exceed the outside diameter of the pipe by more than one-half inch. The face of the cutting head shall be arranged to provide reasonable obstruction to the free flow of soft or poor material.
  - b. The use of water or other liquids to facilitate casing placement and /or spoil removal is prohibited.
  - c. Plans and descriptions of the auger stop arrangement to be used shall be submitted to SBCTA / SCRRRA for approval prior to commencement of work.

- d. Any method which employs simultaneous boring and jacking or drilling and jacking for pipes over 8-inches in diameter that does not adhere to the above requirements will not be permitted. For casings 8-inches and smaller in diameter, augering or boring without the same requirements may be considered if approved by SBCTA/SCRRA.
- 30. If an obstruction is encountered during installation of the casing pipe that will stop the forward action of the pipe, and it becomes evident that it is impossible to advance the pipe, operations will cease and the pipe shall be abandoned in-place and pressure grouted full before continuing with work. Location, length, and depth of abandoned casing pipes and carrier pipes shall be shown on the as-built drawings.
- 31. Bored or jacked installations shall have a bored-hole diameter essentially the same as the outside diameter of the casing plus the thickness of the protective coating. If voids should develop or if the bored-hole diameter is greater than the outside diameter of the casing pipe, plus coating, by more than approximately 1-inch, grouting or other methods as approved by SBCTA/SCRRA shall be employed to fill such voids.
- 32. Pressure grouting of the soils before or during jacking or boring may be required to stabilize the soil, control water, prevent loss of material, and prevent settlement or displacement of the ground and/or tracks. Grout shall be cement, chemical or other special injection material selected to accomplish the necessary stabilization. The grouting contractor shall be a specialist in the field with a minimum of 5-years continuous experience of successfully grouting soil. Materials to be used and the method of injection shall be prepared by a California licensed Geotechnical Engineer, or by an experienced and qualified company specializing in this work and submitted for approval by SBCTA/SCRRA prior to the commencement of work. Proof of experience and competency shall accompany the submission.
- 33. When water is known or expected to be encountered, pumps of sufficient capacity to handle the flow shall be maintained at the site and be constantly attended operationally on a 24-hour per day basis until the SBCTA/SCRRA inspector determines their operation can be safely halted. When dewatering, close observation shall be maintained to detect any settlement or displacement of track, ground, or facilities.
- 34. The dewatering system shall lower and maintain the ground water level a minimum of 2-feet below the invert at all times during construction by utilizing well points, vacuum well points, or deep wells to prevent the inflow of water or water and soil into the heading. Ground water observation wells may be required to demonstrate that the dewatering requirements are being complied with.
- 35. The proposed methods of dewatering shall be submitted to SBCTA/SCRRA prior to the commencement of work. The discharge from the dewatering operations in the vicinity of the railroad shall be carefully monitored. Should excessive fine soils particles, pollutants, or hazardous materials or fluids be observed at any time during the dewatering process, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SBCTA/SCRRA inspector.

36. All backfilling shall be at 90% relative dry compaction. For areas within or that affect the railroad right-of-way, the contractor shall submit a compaction report prepared by a California licensed Geotechnical Professional Engineer prior to release of any deposited fund balance.
37. The Contractor shall remove all temporary facilities constructed on the railroad right-of-way, debris, and other items not originally at the site prior to construction and shall notify SBCTA and any affected operating railroad that all construction has been completed. After as-builts have been received, SBCTA inspects the construction site and signs-off the work, SBCTA will release any unused deposit funds it holds. Contractor shall be responsible to arrange refunds due from any affected operating railroads.
38. A minimum of five feet (5') clearance is required above signal and communication lines for overhead crossings.
39. Poles for any use within the railroad right-of-way must be located fifty-feet (50') out from the centerline of the railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole locations adjacent to industry track must provide at least a ten foot (10') clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at the rate of 1.5 inches per degree of curved track.
40. Regardless of the voltage, un-guyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground-line plus ten feet (10'). If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.
41. Poles must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5 kV and higher) must be located off railroad right-of-way.
42. Grade crossings or temporary grade crossing must not be installed under or within five-hundred feet (500') of the end of any railroad bridge, or three hundred feet (300') from the centerline of any culvert or switch area.
43. For overhead crossings, complete spanning of the property is encouraged with supportive structures and appurtenances located outside of the railroad property. For electric supply and communication lines, normally the crossing span shall not exceed one-hundred fifty-feet (150') with adjacent span not exceeding 1.5 times the crossing span length. For heavier type construction, longer spans will be considered.
44. To ensure that overhead crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of twenty-eight feet (28').. Electric lines must have a fluorescent ball marker on low wire over centerline track.
45. The utility owner will label the poles closest to the crossing with the owner's name and telephone number for emergency contact.
46. Overhead flammable and hazardous material lines are prohibited.

- 47. Because inductive interference from certain types of lines have the potential to disrupt the railroad signal and communication systems causing failures with the signals, communication, and at-grade crossing warning devices, . SBCTA may require that an inductive coordination study be performed prior to approval of the permitted use at the expense of the utility owner for proposed electrical lines crossing tracks.
- 48. Joint-use construction is encouraged at locations where more than one utility or type of facility is involved. However, electricity and petroleum, natural gas or other flammable materials shall not be combined.

Contract	SBCTA

Initials

Attachment: 25-1003231 (10787 : License Agreement No. 25-1003231 - Property One, LLC)

## *Minute Action*

AGENDA ITEM: 6

***Date:*** December 12, 2024

***Subject:***

City of Upland Pacific Electric Trail License on Baldwin Park Branch Right-of-Way

***Recommendation:***

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

- A. Adopt Resolution No. 25-057, reaffirming that the Baldwin Park Branch Right-of-Way (ROW) is reserved for future transportation facility use.
- B. Approve Amendment No. 2 to SBCTA License Agreement No. 25-1003216 with the City of Upland for the Pacific Electric Trail located within the Baldwin Park Branch ROW.

***Background:***

San Bernardino County Transportation Authority (SBCTA) Policy 31602 regarding grants of use on SBCTA property, requires that the Executive Director find that the proposed use does not create a park or recreational use of the SBCTA property subjecting the SBCTA property to Section 4(f) as set forth in 49 USC §303, 23 USC §138, and/or 23 CFR §774, or otherwise change the nature of the primary use of SBCTA's property. Section 4(f) refers to the original section in the U.S. Department of Transportation Act of 1966, which provided for consideration of park and recreation lands, wildlife, and waterfowl refuges, and historic sites during transportation project development. Section 4(f) stipulated that federal agencies cannot approve the use of land from a significant publicly owned public park, recreation area, wildlife or waterfowl refuge, or any significant historic site unless, there is no feasible and prudent alternative to the use of land, and the action includes all possible planning to minimize harm to the property resulting from use. Justice Thurgood Marshall, writing for the United States Supreme Court in *Citizens to Preserve Overton Park v. Volpe*, held that Section 4(f) "is a plain and explicit bar to the use of federal funds for construction of highways through parks; only the most unusual situations are exempted."

In response to a request received from the City of Upland, SBCTA staff sent the City of Upland (City) a letter, in May of 2022, sharing the opinion that a proposed trailhead/urban plaza concept appurtenant to a prefabricated restroom facility, located on the Baldwin Park Branch Right-of-Way (ROW) between Second Avenue and Third Avenue in Downtown Upland, would benefit members of the public using the Pacific Electric Trail and the use would fall within the existing license agreement for the construction, maintenance, and use by the public of a bikeway and pedestrian walkway and associated landscaping and appurtenances. Staff's opinion was based on the express understanding that any and all improvements could and would be relocated to the extent they might conflict with the implementation of passenger rail service within a 45-foot rail reservation area, identified in the Pacific Electric Inland Empire Trail Master Plan (November 2000), at such time as a project to implement passenger rail service within the Baldwin Park Branch ROW. At the time SBCTA staff sent the letter, it had no knowledge of any plan by the City to design the trailhead/urban plaza to be a park within the meaning of Section 4(f).

*Entity: San Bernardino County Transportation Authority*



More recently, upon close review of the City's actions to advance the development of the urban plaza, SBCTA concluded that the urban plaza could constitute a park, thus subjecting SBCTA's Baldwin Park Branch ROW to Section 4(f), which could preclude or make difficult implementation of rail service on the Baldwin Park Branch ROW.

Staff sought an outside legal opinion regarding the proposed urban plaza and the interaction with Section 4(f). As a consequence of that consultation, staff is advised that 23 CFR §774.11(h) ("Subsection (h)") provides an exception to 4(f) which can apply here. The exception in Subsection (h) applies when a "property formally reserved for a future transportation facility temporarily functions for park [or] recreation . . . purposes in the interim, . . . regardless of duration." Staff recommends the following actions:

- That SBCTA and the City each independently adopt resolutions affirming that the Baldwin Park Branch ROW is designated for a future transportation use and that other uses, such as the urban plaza, are interim uses only.
- That SBCTA and the City formally amend the bikeway and pedestrian walkway license agreement, known as SBCTA Contract No. 25-1003216, to reference each agency's respective resolutions affirming that the property is for transportation use and explicitly identifying the urban plaza as an interim use that will be discontinued at such time the property is developed for its ultimate transportation use.
- That the amended license specifically addresses the urban plaza as an improvement subject to an exception to Section 4(f), found in 23 CFR §774.11(h), and that the urban plaza is not "significant" as defined in Section 4(f), and that the City agrees and acknowledges that SBCTA is relying on the City's representations in entering into the amended license and that the City will not later dispute these representations.
- That signs are posted within the urban plaza stating that the plaza is located pursuant to a license agreement and that the land is for a future transportation use.

Ultimately, the recommended actions put the public on notice that the Baldwin Park Branch ROW is a transportation corridor and that one should expect there to be a future project implementing the ultimate transportation use of the property; however, consideration should be given to the fact that public opinion in twenty, fifty, or a hundred years from now may not understand the park they have enjoyed for so many years to be an "interim use," as well as the risks that a court might find that 23 CFR §774.11(h) does not apply to the Baldwin Park Branch ROW or the regulations which provide for the exception may change in the future.

As of the publication of this staff report, consideration of the subject license agreement amendment and the City of Upland's companion Resolution No. 6810 is scheduled for December 9, 2024.

***Financial Impact:***

The zero dollar license agreement is included in the adopted Budget for Fiscal Year 2024/2025 in Program 30, Transit, Task 0313 Transit Right-of-Way Management.

***Reviewed By:***

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Enterprise Risk Manager have reviewed this item, the draft resolution, and the draft amendment.

Transit Committee Agenda Item  
December 12, 2024  
Page 3

**Responsible Staff:**  
Ryan Aschenbrenner, Right of Way Manager

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Approved  
Transit Committee  
Date: December 12, 2024  
Witnessed By:

**RESOLUTION NO. 25-057****RESOLUTION OF THE BOARD OF DIRECTIONS OF THE SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY AFFIRMING RESERVATION OF PACIFIC ELECTRIC  
TRAIL FOR FUTURE TRANSPORTATION USE**

**WHEREAS**, SBCTA purchased the railroad right of way known as the Baldwin Park Branch (San Bernardino County) (the “ROW”) from the Southern Pacific Transportation Company in 1991, pursuant to Instruments 1991-0130995 and 1991-0130996, recorded April 19, 1991, in Official Records of the County of San Bernardino, State of California; and

**WHEREAS**, SBCTA’s policy concerning the ROW is that it is intended for rail transit purposes and, although immediate implementation of rail services is not planned, SBCTA does not wish to permit any activity which would either preclude or make difficult the future implementation of rail service on the ROW; and

**WHEREAS**, SBCTA’s policy concerning the ROW encourages compatible uses within the right of way which further public purposes and improve the quality of life; and

**WHEREAS**, SBCTA and the Cities of Claremont, Montclair, Upland, Rancho Cucamonga, Fontana, and Rialto (the “CITIES”) developed the Pacific Electric Inland Empire Trail Master Plan, dated November 2000, as a planning document for trail use within the ROW which maximizes the quality and benefit to communities and minimizes maintenance requirements, while maintaining a 45-foot-wide area reserved for future rail corridor; and

**WHEREAS**, SBCTA entered into use agreements for portions of the ROW with the CITIES which allow the CITIES to locate and maintain trail improvements within the ROW; and

**WHEREAS**, SBCTA has always taken the position that the ROW is reserved for future transportation facilities and any function for park or recreation purposes in the interim are interim uses only, regardless of duration.

**NOW, THEREFORE, BE IT RESOLVED:**

1. SBCTA formally reaffirms that the Baldwin Park Branch right of way purchased from the Southern Pacific Transportation Company, as more particularly described in Instruments 1991-0130995 and 1991-0130996, recorded on April 19, 1991, in Official Records of the County of San Bernardino, is reserved for use as a future transportation facility and any other uses of the property are interim uses only.
2. SBCTA declares that any activities or uses of the aforementioned Baldwin Park Branch right of way for park or recreation purposes are interim activities which, regardless of duration, will not subject the property to Section 4(f), as described in Title 23, Chapter I, Subchapter H, Part 774, Section 774.11, Subsection (h) of the Code of Federal Regulations (23 CFR 774.11(h)).

Adopted by the San Bernardino County Transportation Authority on January 8, 2025, by the following votes:

- AYES:
- NOES:
- ABSTAINED:
- ABSENT:

\_\_\_\_\_  
Ray Marquez, Board President  
San Bernardino County Transportation Authority

ATTEST:

\_\_\_\_\_  
Marleana Roman, Clerk of the Board  
San Bernardino County Transportation Authority

DRAFT

Attachment: Resolution 25-057 (10989 : City of Upland Pacific Electric Trail License on Baldwin Park Branch Right-of-Way)

**General Contract Information**

Contract No: 25-1003216 Amendment No.: 2  
 Contract Class: Payable Department: Transit  
 Vendor No.: 02268/UPLA CI Vendor Name: CITY OF UPLAND  
 Description: Bicycle Path and Pedestrian Walkway License Agreement - Upland Pacific Electric Trail  
 List Any Related Contract Nos.: RBPK001855

Dollar Amount					
Original Contract	\$	-	Original Contingency	\$	-
Prior Amendments	\$	-	Prior Amendments	\$	-
Prior Contingency Released	\$	-	Prior Contingency Released (-)	\$	-
Current Amendment	\$	-	Current Amendment	\$	-
<b>Total/Revised Contract Value</b>	<b>\$</b>	<b>-</b>	<b>Total Contingency Value</b>	<b>\$</b>	<b>-</b>
<b>Total Dollar Authority (Contract Value and Contingency)</b>				<b>\$</b>	<b>-</b>

**Contract Authorization**

Board of Directors \_\_\_\_\_ Date: 1/8/2025 \_\_\_\_\_ Committee \_\_\_\_\_ Item # \_\_\_\_\_

**Contract Management (Internal Purposes Only)**

Zero Dollar Contracts \_\_\_\_\_ Sole Source? N/A \_\_\_\_\_ No Budget Adjustment \_\_\_\_\_  
 Zero Dollar \_\_\_\_\_ Right of Way – Licenses \_\_\_\_\_ N/A \_\_\_\_\_

**Accounts Payable**

Estimated Start Date: 9/1/2003 Expiration Date: 12/31/2039 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	\$	\$
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-

Ryan Aschenbrenner \_\_\_\_\_ Victor Lopez \_\_\_\_\_  
 Project Manager (Print Name) Task Manager (Print Name)

Additional Notes:

Attachment: CSS 25-1003216 (Print) [Revision 1] (10989 : City of Upland Pacific Electric Trail License on Baldwin Park Branch Right-of-Way)

**LICENSE AMENDMENT No. 2**

For SBCTA Contract No. 25-1003216 (File: RBPK001855)

This AMENDMENT is made and entered into as of the date executed by SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, formed and existing pursuant to Public Utility Code §§130800 et seq. ("SBCTA"), and the City of Upland, a city municipality ("LICENSEE").

**RECITALS:**

SBCTA and LICENSEE are parties to a license agreement commencing September 1, 2003, known to SBCTA as Contract No. 25-1003216 (File: RBPK001855), together with the first amendment agreement thereto, dated January 14, 2005, being hereinafter referred to as the "Original License", the basic terms of which are provided in Part I thereunder.

The parties desire to modify the Original License as hereinafter provided, effective the date the last Party signs it. Except as specifically amended by this Amendment, all other provisions of the Original License shall remain in full force and effect.

**AMENDMENT TERMS:**

It is mutually agreed that the Original License is hereby changed, as follows:

- I. DELETE each instance of "SAN BERNARDINO ASSOCATED GOVERNMENTS" and "SANBAG" and REPLACE with "SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY" and "SBCTA," respectively.
- II. DELETE the preamble preceding Part I Basic License Provisions and REPLACE as follows:

**LICENSE AGREEMENT**

WHEREAS, in 1991 SBCTA purchased the railroad right of way known as the Baldwin Park Branch right of way from the Southern Pacific Transportation Company as one of two alternative rail corridors; and

WHEREAS, SBCTA Resolution No. 25-057 affirms that the Baldwin Park Branch right of way is formally reserved for a future transportation facility; and

WHEREAS, all non-transportation facility uses of the Baldwin Park Branch right of way are interim activities, such that they will not subject the property to Section 4(f) as described in 23 CFR 774.11(h); and

WHEREAS, SBCTA encourages compatible uses within the right of way which further public purposes and improve the quality of life; and

WHEREAS, the City of Upland Resolution No. 6810 acknowledges the Baldwin Park Branch right of way is formally reserved for a future transportation facility and that non-transportation facilities are interim uses.

NOW THEREFORE be it agreed that this LICENSE AGREEMENT (“Agreement”) is made and entered into as of September 1, 2003, by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, pursuant to California Public Utility Code §§130800 et seq. (“SBCTA”), and the CITY OF UPLAND (“LICENSEE”), upon and in consideration of the agreements, covenants terms, recitals above, and conditions below:”

III. DELETE Part I, Basic License Provisions, Item 2, and REPLACE as follows:

“2. Use of License Property:

Construction, maintenance, and use by the public of a bikeway and pedestrian walkway and associated landscaping and appurtenances, including a trailhead/urban plaza located between 2<sup>nd</sup> Avenue and 3<sup>rd</sup> Avenue depicted in Exhibit A-3. LICENSEE’s use of the property is an interim activity, subject and subordinate to the formal reservation of the licensed property for a future transportation facility. (§1.1, §10)”

IV. ADD Exhibit A-3, Tom Thomas Magnolia Plaza Plan attached hereto as Attachment 1 and incorporated herein.

[Signatures on following page]

IN WITNESS WHEREOF, this AMENDMENT was duly executed by the LICENSEE and SBCTA on the dates below and is effective as the date executed by SBCTA.

LICENSEE:  
CITY OF UPLAND, a municipal city

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

By: \_\_\_\_\_  
Name: Bill Velto  
Title: Mayor, City of Upland

By: \_\_\_\_\_  
Name: Ray Marquez  
Title: President

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

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

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
Keri Johnson  
City Clerk

By: \_\_\_\_\_  
Julianna K. Tillquist  
General Counsel

Approved as to Form:

By: \_\_\_\_\_  
Stephen Deitsch  
City Attorney

Attachment: 25-1003216\_02 (10989 : City of Upland Pacific Electric Trail License on Baldwin Park Branch Right-of-Way)



# ATTACHMENT 1

For SBCTA Contract No. 25-1003216 Amendment No. 2

## Exhibit A-3 – Tom Thomas Magnolia Plaza Plan

DRAFT

Attachment: 25-1003216\_02 (10989 : City of Upland Pacific Electric Trail License on Baldwin Park Branch Right-of-Way)

# Attachment 1



### FEATURE LEGEND:

- ① Primary Entry to Plaza with Entry Arched Gateway Signage and Stone Veneered Columns.
- ② Safety / Traffic Control Bollards.
- ③ Existing Building Wall.
- ④ Colored Concrete Paving.
- ⑤ Raised Concrete Platform / Stage for Performances with Accessible Ramp and Stairs (Approx. 500 Sq. Ft.).
- ⑥ Performance Plaza for Gathering with Large Shade Tree and ADA Compliant Tree Grate.
- ⑦ Low Wall with Stone Veneering and Concrete Cap at Stage.
- ⑧ Column Pilaster with Steel Post for Twist Light Support and Connection.
- ⑨ Central Performance Plaza with Commemorative "1906" Bronze Inlay and Decorative / Donor Brick Banding.
- ⑩ Existing Transformer and Bollards to Remain.
- ⑪ Existing Power Pole to Remain.
- ⑫ Stabilized Decomposed Granite Paving with Concrete Curb Edge.
- ⑬ Shaded Passive Seating Area with Adirondack Chair Seating.
- ⑭ Landscape Boulders / Precast "Pebbles" for Informal Seating.
- ⑮ Existing Private Yard Access Gate to Remain.
- ⑯ Existing Stone Veneered Block Wall to Remain.
- ⑰ Covered Seating Area with Picnic Table and Trash Receptacle.
- ⑱ Bench Seating Area.
- ⑲ Citrus Lemon Groves in Angular Gravel Mulch Layer. Groves Provides Buffering from Existing Private Residential Building.
- ⑳ Cornhole Gaming Area with Concrete Play Boards.
- ㉑ Drought Tolerant / Native Planting with Landscape Boulders.
- ㉒ Secondary Entry Gateway Columns with Signage into Urban Plaza.
- ㉓ Mortared Cobble Paving with Landscape Boulders Strategically Placed for Vehicular Barrier.
- ㉔ Light Post Standard Fixture to Remain.
- ㉕ Existing Stone Veneered Pilaster to Remain.
- ㉖ Dry Streambed / "Rain Garden" with Cobble Stones, Landscape Boulders and Native Plants for Storm Water Infiltration.
- ㉗ Stone Veneered Seatwall with Concrete Cap.
- ㉘ Existing Utility (Irrigation Backflow) to Remain.
- ㉙ Existing Asphalt Pacific Electric Bike Trail to Remain.
- ㉚ Existing Obelisk Trail Indicator with Directional Plaques to Remain.
- ㉛ Existing Restroom Building with Draining Fountains to Remain.
- ㉜ Cantilevered Overhead Shade Structures (3 Total) with Picnic Table Seating Beneath.
- ㉝ Low Seal / Barrier Wall with Stone Veneer and Concrete Cap.
- ㉞ Recycled Plastic Wood Pedestrian Bridge.
- ㉟ Bike Station with Bike Rack, Repair Station (Pump / Tools / Etc.) and Trail Head Signage Kiosk.
- ㊱ Existing Concrete Curb / Header.
- ㊲ Trash Receptacle.
- ㊳ New / Relocated Light Post Standard on Column Base.
- ㊴ Citrus Wall Mount on Existing Building Wall for Performance Stage Backdrop.
- ㊵ Tactile Paving Indicators at Bike Path to Slow Traffic Down and Alert Bicyclist.
- ㊶ Optional Etched Paving at Entry Illustrating Historic Points of Interest in Street Map Format.

### PLANT PALETTE:

- | TREES                                    |                        |
|--|------------------------|
| EXISTING OAK TO REMAIN                   | Coast Live Oak         |
| Quercus agrifolia                        |                        |
| EXISTING PINE TREES TO REMAIN            |                        |
| LEMONGROVE TREES                         |                        |
| 'Eureka' Improved Meyers Lemon Ponderosa |                        |
| PLAZA SHADE TREES                        | Samuel Sommer Magnolia |
| Magnolia p. 'Samuel Sommer'              |                        |
| EVERGREEN SHADE CANOPY TREE              | Coast Live Oak         |
| Quercus agrifolia                        |                        |
| FLOWERING ACCENT TREE                    | Western Red Bud        |
| Cercis occidentalis                      |                        |

### SHRUBS AND GROUNDCOVER

- | BACKGROUND                   |                        |
|------------------------------|------------------------|
| Achillea unedo 'Compacta'    | Dwarf Strawberry Tree  |
| Baccharis p. 'Twin Peaks'    | Dwarf Bottlebrush      |
| Callistemon v. 'Lilla John'  | Bush Anemone           |
| Caryopteris 'Elizabeth'      | Rockrose               |
| Cistus species               | Mock Orange            |
| Philadelphus lewisii         | Coffeeberry            |
| Rhamnus californica          |                        |
| MIDGROUND                    |                        |
| Lavatera assurgentiflora     | Tree Mallow            |
| Muhlenbergia dubia           | Pine Slightly          |
| Salsola species              | Sage                   |
| Juncus pekinensis 'Elk Blue' | California Grey Rush   |
| FOREGROUND                   |                        |
| Achillea v. 'Moonshine'      | Yarrow                 |
| Carex tenuiculca             | Berkeley Sedge         |
| Dianella 'LA Rev'            | Flax Lily              |
| Elymus c. 'Canyon Prince'    | Canyon Prince Wild Rye |
| Scilla autumnalis            | Seelens                |
| Syrinchium bellum            | Blue-eyed Grass        |
| Zauschneria c. 'Route 66'    | California Fuchsia     |
| Zephyranthes sandeii         | Rain Lily              |

## Exhibit A-3

25-1003216 (RBPk-1855)  
Tom Thomas Magnolia Plaza



**CITY OF UPLAND**  
UPLAND DOWNTOWN URBAN PLAZA - PRELIMINARY CONCEPTUAL SKETCH  
UPLAND, CALIFORNIA



SCALE 1" = 10'  
DATE: MAY 2021  
ADD JOB # 2001



## ***Minute Action***

AGENDA ITEM: 7

***Date:*** December 12, 2024

***Subject:***

2025 Update to the 10-Year Delivery Plan - Valley Transit Programs

***Recommendation:***

Receive report and provide comments on the planned update to the 10-Year Delivery Plan for the San Bernardino Valley Metrolink/Rail Service Program and San Bernardino Valley Express Bus/Bus Rapid Transit Service Program.

***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 Measure I; 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 10-year period and identifies project scopes, schedules, and budgets. Additionally, it provides a basis for the development of the annual budget for capital projects. The Delivery Plan is a living document that is updated every two years to capture revisions to the projects and assumptions in the plan, actual Measure I revenue, and relevant Board actions. Staff anticipates approval of the 2025 Update to the 10-Year Delivery Plan (2025 Update) by the Board in February 2025. It should be noted that project cost information presented herein is preliminary and subject to further refinement.

**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 2024/2025 is estimated to be about \$16.5 million. The 2021 Update to the Delivery Plan (2021 Update) included estimated Metrolink/Rail Service Program project and operations costs over the 10-year period of \$726 million with \$236 million from Measure I, \$7 million from local funds, \$17 million anticipated from fare revenues from operations, and \$370 million from State and Federal funds, including \$135 million from competitive grant awards. There was an unfunded need of \$97 million for the Gold Line to Montclair and San Bernardino Line Double Track projects.

Since the adoption of the 2021 Update, construction has been completed on the Redlands Passenger Rail Project and passenger service began in October 2022; full funding has been identified for a reduced scope of the San Bernardino Line Double Track project; and the SBCTA Board has committed \$80 million for the Gold Line to Montclair project pending the final cost in San Bernardino County, which will be known when bids are received for the design-build contract, currently scheduled for early 2025.

*Entity: San Bernardino County Transportation Authority*

Table 1 below provides an overview of the projects that have been identified for development in the 2025 Update with the current cost estimate and unfunded need:

**Table 1. Proposed Valley Metrolink/Rail Service Projects for 2025 Update (millions)**

<b>Project</b>	<b>Cost</b>	<b>Unfunded</b>	<b>Phase</b>
Arrow Operations (10-year cost)	\$184.890	\$0	On-going
San Bernardino Line Double Track*	\$89.750	\$0	Design
Gold Line to Montclair**	\$80.000	TBD	Procurement
Gold Line to Montclair Operations** (4-year cost)	\$12.666	\$0	Procurement

\* Cost reflects reduced scope

\*\* Schedule assumes funding is available for ultimate construction cost

### **Valley Express Bus/Bus Rapid Transit 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 2024/2025 is estimated to be about \$10 million. The 2021 Update included estimated Express Bus/Bus Rapid Transit Service Program project and operations costs for the West Valley Connector Project over the 10-year period of \$328 million with \$69 million from Measure I, \$16 million from local and private funds, \$8 million anticipated from fare revenues from operations, and \$235 million from State and Federal funds, including \$193 million from competitive grant awards.

Since the adoption of the 2021 Update, design was completed on the West Valley Connector Project, and construction is underway. SBCTA has been successful in securing additional grants including an additional \$19 million from the Transit and Intercity Rail Capital Program and \$8 million from Affordable Housing and Sustainable Communities Program. The project is fully funded with a current estimated capital project cost of \$320 million.

Additionally, as the development of the Ontario International Airport (ONT) Connector Project, an innovative four-mile sub-surface bi-directional tunnel system that will serve as an on-demand direct connection between ONT and the Cucamonga Metrolink Station, has evolved from the original vision of zero emission passenger cars operating in a tunnel to that of autonomous electric shuttles, it has been determined that this project would be considered an eligible project for the use of Valley Express Bus/Bus Rapid Transit Service Program funds. While there is no recommendation to allocate these funds to this project at this time, the project has been added to this section of the 2025 Update for tracking purposes. Since the 2021 Update, the cost of the project has increased from \$60 million to \$483 million, which will require a significant infusion of grant funding as SBCTA does not currently have the financial resources to meet that shortfall.

It should also be noted that per Board direction in December 2024, SBCTA staff is conducting an evaluation of the application of Transit Signal Priority and other strategies to enhance local bus service, in conjunction with the development of smart corridors in the Valley, with an investment plan to be brought back to the Board by spring 2025. Additionally, staff is continuing to collaborate with local jurisdictions to identify the priority of routes for further development of the Bus Rapid Transit network as identified in the Omnitrans Systemwide Plan (updated in 2019), to be incorporated into the Long Range Multimodal Transportation Plan currently under San Bernardino County Transportation Authority

development. Any investments of Valley Express Bus/Bus Rapid Transit Service Program funds for these purposes would be brought to the Board for approval or incorporated in future Delivery Plan updates.

Table 2 below provides an overview of the projects that have been identified for development in the 2025 Update with the current cost estimate and unfunded need:

**Table 2. Proposed Valley Express Bus/Bus Rapid Transit Service Projects (millions)**

<b>Project</b>	<b>Cost</b>	<b>Unfunded</b>	<b>Phase</b>
West Valley Connector	\$320.335	\$0	Construction
West Valley Connector Operations (9-year cost)	\$80.288	\$0	Construction
ONT Connector*	\$695.991	\$482.678	Environmental
ONT Connector Operations* (4-year cost)	\$28.206	\$0	Environmental

\* Schedule dependent on funding availability for construction

### **Other Projects of Interest**

This 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 2021 Update included four transit projects:

Diesel Multiple Unit (DMU) rail vehicle conversion to Zero Emission Multiple Unit (ZEMU) project, better known as the DMU to ZEMU. This innovative and transformative transit project is nearing completion with the ZEMU vehicle delivered to San Bernardino County for final testing in 2024. While there have been significant cost increases since the 2021 Update, SBCTA has been successful in securing additional Transit and Intercity Rail Capital Program funds to cover the increases.

ZEMU conversion of three Arrow Service DMUs – When the State initially awarded a \$30 million Transit and Intercity Rail Capital Program grant to develop the ZEMU technology, the State requested SBCTA convert the three DMUs procured for the Arrow Service. The 2021 Update included a project to convert all three DMUs to meet the goal of operating the entire Arrow Service corridor as a zero or low-emission revenue operation. However, conversion of the vehicle will not be possible and purchase of new vehicles will be required, which significantly increases the cost of this initiative. The Board allocated \$9.2 million of Zero Emission Transit Capital Program funds to this project, which when combined with the \$7.5 million of existing funds will allow for the purchase of one vehicle, leaving an estimated unfunded need of \$26.5 million.

Zero Emission Bus Replacement Initiative – This 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 Replacement Initiative procurements and costs will be expended by the transit operators in San Bernardino County, SBCTA will be required to nominate the projects to Southern California Association of Governments for funding; therefore, it is important to continue to include this as a project in the 2025 Update. By Board Policy No. 40001, Federal Congestion Mitigation and Air Quality (CMAQ) funds shall be considered as a significant source to fund transit capital projects and start-up operating expenses in accordance with CMAQ criteria. Recommendation of CMAQ funding for transit capital projects is to be made by SBCTA in a manner consistent with the Delivery Plan and plans developed by the San Bernardino County Transportation Authority

transit operators and approved by the Board. The total costs for vehicles and infrastructure associated with this mandate included in the 10-year period for the 2021 Update was estimated at \$269 million, more than doubling the \$131 million that would traditionally be reserved for bus purchases and replacements, and CMAQ funds were 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. Staff has worked with each operator on their current replacement plan and funding needs for the 2025 Update.

Table 3 below provides an overview of the projects that have been identified for development in the 2025 Update with the current cost estimate and unfunded need:

**Table 3. Proposed Other Projects of Interest (millions)**

Project	Cost	Unfunded	Phase
DMU to ZEMU	\$62.323	\$0	Construction/ Operations
DMU to ZEMU Operating (10-year cost)	\$32.785	\$0	Operations
Purchase of three Arrow ZEMUs*	\$42.5	\$26.5	Not Started
Zero Emission Bus Replacement Initiative	\$239.153	\$211.255	On-going

\* Schedule dependent on funding availability for construction

### Revenue Forecast

The 2021 Update assumed that revenue would be increasing 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. Despite the pandemic and the initial concern about potential impacts to program revenue, the 2025 Update starts with a higher base value than projected in the 2021 Update, at an estimated \$249 million versus \$222 million in the 2021 Update. Preliminary revenue forecasts (which are based on actuals to date, HdL Companies (SBCTA's sales tax consultant) five-year forecasts, and then inflation and real growth percentages consistent with the average growth rate projected through 2040 in a study conducted by Beacon Economics in May 2024) also indicate increased cumulative collections, increasing the \$6.9 billion total revenue in the 2021 Update to \$7.6 billion projected in the 2025 Update. A comparison of the forecasts in the 2021 Update to forecasts in the 2025 Update is presented in Tables 4 below and 5 on the following page. Projects included in the Other Projects of Interest do not use Measure I Program funds, so there is no program revenue comparison.

**Table 4. Valley Metrolink/Rail Service Program Revenue Comparison  
2021 Update vs 2025 Update (millions)**

Period	2021 Update	2025 Update	Change
FY2010/2011 – 2023/2024	\$151.791	\$162.196	+\$10.405
FY2024/2025 – 2033/2034	\$169.753	\$188.726	+\$18.973
FY2034/2035 – 2039/2040	\$130.218	\$146.212	+\$15.994
TOTAL	\$451.762	\$497.134	+\$45.372
Uncommitted Balance through 2040*	\$9.700	\$27.495	+\$17.792

\*Reflects increased security costs on Arrow service

**Table 5. Valley Express Bus/Bus Rapid Transit Service Program Revenue Comparison  
2021 Update vs 2025 Update (millions)**

<b>Period</b>	<b>2021 Update</b>	<b>2025 Update</b>	<b>Change</b>
FY2010/2011 – 2023/2024	\$58.013	\$64.516	+\$6.503
FY2024/2025 – 2033/2034	\$106.096	\$117.954	+\$11.858
FY2034/2035 – 2039/2040	\$81.386	\$91.382	+\$9.996
<b>TOTAL</b>	<b>\$245.495</b>	<b>\$273.852</b>	<b>+\$28.357</b>
Uncommitted Balance through 2040*	\$125.000	\$99.162	-\$25.838

\*Reflects increased operating cost estimate for West Valley Connector

### **Bonding Analysis**

The bonding analysis for the 2025 Update is being developed with the following criteria:

- Minimum agency-wide debt coverage ratio: 2.0
- Individual programs must have a positive cash flow over the term of the bond.
- Bond interest rate: 5%
- Latest bond issuance: 2025

Unlike Delivery Plans prior to the 2021 Update, there is no longer a need to bond for the Valley Metrolink/Rail Service Program or the Valley Express Bus/Bus Rapid Transit Service Program. This is because of a combination of higher Measure I revenues actually received versus estimates, strategically expending other funding sources prior to Measure I for the Redlands Passenger Rail Project, and significant competitive funding awarded to the West Valley Connector Project.

SBCTA is proactive to identify appropriate funding sources for long-term operations and maintenance when considering the funding of capital projects and the sustainability of fund sources. The bonding model is developed to take advantage of CMAQ funds for a portion of initial operating costs on new transit service, as new service expenses are eligible for CMAQ funding for up to the first five years. Low Carbon Transit Operations Program (LCTOP) funds are also used where available for fare subsidies while establishing ridership on new service, although LCTOP funding is not a significant source of funding. After CMAQ and LCTOP assumptions are applied, and fare revenue is estimated, funding for operating costs for new service are expected to be funded as such: Gold Line, ONT Connector, and DMU to ZEMU with Local Transportation Funds; Arrow Service, stemming from the Redlands Passenger Rail Project, with Metrolink/Rail Service Program funds and Federal funds where possible for preventative maintenance costs; and West Valley Connector with Valley Express Bus/Bus Rapid Transit Service Program funds.

### **Financial Impact:**

This item has no financial impact on the adopted Budget for Fiscal Year 2024/2025.

### **Reviewed By:**

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

### **Responsible Staff:**

Andrea Zureick, Director of Fund Administration

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Approved  
Transit Committee  
Date: December 12, 2024  
Witnessed By:



# Additional Information

## TRANSIT COMMITTEE ATTENDANCE RECORD – 2024

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<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	
<b>Frank Navarro</b> City of Colton		X	X	X		X		X	X	X	X	
<b>Aquanetta Warren</b> City of Fontana		X	X	X	X			X		X	X	
<b>Larry McCallon</b> City of Highland		X	X	X	X	X		X	X	X	X	
<b>John Dutrey</b> City of Montclair		X	X	X	X				X	X	X	
<b>Alan Wapner</b> City of Ontario				X	X			X	X	X		
<b>L. Dennis Michael</b> City of Rancho Cucamonga				X				X	X	X		
<b>Sylvia Robles</b> City of Grand Terrace												
<b>Bobby Duncan</b> City of Yucaipa					X			X				
<b>Rick Denison</b> Town of Yucca Valley		X	X	X	X	X		X	X	X	X	
<b>Dawn Rowe</b> Board of Supervisors		X		X		X				X		
<b>Joe Baca, Jr.</b> Board of Supervisors		X	X	X	X	X		X	X	X	X	

Communication: Attendance (Additional Information)

X = Member attended meeting      Empty box = Member did not attend meeting  
 Crossed out box = Not a member at the time      Shaded box=The Transit Committee did not meet

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

**Acronym List**

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
S RTP	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



## 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