

CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT (“CMA”) is made and entered into this _____ day of _____, 2018, (the “Commencement Date”) by and between the SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY (“SDAE”), a California public agency, and SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“LICENSEE”) (collectively the “Parties”).

RECITALS

WHEREAS, SDAE is the owner of certain railroad right-of-way assets (the “ROW”) located in the County of San Diego, California. The ROW is in inactive use by heavy rail operators; and

WHEREAS, LICENSEE proposes to construct the Sweetwater Bike Path and Pedestrian Promenade Project (the “Project”). The LICENSEE desires to construct a new private at-grade crossing, to serve the Project across the SDAE tracks in substantial compliance with schematic plans attached hereto as Exhibit “A” (collectively, the “Improvements”); and

WHEREAS, the Parties agree that LICENSEE intends to construct and maintain the Project and LICENSEE will reimburse SDAE for all SDAE staff expenses, consultant expenses, and other direct expenses accrued in reviewing, approving, and constructing the Project and in preparing this CMA and any other agreements relating to the Project, including but not limited to a Right of Entry Permit that allows LICENSEE’s contractor to enter into the ROW to construct the Improvements;

NOW, THEREFORE, IT IS AGREED:

1. **License.** SDAE agrees to grant to LICENSEE and hereby grants to LICENSEE a license upon certain portions of the ROW in the County of San Diego, described in Exhibit “B” solely for the purpose of constructing, maintaining and operating the Improvements, in strict accordance with the provisions of this CMA. This license is granted subject to the prior, continuing, and future rights and obligations of SDAE (including its licensees, successors and assigns) to use the ROW for railroad purposes and other consistent uses, including, but not limited to, existing and future transportation activities, utilities, communication systems, pipeline facilities and appurtenances in, upon, over, across and along the ROW, and there is expressly reserved unto SDAE, and its respective successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain, operate, and use any and all existing and future facilities and appurtenances related to the above-referenced uses.

2. **Use.** If LICENSEE shall use the ROW for any purpose other than as stated in Section 1 above, or fail to act in accordance with the provisions of this CMA, or act in a manner which unreasonably interferes with the use of the ROW by SDAE (including its licensees, successors and assigns), then SDAE (or its successors and assigns) shall provide LICENSEE with a timely written notice of any claim of default, meet and confer with LICENSEE regarding the claim of default, and allow LICENSEE a reasonable opportunity to cure the default so long

as LICENSEE proceeds expeditiously to cure the default. So long as LICENSEE has delivered notice of the existence, identity and notice address of a lender to the LICENSEE or the Project (a “Lender”), SDAE agrees to deliver a like notice of default to such Lender contemporaneously with the notice given to LICENSEE and allow the said Lender to cure such default as if Lender were LICENSEE. If LICENSEE fails to cure the default in a timely manner, SDAE may exercise its remedies at law or equity against LICENSEE. It is expressly understood and agreed by SDAE that LICENSEE shall use the ROW without interference or damage to the catenary wires, pipelines, electric transmission lines, telephone lines, telegraph lines, communications systems and other facilities of like character, existing or constructed during the term of this CMA over, under, along and across the ROW. LICENSEE hereby agrees that it will indemnify and save harmless SDAE from and against any and all liability for any such interference or damage by LICENSEE or its contractors or agents as more expressly set forth below in paragraph 8.

3. **Conditions and Limitations.**

(a) **Conditions and Limitations on Use.**

- (i) LICENSEE shall comply with all applicable terms, conditions, directives and requirements of SDAE’s policies regarding rights-of-way and other SDAE ordinances, rules and regulations. LICENSEE shall comply with all applicable laws and regulations of the federal, state, county, local governments and all administrative agencies thereof which may have jurisdiction over LICENSEE’s construction, maintenance and operation of the Project.
- (ii) No use, construction, or maintenance by LICENSEE or on LICENSEE’s behalf on the Project will unreasonably interfere with any type of railroad operations on the ROW.
- (iii) LICENSEE shall not leave any personal property or equipment on the ROW unattended at any time unless approved by SDAE.

(b) **Limitations on License.** The license and permission to be granted by SDAE to LICENSEE are without warranty of title of any kind, expressed or implied, and are subject to and subordinate to all prior licenses, leases, easements, restrictions, reservations, conditions, covenants, encumbrances, right-of-ways, liens and claims of title which may in any manner encumber the ROW.

4. **Maintenance and Upgrade of Improvements.** LICENSEE shall maintain at its expense the Improvements constructed pursuant to the terms of this CMA and which are over, under, along and across the ROW except for the area of Improvements described in this paragraph. SDAE shall be responsible for the maintenance of the Improvements consisting of at grade roadway crossings between the rails and for two feet outside the rails. LICENSEE shall be responsible for the maintenance of the Improvements consisting of the entire below grade utility crossings between the rails and for two feet outside the rails and the roadway excepting that which is maintained by SDAE described above. SDAE shall also be responsible for maintaining the trackage, crossing signaling, signage, communications, and crossing equipment as required.

SDAE costs for maintaining the portion of the Improvements as described herein shall be at the sole expense of the LICENSEE.

LICENSEE expressly acknowledges that SDAE shall have the sole and exclusive discretion to order LICENSEE to upgrade the at-grade crossing elements of the Improvements, at LICENSEE's complete expense, to SDAE and industry/regulatory current standards in place at that time, such that any form of railroad or transportation operations could be conducted by SDAE. Subject to LICENSEE'S timely receipt of any necessary ROE Permits, LICENSEE shall commence work on rebuilding the crossings within one hundred and twenty (120) days of receiving a written notice from SDAE and shall complete the rebuilding within ninety (90) days from the date it commences work. The upgrades necessary to rebuild the crossings shall include, but are not limited to rails, ties, track way, crossing panels, railway signaling equipment, and ancillary improvements. Failure to rebuild the crossings within ninety (90) days will result in the imposition of liquidated damages at the rate of one hundred dollars (\$100) for each day the crossings are not rebuilt within the aforementioned time schedule.

5. **Construction Right of Entry Permit.** The exercise of any and all rights provided by this CMA is subject to the requirement that LICENSEE and/or its contractors and agents first obtain a Right of Entry Permit ("ROE Permit") from SDAE prior to entry onto the ROW for the construction, upgrade, reconstruction, or maintenance of the Improvements. The ROE Permit requires that LICENSEE and/or its contractors and agents procure and maintain in force at all times during the construction contract, the insurance described in this CMA. SDAE shall timely process any applications required to obtain the ROE Permit, and shall not unreasonably deny or delay the issuance of such ROE Permit. LICENSEE and/or its contractors and agents will comply in all material respects with all SDAE policies, rules and regulations as stated in the ROE Permit, and the instructions of SDAE's representatives in relation to the proper manner of protecting the railroad tracks and traffic moving thereon, catenary lines, pull lines, signals and other property of SDAE or their respective tenants or licensees, during the period of construction of the Improvements and shall perform the work at such times and in such a manner so as not to endanger or interfere with the safe and timely operation of the railroad track and other facilities. LICENSEE shall be responsible for all costs related to plan review, processing, and inspecting the construction of Improvements incurred by SDAE including staff, consultant, and other direct costs.

6. **Maintenance ROE Permit.** Notwithstanding the foregoing, SDAE hereby grants to LICENSEE a Durable Maintenance ROE Permit to allow LICENSEE to enter onto the ROW for routine maintenance of the Improvements, including, but not limited to, activities such as trash removal, landscape maintenance if any, minor repairs, and similar maintenance activities. The Durable Maintenance ROE Permit shall remain effective throughout the life of this CMA and be subject to all of the terms of this CMA, including but not limited to the indemnity and insurance provisions. Entry onto the ROW by individuals or entities other than LICENSEE (such as contractors, agents, and non-LICENSEE employees) shall require a separate ROE Permit as specified in paragraph 5, notwithstanding the traverse of the at-grade crossings as a private right-of-way.

7. **Notice.** The exercise of any and all rights provided to LICENSEE by this CMA is also subject to the notice requirements set forth in the ROE Permits for the construction and maintenance of the Improvements, prior to entry onto the ROW for any purpose.

8. **Indemnification.**

(a) LICENSEE

LICENSEE shall indemnify, defend and hold harmless the San Diego Metropolitan Transit System (“MTS”), its Board, officers, directors, agents, and employees, Rail America, the San Diego and Imperial Valley Railroad (“SD&IV”), SD&AE, San Diego Trolley, Inc. (“SDTI”), San Diego Transit Corporation (“SDTC”), any other entity performing maintenance work on the ROW, any other entity providing passenger rail operation services for SDAE or SD&AE on the ROW, and any other entity providing dispatch services to SDAE for the ROW, their officers, directors, agents and employees (“SDAE Indemnitees”), from any and all liability, loss, expense (including reasonable attorneys’ fees and other defense costs), demands, suits, liens, damages, costs, claims, including, but not limited to, third party claims, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the SDAE Indemnitees arising out of or connected with this CMA, the maintenance of any device or appurtenance implemented under this CMA, and any negligent acts or omissions on the part of LICENSEE, its Council, officers, agents, contractors, employees, or invitees, which shall include members of the public using the Project; provided, however, that LICENSEE shall not be required to indemnify, defend, or hold any of the SDAE Indemnitees harmless to the extent of the negligence or willful misconduct of any SDAE Indemnitee or the default of any SDAE Indemnitee of this CMA. The requirements as to the types and limits of the insurance coverage to be maintained by LICENSEE as required by paragraph 9, and any approval of the insurance by SDAE, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by LICENSEE pursuant to this CMA, including but limited to, the provisions concerning indemnification.

(b) SDAE

SDAE agrees to indemnify, defend and hold harmless LICENSEE and its officers, agents, volunteers, contractors, and employees (“LICENSEE Indemnitees”), from any and all liability, loss, expense (including reasonable attorneys’ fees and other defense costs), demands, suits, liens, damages, costs, claims, including but not limited to, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the LICENSEE Indemnitees arising out of or connected with any negligent acts or omissions on the part of SDAE, its Board, officers, agents, contractors, or employees, under or in connection with any work, authority or jurisdiction delegated to SDAE under this CMA or any breach of this CMA by SDAE; provided, however, that SDAE shall not be required to indemnify, defend, or hold any of the LICENSEE Indemnitees harmless to the extent of the negligence or willful misconduct of any LICENSEE Indemnitee or the default of any LICENSEE Indemnitee of this CMA. SDAE shall have no obligation to indemnify any invitee of LICENSEE.

(c) CONCURRENT NEGLIGENCE

In the event of an act or acts of concurrent negligence which results in the filing of a demand, claim, or complaint against the Parties, each party shall defend and represent itself such that each party shall bear its own costs and attorney’s fees.

9. **Insurance.** LICENSEE, at its sole cost and expense, shall procure and maintain the following insurance:

(a) General Liability

- (i) LICENSEE shall maintain \$15 million of general liability coverage (which can be in a combination of primary and umbrella coverage). Upon request by SDAE, LICENSEE shall provide satisfactory evidence that it meets the insurance requirements of this CMA.
- (ii) The coverage described above shall cover bodily injury (including death) and property damage liability, owned and non-owned equipment, and blanket contractual liability.
- (iii) The policies shall not have endorsement limitations relating to operations on or near railroad property.
- (iv) All such policies shall name in the endorsement San Diego Metropolitan Transit System (“MTS”), San Diego Trolley, Inc. (“SDTI”), San Diego and Arizona Eastern Railway Company, San Diego and Imperial Valley Railroad (“SDIV”), San Diego Transit Corporation (“SDTC”), and their directors, officers, agents, and employees as additional insureds as their interests may appear.

(b) Automobile Liability

- (i) LICENSEE shall maintain \$2 million of automobile liability coverage (which can be in a combination of primary and umbrella coverage). Upon request by SDAE, LICENSEE shall provide satisfactory evidence that it meets the insurance requirements of this CMA.
- (ii) The insurance shall indemnify against loss from liability imposed by law for damages on account of bodily injury, property damage, and personal injury. The automobile coverage shall cover all owned, non-owned and hired automobiles.

(c) **Workers Compensation.** LICENSEE shall cover or insure under the applicable laws relating to workers’ compensation insurance, all of their employees working on or about the Right-of-Way, all in accordance with the “Workers’ Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any Acts amendatory thereof. LICENSEE shall provide employers’ liability insurance in the amount of not less than two million dollars per accident for bodily injury and disease. By its signature hereunder, LICENSEE certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such

provisions in connection with any work performed on the Site. Any persons providing services with or on behalf of LICENSEE shall be covered by workers' compensation (or qualified self-insurance.) LICENSEE waives any rights of subrogation against MTS, SD&AE, or any of their subsidiaries, and the policy form must permit and accept such waiver.

(d) **Railroad Protective Insurance.** LICENSEE shall remove any exclusions relating to performance of operations within the vicinity of any railroad, Project, trestle, track, roadbed, tunnel, underpass, or crossing from its General Liability Coverage or purchase a separate Railroad Protective Liability policy.

(e) For any claims arising out of or connected with this CMA regarding the maintenance of any device or appurtenance implemented under this CMA, and any negligent acts or omissions on the part of LICENSEE, its officers, agents, contractors, or employees, or LICENSEE's operations or activities, LICENSEE's insurance shall be primary insurance to MTS, SDTI, SDTC, SD&AE, SD&IV, and their directors, officers, employees, contractors, agents or authorized volunteers. Any insurance, self-insurance or other coverage maintained by MTS, SDTI, SDTC, SD&AE, SD&IV, and their directors, officers, employees, agents or authorized volunteers shall not contribute to it. All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to the MTS Contracts Specialist of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

(f) LICENSEE (A) shall require that every general contractor (which, for the avoidance of doubt, shall mean any party which has a direct contractual relationship with LICENSEE) and (B) shall use commercially reasonable efforts to require every subcontractor retained by any such general contractor to perform the construction or maintenance of the Improvements, who enters upon, uses, or performs any work upon the ROW by or on behalf of LICENSEE shall provide to SDAE evidence of insurance as follows:

(i) Commercial General Liability. At all times during construction of the Improvements, Commercial General Liability Insurance for bodily injury and property damage in an occurrence form and with insurance companies acceptable to SDAE with minimum policy limits of \$5 million (per occurrence) for any general contractor and \$2 million (per occurrence), \$4 million (aggregate) for any subcontractors. Such coverages may be effected by a combination of primary and umbrella coverage. Commercial General Liability Insurance must include coverage for the following:

- Premises/Operations Liability
- Aggregate Limits per Project
- Products/Completed Operations Liability
- No Explosion, Collapse, and Underground (XCU) exclusion
- Contractual Liability, with respect to this agreement
- Personal Injury Liability
- Broad Form Property Damage

- **Independent Contractors**

All such policies shall name in the endorsement San Diego Metropolitan Transit System, San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company, San Diego and Imperial Valley Railroad, San Diego Transit Corporation, and their directors, officers, agents, and employees as additional insureds as their interests may appear. All general liability coverages required under this Section 9(f) are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required). After construction of the Improvements is completed, such limits can be decreased to \$2 million (per occurrence) / \$4 million (aggregate) for any general contractor and \$1 million (per occurrence) / \$2 million (aggregate) for any subcontractor. Such coverages may be effected by a combination of primary and umbrella coverage.

- (ii) Automobile Liability. At all times during this contract, Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles at a minimum policy limit of \$2 million dollars (per occurrence) for any general contractor and \$1 million (per occurrence) for any subcontractor. Such coverages may be effected by a combination of primary and umbrella coverage. All such policies shall name in the endorsement San Diego Metropolitan Transit System, San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company, San Diego and Imperial Valley Railroad, San Diego Transit Corporation and their directors, officers, agents, and employees as additional insureds as their interests may appear.
- (iii) Workers' Compensation/Employer Liability. At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements at a minimum policy limit of \$1 million dollars. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, SDTC, , and LICENSEE and the policy form must permit and accept such waiver.
- (iv) Railroad Protective Insurance. Remove any exclusions relating to performance of operations within the vicinity of any railroad, Project, trestle, track, roadbed, tunnel, underpass, or crossing from its General Liability Coverage, or purchase a separate Railroad Protective policy in the amount of \$3,000,000 in the name of SDAE, and all other named parties in section f (i) above.
- (v) Notice. All policies and coverages shall contain a provision for

30 days written notice by the Insurer(s) to SDAE of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

10. **Co-operation in Defense of Claims.** The Parties agree to co-operate in good faith to seek a prompt disposition, by way of dismissal or summary judgment, of any claim or litigation alleging liability of any party to this CMA, based on the construction, maintenance or operation of the Project.

11. **Default; Termination.**

(a) In the event that LICENSEE fails to perform any obligation under this CMA, LICENSEE shall pay all costs and expenses incurred by SDAE in obtaining performance of such obligations, including costs of suit and reasonable attorney's fees. If LICENSEE uses the ROW for any purpose not expressly authorized by this CMA or fails to act strictly in accordance with the terms and conditions of this CMA, and if such default is not corrected within 30 days' notice from SDAE to LICENSEE, SDAE may prevent LICENSEE from entering the ROW until the default is corrected; provided, however, SDAE will not prevent LICENSEE from entering the ROW so long as LICENSEE has commenced curative action within such 30 day period and thereafter continues diligently to work to cure such default. Notwithstanding the foregoing, if SDAE determines that any default by LICENSEE does or has the potential to cause a danger to the ROW, light rail vehicle operations, or railroad operations, and LICENSEE fails or refuses to timely correct the default, SDAE may perform such work as is reasonable and necessary to remedy the danger, and LICENSEE shall reimburse SDAE for all costs and damages so incurred for correcting the default. If LICENSEE fails or refuses to correct any default after such notice, subject to the provisions above, or refuses to timely reimburse SDAE for the work required to remedy the danger, SDAE may, upon thirty (30) days additional notice and in addition to any other remedy provided by law, terminate this CMA and prevent LICENSEE from entering the ROW thereafter.

(b) In the event SDAE fails to perform any of its obligations under this CMA, LICENSEE shall give SDAE written notice of the nature of the default and the steps required to remedy the default. If the default is not cured within thirty (30) days of the delivery of LICENSEE's notice, LICENSEE may proceed to enforce its rights and protect its interests under this CMA. SDAE shall pay all costs and expenses incurred by LICENSEE in obtaining performance of the obligations, and protecting LICENSEE's interests hereunder, including costs of suit and reasonable attorney's fees. In no case will any enforcement action modify the ownership or operation of the ROW.

(c) This CMA may be terminated at any time by either SDAE or LICENSEE upon one hundred twenty (120) days notice in writing to be served upon the other party, stating therein the date that such termination shall take place, and that upon the termination of this CMA in this or any other manner herein provided, LICENSEE, upon demand of SDAE, shall abandon the ROW and the use of the Improvements, remove any Improvements constructed, installed or maintained on the ROW for the Project, and restore the ROW and any other improvements or facilities within said ROW, whether owned by SDAE or others, to their original condition in which they were prior to the installation of the Improvements. In case LICENSEE fails to restore SDAE's ROW and improvements or facilities as aforementioned within ten (10) days

after the effective date of termination (or other time period approved by SDAE), SDAE may proceed with such work at the expense of LICENSEE. 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 ROW of SDAE restored as above provided.

(d) Termination of this CMA shall not release any party from any liability or obligation hereunder resulting from an event which occurred before termination.

12. **Notices.** All notices to be given under this CMA shall be in writing and either:

(a) Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered upon actual receipt or one (1) business day after deposit with this courier, whichever occurs first; or

(b) Sent by telecopy or similar means, if a copy of the notice is also sent by United States Mail, in which case notice shall be deemed delivered on transmittal by facsimile provided that a transmission report is generated reflecting the accurate transmission of the notice, as follows:

Metropolitan Transit System
 1255 Imperial Avenue, Suite 1000
 San Diego, CA 92101
 Attn: Manager of Real Estate Assets
 Tel: 619-595-4903 Fax: 619-744-5986

San Diego Unified Port District

These addresses may be changed by written notice to the other Parties provided that no notice of a change of address shall be effective until actual receipt by the Parties of the notice. Copies of notices, if any are so indicated, are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

13. **Waiver.** Any party's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision.

14. **Laws, Venue, and Attorneys' Fees.** This CMA shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this CMA, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any claim, legal action or proceeding between the parties arising under or concerning this CMA, the prevailing party(ies) shall be entitled to reasonable attorneys' fees and expenses as part of the judgment resulting there from.

15. **Dispute Resolution.**

(a) The Parties agree that they shall first meet, through their senior staff

representatives, to attempt to informally resolve any dispute that arises under this CMA.

(b) If the informal efforts are unsuccessful, then the Parties agree to participate in mediation. Within five (5) business days of the request of any party, the Parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the Parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within five (5) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be shared equally by the Parties.

(c) Any dispute not resolved through the mediation required by paragraph (b) of this Section, may proceed to litigation unless the Parties agree in writing to submit the dispute to binding arbitration.

16. Memorandum of Agreement; Estoppel Certificates; Assignment. Upon written request of either Party, or any proposed successor or assign of either Party, the other Party shall (i) cooperate in executing and causing to be recorded a memorandum of or recordable short form of this CMA and (ii) execute and deliver an estoppel letter, within 15 days of such request therefor, such estoppel letter addressed to requesting Party and/or to any party requesting the same, certifying under penalty of perjury as of the date of delivery thereof, whether this CMA has been amended or modified in any manner (and if so, identifying such amendment or modification), whether this CMA is then in full force and effect, and whether there then exist any breaches or defaults by either Party under this CMA, or any facts or circumstance which with the giving of notice or lapse of an applicable cure period, or both, would constitute a breach or default under this CMA. Such estoppel letter shall also include certifications by the requested party as to such other factual matters as the requesting Party or the person requesting same shall reasonably request. LICENSEE shall have the right, without obtaining the consent of SDAE, to freely assign, convey, encumber and otherwise transfer any or all of LICENSEE'S right, title or interest in or to this CMA, any ROE Permits issued in connection herewith, and/or the Improvements from time to time, including, but not limited to: (a) in connection with a sale or transfer, of any interest in the Project, (b) in connection with any finance, refinance, sale lease-back transaction or other funding transaction involving the Project, or (c) to any party controlling, under common control with, or controlled by, LICENSEE or that otherwise has an economic interest in the Project.

IN WITNESS WHEREOF, the parties hereto have caused this CMA to be executed by and through their respective officers duly authorized on the date written below their signatures.

SAN DIEGO AND ARIZONA EASTERN
RAILWAY COMPANY

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Paul C. Jablonski, President

By: _____

APPROVED AS TO FORM:

By: _____
Of Counsel

List of Exhibits

A. Project Schematic Plans