

AGENDA

Board of Directors Meeting

**July 3, 2024
10:00 a.m.**

LOCATION

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

TELECONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

**Big Bear Lake Civic Center
Training Room
39707 Big Bear Boulevard
Big Bear Lake, CA 92315**

Board of Directors

President

Ray Marquez, Council Member
City of Chino Hills

Vice-President

Rick Denison, Council Member
Town of Yucca Valley

Daniel Ramos, Mayor Pro Tem
City of Adelanto

Art Bishop, Mayor Pro Tem
Town of Apple Valley

Carmen Hernandez, Council Member
City of Barstow

Rick Herrick, Council Member
City of Big Bear Lake

Eunice Ulloa, Mayor
City of Chino

Frank Navarro, Mayor
City of Colton

Acquanetta Warren, Mayor
City of Fontana

Bill Hussey, Mayor
City of Grand Terrace

Rebekah Swanson, Mayor Pro Tem
City of Hesperia

Larry McCallon, Mayor Pro Tem
City of Highland

Ronald Dailey, Mayor Pro Tem
City of Loma Linda

John Dutrey, Mayor
City of Montclair

Janet Jernigan, Mayor
City of Needles

Alan Wapner, Council Member
City of Ontario

L. Dennis Michael, Mayor
City of Rancho Cucamonga

Paul Barich, Mayor Pro Tem
City of Redlands

Deborah Robertson, Mayor
City of Rialto

Helen Tran, Mayor
City of San Bernardino

Joel Klink, Mayor Pro Tem
City of Twentynine Palms

Rudy Zuniga, Council Member
City of Upland

Debra Jones, Council Member
City of Victorville

Bobby Duncan, Council Member
City of Yucaipa

Paul Cook, Supervisor
County of San Bernardino

Jesse Armendarez, Supervisor
County of San Bernardino

Dawn Rowe, Supervisor
County of San Bernardino

Curt Hagman, Supervisor
County of San Bernardino

Joe Baca, Jr., Supervisor
County of San Bernardino

Catalino Pining, Caltrans
Ex-Officio Member

Ray Wolfe, *Executive Director*

Julianna Tillquist, *General Counsel*

Minute Action

AGENDA ITEM: 36

Date: July 3, 2024

Subject:

Agreements with DesertXpress Enterprises, LLC (d/b/a Brightline West): Local Rail Service Agreement No. 24-1003091; Amendment No. 4 to the Disposition and Development Agreement No. 23-1002894; and Conditions, Covenants, Restrictions and Easements related to No. 23-1002894

Recommendation:

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

- A. Receive and file a status update from DesertXpress Enterprises, LLC (d/b/a Brightline West).
- B. Approve the Local Rail Service Agreement No. 24-1003091 with Brightline West, for the provision of local rail service between Hesperia and Rancho Cucamonga as part of the consideration received by SBCTA for Lease No. 22-1002723.
- C. Approve Amendment No. 4 to Disposition and Development Agreement No. 23-1002894 (DDA) which replaces, and updates exhibits containing descriptions of the property interests being sold to Brightline West and property interests retained and reserved by the City of Rancho Cucamonga and SBCTA and the Inspector of Record process.
- D. Approve Covenants, Conditions, Restrictions, and Easements further describing the rights and obligations Brightline West, the City of Rancho Cucamonga, and SBCTA will have with respect to the property after the transaction is complete, and additional easement rights which are to be recorded as an encumbrance upon the properties with the close of escrow of the DDA.

Background:

The Brightline West (Brightline) High Desert Stations project has received \$25 million in RAISE Grant funding in response to a successful application submitted by Brightline, in partnership with the San Bernardino County Transportation Authority (SBCTA), for grant funding to apply towards the development and construction of two stations located in the high desert. Brightline, with the Nevada Department of Transportation, applied for and received a \$3 billion Federal Grant for the construction of the Brightline System. On June 5, 2024, the City of Rancho Cucamonga (City)'s Mayor and City Council approved Amendment No. 4 to the Disposition and Development Agreement (DDA) and the Conditions, Covenants, Restrictions, and Easements (CC&Rs) for the property subject to the DDA.

Recommendation B:

The Local Rail Service Agreement (LRSA) No. 24-1003091 is a companion agreement to SBCTA Lease 22-1002723, for the lease of a portion of the San Gabriel Subdivision to provide Brightline with the right-of-way necessary to get from the I-15 Caltrans right-of-way to the Rancho Cucamonga Station and is key consideration for SBCTA's grant of the lease interest to Brightline. A default under the LRSA constitutes a cross default under the lease agreement. The purpose of the LRSA is to provide a transportation alternative for High Desert commuters between the High Desert and Rancho Cucamonga in the form of a local rail service, which will provide 150 seats in the morning, distributed across three departure times, from Hesperia to Rancho Cucamonga, and 150 return seats, distributed across three departure times in the afternoon, from Rancho Cucamonga to Hesperia. In the event of an unplanned disruption to the Entity: *San Bernardino County Transportation Authority*

Board of Directors Agenda Item

July 3, 2024

Page 2

local rail service, Brightline will provide ticket holding local rail service patrons impacted by the disruption a seat on the next train, bus service to their destination station, or a refund.

Recommendation C:

Amendment No. 4 to the DDA updates various legal descriptions as well as making appurtenant updates to the conveyance documents.

- The legal descriptions for the Station property being conveyed to DesertXpress Enterprises, LLC (d/b/a Brightline West) (Brightline) are updated to reflect design modifications to the surface level parking, which the City and SBCTA will retain (Surface Property), as well as refinements to the station access taken from Milliken Avenue. The City/SBCTA-retained Surface Property has been reconfigured to be longer in the north-south direction and now provides for 225 parking spaces. The longer north-south distance that Metrolink patrons would otherwise have had to travel before getting to the Metrolink platforms is mitigated by access easements addressed in the CC&Rs.
- The site plan included in DDA Exhibit C is updated to reflect the modifications to the Surface Property parking and the reconfiguration of station access and circulation.
- The Grant Deed is updated to include descriptions for driveway and utility easements retained by the City/SBCTA for the benefit of the Surface Property, add a reservation of an access easement to the north Metrolink Platforms via the tunnel under the San Gabriel Subdivision right-of-way, and to include the finalized terms and conditions for the tunnel easement reserved by SBCTA for the ONT Connector project. The legal descriptions of the station property attached to the Grant Deed have been conformed to match the updates to the legal descriptions provided in the DDA.
- The Aerial Easement is updated to include a description of the areas/improvements supporting Brightline's viaduct platforms, which occupy the ground space, such as support columns, utilities, access stairs, and crash attenuation barriers to protect the Brightline facilities.
- Updates to the 8th Street Easement granted by the City to reflect changes requested by the title company, however, there is no change to the boundary shape of the 8th Street Easement.
- Updates to the Inspector of Record process to address the Americans with Disabilities Act (ADA) inspections of improvements constructed or reconstructed on the Cucamonga Station site as part of Brightline's modification of the site to ensure connectivity between the Brightline and Metrolink stations.

Recommendation D:

The CC&Rs were deferred to a later date when the DDA was originally negotiated. The CC&Rs provide:

- That Brightline and the City/SBCTA are each responsible for providing security for their respective properties. The CC&Rs allow each party to provide security in the same way they already provide security for the existing station in the case of the City/SBCTA, or the highest level of security provided at any other train station that Brightline owns or operates in the State of California;

Board of Directors Agenda Item

July 3, 2024

Page 3

- That Brightline and the City/SBCTA are each responsible for maintenance of their respective properties, except to the extent that a party causes damage which they are responsible for repairing. The City/SBCTA's maintenance responsibilities are primarily superficial and limited to keeping the surfaces clean, including graffiti removal. Brightline is responsible for the structure in addition to keeping the property free of trash debris and standing water;
- Access easements through Brightline's Station Property in favor of the City/SBCTA to/from the northwest corner of the Surface Property and to/from an existing communication building located at the northwest corner of the existing Cucamonga Station site;
- Easements in favor of Brightline through the City/SBCTA Surface Property for the purposes of access for maintenance, public safety, and for the structural support columns that must pass through the Surface Property;
- Easement in favor of Brightline for access to and from a Brightline baggage elevator and the Transit Station;
- Temporary construction easements on the Transit Center during the initial construction of the Brightline Station Property to allow Brightline to construct/reconstruct stairs and ramps on the existing Cucamonga Station site to ensure connectivity between the Metrolink Station and Brightline's Station, and continued access to the Metrolink platform on the north side of the tracks as well as for the construction of Brightline's station;
- Compensation to the City/SBCTA for the size and duration of temporary construction easements Brightline require, which Brightline will communicate in advance to coordinate communication to Metrolink patrons;
- Each party will carry insurance: the City/SBCTA will ensure the Surface Property in the same manner and level as is typical for City/SBCTA real property, and Brightline is required to carry insurance commensurate with the construction and operation of a railroad facility;
- Brightline will have a right of first negotiation for the Surface Property (City/SBCTA's ground floor parking lot) if the City/SBCTA wish to sell it; and
- Brightline will construct a traffic signal for the Azusa Court/Milliken Avenue intersection.

The terms and conditions within the agreements presented in this item represent the culmination of months of negotiations between Brightline, the City, and SBCTA to ensure that SBCTA's best interests are served in conjunction with the interests of Brightline and the City. Staff recommends that the Board approve the various agreements as presented, allowing Brightline to secure the necessary property rights from SBCTA and the City to operate the Brightline High Speed Rail system on property presently within the possession and/or control of SBCTA and/or the City. Approval of these agreements is necessary for a successful close of escrow which is a critical step in allowing Brightline to move forward with their improvements at the Cucamonga Station.

Financial Impact:

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

San Bernardino County Transportation Authority

Board of Directors Agenda Item
July 3, 2024
Page 4

Reviewed By:

This item has not received prior policy committee or technical advisory committee review. This item is presented directly to the Board without prior committee review to ensure timely approval by all parties which allows Brightline to move forward with overall project development. SBCTA General Counsel, Procurement Manager and Enterprise Risk Manager have reviewed this item and the draft agreements.

Responsible Staff:

Ryan Aschenbrenner, Right of Way Manager

Approved
Board of Directors
Date: July 3, 2024

Witnessed By:

Local Rail Service Agreement

This Local Rail Service Agreement (this "Agreement") is made this 3rd day of July, 2024 (the "Effective Date") by and between DesertXpress Enterprises, LLC, a Nevada limited liability company, and the San Bernardino County Transportation Authority, a county transportation authority.

RECITALS

A. The San Bernardino County Transportation Authority ("SBCTA") is a county transportation authority pursuant to California Public Utilities Code §§ 130800 et. seq. and is responsible for cooperative regional planning and for furthering an efficient multi-modal transportation system throughout San Bernardino County, California. SBCTA supports freeway construction projects, regional and local road improvements, train and bus transportation, railroad crossings, call boxes, ridesharing, congestion management efforts, and long-term planning studies. SBCTA's goal is to encourage responsible growth, a sustainable environment, and a high quality of life for everyone who lives, works, and travels in and through San Bernardino County.

B. SBCTA also provides financial support to the Southern California Regional Rail Authority ("SCRRA" or "Metrolink"), which provides commuter rail services in its five member agencies' counties. Metrolink currently serves nine stations in San Bernardino County: Downtown Redlands, Downtown San Bernardino, San Bernardino Depot, Rialto, Fontana, Rancho Cucamonga, Upland, Montclair, and Ontario-East. Metrolink also operates the 9-mile Arrow hybrid rail line in San Bernardino County, under contract with SBCTA.

C. DesertXpress Enterprises, LLC, which does business as Brightline West ("BLW"), is a privately owned rail carrier that proposes to design, construct, operate, and maintain a private interstate high-speed passenger railroad between Southern California and Las Vegas, Nevada. This dedicated passenger-only electric high-speed rail line will be designed and constructed for operation and maintenance within an approximately 218-mile corridor that will generally follow the Interstate 15 freeway and right-of-way ("I-15") and is proposed to be built primarily in the median of I-15 in California and Nevada (the "BLW System"). BLW proposes to construct the BLW System through two projects – one to be constructed between Las Vegas, Nevada and Apple Valley, California (the "LV/AV Line") and the other to be constructed between Apple Valley and Rancho Cucamonga, California (the "AV/RC Line"). A map that generally depicts the BLW System is attached hereto as Exhibit A. As shown on Exhibit A, the AV/RC Line will travel approximately 1.4 miles within a portion of SBCTA's San Gabriel Subdivision right of way to a new station proposed to be constructed adjacent to the existing Metrolink station in Rancho Cucamonga. (For clarity, the Metrolink station is referred to herein as the "Metrolink

Rancho Cucamonga Station” and the separate high-speed rail station to be constructed by BLW is referred to herein as the “BLW Rancho Cucamonga Station”).)

D. The parties believe that the BLW System will deliver significant public benefits. Studies conducted by BLW predict that the BLW System will support approximately 40,000 construction jobs and approximately 1,000 permanent jobs; improve safety; eliminate more than 400,000 tons of CO₂ from the air per year; and support \$8 billion in economic output while improving quality of life and providing a convenient additional transportation option for the region. Locating a BLW station adjacent to the Metrolink Rancho Cucamonga Station will provide rail connectivity to points throughout Southern California and complement other regional transportation planning, including transportation alternatives for residents of the High Desert region.

E. BLW, the California State Transportation Agency, the California Department of Transportation (“Caltrans”), and the California High-Speed Rail Authority entered a “Memorandum of Understanding Related to the DesertXpress Enterprises High-Speed Rail Cajon Pass Project” dated April 16, 2021 (the “State MOU”). The parties to the State MOU expressed their shared belief that “construction of the [AV/RC Line] will serve the important purposes of increasing passenger rail transportation within Southern California, including interconnectivity between systems, and promoting the region’s mobility, safety, and air quality objectives.” BLW and Caltrans subsequently entered a “Right of Way Use Agreement Related to the DesertXpress High-Speed Rail System – Apple Valley to Rancho Cucamonga Project” dated December 15, 2023 for use of a portion of the width of the I-15 right of way for construction, operation, and maintenance of the AV/RC Line.

F. In 2011, the Surface Transportation Board (“STB”) approved construction and operation of the LV/AV Line. (DesertXpress Enterprises, LLC and DesertXpress HSR Corp. – Construction and Operation Exemption – In Victorville, Cal. and Las Vegas, Nev., STB Docket No. 35544 (STB served Oct. 25, 2011).) The STB had previously held that the project was within its jurisdiction and that the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501, preempts state permitting for the project. (DesertXpress Enterprises, LLC Petition for Declaratory Order, STB Docket No. 34914 (June 25, 2007).) On April 13, 2021, BLW filed a similar Petition for Exemption with the STB for construction of the AV/RC Line. The STB issued its determination granting the petition on November 15, 2023 (DesertXpress Enterprises, LLC – Authority to Construct and Operate – Petition for Exemption from 49 U.S.C. 10901 – Passenger Rail Line Between the Victor Valley, Cal. and Rancho Cucamonga, Cal., STB Docket No. FD 36488 (STB served Nov. 16, 2023).)

G. The Federal Railroad Administration (“FRA”) is the lead agency for environmental review of the BLW System. The FRA has completed its NEPA and related environmental review of the AV/RC Line in the form of a Finding of No Significant Impact in compliance

with NEPA, the Counsel of Environmental Quality's implementing regulations, FRA's Environmental Impact and Related Procedures, and other applicable laws, including Section 106 of the National Historic Preservation Act and Section 4(f) of the U.S Department of Transportation Act of 1966.

H. SBCTA and BLW entered into a memorandum of understanding dated July 31, 2020, related to advancing the AV/RC Line. SBCTA and BLW subsequently entered a "San Gabriel Subdivision Lease Agreement Related to the Brightline West High-Speed Rail Project" dated March 2, 2022, as amended, (the "ROW Agreement") that authorizes BLW's use of a portion of the width of SBCTA's San Gabriel Subdivision right of way. The ROW Agreement is one of several definitive agreements that BLW is entering to secure the right of way and other property rights that it requires to construct and operate the AV/RC Line.

I. I-15 is a primary vehicle transportation corridor for travel within San Bernardino County and for connecting the county with other parts of the state and the nation. Annual average daily traffic is expected to increase significantly during the coming decades as the population and economic standing of the High Desert region continue to grow. To help address these challenges, SBCTA is developing the "I-15 Corridor Project" to improve mobility and freeway capacity. When completed, the I-15 Corridor Project will add one to two vehicular express lanes in each direction of travel on the I-15 freeway from approximately the San Bernardino/Riverside County line north and eventually into the Victor Valley. Construction of the I-15 Corridor Contract 1 Project is scheduled to begin in Spring 2024 and will address the most congested portion of the I-15 corridor by adding two express lanes in each direction, spanning approximately six miles from the San Bernardino/Riverside County line north to Foothill Boulevard. Portions of the I-15 Corridor Project and the AV/RC Line will overlap.

J. To meet the goals both of the I-15 Corridor Project and the BLW System, and as key consideration, in part, for the ROW Agreement, BLW has agreed to provide local passenger rail service ("Local Rail Service") during certain hours of the day between the BLW Rancho Cucamonga Station and a BLW in-line passenger station to be constructed in or near Hesperia, California (the "Hesperia Station") to provide a transportation alternative for residents of the High Desert to travel conveniently by train to and from the Los Angeles Basin.

K. The ROW Agreement preliminarily described certain business terms related to the Local Rail Service. As contemplated in the ROW Agreement, the parties now wish to enter into this Agreement to memorialize the final terms pursuant to which BLW will provide the Local Rail Service.

AGREEMENT

Now, therefore, the parties agree as follows:

SECTION 1. RECITALS

The recitals set forth above are hereby incorporated into the terms of this Agreement.

SECTION 2. DEFINITIONS

These defined terms have the meanings indicated, as follows:

- 2.1. "AV/RC Line" has the meaning set forth in Recital C.
- 2.2. "BLW" is DesertXpress Enterprises, LLC d/b/a Brightline West, as set forth in Recital C.
- 2.3. "BLW High-Speed Passenger Rail Service" means the private high-speed passenger service provided (or to be provided) by BLW on the BLW System.
- 2.4. "BLW Rancho Cucamonga Station" has the meaning set forth in Recital C.
- 2.5. "BLW System" has the meaning set forth in Recital C.
- 2.6. "Business Day" means weekdays, but not weekends and not holidays (that is, Monday through Friday of each week, inclusive, but excluding Saturdays, Sundays, and holidays that are observed by SBCTA).
- 2.7. "Caltrans" is the California Department of Transportation, as set forth in Recital E.
- 2.8. "Claims" has the meaning set forth in Section 5.
- 2.9. "Effective Date" has the meaning set forth in the preamble.
- 2.10. "FRA" refers to the Federal Railroad Administration.
- 2.11. "Hesperia Station" has the meaning set forth in Recital J.
- 2.12. "High Desert" refers to the economic region of San Bernardino County located in the Victor Valley, which includes, but is not limited to, the cities/towns of Adelanto, Apple Valley, Barstow, Hesperia, and Victorville.
- 2.13. "I-15" has the meaning set forth in Recital C.
- 2.14. "I-15 Corridor Project" has the meaning set forth in Recital I.
- 2.15. "LV/AV Line" has the meaning set forth in Recital C.
- 2.16. "Local Rail Service" has the meaning set forth in Recital J.

- 2.17. "Metrolink Rancho Cucamonga Station" has the meaning set forth in Recital C.
- 2.18. "Operating Hours" has the meaning set forth in Section 3.1.4.
- 2.19. "ROW Agreement" has the meaning set forth in Recital H.
- 2.20. "SBCTA" is the San Bernardino County Transportation Authority, as set forth in Recital A.
- 2.21. "SCRRA" is the Southern California Regional Rail Authority, a Joint Powers Authority (JPA) comprised of five member agencies (SBCTA, the Los Angeles County Metropolitan Transportation Authority, Orange County Transportation Authority, Riverside County Transportation Commission, and Ventura County Transportation Commission) that was created pursuant to California Public Utilities Code Section 130255 and California Government Code Section 6500 et seq., to plan, design, construct, maintain, administer, and operate the "Metrolink" regional train system on railroad rights-of-way owned by the member agencies and owned by others, in Los Angeles, Orange, Riverside, Ventura, and San Bernardino counties, and available through other shared use and joint operation agreements.
- 2.22. "State MOU" has the meaning set forth in Recital E.
- 2.23. "STB" means the federal Surface Transportation Board.

SECTION 3. LOCAL RAIL SERVICE

BLW will provide Local Rail Service between the BLW Rancho Cucamonga Station and the Hesperia Station on the following terms:

3.1. Stations.

3.1.1. Local Rail Service will operate between the BLW Rancho Cucamonga Station and the Hesperia Station.

3.1.2. Except as expressly set forth in that certain Conditions, Covenants, Restrictions, and Easements recorded with respect to the BLW Rancho Cucamonga Station, BLW will design, construct, operate, and maintain the BLW Rancho Cucamonga Station and Hesperia Station in good working order, including payment of all utilities, at no cost to SBCTA. SBCTA assumes no responsibility for, and makes no representations or warranties, express or implied, regarding the design, condition, workmanship, or adequacy of the BLW Rancho Cucamonga Station and Hesperia Station and associated rail infrastructure.

3.1.3. BLW will provide on-site security at the BLW Rancho Cucamonga Station and Hesperia Station during Operating Hours.

3.1.4. BLW will have the BLW Rancho Cucamonga Station and Hesperia Station open to the public from at least 30 minutes before the first morning Local Rail Service train arrival or departure until 30 minutes after the last morning Local Rail Service train arrival or departure, and from at least 30 minutes before the first afternoon Local Rail Service train arrival or departure until 30 minutes after the last afternoon Local Rail Service train arrival or departure, respectively, at each station, each weekday (the “Operating Hours”).

3.2. Operations.

3.2.1. BLW will provide Local Rail Service using BLW’s trains and railroad infrastructure at no cost to SBCTA.

3.2.2. BLW will provide a total of one hundred fifty (150) seats each way in the prevailing direction of the typical commute on trains departing daily from the Hesperia Station and BLW Rancho Cucamonga Station on non-holiday weekdays (Monday through Friday) from 5:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 7:00 p.m. These seats will be allocated among three (3) BLW trains in each direction with further details to be approved by the parties when BLW’s operating plan is further developed, but in no case later than six (6) months prior to the start of Local Rail Service.

3.2.3. After commencement of operations for the BLW System, BLW will provide SBCTA with at least thirty (30) days prior notice of any planned changes to the schedule of trains that operate in Local Rail Service (with the understanding that any schedule changes will be consistent with Section 3.2.2 above.) BLW will provide reasonable notice under the circumstances to SBCTA and on BLW’s ticketing platforms of any BLW planned service outages that will affect the Local Rail Service schedule.

3.2.4. In the event that a train scheduled as part of the Local Rail Service experiences an unplanned disruption, any Local Rail Service passengers whose tickets have been processed for admission at either the BLW Rancho Cucamonga Station or Hesperia Station will be provided with one of the following, at each passenger’s election: (i) a seat on the next train with seats available (even if outside the normal Local Rail Service scheduled times); (ii) bus service to their destination station; or (iii) a refund. Any patrons who have purchased a ticket in advance for a return trip between these stations for a return train that has experienced an unplanned disruption will be given the same three options, regardless of whether the ticket has been processed at the station for beginning the return trip.

3.2.5. BLW will coordinate the Local Rail Service at the Hesperia Station and the BLW Rancho Cucamonga Station with bus transit services to the extent provided by third parties. BLW will also coordinate the Local Rail Service at the BLW Rancho Cucamonga Station with Metrolink service at the Metrolink Rancho Cucamonga Station to facilitate transfers between the two services.

3.2.6. BLW will meet with SBCTA quarterly and provide Local Rail Service ridership quarterly reports to SBCTA.

3.2.7. BLW will set fare rates for passengers using the Local Rail Service based upon and comparable to commuter rail service fare policies in use in the United States. BLW will have the option to set one-way, round trip, or multi-ticket purchasing options for Local Rail Service that are consistent with the commuter rail service fares as set forth in this paragraph; *provided*, however, that one of the options available for ticketing will always be single one-way fare tickets based on the fare structure described in the first sentence of this Section.

3.2.8. BLW will be responsible for ticketing for the Local Rail Service. BLW will sell tickets for the Local Rail Service at both the Hesperia Station and the BLW Rancho Cucamonga Station and on any electronic platforms on which tickets for BLW's other high-speed rail services on the BLW System are sold. SBCTA acknowledges that no bag check services will be available at the Hesperia Station.

3.2.9. Passengers using the Local Rail Service will have access to parking, ticketing, and platform areas in both stations. Depending on safety and security considerations, Local Rail Service guests may also have access to other common areas. Passengers using the Local Rail Service will not have access to BLW Rancho Cucamonga Station areas provided for the exclusive use of passengers with premium service tickets.

3.2.10. SBCTA acknowledges that passengers using the Local Rail Service will be required to comply with the same BLW security processes and BLW passenger policies as required of other BLW passengers, both of which may change from time to time.

3.2.11. BLW will provide information about the Local Rail Service on its website and at the BLW Rancho Cucamonga Station and Hesperia Station. Any advertising specifically for Local Rail Service separate from general advertising for the BLW System will be done at no cost to BLW.

3.2.12. At no cost to SBCTA, BLW will provide substantially similar directional signage for the Local Rail Service at the Hesperia Station as it does for BLW's Victor Valley station in Apple Valley.

SECTION 4. ADDITIONAL UNDERSTANDINGS

4.1. SBCTA acknowledges that BLW will provide Local Rail Service as a part of its privately owned and operated high-speed rail service that is independent of any transportation services provided by SBCTA or SCRRA. Nothing in this agreement gives SBCTA or SCRRA any ownership interest in, access to, or control over operation of any BLW trains, facilities, or services, inclusive of any facilities or operations related to the Local Rail Service; *provided*, however, that nothing in this Section limits SBCTA's legal or equitable remedies related to the enforceability of any provision of this Agreement.

4.2. All fares collected for the Local Rail Service and associated parking owned and operated by BLW will be for the benefit of BLW.

4.3. BLW has separately entered an agreement with Caltrans for use of a portion of the I-15 corridor for construction, operation, and maintenance of the AV/RC Line. SBCTA acknowledges that the portion of the Caltrans right of way that BLW will use for the AV/RC Line may include width that otherwise would have been used for express lanes planned as part of the I-15 Corridor Project. BLW acknowledges that SBCTA (i) intends to begin construction of two express lanes between Foothill Boulevard and the southerly limits of the AV/RC Line in 2024 and (ii) reserves the right to extend one express lane between Foothill Boulevard and US-395 within the I-15 corridor. BLW will coordinate with SBCTA and Caltrans regarding the extension of these express lanes.

4.4. The parties will work together in good faith, including outreach to third parties, to facilitate the location and construction of the Hesperia Station with the goal of starting Local Rail Service concurrently with the start of BLW's revenue high-speed service on the AV/RC Line. As a precondition to starting Local Rail Service concurrently with the start of BLW's revenue high-speed service on the AV/RC Line, the Hesperia Station must be complete. To achieve this, BLW will start construction on the Hesperia Station concurrent with the start of the construction segment of the BLW System in which the Hesperia Station will be located. The parties acknowledge that for BLW to start construction on the Hesperia Station (i) BLW must have full access to Outpost Road, and (ii) the agreement for the RAISE grant related to development of the Hesperia Station must be executed. To the extent that either of these conditions is not met in time for construction of the Hesperia Station to begin concurrently with the related construction described above, BLW will have a day-for-day extension of time to start Local Rail Service after the start of BLW's revenue high-speed service on the AV/RC Line. Regardless of when the two conditions above are met, BLW will maintain its good-faith efforts to begin Local Rail Service concurrent with the start of BLW's revenue high-speed service on the AV/RC Line.

4.5. The parties enter this Agreement with the mutual understanding that the Local Rail Service is for the specific purpose of providing a transportation alternative for residents of the High Desert to travel conveniently by train to and from the Los Angeles Basin. Any unforeseen impact to BLW's high-speed rail service between Rancho Cucamonga and Las Vegas that is not specifically measurable except by the opportunity cost of the seats used between the Hesperia Station and the BLW Rancho Cucamonga station will be identified and discussed in good faith to achieve the intended outcome of this Local Rail Service by both parties.

4.6. SBCTA acknowledges that BLW's operations are under the jurisdiction of the federal Surface Transportation Board ("STB"). Should a conflict arise between jurisdiction exercised by the STB and BLW's provision of Local Rail Service as described herein, the parties will work together in good faith to reconcile the conflict.

SECTION 5. INDEMNIFICATION

Each party is responsible for its own acts and omissions and shall indemnify, defend, and hold harmless the other party and its boards, officers, agents, employees, assigns, and successors in interest from and against all fines, claims, lawsuits, judgments, awards, liabilities, losses, damages, and expenses (including reasonable attorney fees and costs) (collectively "Claims") to the extent such Claims arise from the indemnifying party's performance of its obligations under this Agreement.

SECTION 6.

Upon the commencement of Local Rail Service, BLW will procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars (\$323,000,000), or such other limit of liability as Congress may establish from time to time applicable to BLW's passenger rail operations. Such policy or policies must provide coverage to SBCTA and its board, officers, agents, employees, assigns, and successors in interest as additional insureds. All excess or umbrella policies must "follow form" and afford no less coverage than the primary policy and must include one reinstatement limit for the period of the policy term.

SECTION 7. LENDERS RIGHTS

Because the Local Rail Service provided under this Agreement is a requirement of the ROW Agreement, Leasehold Lenders (as defined in the ROW Agreement) will have the same rights in relation to this Agreement as are provided for them in the ROW Agreement, including those rights in Section 21 (Restrictions on Transfers and Prohibition of Encumbrances) of the ROW Agreement.

SECTION 8. FORCE MAJEURE

Notwithstanding anything to the contrary contained in this Agreement, should any fire or other casualty, act of nature, earthquake, flood, hurricane, lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, or other occurrence beyond a party's control prevent performance of this Agreement in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing party, performance of this Agreement by such party will be suspended or excused to the extent and for a period commensurate with such occurrence.

SECTION 9. DISPUTE RESOLUTION

9.1. Good Faith. The parties agree to work in good faith to resolve any dispute that may arise under this Agreement through the dispute resolution process described in Section 9.2 below.

9.2. Dispute Resolution Process.

9.2.1. If the parties are unable to resolve a dispute within ten (10) Business Days of written notice of a dispute, the parties will, at the written request of any of the parties, require that the matter be reviewed by a senior level executive of each party (in the case of BLW by a Senior Vice President or higher and in the case of SBCTA by the Transit & Rail Director or higher.)

9.2.2. If the senior executives are unable to resolve the matter within ten (10) Business Days following the time provided in Section 9.2.1, then the parties will, at the written request of either party, attempt to mediate the dispute for a period of thirty (30) days, using a third-party mediator who is neutral and independent of the parties, such mediator to be jointly selected by the parties within seven (7) Business Days after the conclusion of the ten (10) Business Day period of discussions between senior level executives described in this in Section 9.2.2. If the parties cannot agree on the mediator within such time period, then within five (5) days thereafter, each party will select an independent neutral, and those two neutrals will, within five (5) Business Days, select the mediator. Mediation will be conducted in San Bernardino County, California at a time and location selected by the mediator.

9.2.3. No information exchanged in mediation will be discoverable or admissible in any litigation involving the parties, consistent with California Evidence Code sections 1119 et seq. and 1121. Neither party will be bound by the result of the mediation process described in this Section, but participation in such mediation process will be a condition for either of the parties to file a lawsuit or to initiate a formal administrative proceeding related to this Agreement. All statutes of limitation related to claims or defenses that can

be asserted by either party in relation to the dispute will be tolled during the formal dispute-resolution process described in this Section 9.

9.3. Each party will bear its own costs, including attorneys' fees, incurred in relation to the dispute-resolution process described in this Section 9. In the event the parties use a mediator, they will share equally in the costs of the mediator's services.

SECTION 10. TERM

This Agreement is co-terminus with the ROW Agreement. In the event the ROW Agreement expires or is terminated, this Agreement will automatically terminate without further notice by either party.

SECTION 11. TERMINATION

11.1. Termination for Convenience by SBCTA. Notwithstanding any provision herein to the contrary, SBCTA may terminate this Agreement without cause by providing at least thirty (30) days written notice to the other parties. Any unilateral termination by SBCTA under this paragraph (i) will have no effect on BLW's rights under any other agreement, including the ROW Agreement, (ii) will give SBCTA no claim or other rights related to the I-15 right of way where BLW has constructed rail facilities or entered an agreement in anticipation of doing so, and (iii) will extinguish any obligations that BLW has under the ROW Agreement to provide Local Rail Service.

11.2. Termination for Cause by SBCTA. The occurrence of any of the following constitutes a material breach and default of this Agreement by BLW for which SBCTA may elect to terminate the Agreement for cause upon ninety (90) days written notice and reasonable opportunity to cure:

11.2.1. The failure by BLW to start construction of the portion of the AV/RC Line to be built under the terms of the ROW Agreement, as set forth in Section 11.1 of the ROW Agreement (as amended.)

11.2.2. The failure by BLW to complete construction of the portion of the AV/RC Line to be built under the terms of the ROW Agreement and begin providing BLW High-Speed Passenger Rail Service between Rancho Cucamonga, California and Apple Valley, California within the time set forth in Section 17.1.8 of the ROW Agreement (as amended) (subject to a force majeure event or any extension by written agreement of the parties to be or not to be entered into in each party's sole discretion.)

11.2.3. The failure to operate Local Rail Service following commencement of BLW High-Speed Passenger Rail Service for a period longer than three (3) consecutive months, unless the period of non-operation is (i) due to construction or maintenance work that BLW is performing with reasonable diligence, (ii) the result of a force majeure event, or (iii) subject to an extension by written agreement of the parties to be or not to be

entered into in each party's sole discretion. This three (3) month period may be extended, as reasonably determined by SBCTA, for up to a total of eighteen (18) consecutive months, if BLW High-Speed Passenger Rail Service is concurrently not being operated. Where the circumstances in subclauses (i) or (ii) above apply, the three (3) and eighteen (18) month periods will be extended on a day-to-day basis as long as the applicable conditions exist.

11.3. Termination by Mutual Consent. Notwithstanding any provision herein to the contrary, this Agreement may be terminated by mutual written consent of the parties.

11.4. Effect of Termination. Regardless of the basis of any termination of this Agreement, upon termination of the Local Rail Service the parties will have no further obligation or commitment under this Agreement except as follows:

11.4.1. Any Claims that accrued prior to termination will survive.

11.4.2. Any obligations or commitments that are expressly stated herein to survive termination will survive.

11.4.3. Any rights held by Leasehold Lenders, as expressed in Section 7, will survive.

SECTION 12. GENERAL CONDITIONS

12.1. Governing Agreement. In the event of a conflict between the terms of this Agreement and Exhibit C to the ROW Agreement, the terms of this Agreement will govern.

12.2. Governing Law. Except on subjects preempted by federal law, this Agreement is governed by and will be construed in accordance with the laws of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to BLW because of its status as a common carrier regulated by the federal government.

12.3. Entire Agreement. This Agreement (including exhibits, attachments, and other documents, manuals, etc. incorporated herein), together with the ROW Agreement, is the full and complete agreement between the parties with respect to the transaction and matters set forth or contemplated herein and hereby.

12.4. Limitation of Remedies. Notwithstanding anything to the contrary in this Agreement, in no event will the parties be liable to each other for any indirect, punitive, special, or consequential damages (including, but not limited to, loss of profits, interest, earnings, or use) whether arising in contract, tort, or otherwise.

12.5. Exhibits. Exhibit A and Exhibit B, attached to this Agreement, are made a part of this Agreement by this reference.

12.6. Reasonableness. Unless this Agreement specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals contemplated by this Agreement which may be given by a party under or pursuant to this Agreement will not be unreasonably withheld or conditioned by such party and will be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party will, with notice of such disapproval, submit to the requesting party a written statement setting forth with reasonable specificity its reasons for such disapproval.

12.7. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, illegal or otherwise unenforceable, it will not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision. Upon such a determination that any term or provision is invalid, void, illegal, or otherwise unenforceable, the parties will negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the terms contemplated hereby are achieved as originally contemplated to the greatest extent possible.

12.8. Interpretation. The section headings in this Agreement are for convenience only and will not be used for any purpose in the interpretation of this Agreement. When the context requires, the plural includes the singular and the singular includes the plural. References to agreements or contracts are to such agreement or contract as may be amended, restated, or otherwise modified from time to time. The words "include," "includes," and "including" are used without limitation and are deemed to be followed by the phrase "without limitation." Notwithstanding specific references to "good faith," the duty of good faith and fair dealing applies generally with respect to this Agreement. For the purposes of this Agreement, words of any gender are deemed to include correlative words of the other (whether masculine, feminine, or neuter) genders.

12.9. Amendments. This Agreement may only be modified or changed by written amendment signed by authorized representatives of each of the parties.

12.10. Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein has the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither of the parties has any right or power to obligate or bind the other party in any manner whatsoever.

12.11. Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this Agreement must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by a party of any breach will be deemed to be a waiver of any other or subsequent breach.

12.12. Notices. Any communication, notice, or demand of any kind whatsoever that a party may be required or may desire to give to or serve upon the other party must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

BLW: DesertXpress Enterprises, LLC
Attn: Sarah Watterson, President
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

With a copy to:

David Pickett
Associate General Counsel
DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

SBCTA: San Bernardino County Transportation Authority
Attn: Transit and Rail Programs
1170 West 3rd Street, 2nd Floor
San Bernardino, CA 92410

With a copy to:

Julianna Tillquist
General Counsel
San Bernardino County Transportation Authority
1170 West 3rd Street, 2nd Floor
San Bernardino, CA 92410

Without requiring an amendment to this Agreement, either party may change its address for notice by written notice given to the other party in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service; three (3) days after being placed in the U.S. Mail, if mailed, return receipt requested; or one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery.

12.13. No Third-Party Beneficiaries. This Agreement is for the exclusive benefit of the parties to it and not for the benefit of any third party, except to the extent expressly contemplated in this Agreement, including in favor of any Leasehold Lender (as defined in the ROW Agreement.)

12.14. Authority and Binding Effect. Each individual executing this Agreement affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this Agreement and, through his or her execution, bind the party on whose behalf he or she is executing the Agreement. The parties will affix to this Agreement as Exhibit B, evidence of authority for the execution of this Agreement for their respective parts.

12.15. Counterparts. The parties may sign this Agreement in counterparts, each of which is deemed an original but all of which together constitute one and the same instrument.

The parties have executed this Agreement as of the Effective Date.

**DESERTXPRESS ENTERPRISES,
LLC**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Sarah Watterson
President
DesertXpress Enterprises, LLC

By: _____
Ray Marquez
Board President
San Bernardino County
Transportation Authority

Approved as to Form:

Approved as to Form:

By: _____
David Pickett
Associate General Counsel
DesertXpress Enterprises, LLC

By: _____
Julianna K. Tillquist
General Counsel
San Bernardino County
Transportation Authority

Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

EXHIBIT A

MAP OF BLW SYSTEM

DRAFT

Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

Brightline West System Map

- Map legend**
-  Station Marker
 -  Airport
 -  Brightline West
 -  Major Highways
 -  Metrolink Regional Rail
 -  California High-Speed Rail
 -  High Desert Corridor
 -  Amtrak
 -  State lines



EXHIBIT B

SIGNATURE AUTHORITY

DRAFT

Attachment: 24-1003091 - Local Rail Service Agreement (9316 : Additional Brightline Contract Actions)

General Contract Information

Contract No: 23-1002894 Amendment No.: 4
 Contract Class: Payable Department: Transit
 Vendor No.: 03635 Vendor Name: DESERTXPRESS ENTERPRISES, LLC
 Description: Disposition and Development Agreement for Brightline West Highspeed Rail - Amendment 4
 List Any Related Contract Nos.: 23-1002895 (receivable contract)

Dollar Amount					
Original Contract	\$	50,000.00	Original Contingency	\$	-
Prior Amendments	\$	-	Prior Amendments	\$	-
Prior Contingency Released	\$	-	Prior Contingency Released (-)	\$	-
Current Amendment	\$	-	Current Amendment	\$	-
Total/Revised Contract Value	\$	50,000.00	Total Contingency Value	\$	-
Total Dollar Authority (Contract Value and Contingency)				\$	50,000.00

Contract Authorization

Board of Directors Date: 07/03/2024 Board Item # 9316

Contract Management (Internal Purposes Only)

Other Contracts Local Sole Source? N/A No Budget Adjustment
 Escrow Agreement Escrow Agreement One-Time Payments

Accounts Payable

Estimated Start Date: 10/05/2022 Expiration Date: 06/30/2031 Revised Expiration Date: _____

NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

							Total Contract Funding:		Total Contingency:	
							\$	50,000.00	\$	-
Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name			
GL	1080	30	0313	0360	53750		Rail Asset General Revenue	50,000.00		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-
GL								-		-

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

Additional Notes: Amendment 4 makes no fiscal changes. Closing costs/fees associated with escrow for disposition of SBCTA/City real proeprty Within ten (10) business days after the date the DDA is executed by the Seller and delivered to Developer, the Developer shall deposit the sum of \$50,000 with Escrow Holder as a deposit.

Attachment: CSS - 23-1002894 [Revision 1] (9316 : Additional Brightline Contract Actions)

FOURTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Amendment**") is entered into as of _____, 2024 by and among CITY OF RANCHO CUCAMONGA, a California municipal corporation ("**City**"), SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public entity ("**SBCTA**"; City and SBCTA, collectively, "**Seller**"), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West ("**Developer**").

RECITALS

A. Developer and Seller are parties to that certain Disposition and Development Agreement dated as of October 5, 2022 (the "**Original Agreement**"), as amended by that certain First Amendment to Disposition and Development Agreement dated as of February 2, 2023 (the "**First Amendment**"), that certain Second Amendment to Disposition and Development Agreement dated as of March 6, 2023 (the "**Second Amendment**"), and that certain Third Amendment to Disposition and Development Agreement dated as of March 30, 2023 (the "**Third Amendment**"), and together with the Original Agreement, First Amendment, Second Amendment, Third Amendment and this Amendment, collectively the "**DDA**"), pursuant to which Developer agreed to develop a train station and related infrastructure located in Rancho Cucamonga, California (the "**Property**"), as more particularly described in the DDA.

B. All capitalized terms used but not defined herein shall have the meanings ascribed such terms in the DDA.

C. The parties desire to amend the DDA upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Developer agree as follows:

AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. City/SBCTA Property Description. Exhibit "A-3" through Exhibit "A-7", inclusive, attached to the DDA are hereby deleted and replaced in their entirety with the new Exhibit "A-3" through Exhibit "A-7", inclusive, attached hereto, which revised Exhibits are hereby incorporated into the DDA.

3. Site Plan. The Site Plan attached as Exhibit "C" to the DDA is hereby deleted and replaced in its entirety with the new Site Plan attached hereto as Exhibit "C", which revised Site Plan is hereby incorporated into the DDA.

4. Grant Deed. The Grant Deed attached as Exhibit "D" to the DDA is hereby deleted and replaced in its entirety with the new Grant Deed attached hereto as Exhibit "D", which revised Grant Deed is hereby incorporated into the DDA.

5. 8th Street Easement. The Easement for High-Speed Rail Overpass (8th Street) attached as Exhibit "E" to the DDA is hereby deleted and replaced in its entirety with the new Easement for High-Speed Rail Overpass (8th Street) attached hereto as Exhibit "E", which revised Easement for High-Speed Rail Overpass (8th Street) is hereby incorporated into the DDA.

6. Easement for Aerial Platform. The Easement for Aerial Platform attached as Exhibit "F" to the DDA is hereby deleted and replaced in its entirety with the new Aerial Platform Easement attached hereto as Exhibit "F", which revised Aerial Platform Easement is hereby incorporated into the DDA.

7. Milliken Triangle Easement. The Milliken Triangle Easement attached as Exhibit "G" to the DDA is hereby deleted and replaced in its entirety with the new Milliken Triangle Easement attached hereto Exhibit "G", which revised Milliken Triangle Easement is hereby incorporated into the DDA.

8. Inspector of Record Process. Sections 2.3, 2.4 and 2.5 are hereby added to the Inspector of Record Process in Exhibit H as follows:

2.3 Public Owned Improvements. With respect only to the modification, alteration, construction, or reconstruction of facilities under the current or future ownership or the exclusive operation of City and/or SBCTA ("**Public Improvements**"), including tunnels, ramps, public streets, curbs, gutters, sidewalks, traffic signals, storm drains, parking lots, street lights, and landscaping, the City or SBCTA, as applicable ("**Approving Agency**"), shall have approval rights with respect to the design and/or construction drawings relating thereto (each a "**Submittal**"). The Approving Agency shall complete its review and take action on any Submittal that is (i) consistent with the codes described in Section 1 above; (ii) consistent with other standards, specifications, and requirements applicable to the subject Public Improvement and adopted by the Approving Agency and effective at the time the Submittal is received by the Approving Agency; and (iii) generally consistent with the Site Plan within twenty (20) days of its receipt of such Submittal. The foregoing shall not prohibit the imposition of state or federal required standards, such as applicable updated accessibility standards. The City agrees to have a scoping meeting within sixty (60) days of the date of this Amendment and additional meetings with Developer during the design process to discuss applicable standards and to ensure Developer has a copy of the current and future pending standards, specifications, and requirements. Developer agrees to commence construction within one (1) year of the issuance of the associated building permit, unless extended by the City. Approving Agency staff shall transmit its comments in the form of a comment matrix and annotated plans (as appropriate) to Developer. If the Approving Agency has not completed its review within such time, Developer may provide the Approving Agency notice to cure. The Approving Agency shall have ten (10) days to cure by completing its review after receipt of the Developer notice. If the Approving Agency has not completed its review and taken action by the ninth (9th) day, Developer and Approving Agency shall meet on the tenth (10th) day to discuss any open issues with the result of such meeting being an approval or a conditional approval upon incorporation of comments. If,

in the sole discretion of the Approving Agency, Developer or its contractor has submitted a Submittal or series of Submittals that cannot reasonably be completed within twenty (20) days due to the Submittal's volume, complexity or other condition beyond the reasonable control of the Approving Agency, the Approving Agency shall provide notice within seven (7) days of receipt of a Submittal to Developer of its inability to complete its review to Developer. The Approving Agency and Developer shall thereafter mutually agree on a new deadline for the Approving Agency to complete its review of any or all pending Submittals, provided that in no event shall the review period exceed sixty (60) calendar days. The Approving Agency shall inspect any Public Improvements within three (3) business days of Developer's request. If the Approving Agency fails to timely inspect, Developer may provide a second notice to the Approving Agency. If the Approving Agency fails to inspect any Public Improvements within two (2) business days following such second notice, then the Inspector of Record shall inspect such Public Improvements and provide the Approving Agency with the results and documentation from such inspection. The Approving Agency shall accept or reject such Public Improvements following the inspection thereof. The rejection notice must include sufficient details regarding the rejection to provide for a path for subsequent approval and acceptance. For the avoidance of doubt, this Section 2.3 shall apply only to Public Improvements, including right-of-way improvements, as applicable, but not to any otherwise private improvements, such as the Developer station or track and rail facilities.

2.4 City Review and Inspection of Public Improvements. With respect to the review of a Submittal with respect to Public Improvements, Developer agrees to pay for a third party reviewer if necessary to meet the deadlines noted in Section 2.3 above. With respect to the inspection of Public Improvements, to the extent desired by the City, Developer agrees to use and pay for a City Public Works employee in lieu of a third-party Inspector of Record so long as the City agrees to expedite such inspection work consistent with the expedited Inspector of Record Process. For the avoidance of doubt, the timing for review, approval, and inspection set forth in Section 2.3 above also applies to such public right-of-way work.

2.5. Failure to Timely Approve; Work Stoppage. Subject to the last sentence of this Section 2.5, if the Approving Agency fails to meet the established deadlines above and additionally fails to respond to the notice to cure established above, then Developer may direct its contractor to perform the work, on a conditional basis pending the Approving Agency's compliance. Neither Party shall arbitrarily or capriciously withhold or delay any action or approval required under this Agreement or necessary to complete the Project. In no event shall work be stopped in the event of a claim or dispute, except for reasons of public health or safety, or where the Inspector of Record orders a halt to the work or where it is absolutely necessary to first resolve the dispute in order to be able to continue work.

9. Developer Address. Developer's notice address in Section 8.1 of the DDA is hereby updated as follows:

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: President

With a copy to Developer's Legal Department
At the Developer address above

10. Full Force and Effect. This Amendment, together with the DDA, as previously amended, constitutes the entire agreement between Seller and Developer regarding the matters set forth herein or therein, and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements or understandings. Except as otherwise specifically provided herein, the DDA shall remain unmodified and shall continue in full force and effect.

11. Counterparts; Execution by Electronic Means. This Amendment may be signed by the parties in two or more counterparts which, including the execution and transmission via electronic means, when taken together, shall constitute one and the same instrument and shall have the same force and effect as if the originally executed copies of this Amendment were delivered to all parties.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

SELLER:

DEVELOPER:

CITY OF RANCHO CUCAMONGA,
a California municipal corporation

DESERTXPRESS ENTERPRISES, LLC,
a Nevada limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

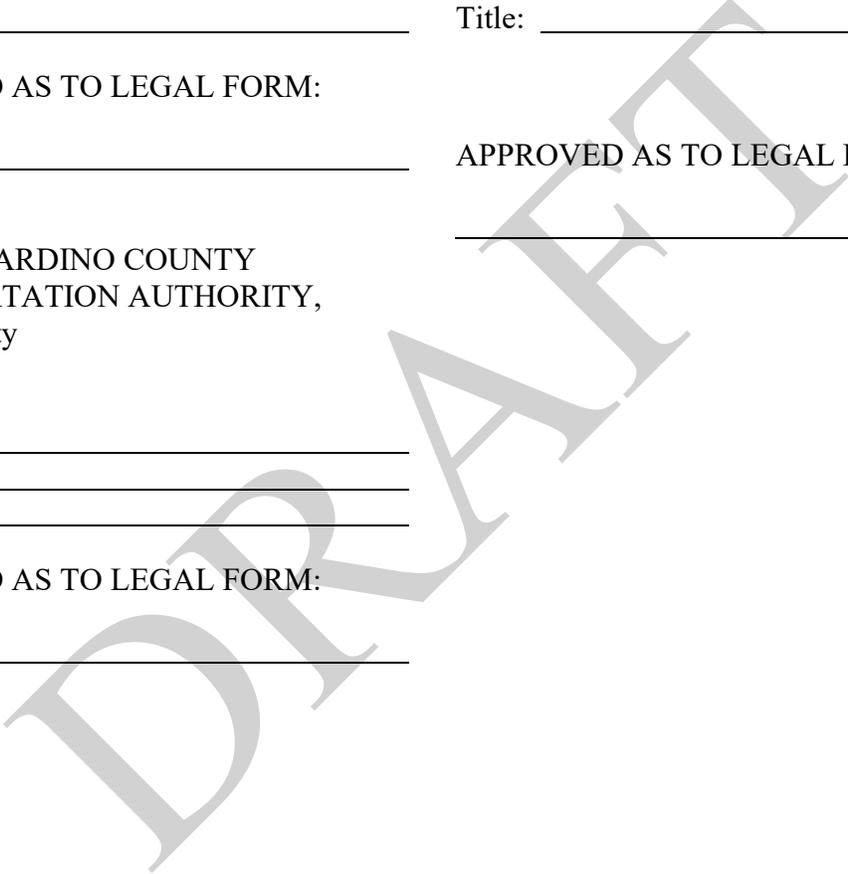
APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY,
a public entity

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM:



Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBITS "A-3" – A-7
CITY/SBCTA PROPERTY
[See Attached]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-3'**Legal Description of the City/ SBCTA Property****APN: 0209-272-11, 0209-272-22, & 0209-143-21**

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with a portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on said Parcel Map, filed in the Office of said County Recorder, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, together with a portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet to the **Point of Beginning**;

Thence South 00°00'00" West 568.51 feet to the southeasterly line of Parcel 15 per said Parcel Map;

Thence along said southeasterly line South 46°46'47" West 23.71 feet to the southerly line of said Parcel 15;

Thence along said southerly line South 89°36'24" West 269.11 feet to the beginning of a tangent curve, concave northeasterly, having a radius of 117.00 feet;

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence northwesterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43'39" an arc length of 60.70 feet;

Thence leaving said southerly line North 00°10'37" West 569.98 feet to said northerly line of the Rancho Cucamonga Metrolink Station Phase I;

Thence along said northerly line North 89°43'55 East 346.26 feet to the **Point of Beginning**;

Excepting therefrom that portion of the land described below as **Parcel "B"**.

Parcel contains 115,115 square feet, more or less.

AND

Parcel "B"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 10.47 feet to the **Point of Beginning**;

Thence South 90°00'00" West 248.00 feet;

Thence South 00°00'00" East 348.75 feet;

Thence North 90°00'00" East 248.00 feet;

Thence North 00°00'00" East 348.75 feet to the **Point of Beginning**.

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Parcel contains 86,490 square feet, more or less.

Excepting from Parcel B that eight-foot-high portion of the real property depicted on Exhibits A-7 attached hereto.

See Exhibits 'A-3', 'A-4', 'A-5', 'A-6', and 'A-7' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____



DRAFT

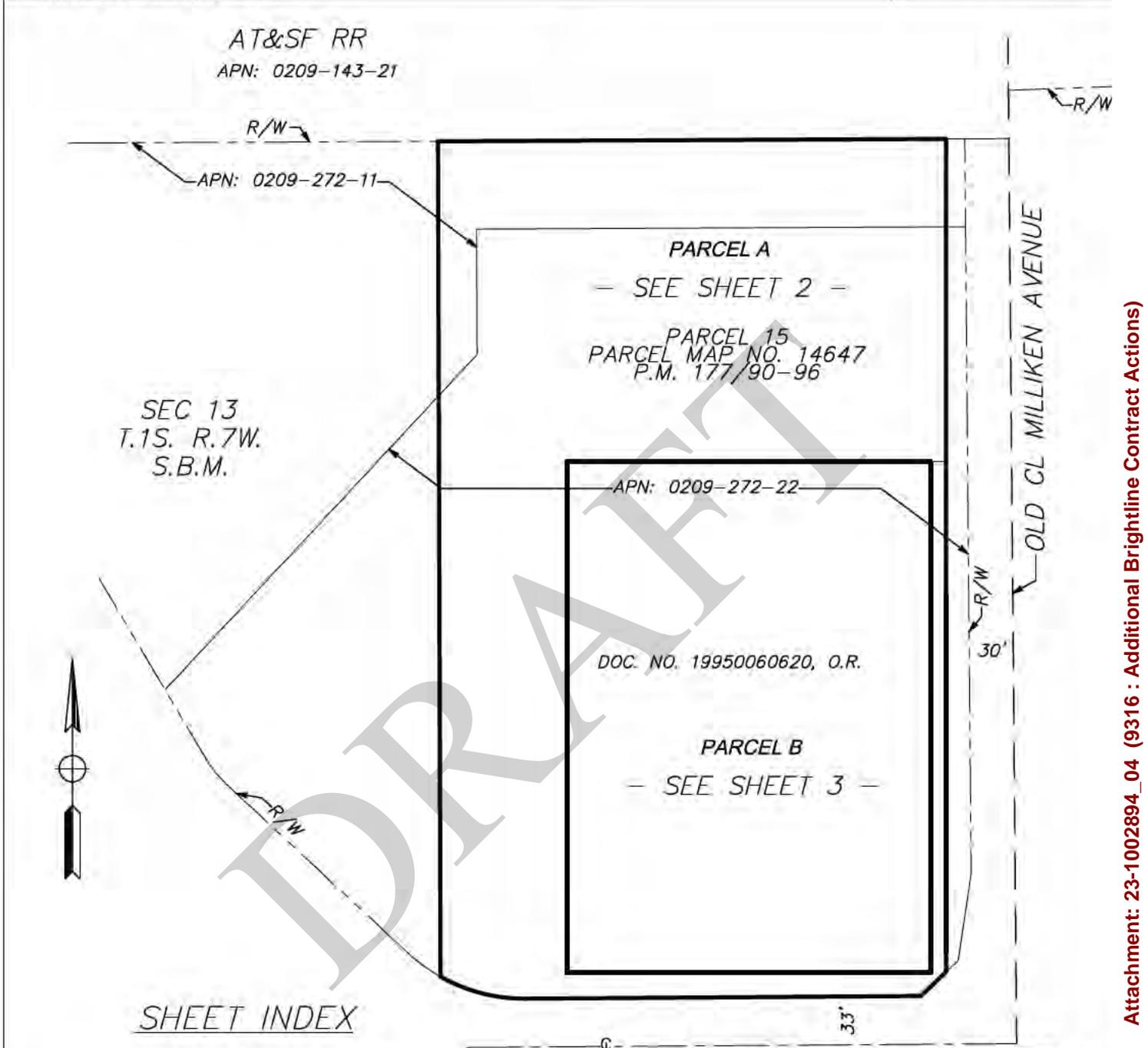
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary
04/04/2024 10:16:25 AM

EXHIBIT 'A-4'

36.d

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: N/A



SHEET INDEX

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

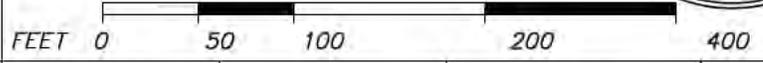
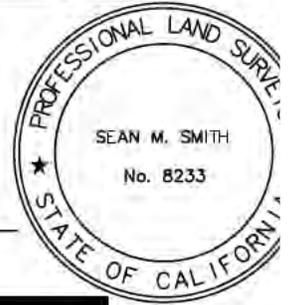
LEGEND

-  Indicates area to be described
- POC Point of Commencement
- POB Point of Beginning
- SCE Southern California Edison
- SF Square Feet

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-5'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 115,115 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

POC
PARCEL MAP NO. 14647
PER P.M. 177/90-96

NE COR.
SEC. 13

POB
PARCEL A

L1
L2
L3

NE COR.
PHASE 1

NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	23.71'

SEC 13
T.1S. R.7W.
S.B.M.



NORTHWESTERLY
LINE PARCEL 15

N00°10'37"W 569.98'

PARCEL A
DOC. NO. 19950060620, O.R.
PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96

APN: 0209-272-22

PARCEL B
- SEE SHEET 3 -

SOUTHERLY LINE
PARCEL 15

EASTERLY LINE
PARCEL 15

30'

S00°00'00"W 568.51'

EASTERLY LINE
SECTION 13

OLD CL MILLIKEN AVENUE

AZUSA COURT

NO.	DELTA	RADIUS	LENGTH
C1	29°43'39"	117.00'	60.70'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS B233 DATE



	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-6'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 86,490 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

POC
PARCEL MAP NO. 14647
PER P.M. 177/90-96

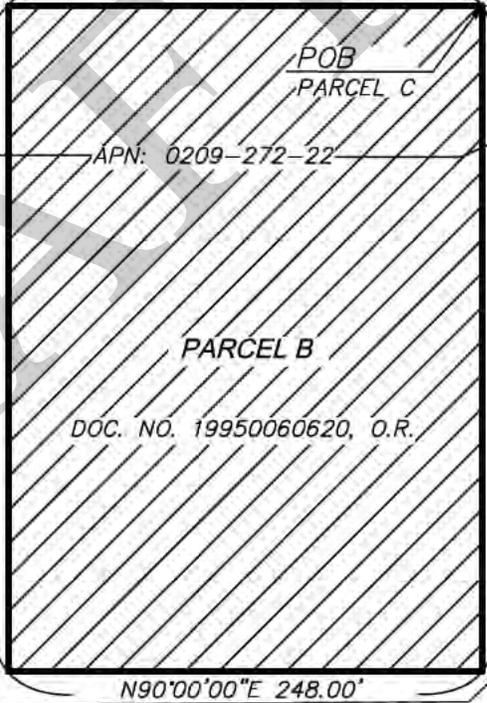
NE COR.
SEC. 13

NE COR.
PHASE 1

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'

SEC 13
T.1S. R.7W.
S.B.M.

PARCEL A
- SEE SHEET 2 -
PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96



NORTHWESTERLY
LINE PARCEL 15

SOUTHERLY LINE
PARCEL 15

AZUSA COURT

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS B233 DATE



LEGEND	
	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

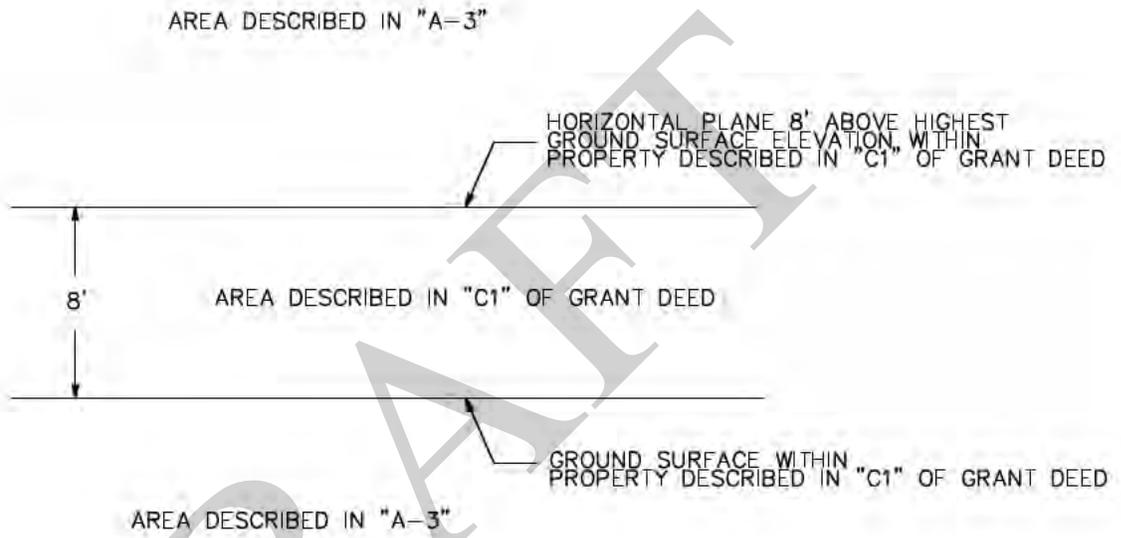
PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-7'

36.d

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: N/A



AIR SPACE RESERVATION PROFILE DETAIL

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE _____



CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	N/A	4	4

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "C"

SITE PLAN

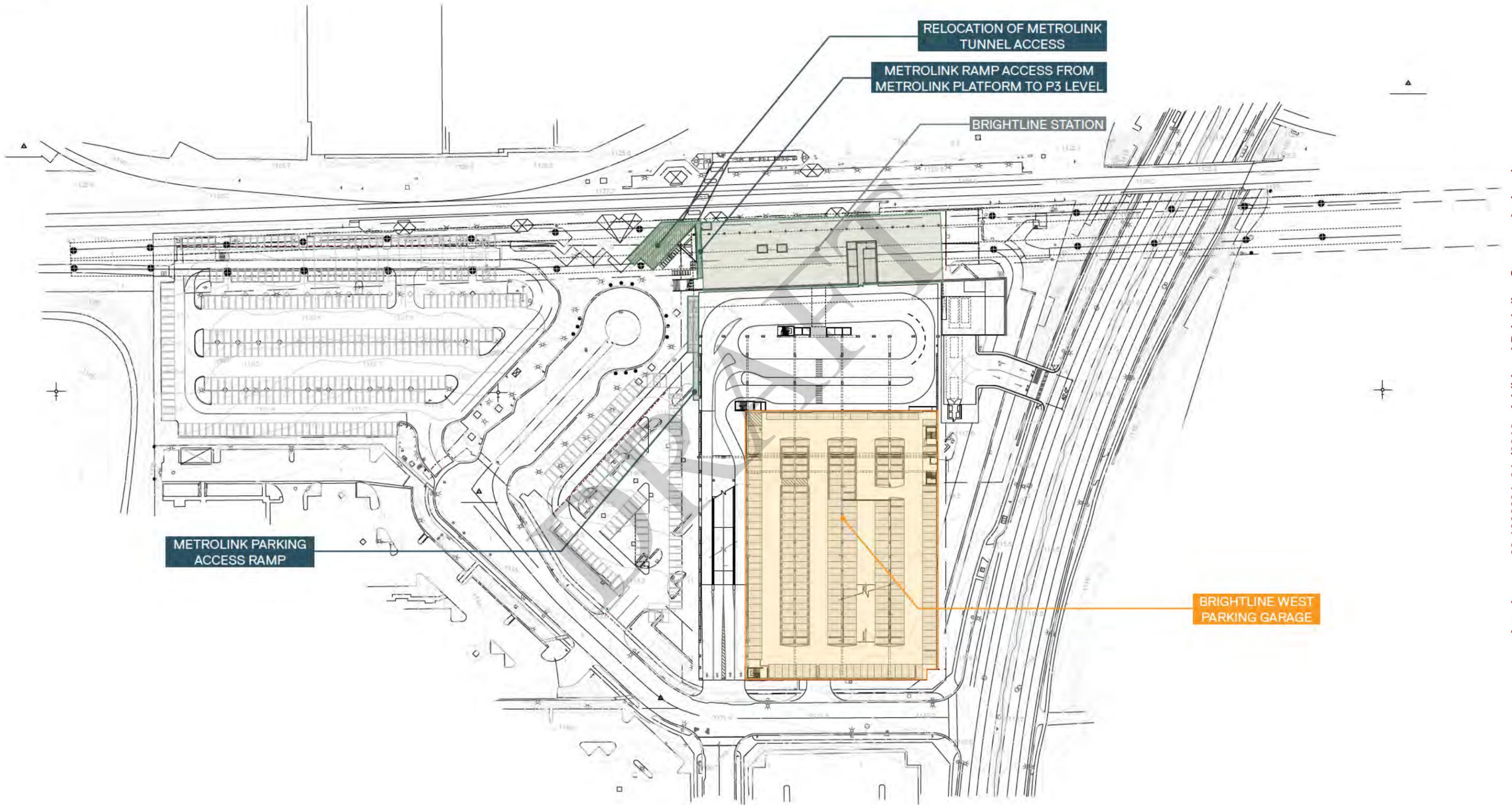
[See attached]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station

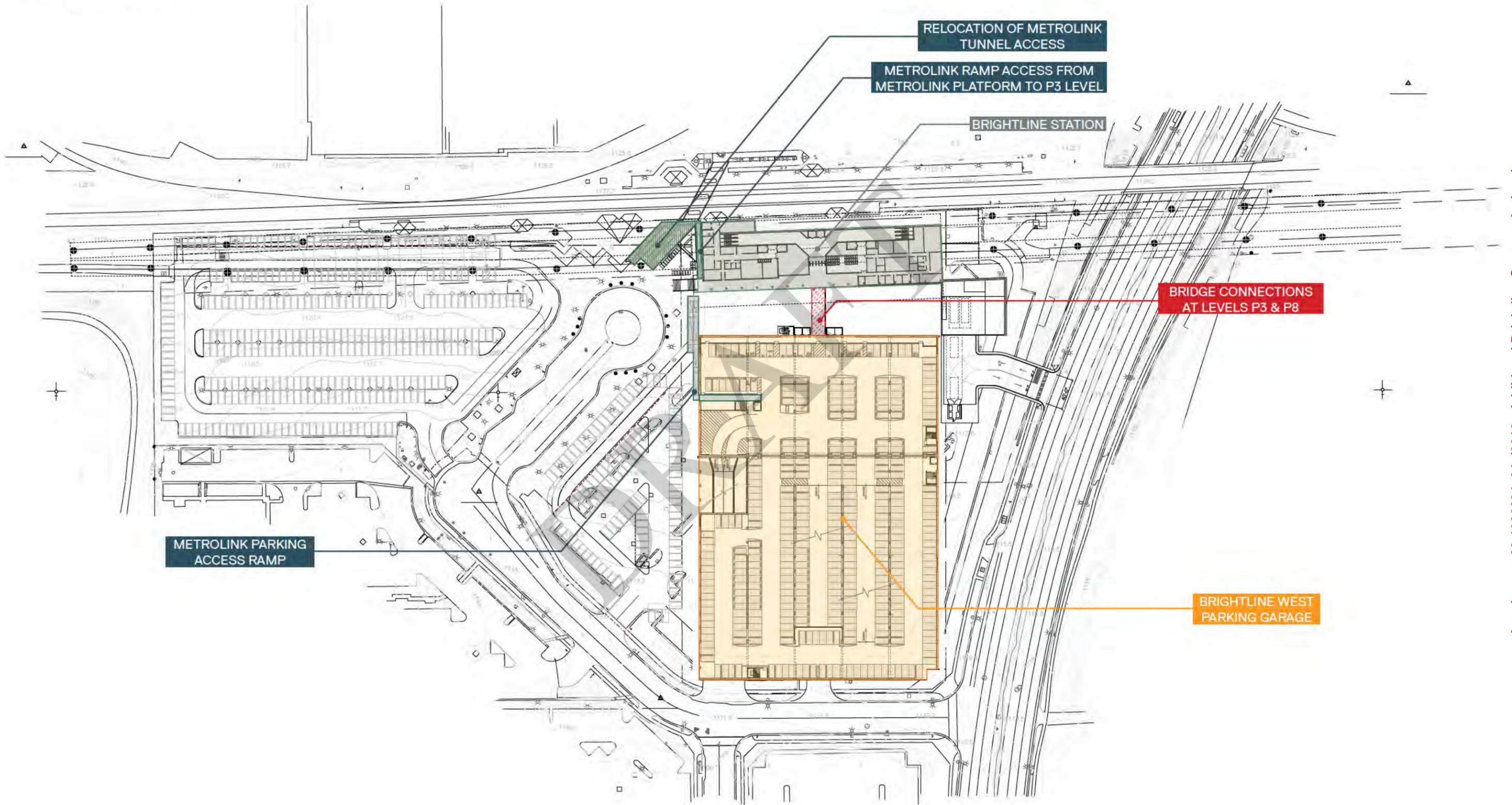
P2 Plan



Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station

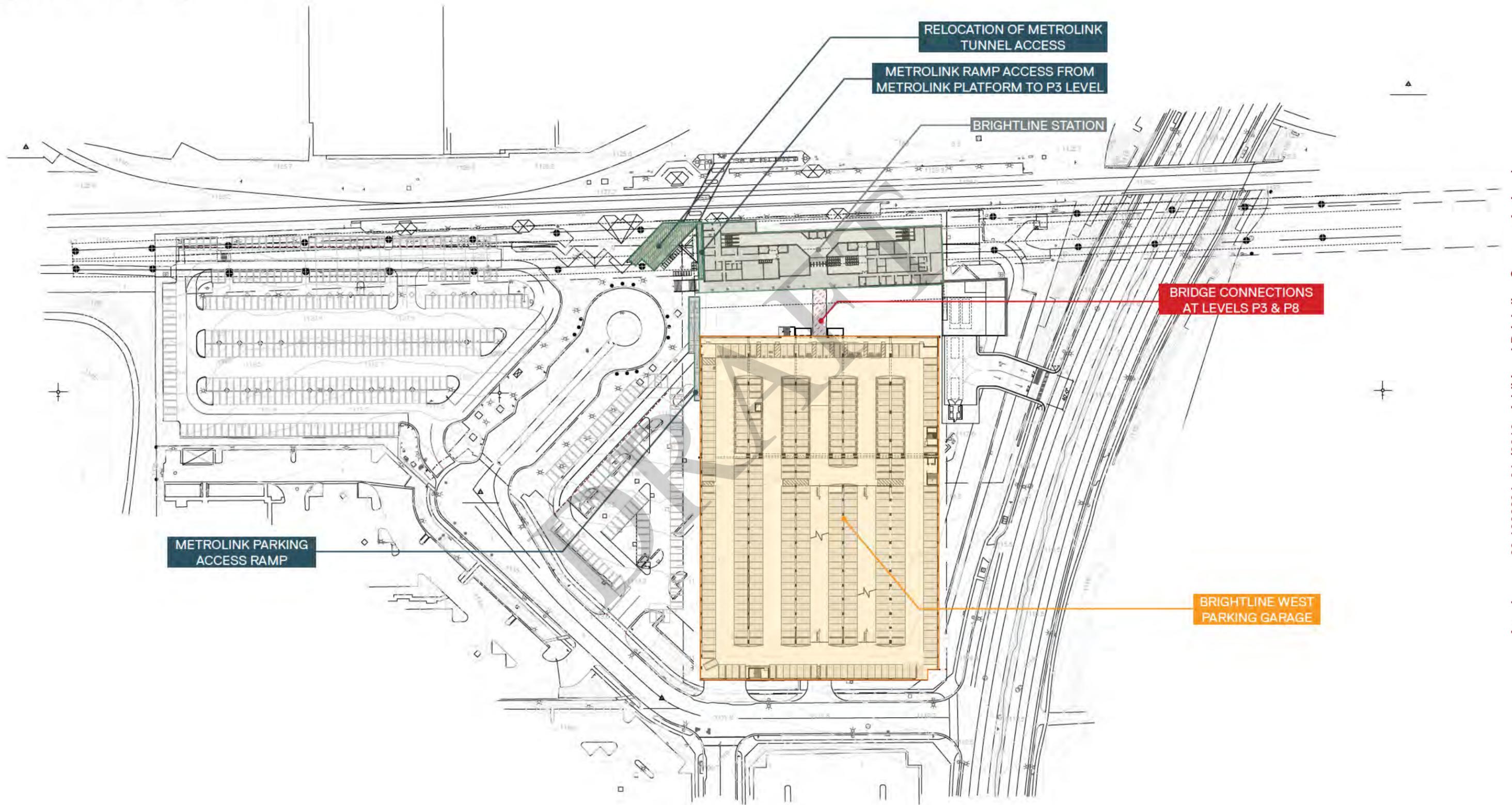
P3 Parking Plan



Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Rancho Cucamonga Station

Typical Parking Plan



Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "D"

GRANT DEED

[See attached]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO,
AND MAIL TAX STATEMENTS TO:

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

APN(s): Portion of 0209-143-21 and 0209-272-22

(Space above for Recorder's Use)
Exempt From Recording Fee Per Government Code Section 27383

Documentary transfer tax is \$_____, based on the purchase price of the property conveyed.

GRANT DEED

The undersigned grantor(s) declare(s):

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF RANCHO CUCAMONGA ("City") and the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY ("SBCTA"), collectively the "Grantor, hereby GRANT to DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company ("Grantee") the land described on Exhibit "A-1", Exhibit "B-1" and Exhibit "C-1" and depicted on Exhibit "A-2", Exhibit "B-2" and Exhibit "C-2" and any improvements thereon (the "Property")

EXCEPTING THEREFROM in fee a portion of the Property described on Exhibit "C-1" and depicted on Exhibit "C-3" attached hereto ("Reserved Property").

EXCEPTING THEREFROM AND RESERVING UNTO GRANTOR a non-exclusive access easement appurtenant over that portion of the Property described on Exhibit "D-1" and depicted on Exhibit "D-2" and Exhibit "D-3" attached hereto in favor of the Reserved Property for access to and from Azusa Court for a driveway and mechanical, electrical or other miscellaneous conduit and equipment appurtenant to the operation of the Reserved Property for parking purposes.

EXCEPTING THEREFROM AND RESERVING UNTO GRANTOR a non-exclusive utility easement appurtenant over that portion of the Property described on Exhibit "D-1" and depicted on Exhibit "D-2" and Exhibit "D-3" attached hereto in favor of the Reserved Property for utilities to and from Azusa Court to service the Reserved Property. Following the installation of the utilities per plans approved by both Grantor and Grantee during the initial construction of the improvements on the Property by Grantee, the foregoing utility easement shall be replaced with a utility easement within (1) the driveway easement area described on Exhibit "D-1" and depicted on Exhibit "D-2" and Exhibit "D-3" and (2) a utility easement five (5) feet (or such larger area, as necessary) on each side adjacent to each such installed utility between Azusa Court and the Reserved Property that provides utility service to the Reserved Property. For the avoidance of

doubt, if Grantor desires to modify or add utilities in the future, Grantee shall have reasonable review and approval rights with respect to any such modification or addition.

EXCEPTING THEREFROM AND RESERVING UNTO GRANTOR a non-exclusive access easement over that portion of the Property shown and depicted on Exhibit “E” attached hereto, in favor of the adjacent transit center property to the west owned by the City and SBCTA described and depicted on Exhibit “F” attached hereto, for access to and from the north Metrolink platform via an underground tunnel.

EXCEPTING THEREFROM AND RESERVING UNTO SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (“SBCTA”) an exclusive easement for the construction, maintenance, repair, operation and use of one or more tunnels, including appurtenant facilities necessary or convenient thereto, in and through that portion of the Property described and depicted on Exhibit “G” (“Tunnel Easement Area”) attached hereto and subject to the terms and provisions of Schedule 1 attached hereto (“Tunnel Easement”).

SUBJECT TO, all matters of record and all matters visible upon a diligent inspection.

1. This grant of the Property is subject to the terms of a Disposition and Development Agreement entered into by and between Grantor and Grantee dated as of October 5, 2022 (as amended, the “DDA”), which includes an irrevocable parking license in favor of Grantor to the extent and for so long as the Property can be used for parking pending the required and contemplated development of the Property pursuant to the DDA.

2. As provided in, and subject to the provisions contained in, Section 5.2.2 of the DDA, the Grantor shall have the right, at its option, to reenter and take possession of the Property hereby conveyed, with all improvements thereon and to terminate and revert in Grantor the Property hereby conveyed to the Grantee (or its successors in interest).

3. Section 4.1 of the DDA contains specific and reasonable restrictions on transfer of the Property and on transfer of interests in Developer until completion of the Project, with certain specific exceptions. The Grantee covenants, for itself and its successors and assigns, to comply with such restrictions, which are hereby incorporated herein by reference.

4. Upon written request by Grantee, the City Manager of the City and the Executive Director of the SBCTA shall execute a “Certificate of Completion” in recordable form, cause it to be acknowledged and deliver it to Grantee for recording to confirm that such development has been timely completed in accordance with the DDA.

5. The covenants and restrictions in this Grant Deed shall bind, benefit and burden the Property, the Grantor and the Grantee and their respective successors, assigns and successors in interest to all or any portion of or interest in the Property.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of the date set forth below.

Dated: _____, 2024

CITY OF RANCHO CUCAMONGA

By: _____

Print Name: _____

Title: _____

ATTEST:

City Clerk

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____

Print Name: _____

Title: _____

ATTEST:

DRY
WET

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

)
)

_____, before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

)
)

, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT A TO GRANT DEED
PROPERTY DESCRIPTION AND DEPICTION

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A1'
Legal Description

APN: 0209-143-21

That portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on Parcel Map No. 14647, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of San Bernardino County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, in the City of Rancho Cucamonga, County of San Bernardino, State of California, described as follows:

Commencing at the northeast corner of said Section 13;

Thence along the easterly line of said Section 13 South 00°29'50" East 50.00 feet to the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation South 89°43'55" West 30.00 feet to the northeasterly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55" West 12.83 feet to the **Point of Beginning**;

Thence continuing along said northerly line South 89°43'55" West 346.26 feet;

Thence leaving said easterly prolongation North 00°10'37" West 33.38 feet;

Thence North 87°50'29" East 346.61 feet;

Thence South 00°00'00" East 44.81 feet to the **Point of Beginning**;

Parcel contains 13,539 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-2' attached hereto and made a part hereof.

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: 
Sean M. Smith, PLS 8233

Date: 9/27/2022

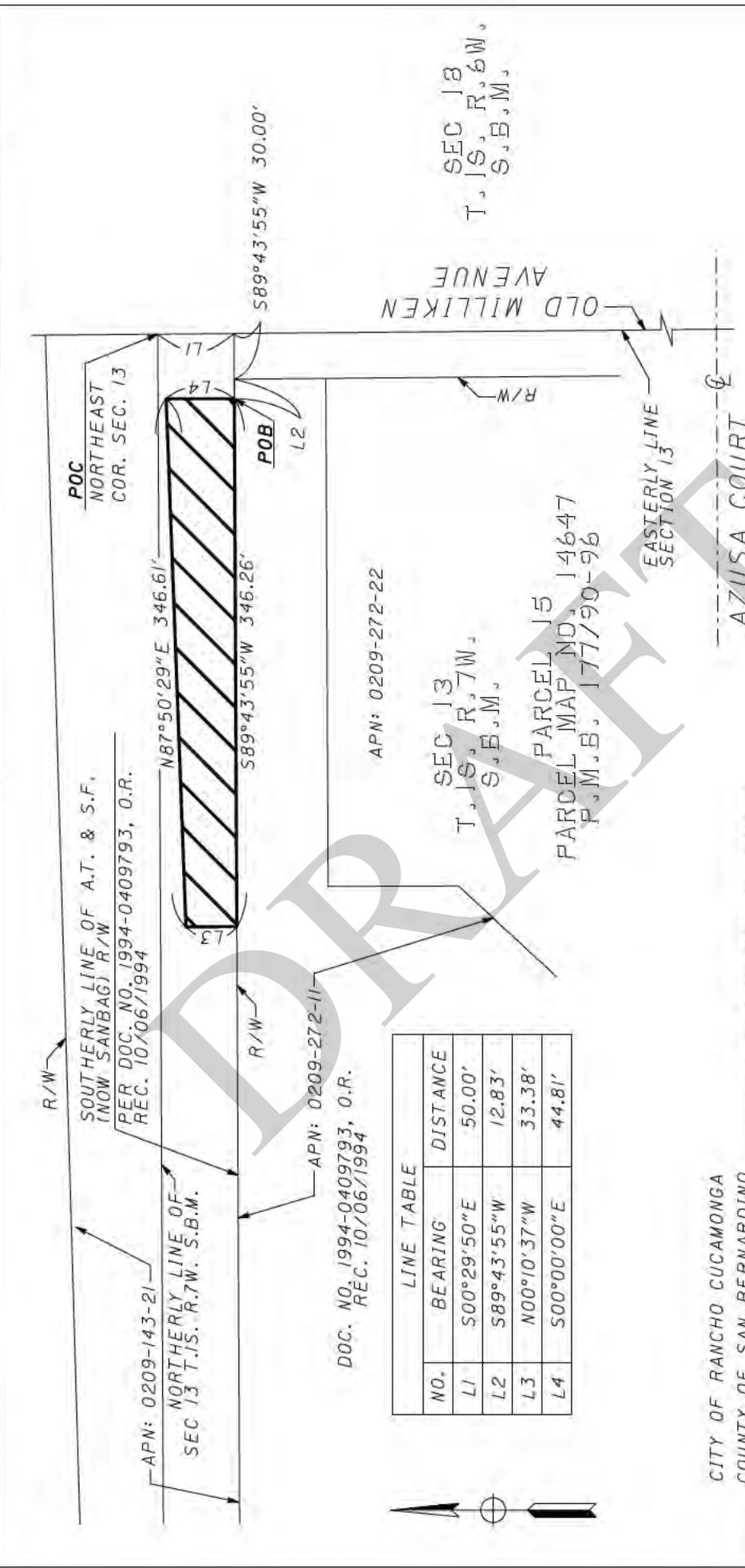


DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-2'

APN	TYPE OF ESTATE	AREA
0209-143-21	FEE	13,539 SF



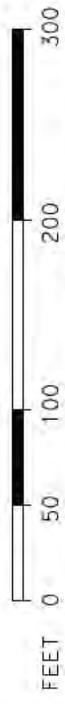
NO.	BEARING	DISTANCE
L1	500°29'50"E	50.00'
L2	S89°43'55"W	12.83'
L3	N00°10'37"W	33.38'
L4	S00°00'00"E	44.81'



THIS PLAT WAS PREPARED UNDER MY DIRECTION

[Signature]

SEAN M. SMITH, PLS 8233 DATE 9/27/2022



CITY OF RANCHO CUCAMONGA
 COUNTY OF SAN BERNARDINO

LEGEND

- Indicates area to be acquired
- POC Point of Commencement
- POB Point of Beginning
- SF Square Feet
- R/W Right-of-Way

PREPARED BY:

PSOMAS
 1650 Spruce Street, Suite 400
 RIV 9195

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
<i>[Signature]</i>			

EXHIBIT B TO GRANT DEED

PROPERTY DESCRIPTION AND DEPICTION (CONTINUED)

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-1'
Legal Description

APN: 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with a portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet to the **Point of Beginning**;

Thence South 00°00'00" West 568.51 feet to the southeasterly line of Parcel 15 per said Parcel Map;

Thence along said southeasterly line South 46°46'47" West 23.71 feet to the southerly line of said Parcel 15;

Thence along said southerly line South 89°36'24" West 269.11 feet to the beginning of a non-tangent curve, concave northeasterly, a radial line to said point bears South 00°23'39" East and having a radius of 117.00 feet;

Thence northeasterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43'39" an arc length of 60.70 feet;

Thence leaving said southerly line North 00°10'37" West 569.98 feet to said northerly line of the Rancho Cucamonga Metrolink Station Phase I;

Preliminary
04/19/2024 2:52:55 PM

Thence along said northerly line North $89^{\circ}43'55$ East 346.26 feet to the **Point of Beginning;**

Parcel contains 115,115 square feet, more or less.

Excepting therefrom that portion of said Parcel 15 per said Parcel Map, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South $00^{\circ}29'50''$ East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South $89^{\circ}43'55$ West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South $89^{\circ}43'55$ West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South $00^{\circ}00'00''$ West 220.19 feet;

Thence South $90^{\circ}00'00''$ West 10.47 feet to the **Point of Beginning;**

Thence South $90^{\circ}00'00''$ West 248.00 feet;

Thence South $00^{\circ}00'00''$ East 348.75 feet;

Thence North $90^{\circ}00'00''$ East 248.00 feet;

Thence North $00^{\circ}00'00''$ East 348.75 feet to the **Point of Beginning.**

Parcel contains 86,490 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibits 'B-2' attached hereto and made a part hereof.

Preliminary

04/19/2024 2:52:59 PM

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____



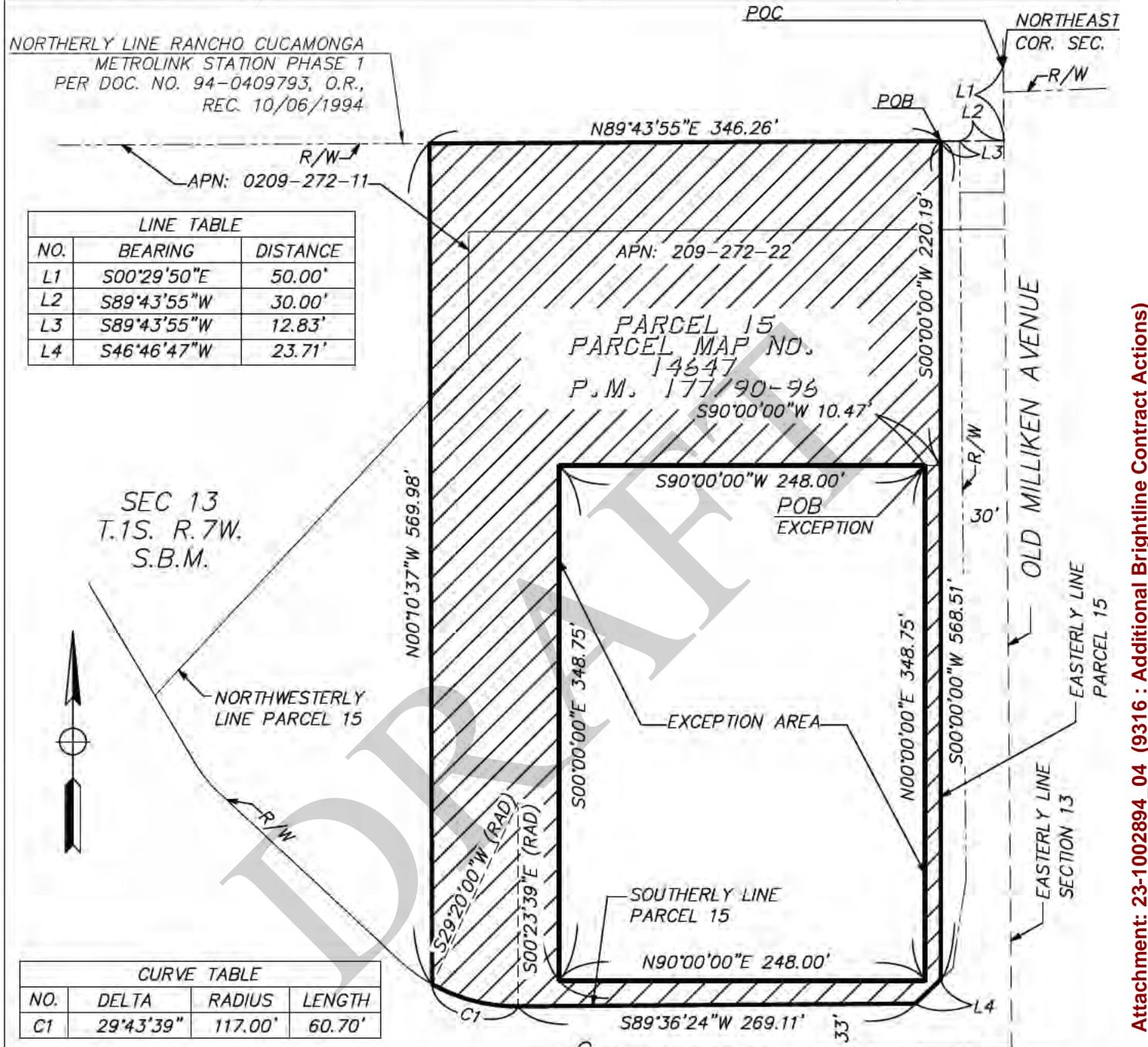
DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary
04/19/2024 2:53:03 PM

EXHIBIT 'B-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	EASEMENT	TOTAL: 115,115 SF



LINE TABLE

NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	23.71'

CURVE TABLE

NO.	DELTA	RADIUS	LENGTH
C1	29°43'39"	117.00'	60.70'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

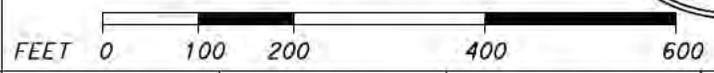
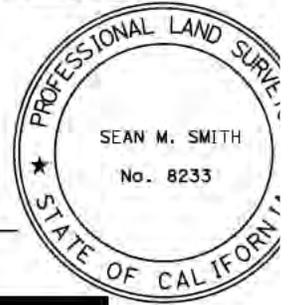
LEGEND

- Indicates area to be acquired
- POC Point of Commencement
- POB Point of Beginning
- SCE Southern California Edison
- SF Square Feet

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT C TO GRANT DEED

**PROPERTY DESCRIPTION AND DEPICTION (CONTINUED) AND DESCRIPTION
AND DEPICTION OF THE RESERVED PROPERTY**

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C-1'
Legal Description

APN: 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South 00°00'00" West 220.19 feet;

Thence North 90°00'00" West 10.47 feet to the **Point of Beginning**;

Thence North 90°00'00" West 248.00 feet;

Thence South 00°00'00" West 348.75 feet;

Thence North 90°00'00" East 248.00 feet;

Thence North 00°00'00" West 348.75 feet to the **Point of Beginning**.

Parcel contains 86,490 square feet, more or less.

Preliminary

03/14/2024 3:53:30 PM

Reserving to the City of Rancho Cucamonga and San Bernardino County Transportation Authority the air space above the above-described land, contained between a horizontal plane eight (8) feet above the existing ground surface and existing ground surface.

The foregoing 8-foot-tall portion shall exist prior to the construction of improvements by Grantee at an elevation range between 1109-1117 above mean sea level and following the construction of improvements by Grantee, the lower boundary of such 8-foot-tall portion shall commence at the finished ground floor surface and continue directly 8 feet above, as measured perpendicularly to the finished ground floor surface described in a Certificate of Compliance recorded by the City Engineer within 30 days after the completion of construction.

The level plane elevation described above is expressed in terms of North American Vertical Datum of 1988. The elevation is based on the San Bernardino County Benchmark No. UF206 with a published elevation of 1,114.07 feet above mean sea level.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibits 'C-2' and 'C-3' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

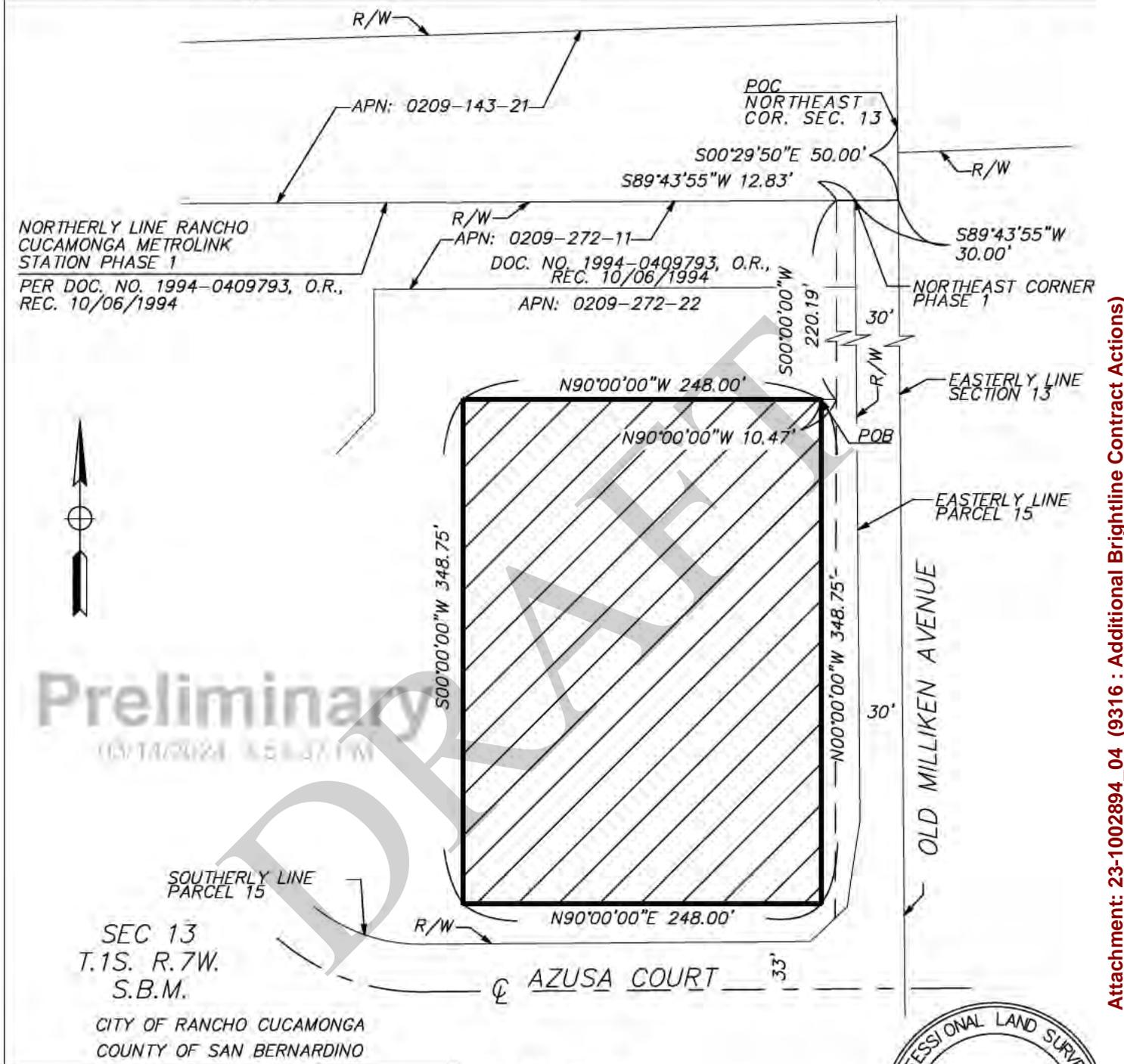


Preliminary
03/14/2024 3:53:34 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	86,490 SF



Preliminary
 (01/14/2024 15:43:37 PM)

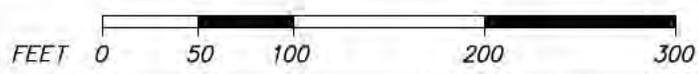
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

LEGEND	
	Indicates area to be acquired
POC	Point of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED UNDER MY DIRECTION



SEAN M. SMITH, PLS 8233 DATE



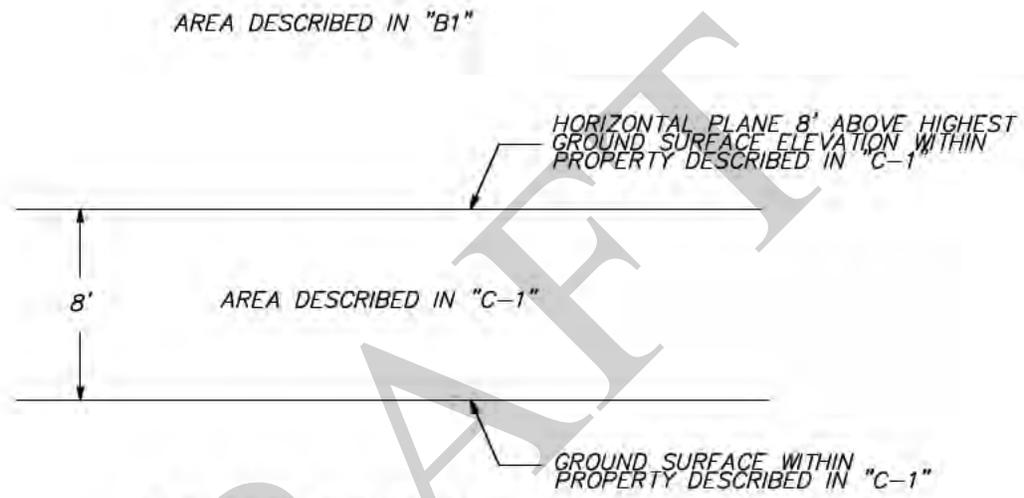
PREPARED BY:
PSOMAS
 1650 Spruce Street, Suite 400
 Riverside, California 92507
 (951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

EXHIBIT 'C-3'

36.d

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 86,490 SF



Preliminary

AIR SPACE RESERVATION PROFILE DETAIL

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE _____



CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	N/A	2	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT D TO GRANT DEED

DESCRIPTION AND DEPICTION OF DRIVEWAY AND UTILITY EASEMENT

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-1'**Description of the Driveway and Utility Easement****APN: 0209-272-22**

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Parcel "A" - Driveway Easement

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83;

Thence South 00°00'00" West 568.51 feet to the northerly right of way of Azusa Avenue, as shown on said Parcel Map;

Thence along said northerly right of way the following four (4) courses:

- 1) Thence South 46°46'47" West 0.63 feet to a point hereinafter referred to as **Point "A"**;
- 2) Thence South 46°46'47" West 23.08 feet to the southerly line of said Parcel 15;
- 3) Thence South 89°36'24" West 133.70 feet to the **Point of Beginning**;
- 4) Thence South 89°36'24" West 30.75 feet;

Thence North 00°00'00" West 16.93 feet;

Thence South 90°00'00" East 30.75 feet;

Thence South 00°00'00" West 16.72 feet to the **Point of Beginning**.

Parcel contains 517 square feet, more or less.

AND

Parcel "B" – Utility Easement

Beginning at the above-described **Point "A"**;

Thence along said northerly right of way the following three (3) courses:

- 1) Thence South 46°46'47" West 23.08 feet to the southerly line of said Parcel 15;
- 2) Thence South 89°36'24" West 269.11 feet to the beginning of a non-tangent curve, concave northeasterly, a radial line to said point bears South 00°23'39" East and having a radius of 117.00 feet;
- 3) Thence northwesterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43'33" an arc length of 60.70 feet;

Thence leaving said southerly line and along the westerly line of herein described Exhibit "A", as shown on a document recorded as Document No. 2024-XXXXXX, Official Records, in the Office of the County Recorder of said County, North 00°10'37" West 2.65 feet;

Thence North 90°00'00" East 344.04 feet to the **Point of Beginning**.

Parcel contains 5,381 square feet, more or less.

See Exhibits 'D-2', 'D-3' and 'D-4' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).



Signature: _____
Sean M. Smith, PLS 8233

Date: _____

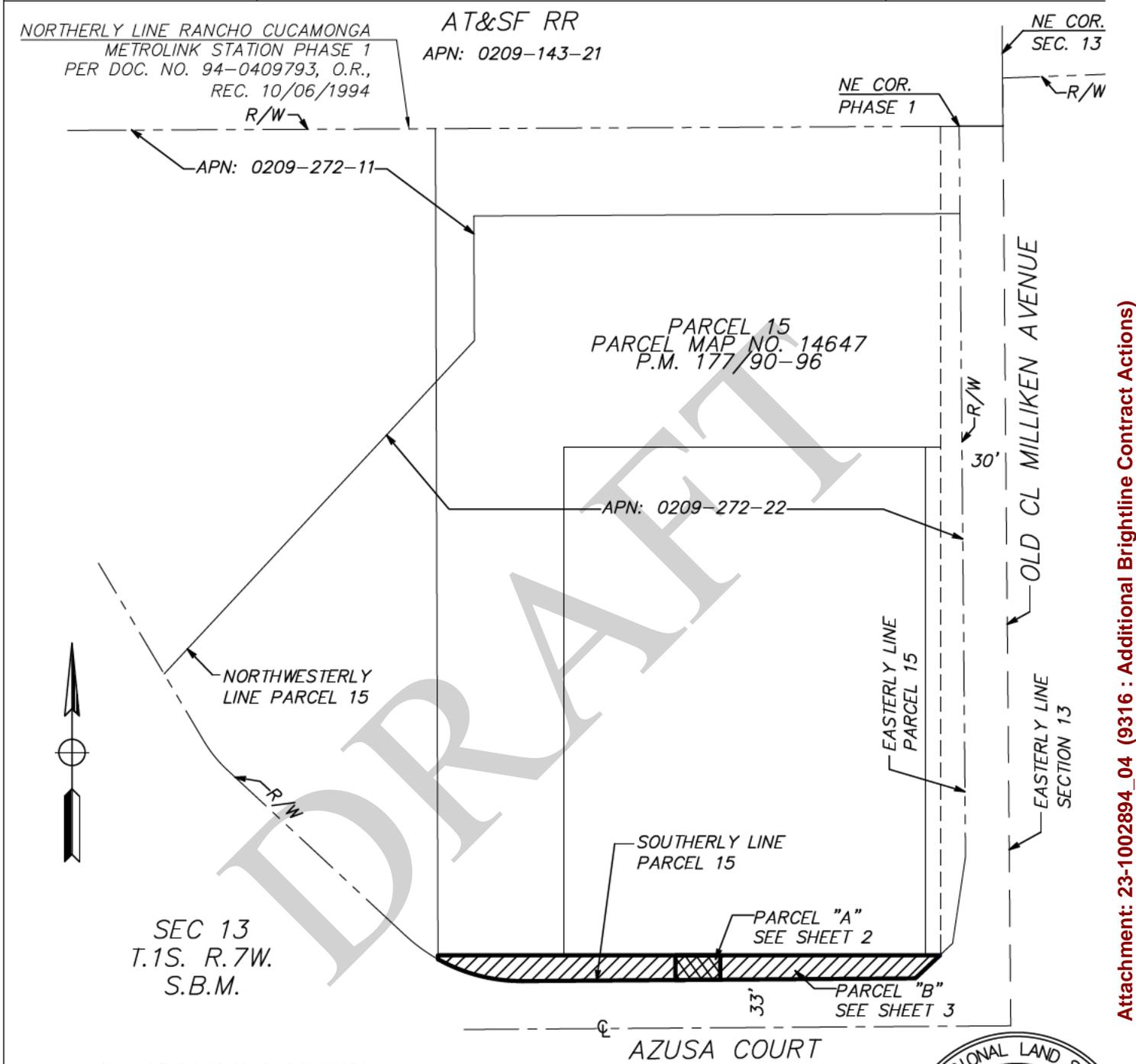
DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-2'

36.d

APN	TYPE OF ESTATE	AREA
0209-272-22	EASEMENT	TOTAL: --- SF



Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

- Indicates area to be described
- POC Point of Commencement
- POB Point of Beginning
- SCE Southern California Edison
- SF Square Feet

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE _____



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

EXHIBIT 'D-3'-DRIVEWAY

36.d

APN	TYPE OF ESTATE	AREA
0209-272-22	DRIVEWAY EASEMENT	TOTAL: 517 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

POC

NE COR.
SEC. 13

NE COR.
PHASE 1

L1
L2
L3

R/W

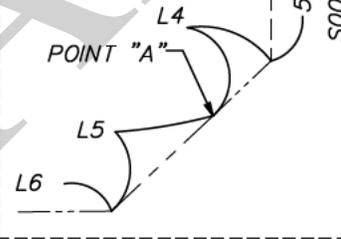
APN: 0209-272-11

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	0.63'
L5	S46°46'47"W	23.08'
L6	S89°36'24"W	133.70'
L7	S89°36'24"W	30.75'
L8	N00°00'00"W	16.93'
L9	S90°00'00"E	30.75'
L10	S00°00'00"W	16.72'

PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96

APN: 0209-272-22

DETAIL A
N.T.S



SOUTHERLY LINE
PARCEL 15 SEE DETAIL A
HEREON

PARCEL "A"

L9 L10

L8 L6

L7 POB 33'

30'

S00°00'00"W 568.51'

EASTERLY LINE
PARCEL 15
EASTERLY LINE
SECTION 13

OLD CL MILLIKEN AVENUE



NORTHWESTERLY
LINE PARCEL 15

SEC 13
T.1S. R.7W.
S.B.M.

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

AZUSA COURT

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE



FEET 0 50 100 200 400

LEGEND	
	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	Packet Pg. 803

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-4'-UTILITY

36.d

APN	TYPE OF ESTATE	AREA
0209-272-22	UTILITY EASEMENT	TOTAL: 5,381 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

POC

NE COR.
SEC. 13

NE COR.
PHASE 1

APN: 0209-272-11

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	0.63'
L5	S46°46'47"W	23.08'
L6	N00°10'37"W	2.65'

PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96

APN: 0209-272-22

DETAIL A
N.T.S

N90°00'00"E
344.05'

POINT "A"
POB

SOUTHERLY LINE
PARCEL 15
SEE DETAIL A
HEREON

PARCEL "B"

N90°00'00"E 344.04'

S89°36'24"W 269.11'

AZUSA COURT



NORTHWESTERLY
LINE PARCEL 15

SEC 13
T.1S. R.7W.
S.B.M.

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE



LEGEND	
	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT E TO GRANT DEED

**DESCRIPTION AND DEPICTION OF ACCESS EASEMENT TO
THE UNDERGROUND PEDESTRIAN METROLINK TUNNEL**

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'E'**Description of Access Easement to the Underground Pedestrian Metrolink Tunnel****APN: 0209-143-21**

That portion of portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 352.94 feet to the **Point of Beginning**;

Thence continuing along said northerly line South 89°43'55 West 6.16 feet;

Thence leaving said northerly line North 00°10'37" West 33.38 feet;

Thence North 87°50'29" East 24.23 feet;

Thence South 27°38'38" West 38.68 feet to the **Point of Beginning**.

Parcel contains 509 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibits 'E-1' attached hereto and made a part hereof.

Preliminary
04/19/2024 2:43:09 PM

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____



DRAFT

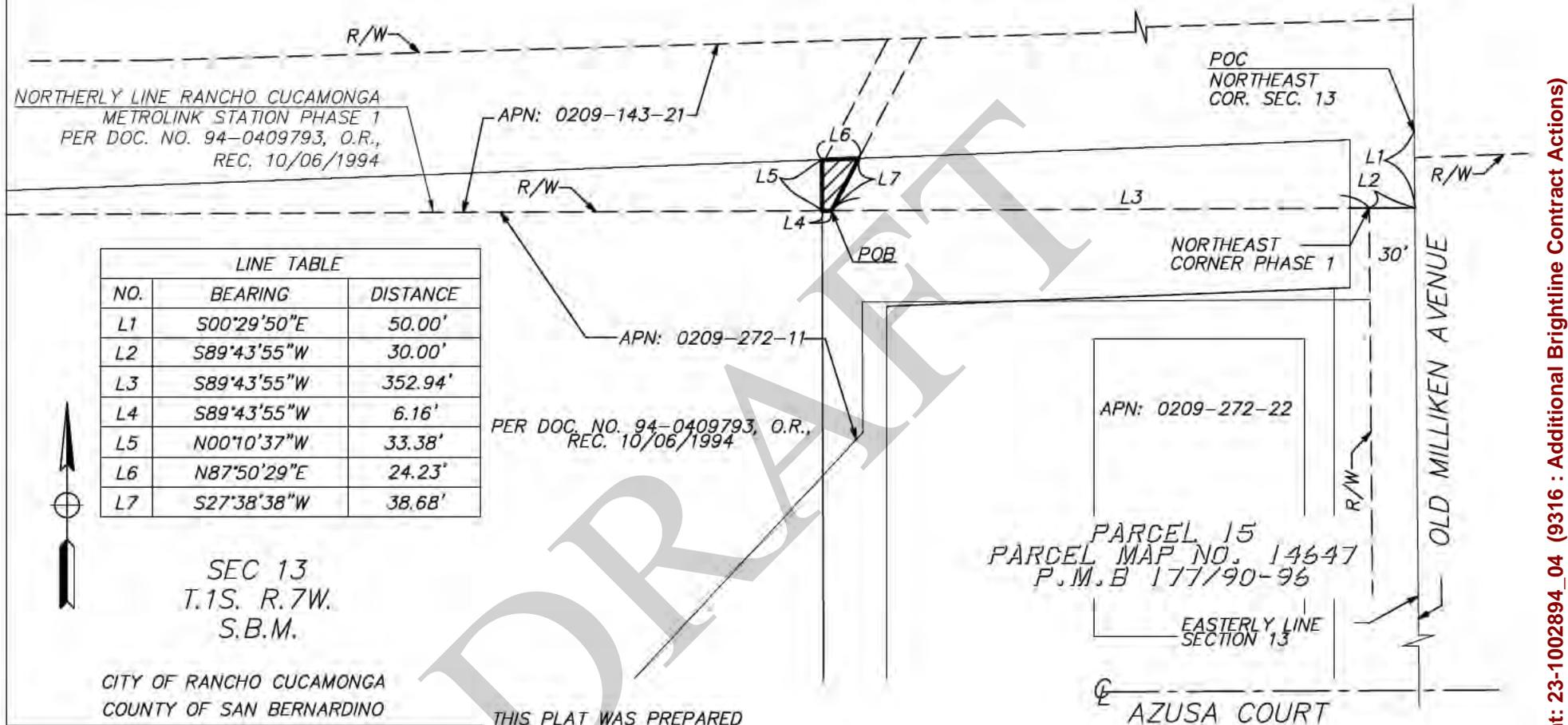
Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary

04/19/2024 2:43:14 PM

EXHIBIT 'E-1'

APN	TYPE OF ESTATE	AREA
0209-143-21	EASEMENT	509 SF



NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	352.94'
L4	S89°43'55"W	6.16'
L5	N00°10'37"W	33.38'
L6	N87°50'29"E	24.23'
L7	S27°38'38"W	38.68'



SEC 13
T.1S. R.7W.
S.B.M.

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE



PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	1



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT F TO GRANT DEED

DESCRIPTION AND DEPICTION OF THE ADJACENT TRANSIT CENTER

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

All that portion of said Parcel 15, together with all that portion of said Rancho Cucamonga Metrolink Station Phase I;

Excepting therefrom that portion lying easterly of the following described line:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South $00^{\circ}29'50''$ East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South $89^{\circ}43'55''$ West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South $89^{\circ}43'55''$ West 359.10 feet to the **Point of Beginning**;

Thence South $00^{\circ}10'37''$ West 569.98 feet to the southerly line of said Parcel 15, also being the **Point of Terminus**;

Parcel contains 227,529 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.00 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'F-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).



Signature: 
Sean M. Smith, PLS 8233

Date: 9/27/2022

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'F-1'

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

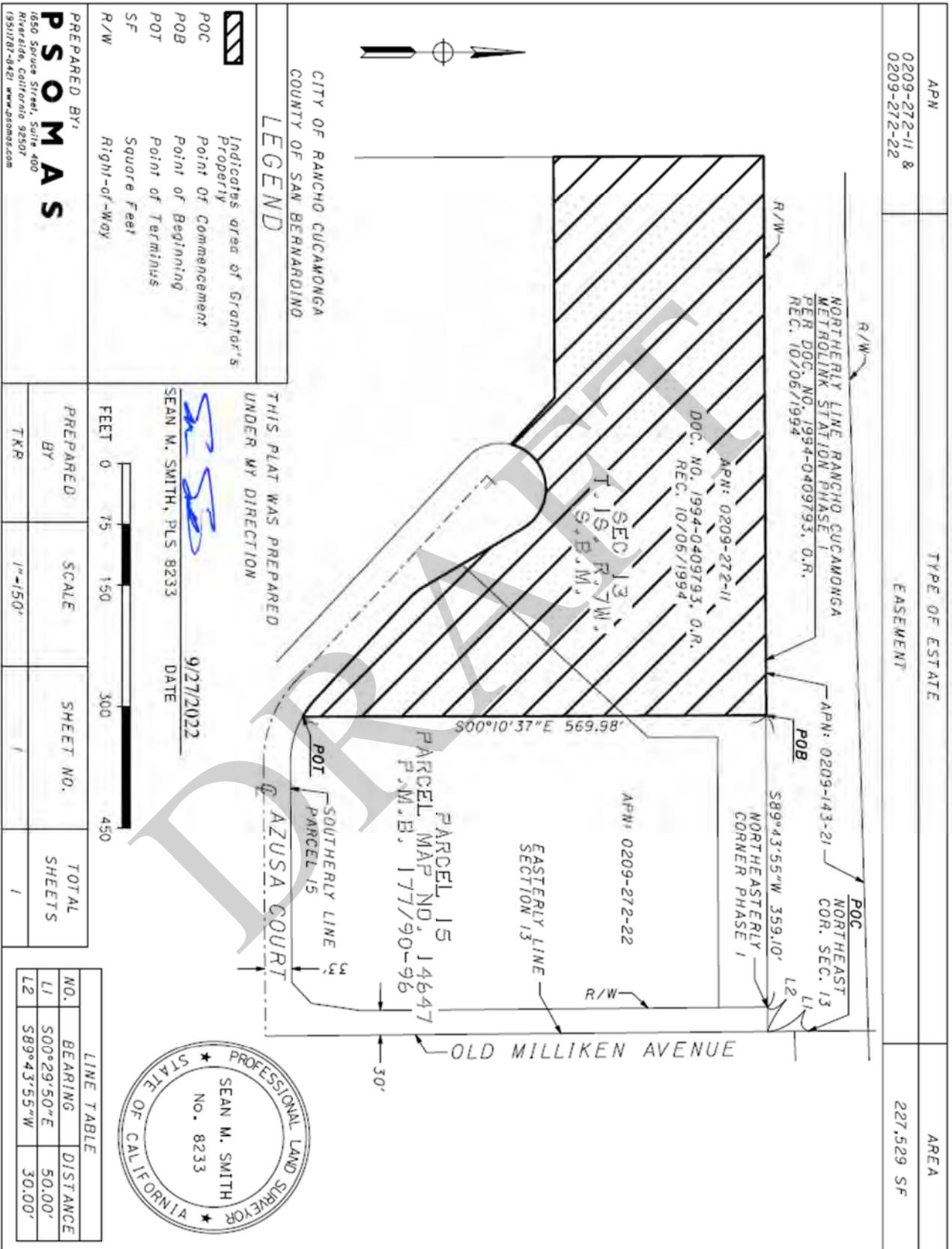


EXHIBIT G TO GRANT DEED
DESCRIPTION AND DEPICTION OF TUNNEL EASEMENT

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'G'**Legal Description of Tunnel Easement****APN: 0209-272-22**

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of Section 13 of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55" West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55" West 12.83 feet;

Thence leaving said northerly line South 00°00'00" West 311.62 feet;

Thence South 89°36'24" West 345.30 feet to the westerly line of the land described in Exhibit A-3 and as shown on the plat in Exhibit A-4;

Thence along said westerly line South 00°10'37" East 98.41 feet to the **Point of Beginning**;

Thence leaving said westerly line South 47°37'41" East 257.13 feet to the southerly line of said Parcel 15, also being the southerly line of the land described in Exhibit B-1 and shown on the plat in Exhibit B-2;

Thence along said southerly line South 89°36'24" West 82.47;

Thence leaving said southerly line North 47°37'41" West 145.18 feet to a point on said westerly line;

Preliminary

03/14/2024 3:54:26 PM

Thence along said westerly line North 00°10'37" West 76.01 feet to the **Point of Beginning**.

Parcel contains 11,265 square feet, more or less.

Excepting therefrom that portion of the above-described parcel lying above a level plane elevation of 1095.50 feet above mean sea level.

The level plane elevation described above is expressed in terms of North American Vertical Datum of 1988. The elevation is based on the San Bernardino County Benchmark No. UF206 with a published elevation of 1,114.07 feet above mean sea level.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'G' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

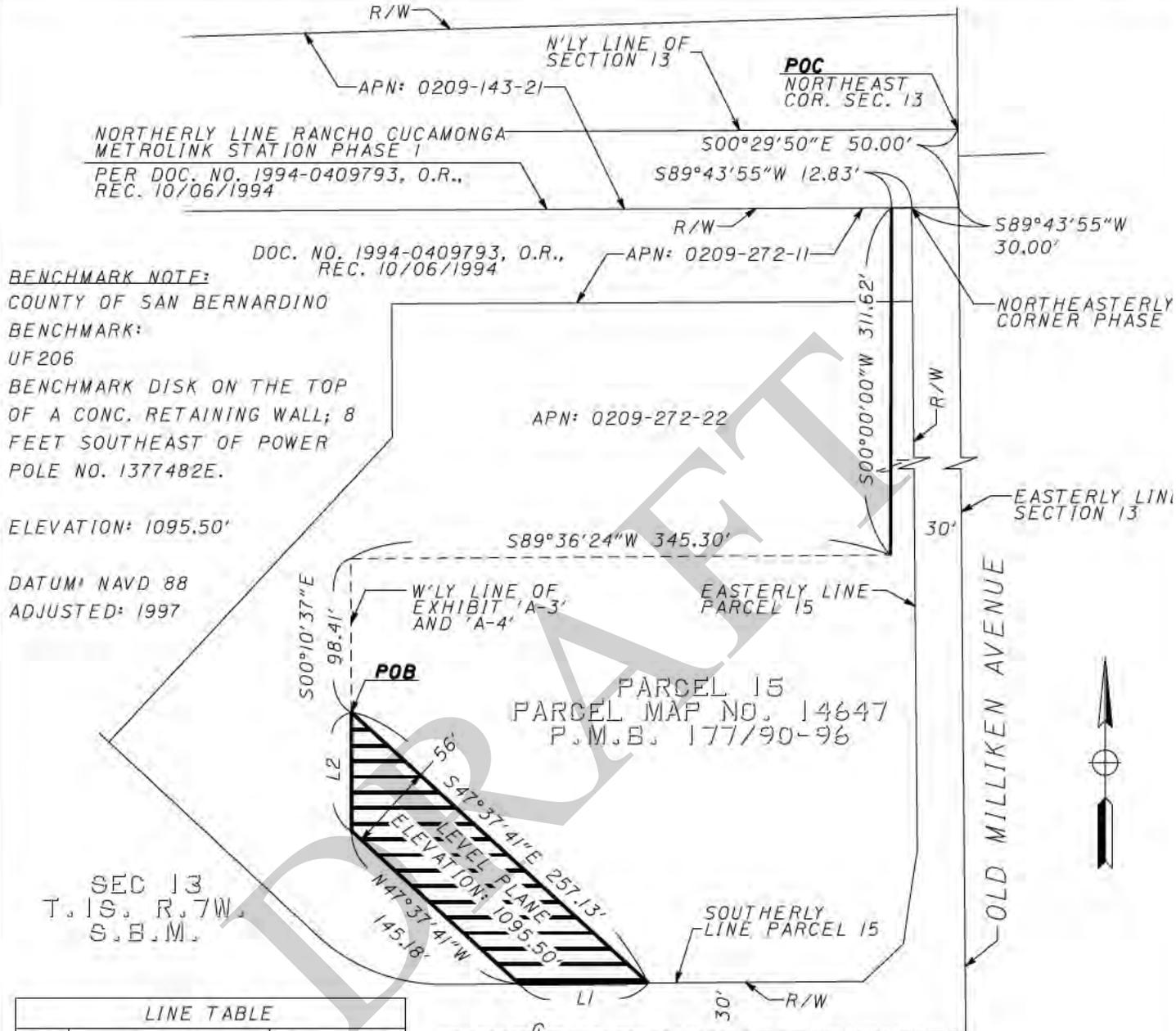


Preliminary
03/14/2024 3:54:31 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'G'

APN	TYPE OF ESTATE	AREA
0209-272-22	EASEMENT	11,265 SF



NO.	BEARING	DISTANCE
L1	S89°36'24"W	82.47'
L2	N00°10'37"W	76.01'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

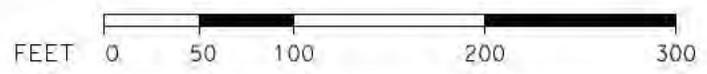
	Indicates area of easement
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

Preliminary

03/14/2024 3:54:36 PM
THIS PLAT WAS PREPARED
UNDER MY DIRECTION



SEAN M. SMITH, PLS 8233 DATE



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
1951787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

SCHEDULE 1 TO GRANT DEED

TERMS AND CONDITIONS OF TUNNEL EASEMENT

1. The party first constructing improvements shall/must engineer its improvements to be located exclusively on and rely upon structural support exclusively from its property, whether the Property, exclusive of the Tunnel Easement Area, as to Grantee or the Tunnel Easement Area as to SBCTA, to accommodate the future construction by the other party of improvements on its property as aforementioned. Prior to construction, the party first constructing improvements shall/must provide to the other party the engineering plans and specifications for such improvements and the non-constructing party has reasonable review rights (within 30 days of delivery) with respect thereto for the limited purpose of providing results of review comments to the constructing party for avoiding and minimizing conflicts for such future improvements by the non-constructing party.
2. For all future construction on the Property, including without limitation the Tunnel Easement Area, beyond the initial construction and any maintenance activities by either party that could foreseeably impact the structural integrity of the improvement(s) of, by or for the other party on its property as described in and as limited by Paragraph 1 above and Paragraph 3 below, the non-constructing or non-maintaining party has reasonable review rights with respect to any such construction (within 30 days of delivery of the construction engineering plans and specifications provided by the constructing party at least 30 days prior to commencing such construction) or maintenance (within 5 business days of delivery of the maintenance plans provided by the maintaining party at least 5 business days prior to commencing such maintenance) by the other party, which review shall be limited to the non-constructing or non-maintaining party providing results of review comments to the constructing or maintaining party for avoiding or minimizing risks to the improvements or operations of the non-constructing or non-maintaining party. Nothing in the foregoing shall change or supersede the Inspector of Record process set forth in Exhibit H to the Disposition and Development Agreement.
3. The constructing party shall ensure that any temporary and permanent improvements do not adversely affect the structural integrity, safety, durability, maintainability, or continued efficient operation of any existing or future facilities of the non-constructing party; provided, however that, except as otherwise expressly agreed in writing by the parties, each party acknowledges and agrees that the structural integrity, safety, durability, maintainability and continued efficient operation of its existing or future facilities must rely exclusively on such party's property as described in and limited by Paragraph 1 above, including any improvement(s) thereon or thereto, whether the Property, exclusive of the Tunnel Easement Area, as to Grantee or the Tunnel Easement Area as to SBCTA.
4. It is anticipated that any tunneling in the Tunnel Easement Area will occur via modern tunnel boring machine or other similar tunneling methods (i.e., no surface entry within the Property) and not mining or blasting or another similar method without Grantee's prior written consent;

provided, however, that such consent shall not be unreasonably withheld, conditioned or delayed.

5. It is also anticipated that any construction and development on the Property would use spread footers over the tunnel area and not pylons or another method without SBCTA's prior written consent; provided, however, that such consent shall not be unreasonably withheld, conditioned or delayed.
6. The constructing party shall provide the non-constructing party with 60 days advance written notice prior to the commencement of construction activities and 15 days advance written notice prior to the commencement of any maintenance activities that could foreseeably impact the structural integrity of the improvement(s) of the other party. The constructing party shall use commercially reasonable efforts to mitigate impacts to the operations of the non-construction party.
7. In the event that a party determines that an emergency situation exists that impacts the other party's respective property as described in Paragraph 1 above, the party seeking to address such emergency situation shall provide notice of the emergency situation to the other party as promptly after such determination and shall have the right, at its sole cost and risk (except to the extent that the emergency is caused or contributed to by the other party), to immediately act to address the emergency situation.
8. Grantee shall protect, indemnify, defend, and hold harmless SBCTA, Omnitrans (the contemplated tunnel operator), its/their successors and assigns, and any other tunnel operator(s), service provider(s), contractor(s) or subcontractor(s) from and against all claims, demands, expenses, liabilities, losses, damages, and costs relating to the Property, inclusive of the Tunnel Easement Area, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, to, any person or loss or damage to the extent arising as a result of the acts or omissions of Grantee, or any employee, agent, visitor, contractor, patron, guest or invitee (each a "Permittee") of Grantee on or related to the Property, inclusive of the Tunnel Easement Area.
9. SBCTA shall protect, indemnify, defend, and hold harmless Grantee, its successors and assigns, and any other train operator(s), service provider(s), contractor(s) or subcontractor(s) from and against all claims, demands, expenses, liabilities, losses, damages, and costs relating to the Property, inclusive of the Tunnel Easement Area, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, to, any person or loss or damage to the extent arising as a result of the acts or omissions of SBCTA or any Permittee of SBCTA on or related to the Tunnel Easement.
10. Notwithstanding anything to the contrary in Paragraphs 8 and/or 9 above, a party shall not be entitled to indemnification or any other right, remedy or relief provided under or pursuant to such paragraphs for claims, demands, expenses, liabilities, losses, damages and costs to the

extent caused or contributed to by, or arising out of, resulting from or relating to, its negligence or willful misconduct or the negligence or willful misconduct of its Permittees, including without limitation its breach of, default under or failure of performance with respect to these Tunnel Easement terms and conditions or any of them.

11. Commencing upon the construction of the tunnel(s) and at all times thereafter, SBCTA shall maintain (or require that the tunnel operator maintain) insurance coverage, or self-insurance, in amounts and coverage types, that SBCTA deems appropriate in its reasonable discretion, to which, if any, the Grantee will be named as an Additional Insured. During said period, SBCTA will provide (or require the tunnel operator to provide) to Grantee reasonable evidence of said insurance, or a statement of self-insurance, promptly following receipt of written request for the same from Grantee. During construction of the tunnel(s) in the Tunnel Easement Area, SBCTA will require all contractors to provide insurance coverage types and limits, that SBCTA deems appropriate in its reasonable discretion, and will require (or require the tunnel operator to require) all contractors to add Grantee as an indemnified party and an additional insured to all insurance required in any Tunnel Easement Area construction related contracts. Additionally, if the insurance Grantee requires or desires is in excess of what SBCTA or the tunnel operator, as applicable, is required to carry as outlined in this Paragraph 11, Grantee may, at its sole election and its sole cost and expense, timely obtain and pay for any upgrade/excess amount it requires or desires, such that there is no delay in construction or SBCTA shall be entitled to move forward without same.
12. SBCTA shall not prevent access by Grantee or Grantee's Permittees to the Property, exclusive of the Tunnel Easement Area, as a result of tunnel construction, maintenance or repair activities in the Tunnel Easement Area.
13. The constructing party, as to its respective property as described in Paragraph 1 above, shall ensure that an adequate performance bond is in place at or prior to the commencement of on-site construction activities.
14. The parties acknowledge and agree that, in connection with the DDA, each party and its counsel have reviewed this Grant Deed (including, without limitation, this Schedule 1), and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Grant Deed (including without limitation this Schedule 1). This Grant Deed, including without limitation this Schedule 1, shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties.
15. The parties further acknowledge and agree that this Grant Deed, including without limitation this Schedule 1, together with all attachments and exhibits thereto, constitutes the entire understanding and agreement of the parties with respect to the tunnel, the Tunnel Easement and the Tunnel Easement Area. The Grant Deed, including exhibits thereto and this Schedule 1, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the tunnel, the Tunnel Easement and the Tunnel Easement Area.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Grantee does hereby agree to, as well as acknowledge and accept, the Grant Deed, including without limitation this Schedule 1.

, a Nevada limited liability company

By: _____
Sarah Watterson, _____

ACKNOWLEDGMENT

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

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "E"
EASEMENT FOR HIGH-SPEED RAIL OVERPASS
(8TH STREET)
[See Attached]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUEST BY,
AND WHEN RECORDED RETURN TO:

DesertXpress Enterprises, LLC
3920 W. Hacienda Ave.
Las Vegas, NV 89118
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Free Recording Requested per Government Code 27383.

EASEMENT FOR HIGH-SPEED RAIL OVERPASS
(8TH STREET)

THIS EASEMENT FOR HIGH-SPEED RAIL OVERPASS (“**Agreement**”) is dated as of _____, 20__ and is entered into by and between the CITY OF RANCHO CUCAMONGA, a California municipal corporation (“**City**”), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California (“**DXE**”). City and DXE are sometimes hereinafter referred to individually as “**Party**” and collectively as the “**Parties.**”

RECITALS

A. DXE plans to construct a high-speed passenger rail system from Las Vegas, Nevada to Rancho Cucamonga, California (“**HSR System**”). One portion of this system will include an elevated track structure along a portion of 8th Street in the City of Rancho Cucamonga and requires an easement from the City in order to construct, operate, and maintain this elevated track structure. The location of the easement is described in Exhibit “A” (the “**Easement Area**”), and the elevated high-speed rail track structure and ground-level supporting facilities is described in Exhibit “B” (the “**Improvements**”).

B. The City’s public purposes in entering into this Agreement include facilitating the development of transportation that will benefit the public, providing employment opportunities resulting from the work to be performed by DXE and the operation of a high-speed rail project, and obtaining fair market compensation for the easement interest granted herein (and such compensation shall become part of the general funds of the City and in turn used for public purposes).

AGREEMENT

1. **Grant of Easement; Consideration.** City hereby grants to DXE a nonexclusive perpetual easement (“Easement”) in and through the Easement Area for the purpose of installing, maintaining, and operating the Improvements and operating passenger rail service thereon, subject to all applicable laws, it being understood that the non-vacated portion of 8th Street is a public street that will continue to be used by the public at the risk of DXE. The installation, maintenance, and operation of the Improvements shall be subordinate to any existing easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances, and other matters of record on or under 8th Street. As a condition precedent to DXE’s occupancy or use of the Easement Area, DXE will pay to City the one-time sum equal to the fair market price of the easement interest and rights described herein, as determined by an appraisal obtained by City.

2. **AS-IS.** DXE accepts the Easement Area in its current “AS-IS” condition, without representation or warranty, express or implied, and subject to all existing matters of record and all matters that would be revealed by a diligent inspection of the Easement Area. DXE also acknowledges that City makes no representations, express or implied, as to the physical condition of or title to the Easement Area. This Agreement does not constitute, nor grant permission to use or occupy property not belonging to, or under the control of City, and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this Agreement.

3. **Authorized Improvements; Street Closures.** The rights of DXE to install, maintain, and operate the Improvements are subject to any applicable laws and permitting requirements and conditions (and the City does not waive any of its rights or powers in its governmental capacity in that regard to the extent applicable). City will review and approve all such Improvement plans in its proprietary capacity as property owner prior to construction of the Improvements only to ensure consistency and no material interference with the Public Improvements (as defined below) and not to review the HSR System. In addition, the location of any columns that support the elevated track structure within the Easement Area will be determined per plans approved in writing by the City Engineer after finding that the locations will not unreasonably impact the Public Improvements, including 8th Street and Rochester Avenue. Any and all street closures required for installation, maintenance, or repairs of the Improvements must be approved in advance in writing by the City Manager, and DXE shall pay or reimburse City within thirty (30) days after written demand for all costs incurred by City in connection with any such closures.

4. **Standards for Rail Facilities.** City acknowledges that standards promulgated by and decisions issued by the Federal Railroad Administration (“FRA”) and Surface Transportation Board (“STB”) govern the design, construction, operation, and maintenance of railroad facilities within their jurisdiction and that such regulations, standards, and decisions might as a matter of law preempt and supersede requirements that may otherwise apply under state or local laws. City acknowledges that it is not a regulatory agency under federal law or with respect to California utilities regulated by the California Public Utilities Commission, and the Parties agree that the City will have no liability for not inspecting rail facilities or operations on the Easement Area for purposes of enforcing compliance with laws and regulations within the jurisdiction of the STB, the FRA, or the California Public Utilities Commission. Notwithstanding this Section 4, City

reserves all of its governmental rights and powers, and DXE acknowledges that City is entering into this Agreement solely in its proprietary capacity.

5. **Repair of Damage.**

(a) **Damage to Public Improvements.** DXE shall promptly notify the City in writing if it becomes aware of any damage to 8th Street or Public Improvements (as defined below). Whether or not DXE notifies the City, if any damage is caused to 8th Street or Public Improvements directly or indirectly by DXE or its contractors, such repair work will be conducted by the City at DXE's sole cost and expense, or if so authorized in writing by City, may be repaired by DXE at its sole cost and expense (whereupon DXE shall promptly coordinate with City on any necessary street closures, and promptly perform the repairs).

(b) If City elects to perform repair work for which DXE has some or all responsibility, DXE shall reimburse City for its share of the reasonable costs of the repair work within thirty (30) days after delivery of a statement from City describing the costs, including a statement detailing such costs and expenses. In the event payment is not made within said thirty (30) day period, said payment shall include interest at a rate of ten percent (10%) per annum from the end of said thirty (30) day period until paid.

6. **Encumbrance.** DXE may, at any time and from time to time, encumber to any bank, insurance company or other institutional lender, herein called "Mortgagee," by one or more deeds of trust (the "Security Instrument"), all of DXE's interest under this Agreement and the interest created hereunder provided that (i) such Security Instrument is subject to the terms of this Agreement and all interests of the City hereunder, (ii) such Security Instrument shall not constitute in any way a lien or encumbrance on the City's interests, and (iii) the Security Instrument shall not encumber any obligations that do not relate to the HSR System. No Mortgagee shall be liable to City as the successor to the rights and obligations of DXE under this Agreement unless and until such Mortgagee acquires the easement interest hereunder through foreclosure or other proceedings in the nature of foreclosure or as a result of an assignment in lieu of foreclosure or other assignment, action or remedy, nor shall a Mortgagee be liable for any defaults that occur after it conveys its interest in the property associated with the Easement hereunder.

7. **Ownership of Improvements.** All Improvements shall be owned by DXE during the duration of this Agreement, and upon the termination of this Agreement, shall become the sole property of City without compensation to DXE, or, if City so elects and upon written notice to DXE within ninety (90) days of termination, shall be demolished and removed by DXE from the Easement Area at DXE's sole expense within twelve (12) months from the date of said notice (subject to extension for Force Majeure Events or by written agreement of the Parties), and the foregoing (and defense and indemnity obligations of DXE under this Agreement) shall survive the termination of this Agreement. Nothing herein affects City's rights or remedies as a governmental entity, such as the right to cause DXE to abate a nuisance, and in connection therewith, remove Improvements (if City has such a right as a governmental entity under applicable law). For the avoidance of doubt, the City acknowledges and agrees that the construction and operation of the HSR System in accordance with this Agreement and applicable law is not a nuisance.

8. **Waiver and Release.** DXE expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies DXE may now or hereafter have against City, and its officials, officers, employees, consultants, attorneys and agents (collectively, “City Entities”), whether known or unknown, arising prior to the date of this Agreement and relating to the condition of the Easement Area, or 8th Street or adjacent property, and all claims of contribution and reimbursement for costs of remediating Hazardous Materials (defined in Section 12 below) released or existing prior to the date of this Agreement in, on or near the Easement Area.

DXE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“SECTION 1542”), WHICH IS SET FORTH BELOW:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

BY INITIALING BELOW, DXE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

DXE’s Initials

The waivers and releases by DXE contained herein shall survive the termination of this Agreement and shall be binding upon the assignees, transferees, and successors-in-interest of DXE.

9. **Access.** DXE acknowledges that 8th Street contains certain City-owned public facilities collectively and hereinafter referred to as “Public Improvements” as well as publicly and privately owned utilities, including storm drains, water, sewer, gas, electrical, cable television, fiber optics and other public and privately owned utilities and facilities. Except for access to the elevated high-speed rail track structure or associated facilities relating thereto (“**Restricted Facilities**”), which access is covered in the following sentence, the City and utility providers shall have access at any time to the Easement Area. Except in the event of an emergency, in which event telephonic notice as soon as practical is acceptable in lieu of five (5) business day advance written notice, if the City (1) desires to do any digging or trenching in the Easement Area, (2) desires to operate a crane in the Easement Area, or (3) desires access to the Restricted Facilities, the City shall notify DXE either in writing at least five (5) business days prior to such desired entry. In such event, DXE shall cooperate with the City to determine how to safely provide access to 8th Street for purposes of the work to be performed. DXE shall have the right, but not the obligation, to add appropriate signage to the Restricted Facilities, including, without limitation, signs prohibiting access and requiring advance notice and permission prior to entry. Under no

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

circumstances shall the City be liable in damages to DXE, or to any assignee or Mortgagee, for City's failure to provide advance notice of entry and DXE covenants on behalf of itself and its successors in interest not to sue for or claim damages against City as a result of City's breach of the notice requirements in this Section 9.

10. **Safety Protocols.** DXE and the City will comply in good faith with all safety procedures and protocols mutually developed by the parties, as the same may be amended in writing from time to time. It is contemplated that such procedures and protocols will address both planned and emergency access needs for access by City and utility companies. Either party can at any time present draft safety procedures and protocols to the other party for its reasonable review and approval and the parties shall thereafter reasonably cooperate to finalize such procedures and protocols.

11. **Utilities.** As between DXE and the City, any required relocation of a utility that interferes with DXE's project within the Easement Area is the sole responsibility of DXE. Upon written request by DXE, City will provide utility contact information known to City and make its right-of-way utility staff available (on a reimbursable basis) for meetings with third-party utility owners to help facilitate DXE's property access and construction and maintenance activities.

12. **Termination.** In the event DXE fails to use the Easement Area for rail transportation purposes for a period of five (5) consecutive years ("**Abandonment**"), the City may, after thirty (30) days written notice to DXE, deem the easement abandoned and terminate this Agreement; provided, however, the City may not terminate this Agreement if DXE cures the Abandonment by using the Easement Area for rail transportation purposes during the thirty (30) day period after written notice by the City. Additionally, City may terminate this Agreement if DXE fails to comply with this Agreement and then fails to cure such default within thirty (30) days after written notice from City, and then continues to fail to cure such default within five (5) business day following a second written notice from the City sent after the initial 30-day period, with each such notice (i) sent via certified mail or another delivery method requiring a signature by the recipient and (ii) stating in all capital and bolded letters of at least 12 point font: "FAILURE TO CURE SHALL RESULT IN TERMINATION"; provided, however, the City may not terminate this Agreement if DXE commences to cure the default during the applicable cure period after written notice by the City and thereafter diligently prosecutes the cure to completion.

(a) **Right of Mortgagee to Cure Defaults.** Each Mortgagee will have the same period, commencing upon written notice to each such Mortgagee of such default, to remedy or cause to be remedied the default complained of as DXE has hereunder to cure such default, plus an additional ninety (90) days in the case of any other default which is capable of being cured by the Mortgagee (and such ninety (90) day period will be extended for a reasonable period of time to gain possession of the interest of DXE under the Agreement through legal proceedings if necessary to cure such default provided the Mortgagee commences the proceedings within one hundred eighty (180) days after the initial written notice by the City and thereafter diligently prosecuting such proceedings) which period will be extended as necessary for a Mortgagee to obtain relief from any stay in a bankruptcy proceeding in which DXE is a debtor, provided the Mortgagee is diligently prosecuting such relief and has assumed the obligations of this Agreement in writing (and such written assumption shall have been delivered to City), and City will accept performance by such Mortgagee within the time specified herein as timely performance by DXE;

provided, however, that (i) nothing contained herein will be deemed to impose upon any Mortgagee the obligation to perform any obligation of DXE under this Agreement or to remedy any default by DXE hereunder, and (ii) in the event that the Mortgagee or a third party succeeds to DXE's interest under this Agreement pursuant to foreclosure of the Security Agreement, exercise of a power of sale thereunder or a deed in lieu thereof, City waives, as against the Mortgagee or such third party, any default by DXE that is not susceptible to cure by the Mortgagee. Any provision of this Agreement to the contrary notwithstanding, no performance by or on behalf of a Mortgagee will cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Property or bound by or liable under this Agreement, unless the Mortgagee is actually in possession of the Property. In addition, the parties agree that if there is more than one (1) Mortgagee (or collateral assignee), then all cure periods provided in this paragraph will run concurrently. Upon the full and timely performance by Mortgagee of the obligation or obligations the nonperformance of which was the subject of the notice of default given to Mortgagee pursuant to this Section, such default shall be deemed cured and shall no longer give rise to any rights and remedies of City; provided, however, that Mortgagee's cure of any default under this Agreement by DXE shall not excuse or waive any future default under this Agreement by DXE or preclude or limit the exercise of any rights or remedies afforded City under this Agreement as a result of such future default. Notwithstanding any provision to the contrary contained elsewhere in this Agreement, City will not have the right to terminate this Agreement or re-enter the Property by reason of a default by DXE that is reasonably susceptible of cure by Mortgagee, during the period specified in this Section 12 in which a Mortgagee is entitled to cure a default by DXE.

13. **Hazardous Materials.**

(a) DXE covenants that it will not handle or transport Hazardous Materials in the Easement Area except for removal, transportation and disposal in compliance with laws regarding excavated soils that are or may be contaminated with Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance,

product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles or passenger trains; and (d) asbestos. Notwithstanding the foregoing, DXE may handle and transport Hazardous Materials normally and customarily used in the development, construction and operation of railroad infrastructure, including passenger stations, that are used, stored, transported and disposed of in accordance with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record. As an example only, train infrastructure typically entails refueling maintenance vehicles or using cleaning supplies for routine maintenance.

(b) DXE further agrees that at City's request it will furnish City with proof, satisfactory to City, that DXE is in compliance with all such laws, rules, regulations, orders, decisions and ordinances regarding Hazardous Materials.

(c) Notwithstanding anything else contained in this Agreement, DXE shall indemnify, defend and hold harmless City from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to injuries to any person, including wrongful death, or damage to property, including without limitation, property of City and DXE, or otherwise (including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs) resulting in whole or in part from DXE's failure to comply with DXE's obligations under this Agreement with respect to Hazardous Materials, provided, however, that the foregoing shall not apply to releases of Hazardous Materials by City Entities' active negligence or willful misconduct or to Hazardous Materials not brought onto the Easement Area by DXE or its contractors. DXE agrees to reimburse City for all reasonable costs of any kind incurred as a result of the DXE's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of DXE's handling, transporting, or disposing of Hazardous Materials on, over, or across the Improvements and/or 8th Street or adjacent property.

(d) City shall have the right at any time to inspect the Improvements, 8th Street and Public Improvements in order to monitor DXE's compliance with this Agreement, subject to the provisions of Section 9 above.

14. **Insurance.** DXE shall obtain and maintain insurance, at its sole cost and expense, as required in **Exhibit "C"** attached hereto.

15. **Indemnity.** DXE shall defend, indemnify and hold City and its officials, officers, agents, employees and contractors free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of DXE, its partners, affiliates, agents officials, officers, employees or contractors in performance of this Agreement, use of the Easement Area or the construction, use, or operation of the Improvements or the failure to comply (or failure of its contractors to comply) with California Labor Code Section 1720 et seq., including without limitation Labor Code Section 1781. DXE shall further defend, indemnify and hold harmless the

City and its officials, officers, agents and employees from all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings (brought against the City or its departments, commissions, agents, officers, officials, or employees to challenge, attack seek to modify, set aside, void or annul any City decision made in connection with this Agreement or DXE's use of the Easement Area (based on noncompliance with the California Environmental Quality Act or otherwise). DXE shall defend, with counsel reasonably acceptable to City and at DXE's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, that may be brought or instituted against City, its officials, officers, agents, employees or contractors. DXE shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, agents, employees or contractors. DXE shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this Agreement or the indemnity herein provided. DXE's obligations hereunder shall survive termination or expiration of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, agents or, employees or contractors.

16. **Covenant Running With Land.** This Agreement shall be deemed a covenant running with the land with respect to the Easement Area, burdening the Easement Area and benefitting the real property interests associated with the HSR System. All of the covenants, obligations, and provisions of this Agreement shall be binding upon and inure to the benefit of successors, legal representatives, assigns and successors-in-interest to the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of the Easement Area shall be conclusively deemed to have notice of this Agreement, whether or not reference to this Agreement is contained in the instrument by which such person acquires an interest in the Easement Area. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying the Easement Area or any portion thereof or interest therein shall conclusively be deemed to have been executed, delivered and accepted subject to this Agreement.

17. **Estoppel Certificates.** Each of the Parties hereto agree, promptly upon request from the other Party hereto, to furnish from time to time in writing certificates containing truthful estoppel information and/or confirmations of the agreements, obligations and easements contained in this Agreement and otherwise in a form and substance reasonably satisfactory to the Party from whom such certificate is sought.

18. **Cooperation; Further Assurances.** The Parties agree to execute any reasonable documents necessary to effectuate or protect a Party's rights under this Agreement.

19. **Attorneys' Fees.** In the event either Party brings a suit, action, or other proceeding against the other Party that in any way relates to or arises out of this Agreement, the prevailing Party (meaning the Party that obtains substantially the relief sought by it) shall be entitled to have and recover from the other Party all reasonable costs and expenses of the suit, action or proceeding, including attorneys' fees, from the commencement of the suit, action or proceeding through the entry of judgment. The trial court shall determine which Party is the prevailing Party as well as the amount of attorneys' fees and costs to be awarded immediately following the entry of judgment (and without awaiting any appeal) in a post-trial proceeding, such as is conducted when a cost bill is submitted. If an appeal is timely filed and if the awarding or amount of attorneys' fees and costs is at issue in the appeal, then the appellate court (or the trial court, acting pursuant to an order of

the appellate court) shall determine such issue, and the recoverable attorneys' fees and costs shall include those incurred through the entry of final judgment following the appeal.

20. **Miscellaneous.**

(a) **Notices.** All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

DXE: DesertXpress Enterprises, LLC
 3920 W. Hacienda Ave.
 Las Vegas, NV 89118
 Attn: General Counsel

City: City of Rancho Cucamonga
 10500 Civic Center Drive
 Rancho Cucamonga, CA 91730
 Attn: City Manager

Such notice shall be deemed made when delivered by certified mail, return receipt requested, first class postage prepaid, or by reputable overnight messenger delivery service, and addressed to the Party at its applicable address and shall be deemed delivered on the date of delivery or refusal to accept or inability to delivery shown on the return receipt, or one (1) business day after delivery to the messenger service for overnight delivery, as applicable.

(b) **Entire Understanding.** This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein.

(c) **Invalidity.** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the successors of the respective Parties. Except as set forth in Section 6 above, this Agreement may not be assigned by either Party without the prior written consent of the other Party.

(e) **Governing Law.** Except on subjects preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to DXE because of its status as a common carrier regulated by the federal government.

(f) **Venue.** Venue for any legal action between the Parties related to this Agreement will be in the Superior Court of San Bernardino County, California or the United States

District Court, Central District Court of California. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located.

(g) Exhibits. All exhibits attached hereto form material parts of this Agreement.

(h) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(i) Survival. All defense, indemnity, and payment obligations of DXE that arise or relate to events occurring prior to the termination of this Agreement shall survive such termination.

21. **Property Taxes, Including Possessory Interest Taxes**. This Agreement creates a possessory interest that may be subject to possessory interest tax (a type of California property tax), and DXE shall pay any such possessory interest taxes that may be assessed. If the Improvements are taxed as an improvement on the Easement Area, DXE shall, upon demand, pay such taxes allocable to the Improvement, as determined by the taxing authority. City shall cooperate and assist DXE, at no costs to City, in any efforts to obtain a separate assessment for the Improvements, including executing any reasonably required applications or reasonable documents. DXE shall pay when due all personal property taxes levied against or relating to the Improvements.

22. **Encroachment Permit(s)**. DXE shall obtain encroachment permits from City, which City shall not unreasonably deny (upon written application at least forty-five (45) days in advance, but City shall endeavor to process such permits more quickly if possible), in areas outside of but adjacent to the Easement Area as needed for: (i) temporary construction staging; (ii) any public improvements thereon that will be affected (including closure of areas open to the public) or need to be altered or repaired as a result of work done by DXE; or (iii) or access for the foregoing purposes. DXE shall pay all related permit fees and reimburse City within ten (10) business days after written demand for costs of processing the applications.

[Signature Page Follows]

The Parties have executed this Agreement as of the date first written above.

DXE:

CITY:

DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company

CITY OF RANCHO CUCAMONGA, a California municipal corporation

By: _____
Sarah Watterson
President

By: _____, Mayor

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

Nicholas Ghirelli,
City Attorney

DRY

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "A"

DESCRIPTION OF EASEMENT AREA

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A'
Legal Description

APN: 0209-272-11, 0229-262-35 & 0229-262-36

Those portions of Milliken Avenue and Parcel 1, as shown on Parcel Map No. 7555, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 77, pages 42 and 43 of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of Parcel 1 of Parcel Map No. 7797, in said City, filed in Book 80, pages 29 through 32, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with that portion lying within 8th Street Right-of-Way, as shown on the Record of Survey filed in Book 118, pages 77 and 78, in the Office of the County Recorder of said County, together with a portion of the land in said City described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, State of California, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, as shown on Parcel Map No. 14647 filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, said point being on the westerly line of Section 18, Township 1 South, Range 6 West, San Bernardino Meridian, as shown on said Parcel Map No. 7555;

Thence along the westerly line of said Section 18 South 00°29'50" East 3.79 feet to the **Point of Beginning**;

Thence leaving said westerly line North 87°50'29" East 509.29 feet;

Thence North 87°48'05" East 258.95 feet;

Thence North 86°59'53" East 149.87 feet;

Thence North 10°47'55" East 1.81 feet;

Thence North 55°47'55" East 1.41 feet;

Thence South 79°12'05" East 8.00 feet;

Thence South 36°17'13" East 0.62 feet;

Preliminary

04/19/2024 3:02:22 PM

Thence North 86°34'19" East 148.67 feet;

Thence North 42°11'39" East 1.43 feet;

Thence North 86°34'31" East 8.00 feet;

Thence South 48°28'38" East 1.38 feet;

Thence North 86°18'40" East 79.13 feet;

Thence North 87°14'34" East 85.84 feet;

Thence North 88°08'53" East 93.15 feet;

Thence North 87°54'53" East 419.57 feet;

Thence North 02°05'07" West 3.00 feet;

Thence North 87°54'53" East 106.18 feet;

Thence South 02°05'07" East 3.00 feet;

Thence North 87°54'53" East 1,377.58 feet;

Thence North 88°01'32" East 46.56 feet;

Thence North 88°41'30" East 46.74 feet;

Thence South 89°45'16" East 31.17 feet;

Thence North 88°28'08" East 146.29 feet;

Thence South 85°51'37" East 8.00 feet;

Thence South 87°58'21" East 107.78 feet;

Thence South 74°01'15" East 8.00 feet;

Thence South 89°40'47" East 116.04 feet;

Preliminary

04/19/2024 3:02:28 PM

Thence South 44°38'23" East 6.21 feet to a point hereinafter referred to as **Point "A"**, said point being on the southerly line of the Railroad Right-of-Way as shown on said Record of Survey;

Thence continuing South 44°38'23" East 21.59 feet;

Thence South 87°56'20" East 76.88 feet to the easterly line of Rochester Road as shown on said Record of Survey;

Thence along said easterly line South 00°09'46" West 53.26 feet;

Thence leaving said easterly line North 88°01'57" West 77.71 feet;

Thence North 87°41'11" West 22.86 feet;

Thence North 84°42'33" West 129.75 feet;

Thence North 80°18'23" West 107.04 feet;

Thence North 85°57'27" West 23.10 feet;

Thence North 86°57'43" West 47.82 feet;

Thence North 88°21'24" West 48.91 feet;

Thence South 87°51'40" West 44.94 feet;

Thence South 87°52'16" West 15.79 feet;

Thence South 87°54'53" West 2,029.24 feet;

Thence South 86°56'35" West 23.54 feet;

Thence South 86°33'18" West 33.69 feet;

Thence South 79°10'13" West 53.07 feet;

Thence South 79°13'27" West 89.48 feet to the northerly line of said Section 18;

Thence South 79°13'27" West 24.46 feet;

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary

04/19/2024 3:02:33 PM

Thence South 87°50'06" West 8.00 feet;

Thence South 81°58'53" West 137.33 feet;

Thence South 87°55'09" West 943.00 feet to the westerly line of said Section 18;

Thence along said westerly line North 0°29'50" West 60.02 feet to a point hereinafter referred to as **Point "B"**, said point being on the southerly line of the Railroad Right-of-Way as shown on said Record of Survey;

Thence continuing North 0°29'50" West 13.25' to the **Point of Beginning**.

Excepting therefrom that portion lying northerly of the following described line:

Commencing at the above-described **Point "A"**;

Thence South 87°55'10" West 3,762.19 feet to the above referenced **Point "B"**.

Reserving all that portion lying below a level plane 16.00 feet above the existing ground, except that portion occupied by viaduct columns at locations described on Exhibit 'A-2' attached hereto.

Parcel contains 131,094 square feet, more or less.

AND

Parcel "B"

Commencing at said northeast corner of said Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map No. 14647;

Thence along the easterly line of said Section 13 South 00°29'50" East 50.00 feet to the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I, said point also being the **Point of Beginning**;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said northerly line South 00°00'00" West 28.43 feet;

Preliminary

04/19/2024 3:02:37 PM

Thence North 87°55'10" East 13.09 feet to the easterly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence North 87°55'10" East 30.01 to the easterly line of said Section 13;

Thence along said easterly line of Section 13 North 00°29'50" West 27.07 feet to said easterly prolongation and the **Point of Beginning**.

Parcel contains 1,192 square feet, more or less.

Excepting therefrom all that portion below a level plane 16.00 feet above the existing ground, except that portion occupied by viaduct columns at a location described on Exhibit 'A-2' attached hereto.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____



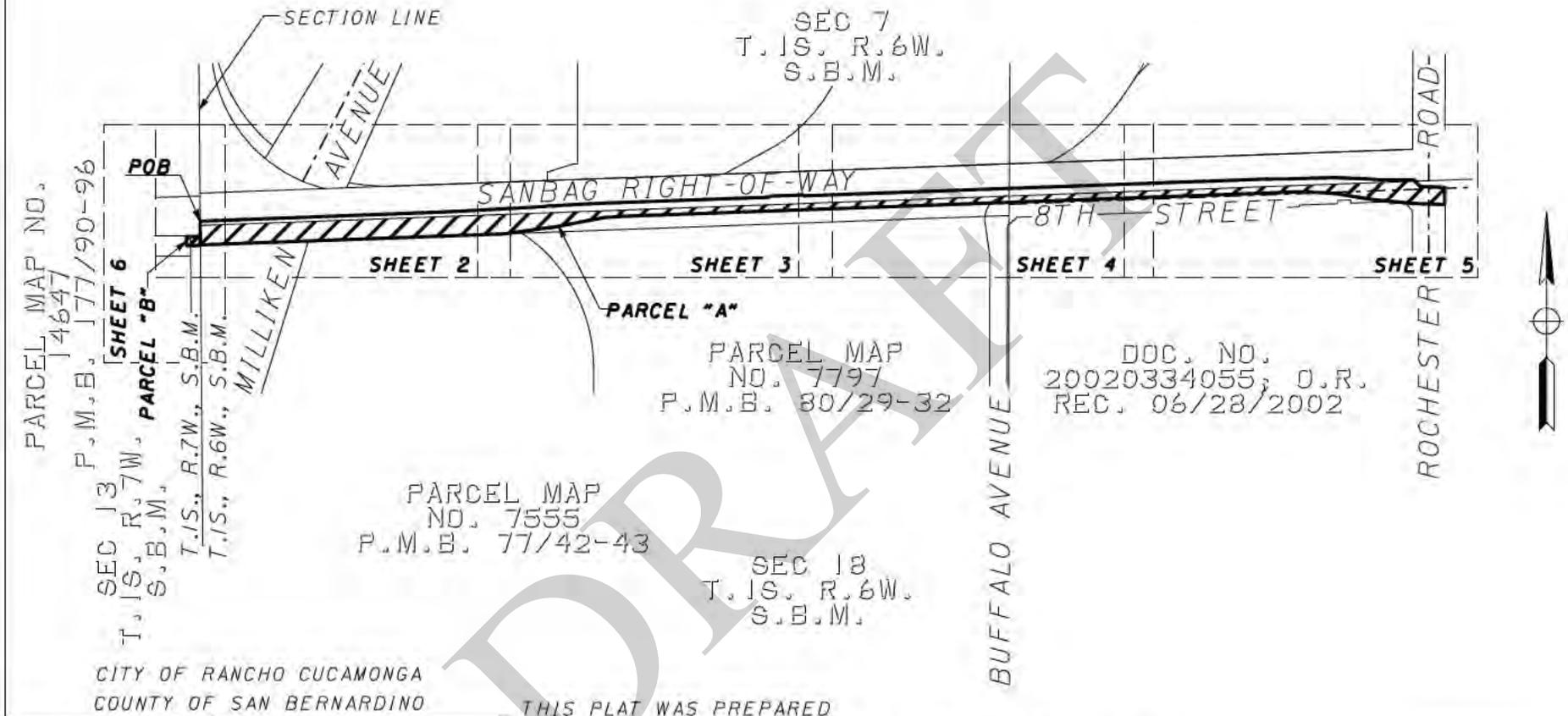
Preliminary
04/19/2024 3:02:41 PM

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-20 & 0229-111-14	EASEMENT	PARCEL "A"= 131,094 SF PARCEL "B"= 1,192 SF

INDEX MAP



LEGEND

	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

04/16/2004 3:06PM PML

SEAN M. SMITH, PLS 8233 DATE



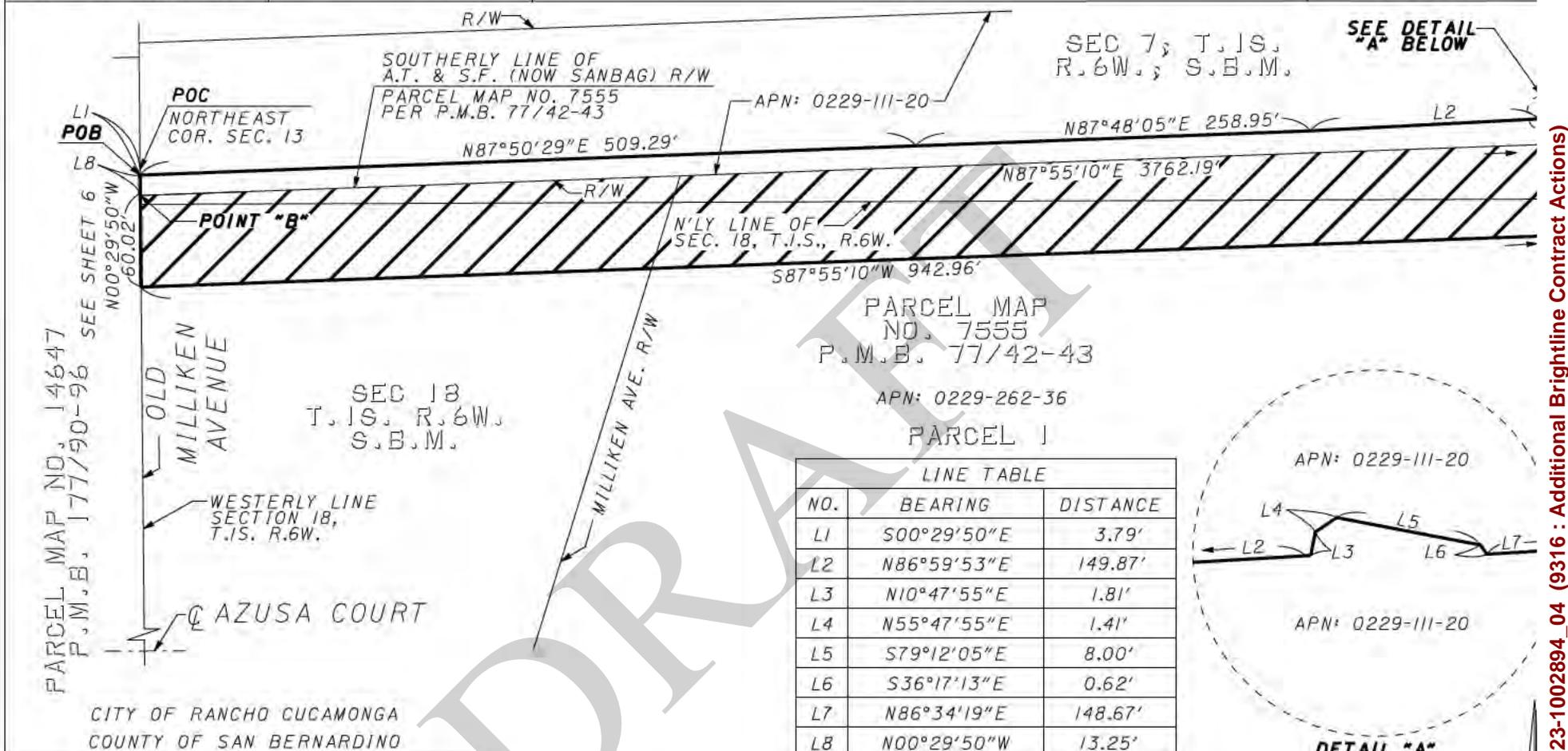
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
19511787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=500'	1	7

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

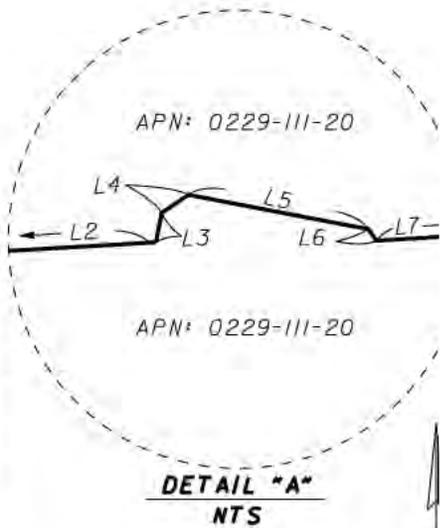
EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-20 & 0229-111-14	PARCEL "A"	EASEMENT	131,094 SF



PARCEL MAP NO. 7555
P.M.B. 77/42-43
APN: 0229-262-36
PARCEL 1

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	3.79'
L2	N86°59'53"E	149.87'
L3	N10°47'55"E	1.81'
L4	N55°47'55"E	1.41'
L5	S79°12'05"E	8.00'
L6	S36°17'13"E	0.62'
L7	N86°34'19"E	148.67'
L8	N00°29'50"W	13.25'



CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND	
	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

Preliminary
DATE: 02/08/2018 10:03:11 AM

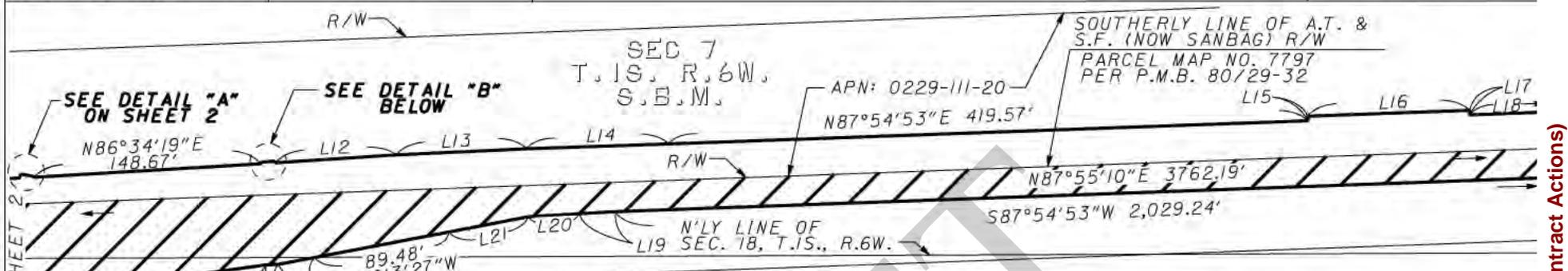


PREPARED BY: PSOMAS 1650 Spruce Street, Suite 400 Riverside, California 92507 19511787-8421 www.psomas.com	PREPARED BY TKR	SCALE 1"=100'	SHEET NO. 2	TOTAL SHEETS 7
---	--------------------	------------------	----------------	-------------------

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-20 & 0229-111-14	PARCEL "A"	EASEMENT	131,094 SF



SEE SHEET 2
SEE SHEET 2

APN: 0229-262-36

SEC 18
T.1S. R.6W.
S.B.M.

PARCEL 1

PARCEL MAP
NO. 7555
P.M.B. 77/42-43

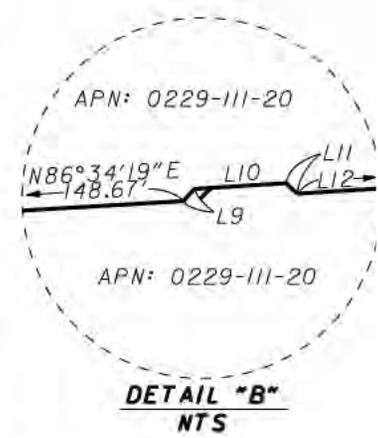
CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PARCEL 1
PARCEL MAP
NO. 7797
P.M.B. 80/29-32

EASTERLY LINE PARCEL 1
PARCEL MAP NO. 7555
PER P.M.B. 77/42-43

APN: 0229-262-35

NO.	BEARING	DISTANCE
L9	N42°11'39"E	1.43'
L10	N86°34'31"E	8.00'
L11	S48°28'38"E	1.38'
L12	N86°18'40"E	79.13'
L13	N87°14'34"E	85.84'
L14	N88°08'53"E	93.15'
L15	N02°05'07"W	3.00'
L16	N87°54'53"E	106.18'
L17	S02°05'07"E	3.00'
L18	N87°54'53"E	1,377.58'
L19	S86°56'35"W	23.54'
L20	S86°33'18"W	33.69'
L21	S79°10'13"W	53.07'
L22	S87°50'06"W	8.00'



	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
19511787-8421 www.psomas.com

Preliminary

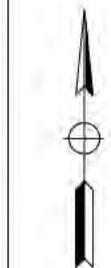
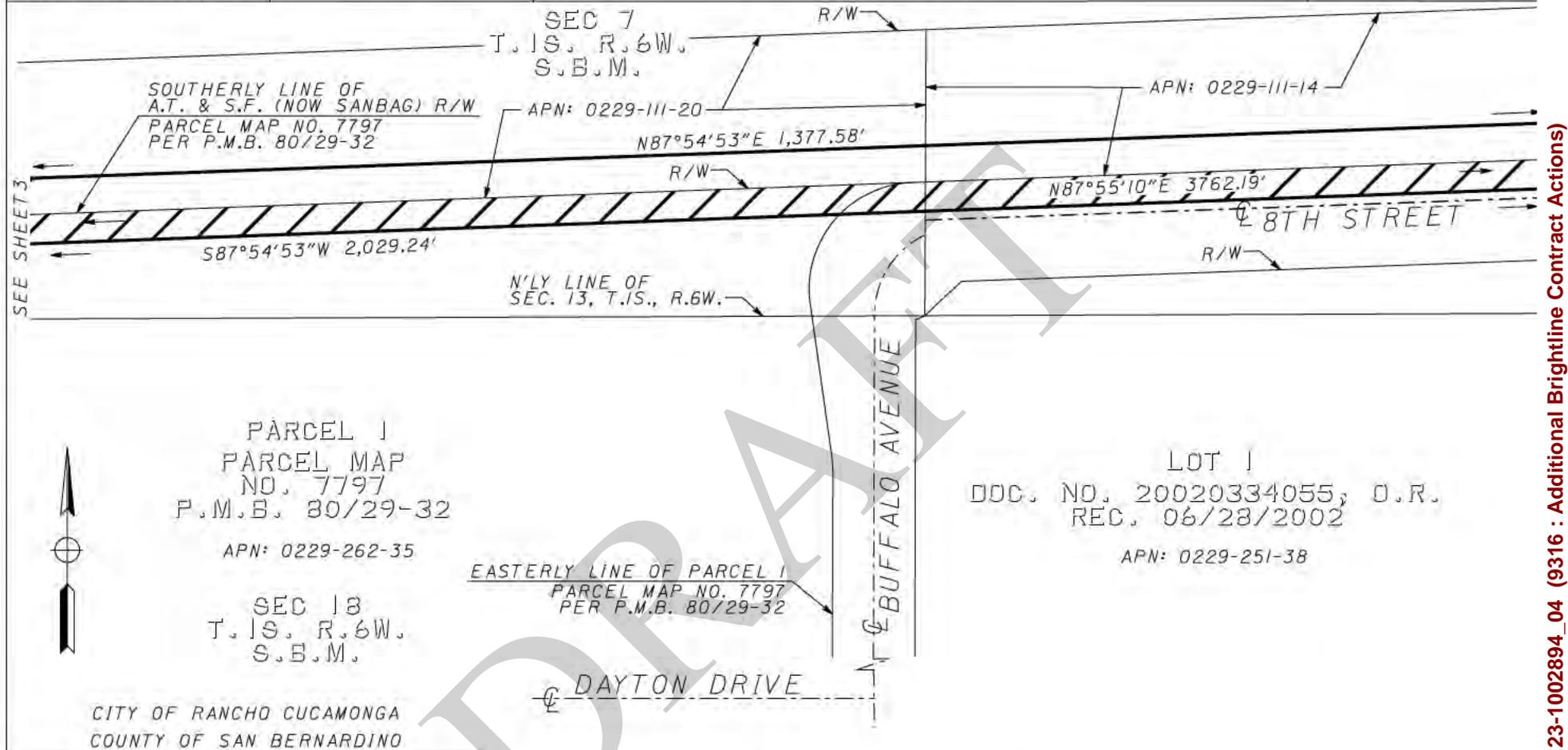
SCALE

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	3	7

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0229-262-35, 0229-262-36, 0229-111-14 & 0229-111-14	PARCEL "A"	EASEMENT	131,094 SF



PARCEL 1
 PARCEL MAP
 NO. 7797
 P.M.B. 80/29-32
 APN: 0229-262-35

SEC 13
 T.1S. R.6W.
 S.B.M.

LOT 1
 DDC. NO. 20020334055, D.R.
 REC. 06/28/2002
 APN: 0229-251-38

CITY OF RANCHO CUCAMONGA
 COUNTY OF SAN BERNARDINO

LEGEND	
	Not a Part
	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

Preliminary

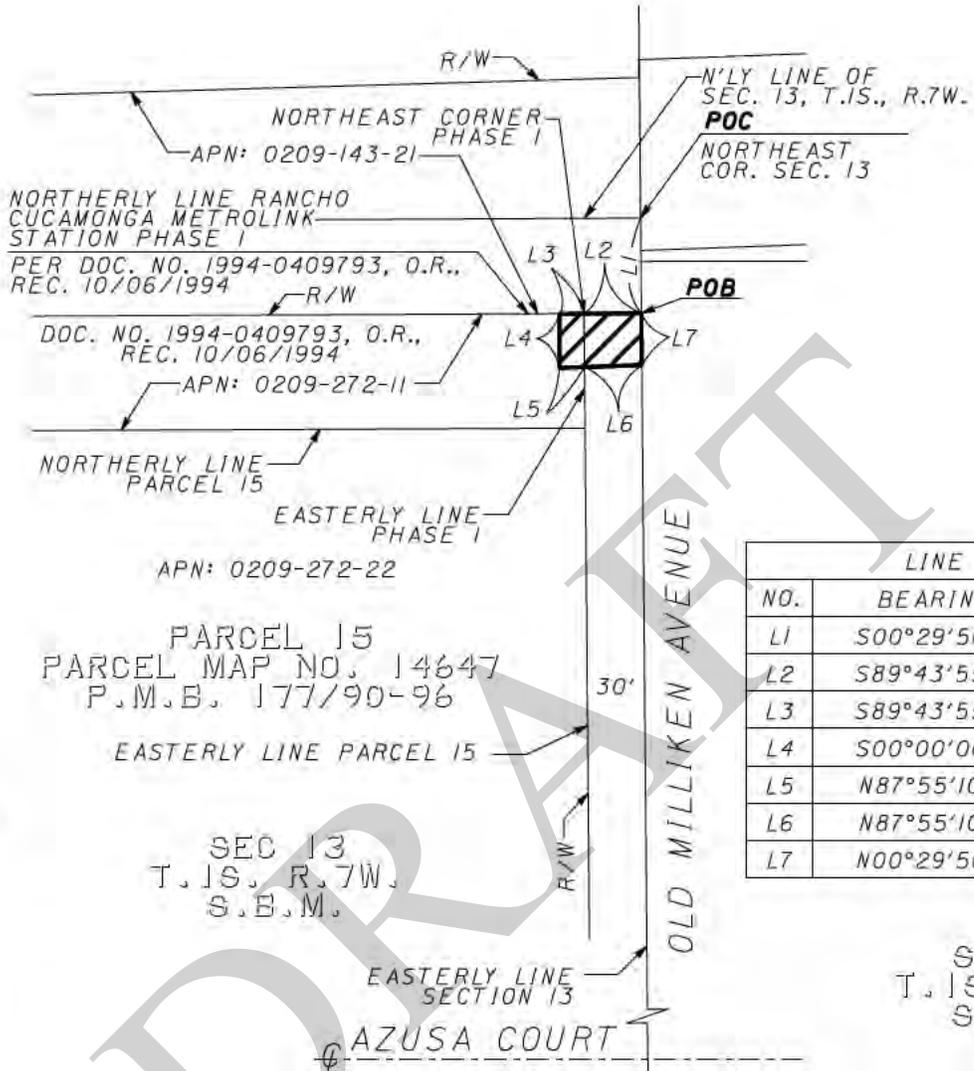


PREPARED BY: PSOMAS 1650 Spruce Street, Suite 400 Riverside, California 92507 19511787-8421 www.psomas.com	PREPARED BY TKR	SCALE 1"=100'	SHEET NO. 4	TOTAL SHEETS 7
---	--------------------	------------------	----------------	-------------------

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-1'

APN	PARCEL	TYPE OF ESTATE	AREA
0209-272-11	PARCEL "B"	EASEMENT	1,192 SF



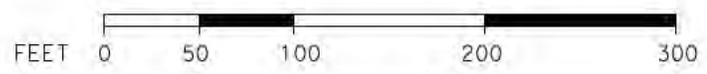
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S00°00'00"E	28.43'
L5	N87°55'10"E	13.09'
L6	N87°55'10"E	30.01'
L7	N00°29'50"W	27.07'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

	Indicates area to be acquired from City
POC	Point Of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

Preliminary
08/18/2024 10:30:00 PM



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
1951787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	6	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "B"**DESCRIPTION OF IMPROVEMENTS**

The Improvements will consist of an elevated railroad viaduct and approximately twenty-one (21) associated support columns and ground-level supporting facilities, such as footings, stairs, utility lines, fencing, access pathways, and grounding mats, located in the Easement Area.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "C"

Required Insurance

(a) Prior to Construction. On or before DXE's entry onto the Easement Area, DXE shall procure and maintain, at its sole cost and expense, the following insurance:

(1) Commercial General Liability (CGL) with a limit not less than twenty-five million dollars (\$25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars (\$25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must provide coverage to the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 10. Coverage shall be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement and the location and placement of improvements within the Easement Area, unless caused by an Indemnified Party's gross negligence or willful misconduct.

(b) Insurance During Construction. Prior to commencing physical construction within the Easement Area, DXE shall procure or cause to be procured and maintained throughout construction the following insurance coverage:

(1) Liability Insurance. Commercial General Liability (CGL) with a limit not less than three hundred million dollars \$300,000,000 each occurrence, three hundred million dollars (\$300,000,000) products and completed operations aggregate, and a general aggregate limit of not less than three hundred million dollars (\$300,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the Project. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms providing equivalent coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must cover the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 or 20 10 and accompanied by 20 37 or equivalent forms with approval from City providing coverage to the additional insured for completed operation losses. Coverage must be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement, unless caused by an Indemnified Party's gross negligence or willful misconduct.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years

from the completion date of the Project. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

(2) Commercial Automobile Insurance. During all phases of the Project, DXE shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than one million dollars (\$1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). During all phases of the Project, DXE shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars (\$25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

(3) Workers' Compensation and Employers Liability Insurance. During all phases of the Project, DXE shall provide evidence of Workers' Compensation insurance as required under California statute including coverage for Employer's Liability with limits of at least one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee by disease, and a policy limit of one million dollars (\$1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars (\$25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies.

The workers' compensation policies must provide the following:

- a. A waiver of subrogation in favor of City and the Indemnified Parties;
- b. A provision extending coverage to all states' operations;
- c. A voluntary compensation endorsement;
- d. An alternative employer endorsement, if applicable to DXE operations;
- e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;

f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and

g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

(4) Professional Liability Insurance. During all phases of the Project, DXE shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in constructing the Project on the Easement Area, procured, and maintained by those third parties performing such work for or on behalf of DXE. For the lead design contractor for the improvements in privity with DXE, the coverage must not be less than ten million dollars (\$10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to the Project, the coverage must not be less than five million dollars (\$5,000,000) per claim and in the aggregate. DXE shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of the Project, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars (\$1,000,000) per claim and in the aggregate. DXE shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars (\$25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against DXE by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for DXE or any lead design entity is permitted to exceed five hundred thousand dollars (\$500,000), unless commercially unavailable and without prior written approval from City, in its good faith discretion. Coverage must apply specifically to professional activities performed or contracted by DXE in support of the Project. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. DXE agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and DXE shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after the commencement of revenue service or to purchase an extended reporting period for no less than three (3) years after the commencement of revenue service.

(5) Contractor's Pollution Liability. DXE shall procure or cause to be procured contractor's pollution liability ("CPL") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with Project dedicated limits of no less than twenty-five million dollars (\$25,000,000) per occurrence and twenty-five million dollars (\$25,000,000) in the aggregate per policy period dedicated to the Project. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Project. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, DXE shall furnish City evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars (\$5,000,000) per loss and an annual aggregate of five million dollars (\$5,000,000).

(6) Railroad Protective Liability. DXE shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from City, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad. 20.2.1.7. Aircraft Liability. If applicable, DXE shall procure, or cause to be procured and maintained, aircraft liability insurance with a limit of not less than ten million dollars (\$10,000,000) per occurrence in all cases where any aircraft is used on the Project that is owned, leased or chartered by any contractor-related entity or its subcontractors of any tier, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project or on any property owned, rented or leased by City or any of the Indemnified Parties is subject to review and written acceptance by City prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance is acceptable in lieu of the coverage listed above but must be provided prior to use of the aircraft.

(7) Builder's Risk Insurance. DXE shall, upon commencement of construction and with approval of City, obtain and maintain a policy of builder's risk insurance for the Project. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Project. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and SBCTA, and City. Coverage must include property owned by City and the Indemnified Parties that is part of the Project and must not be limited by use of the phrase "as their interests may appear." The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for incorporation into the works located at the Easement Area, in storage or in the course of transit to the Easement Area and all improvements that are within the Easement Area.

The builder's risk policy must include coverage for:

- a. Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;
- b. Machinery accidents and operational testing involving equipment covered by the policy;
- c. Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars (\$25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;
- d. Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;
- e. Replacement value of any property or equipment stored either on or off the Easement Area;
- f. Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:
 - Collapse;
 - Terrorism;
 - Earthquake;
 - Flood;
- g. Plans, blueprints and specifications; and
- h. Demolition and increased cost of construction as required by law or

ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of DXE.

The policy must provide a "severability of interests provision," "multiple insured's clause" or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

DXE shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction of the Project and prior to commencing operations of the Project within the Easement Area, DXE shall provide evidence of "all risk" property insurance covering the Project/Improvements, with coverage sufficient to cover the probable maximum loss of such improvements and alterations made by DXE pursuant to the terms hereof, which must include "all risk" coverage using the ISO Causes of Loss - Special Form or (with approval from City) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

(c) Insurance During Operations. Upon the commencement of revenue service operations, DXE shall procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) with a limit not less for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars (\$323,000,000), or such other limit of liability as Congress may establish from time to time applicable to DXE's passenger rail operations. Such policy or policies must provide coverage to all Indemnified Parties as additional insureds. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy and the policies up to three hundred twenty-three million dollars \$323,000,000 must include one reinstatement limit for the period of the policy(ies) term.

(d) Self Insurance. The policy or policies under which coverage required by this Agreement is provided may include a deductible or self-insured retention not in cumulative excess of ten million dollars (\$10,000,000) on the condition that:

(1) Each insurance policy expressly provides that the obligations of the policy issuer to City as an additional insured are not to be diminished in any way by DXE's failure to pay its deductible or self-insured retention obligation for any reason;

(2) DXE provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to City and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that DXE has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars (\$1,000,000); and

(3) DXE promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

(e) Definition of “Self Insurance”. As used in this Agreement, “self insurance” means that DXE is itself acting as if it were the insurance company providing the insurance required under the provisions of this Agreement.

(f) Evidence of Insurance. In accordance with the insurance requirements above, DXE shall furnish evidence of insurance reasonably acceptable to City before DXE enters the Easement Area, before commencing physical construction of the Project within the Easement Area, and before the beginning of operations, as applicable. DXE shall provide City with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. DXE shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder's risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to DXE starting work on the Project, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of DXE, any of the coverage required becomes unavailable, DXE shall provide good faith alternative insurance packages and programs, subject to prior approval by City, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

(g) Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, must be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name the Indemnified Parties as additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of DXE under this Agreement, coverage for such additional insureds must not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for City to vicarious liability but shall allow coverage for City to the full extent provided by the policy.

(h) Waiver of Subrogation Rights. To the fullest extent permitted by law, DXE hereby waives all rights of recovery under subrogation against the additional insureds named herein, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of City, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, DXE shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. DXE shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit DXE from waiving the right of subrogation prior to a loss or claim.

(i) Eligible Insurers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and 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 City. DXE shall furnish to City, not less than fifteen (15) days before the date the insurance is first required to be carried by DXE, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, evidencing the coverages required under this Section, with a copy of each policy, if requested by City. Such certificates must provide that should any policies described therein be cancelled before the expiration date thereof, notice is to be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, DXE agrees that the insurance coverage required hereunder is not to be terminated or modified in any material way without thirty (30) days advance written notice from DXE to City.

(j) Cure. If DXE fails to procure and maintain insurance required under this Agreement or fails to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, subject to the provisions herein, City is entitled, after thirty (30) days prior written notice to DXE of DXE's default hereunder and DXE's failure to cure such default within said thirty (30) days, ten (10) days for non-payment, to require DXE to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Project until DXE has provided City reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of DXE under this Section have been met. No cessation of construction or operations required by City under this Section releases or relieves DXE of any of its other obligations under this Agreement.

EXHIBIT "F"

EASEMENT FOR AERIAL PLATFORM

[See Attached]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "F"

RECORDING REQUEST BY,
AND WHEN RECORDED RETURN TO:

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

San Bernardino County Transportation
Authority
1170 W. Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Director of Transit and Rail

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Free Recording Requested per Government Code 27383.

EASEMENT FOR AERIAL PLATFORM
(Brightline West Platform)

THIS EASEMENT FOR AERIAL PLATFORM (“**Agreement**”) is dated as of _____ 20__ (“**Effective Date**”) and is entered into by and between the CITY OF RANCHO CUCAMONGA, a California municipal corporation (“**City**”) and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a California municipal corporation (“**SBCTA**”) (City and SBCTA, collectively, “**Grantor**”), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California (“**Grantee**”). City, SBCTA and Grantee are sometimes hereinafter referred to individually as “**Party**” and collectively as the “**Parties.**” Decisions of Grantor under this Agreement shall require the joint consent or approval of both SBCTA and City, with the manner of providing such consent or approval determined by each agency.

RECITALS

A. Grantee plans to construct a high-speed passenger rail system from Las Vegas, Nevada to Rancho Cucamonga, California (“**HSR System**”). One portion of this system will include an elevated track and passenger platform structure within a portion of property jointly owned by SBCTA and the City that is improved with parking and transit improvements, said property being more particularly described on **Exhibit A** attached hereto and made a part hereof (“**Grantor’s Property**”).

B. Grantee desires that it be granted an aerial easement for the elevated track and platform structure for passenger rail (the “**Elevated Structure**”) over the portion of the Grantor’s Property legally described and depicted in **Exhibit B** attached hereto and made a part hereof (the “**Aerial Easement Area**”), and a surface and subsurface easement for ground-level supporting facilities within, through and across only those portions of the Ground Easement Area expressly and specifically designated on plans approved in advance and in writing by the Public Agencies which plans Grantee must ensure specifically show such ground-level supporting facilities, as necessary to support the Elevated Structure and the HSR System, such as columns, footings, stairs, utility lines, grounding mats, fencing, access pathways, and sheer walls (seismic) supporting the Elevated Structure (collectively, the “**Supporting Facilities**” and, together with the Elevated Structure, the “**Improvements**”) on, over, under, through, above and across the portions of the Grantor’s Property below the Aerial Easement Area as necessary to support the Improvements (collectively, the “**Ground Easement Area**”, and with the Aerial Easement Area, hereinafter collectively referred to as the “**Easement Area**”). The Improvements must be designed and constructed by Grantee to continue to allow equipment to pass under and between such Improvements as necessary for the Public Agencies to access and maintain, in a commercially reasonable manner, the adjacent Metrolink tracks; provided, however, the Public Agencies must exercise commercially reasonable care to avoid contact with any of the Improvements during the movement of any such equipment.

C. Grantor’s public purposes in entering into this Agreement include facilitating the development of transportation that will benefit the public, providing employment opportunities resulting from the work to be performed by Grantee and the operation of a high-speed rail project, and obtaining fair market compensation for the easement interest granted herein (and such compensation shall become part of the general funds of the City, in part, and SBCTA, in part, and in turn used for public purposes).

D. Any elevation described in this Agreement is given in [NAVD 88] datum.

AGREEMENT

1. Grant of Easement; Term; Consideration.

(a) Exclusive Easement for Improvements. Subject to the terms and conditions of this Agreement, Grantor does hereby grant, bargain, sell and convey to Grantee, its successors and assigns, the following: (i) an exclusive, permanent aerial easement for the purpose of constructing, installing, inspecting, maintaining, repairing, replacing, removing, using and operating the Elevated Structure over the portion of the Grantor’s Property within the Aerial Easement Area (the “**Aerial Easement**”); and (ii) a permanent exclusive easement on, over, under, above, through and across the Ground Easement Area for the purpose of constructing, installing, inspecting, maintaining, repairing, replacing, and removing the Supporting Facilities supporting the Elevated Structure (collectively, the “**Ground Easement**”, and with the Aerial Easement, hereinafter collectively referred to as the “**Easements**”).

(b) Non-Exclusive Access Easement. In addition, the Grantor hereby grants to Grantee, its contractors, subcontractors, agents, employees, lessees, licensees, successors and assigns, a permanent and non-exclusive easement for vehicular and pedestrian ingress, egress and

access on, over, across and upon the Grantor's Property, as the same may be developed and redeveloped from time to time provided that in all events access to the Easement Area is provided, as reasonably necessary for the purpose of performing such inspection and minor maintenance and repair of the Improvements. For purposes of this Section 1(b), minor maintenance and repair of Improvements involves any maintenance and repair work that does not require the closure of any parking spaces or materially impact Grantor's access through Grantor's Property.

(c) Access for Construction and Installation. Any access to Grantor's Property for the initial construction and installation of the Improvements within the Easement Area shall be pursuant to the temporary construction easement provided for in the Disposition and Development Agreement between Grantor and Grantee and dated October 5, 2022 ("DDA"). Any additional construction or installations shall be covered by Section 1(e) below and shall require the consent of Grantor. Grantee acknowledges and agrees that it is not permitted to construct or install any improvements outside the Easement Area.

(d) Access for Major Maintenance and Repair. Except for minor maintenance and repair covered by Section 1(b) above or in the event of an emergency, in which event telephonic notice as soon as practical is acceptable in lieu of advance written approval, any access to Grantor's Property for maintenance and repair shall require the prior written approval of Grantor, not to be unreasonably withheld, conditioned or delayed, and which request shall be reviewed and granted or denied within ten (10) business days of the written request. Grantee shall tailor its request for access to avoid interference with Grantor's rights to or use of Grantor's Property where possible or minimize interference to the extent avoidance is not possible. Any such access shall be consistent with the safety protocols described in Section 12 and shall at all times maintain at least one reasonably convenient ADA compliant path of pedestrian travel to all public transit and rail services located on or adjacent to Grantor's Property and furthermore, any such access shall maintain no less than the minimum number of ADA accessible parking stalls pursuant to statutory requirements.

(e) Access for Replacement and Removal. Any access to Grantor's Property for construction, installation, replacement or removal of the Improvements after initial construction and installation under Section 1(b) above shall require an encroachment agreement or other temporary construction easement from Grantor, not to be unreasonably withheld, conditioned, or delayed.

(f) Adjustments to Easement Area. Construction of the Improvements must be within the boundaries of the Easement Area, however, the Parties acknowledge that final design and construction of the Elevated Structure and Supporting Facilities may require a non-material adjustment of the description of the Easement Area; provided, however, the location of the Supporting Facilities shall be designed to maximize Grantor's ability to use the surface area below the Aerial Easement Area for parking, pedestrian access, and any legally permitted purposes that does not materially interfere with the Easements granted herein; the plans for the Supporting Facilities shall be subject to Grantor's approval. Upon completion of the construction of the Elevated Structure and Supporting Facilities, Grantee shall provide an accurate as-built survey to Grantor and detailed as necessary for Grantee to produce a revised legal description acceptable to Grantor, and Grantor and Grantee agree to amend this Agreement (which amendment shall be recorded) to replace and refine (but not materially enlarge) the descriptions of the applicable

Easement Area attached to this Agreement with the descriptions for the same as set forth in the as-built survey by mutually executing and recording such amendment in the Official Records of the County of San Bernardino. In connection with the foregoing, the Parties acknowledge and Grantee agrees that the area below the Aerial Easement Area, excluding the Ground Easement Area, is retained by the Grantor and may continue to be used by the public for transportation and related purposes as well as supporting and ancillary purposes and uses (which may include without limitation parking) or any other valid legal use, provided such other use does not unreasonably interfere with Grantee's use of the Ground Easement Area for the purposes set forth in this Agreement.

2. **Compensation.** As a condition precedent to Grantee's occupancy or use of the Easement Area, Grantee will pay to Grantor the one-time sum equal to the fair market value of the easement interest and rights described herein, as determined by an appraisal obtained by Grantor, with one half of such sum payable directly to SBCTA and the other half payable directly to City.

3. **AS-IS.** Grantee accepts the condition of the Grantor's Property, including without limitation the Easement Area, in its current "AS-IS," "WHERE IS" and "WITH ALL FAULTS" condition, without representation or warranty, express or implied, and subject to all existing matters of record and all matters that would be revealed by a diligent inspection of the Easement Area. Grantee agrees that its rights and remedies under this Agreement, including the Easement as well as its rights and interests in the Easement Area, including with respect to the installation, maintenance, and operation of the Improvements, are subject and subordinate to any (and all) existing easement(s), covenant(s), condition(s), restriction(s), reservations, rights of way, liens, encumbrances, and other matters of record on, under, affecting or relating to the Easement Area. Grantee also acknowledges that Grantor makes no representations, express or implied, as to the legal compliance, including compliance with laws governing Hazardous Materials (defined below) and other environmental laws, the physical condition, including the environmental condition, of or title to the Easement Area. This Agreement does not constitute, nor grant permission to use or occupy property, including property rights or interests, not belonging to, in the possession of or under the control of Grantor, and permission to use or occupy such property must be obtained from every owner, holder, user, possessor and controller of such property, separate from and in addition to this Agreement.

4. **Authorized Improvements.** The rights of Grantee to install, maintain, and operate the Improvements are subject to the terms of this Agreement, including Grantor's right to review and approve any and all Improvement plan(s), in its proprietary capacity as outlined below, as well as any applicable laws and license, permitting and approval requirements and conditions (and Grantor does not waive or release, and shall continue to have, any and all of its right(s) or power(s) in its governmental capacity in that regard to the extent applicable). In addition, any review and/or approval of any or all of such Improvement plan(s) by Grantor in its proprietary capacity as property owner prior to construction of the Improvements (i) shall not be deemed to be a review of any plans, drawings or specifications from an engineering or technical standpoint, (ii) may not be relied upon by Grantee (other than for the purpose of indicating that such review and approval occurred) and (iii) does not release, relieve or waive any obligation, liability or duty of Grantee or any right or remedy of Grantor (other than relating to whether the review and/or approval, as applicable, has occurred).

5. **Standards for Rail Facilities.** Grantor acknowledges that standards promulgated by and decisions issued by the Federal Railroad Administration (“FRA”) and Surface Transportation Board (“STB”) govern the design, construction, operation, and maintenance of railroad facilities within their jurisdiction and that such regulations, standards, and decisions might as a matter of law preempt and supersede requirements that may otherwise apply under state or local laws. Grantor acknowledges that it is not a regulatory agency under federal law or with respect to California utilities regulated by the California Public Utilities Commission, and the Parties agree that Grantor will have no liability for not inspecting or any failure to inspect rail facilities or operations on the Easement Area for purposes of enforcing compliance with laws and regulations within the jurisdiction of the STB, the FRA, or the California Public Utilities Commission. Notwithstanding this Section 5, Grantor reserves and does not waive or release any (or all) of its governmental right(s) and power(s), and Grantee acknowledges that Grantor is entering into this Agreement solely in its proprietary capacity.

6. **Repair of Damage.**

(a) **Damage to Public Improvements.** Grantee shall promptly notify Grantor in writing if it becomes aware of any damage to or destruction of Public Improvements (as defined below). Whether or not Grantee notifies Grantor, if any damage is caused to Public Improvements directly or indirectly by Grantee (including, without limitation, Grantee’s officers, directors, agents, representatives, employees, partners, managers, contractors, or subcontractors (collectively “**Grantee Parties**”)) such repair work may be conducted by Grantor at Grantee’s sole cost and expense or, if so authorized in writing by Grantor, may be repaired by Grantee at Grantee’s sole cost and expense (whereupon Grantee shall promptly coordinate with Grantor on any necessary closures, and promptly perform the repairs). Grantee acknowledges and agrees that the foregoing terms of this Agreement, including their operation, will not waive, relieve or release Grantee from liability for damage or destruction, including any claim, demand, loss, liability, damage, cost or expense, including attorneys’ fees, incurred or suffered by Grantor or others, including damage to any property or injury to, including death of, any person, arising out of, resulting from or related to such damage or destruction caused directly or indirectly by Grantee or the Grantee Parties.

(b) If Grantor elects to perform repair work for which Grantee has some or all responsibility, Grantee shall reimburse Grantor for its share of the reasonable costs of the repair work within thirty (30) days after delivery of a statement from Grantor describing the costs, including a statement detailing such costs and expenses. In the event payment in full is not made within said thirty (30) day period, the outstanding balance shall accrue interest at the maximum legal rate or a rate of twelve percent (12%) per annum, whichever is less, compounding monthly from the end of said thirty (30) day period until paid to cover administrative and other costs and expenses.

7. **Encumbrance.** Grantee may, at any time and from time to time, encumber to any bank, insurance company or other institutional lender, herein called “Mortgagee,” by one or more deeds of trust (the “**Security Instrument**”), all of Grantee’s easement interest under this Agreement, provided that (i) such Security Instrument is subject and subordinate to this Agreement and all other interests of the Grantor hereunder, (ii) such Security Instrument shall not constitute in any way a lien or encumbrance on Grantor’s rights or interests, and (iii) the Security Instrument shall not encumber any obligations that do not relate to the HSR System. No Mortgagee shall be

liable to Grantor as the successor to the rights and obligations of Grantee under this Agreement unless and until such Mortgagee acquires the easement interest hereunder through foreclosure or other proceedings in the nature of foreclosure or as a result of an assignment in lieu of foreclosure or other assignment, action or remedy, nor shall a Mortgagee be liable for any defaults that occur after it conveys the easement interest hereunder.

8. **Ownership of Improvements.** The Improvements shall be owned by Grantee during the duration of this Agreement. Upon the termination of this Agreement by Grantor pursuant to (and subject to) Section 14, or otherwise by Grantee, the Improvements shall become the sole property of Grantor without compensation to Grantee or any Mortgagee, or, if Grantor so elects and upon written notice to Grantee within ninety (90) days of termination, shall be demolished and removed by Grantee from the Easement Area at Grantee's sole expense within twelve (12) months from the date of said notice (subject to extension for Force Majeure Events or by written agreement of the Parties), and the foregoing (and defense and indemnity obligations of Grantee under this Agreement) shall survive the termination of this Agreement. Nothing herein affects Grantor's rights or remedies as a governmental entity, such as the right to cause Grantee to abate a nuisance, and in connection therewith, remove Improvements (if Grantor has such a right as a governmental entity under applicable law). Except as expressly limited by the terms of this Agreement, including, but not limited to, Section 14 of this Agreement, in the event of a breach, default or failure of performance by Grantee, Grantor shall have such rights and remedies as are provided under applicable law or in equity, including the right or remedy of declaratory relief, specific performance, injunction and restitution. For the avoidance of doubt, Grantor acknowledges and agrees that the construction and operation of the HSR System in accordance with this Agreement and applicable law and in a commercially reasonable manner is not a nuisance.

9. **Waiver and Release.** Grantee expressly waives, releases and relinquishes (a) any and all claims, causes of action, rights and remedies Grantee may now or hereafter have against Grantor, and its officials, officers, employees, consultants, contractors, attorneys and agents (collectively, "**Grantor Entities**"), whether known or unknown for all events and circumstances arising prior to the date of this Agreement, with respect to liability for any (and all) claim(s), demand(s), loss(es), liability(ies), damage(s), cost(s) and expense(s), including damage to or loss, upon, above, beneath, or across the Easement Area or adjacent property owned by Grantor or either of them, unless and except to the extent such damage or loss is caused by the gross negligence or willful misconduct of Grantor Entities, and (b) all claims of contribution and reimbursement for costs of remediating Hazardous Materials (defined in Section 15 below) released or existing prior to the date of this Agreement in, on or near the Easement Area.

GRANTEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.”

BY INITIALING BELOW, GRANTEE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

Grantee's Initials

The waivers and releases by Grantee contained in this Agreement shall survive the termination of this Agreement and shall be binding upon the assignees, transferees, and successors-in-interest of Grantee.

10. **Grantor's Access.** Grantee acknowledges that the Grantor's Property, including without limitation the Easement Area, may contain certain Grantor-owned facilities, whether public, enterprise, proprietary or otherwise as well as publicly and/or privately owned utilities, including, without limitation, storm drains, water, sewer, gas, electrical, cable television, fiber optics and appurtenant facilities, hereinafter referred to collectively as “**Public Improvements**”. Except for access to the Improvements, which access is covered in the following sentence, Grantor and utility providers shall have access at any time, from time to time and without notice or liability to the Easement Area, including without limitation the Public Improvements. Except in the event of an emergency, in which event telephonic notice as soon as practical is acceptable in lieu of advance written approval, if Grantor (being either or both SBCTA and City, as the case may be) desires access to the Improvements, Grantor shall request Grantee's prior written approval, not to be unreasonably withheld, conditioned or delayed, and which request shall be reviewed and granted or denied within ten (10) business days of the written request, and Grantee shall endeavor to deliver approval of such request within five (5) business days when possible. Grantor shall tailor its request for access so that it does not unreasonably interfere with Grantee's rights to or use of the Easement Area. Any such access must be consistent with the safety protocols described in Section 12 and Grantee shall cooperate with Grantor to determine how to safely provide access to the Easement Area for purposes of the work to be performed. Grantee shall have the right, but not the obligation, to add appropriate signage to the Improvements, including, without limitation, signs prohibiting access and requiring advance notice and permission prior to entry. Under no circumstances shall Grantor be liable in damages to Grantee, or to any successor, assign, assignee or Mortgagee, including any successor in interest, for Grantor's failure to request or obtain Grantee's permission, and Grantee covenants on behalf of itself and its successors and assigns, including successors in interest and any Mortgagee, not to sue for or claim damages against Grantor as a result of Grantor's breach of the notice requirements in this Section 10.

11. **Coordination of Grantor Construction Activities.** If Grantor (being either or both SBCTA and City, as the case may be) desires to (i) do any digging or trenching on its property within twenty-five (25) feet of any of Grantee's columns built as part of the Supporting Facilities or below the Improvements or digging or trenching adjacent to underground utilities or grounding mats (other than minor digging for sprinklers, sign posts, or similar non-substantive digging), or (ii) operate a crane or other equipment in a location and/or configuration which is capable of extending into or above the Aerial Easement Area or within twenty-five (25) horizontal feet of

such Aerial Easement Area, then the Grantor shall give Grantee notice of such intent no later than forty-five (45) days (or for small machinery fifteen (15) days) before such work is to commence, and Grantee shall have fifteen (15) days (or five (5) business days for small machinery) in which to review and comment on the intended work. Grantor shall reasonably consider Grantee's concerns, but Grantor shall not be prevented from operation, use, or construction on Grantor's Property, so long as Grantor complies with all applicable standards, laws, regulations, and policies in order to reasonably safeguard the Improvements and rail operations.

12. **Safety Protocols.** Grantee and Grantor will comply in good faith with all written safety procedures and protocols mutually developed by the Parties, as the same may be amended by the Parties in writing from time to time, and in all events to be prepared prior to the start of construction and rail operations. The Parties acknowledge that additional agencies, including the Federal Railroad Administration and emergency responders, will participate in the development of safety protocols and procedures.

13. **Utilities.** As between Grantee and Grantor, any required relocation of a utility that interferes with Grantee's project within the Easement Area is the sole responsibility of Grantee. Upon written request by Grantee, Grantor will provide utility contact information known to Grantor and make its right-of-way utility staff, if any, reasonably available on a reimbursable basis and Grantee shall pay or reimburse Grantor (within thirty (30) days after delivery (including deemed receipt pursuant to Section 21(a) below) of written demand) for said reasonable cost(s) and expense(s) incurred by Grantor. Grantee shall also be subject to the interest upon late payments as described in Section 6.

14. **Termination.** In the event (i) Grantee fails to commence construction of either the Improvements within the Easement Area or the adjacent train station within three (3) years of the Effective Date (as will be extended by Grantor if Grantee has made material progress toward meeting the requirements to commence construction), (ii) Grantee fails to complete construction within seven (7) years of the Effective Date (subject to a Force Majeure Event or any extension by written agreement of the Parties) or (iii) if, after commencement or re-commencement of passenger rail service, Grantee fails to actively operate the Improvements for a period of eighteen (18) consecutive months (any period of non-operation due to construction or maintenance work which Grantee is performing with reasonable diligence, or subject to a Force Majeure Event or any extension by written agreement of the Parties is deemed to be operating for the purposes of this item iii) ("**Abandonment**"), Grantor may, subject to Section 14(a) below, after thirty (30) days written notice to Grantee, deem the Easements abandoned and terminate this Agreement; provided, however, Grantor may not terminate this Agreement if Grantee cures the Abandonment by resuming daily passenger rail service within the Easements within the thirty (30) day period after written notice by Grantor. Additionally, Grantor may terminate this Agreement if Grantee fails to comply with this Agreement and then fails to cure such default within thirty (30) days after written notice from Grantor, and then continues to fail to cure such default within five (5) business days following a second written notice from the Grantor sent after the initial 30-day period, with each such notice stating in all capital and bolded letters of at least 12 point font: "FAILURE TO CURE SHALL RESULT IN TERMINATION"; provided, however, the Grantor may not terminate this Agreement if Grantee commences to cure the default during the applicable cure period after written notice by the Grantor and thereafter diligently prosecutes the cure to completion.

(a) Right of Mortgagee to Cure Defaults. Provided that Mortgagee or Grantee has provided Grantor in writing the address for sending notices to the Mortgagee and satisfactory documentation of its status as a Mortgagee, each Mortgagee who has been so identified to the Grantor as a Mortgagee will have the same period, commencing upon written notice to each such Mortgagee of such default, to remedy or cause to be remedied the default complained of as Grantee has hereunder to cure such default, plus an additional ninety (90) days in the case of any other default which is capable of being cured by the Mortgagee (and such ninety (90) day period, upon written notice provided to Grantor within said ninety (90) day period, will be extended for a reasonable period of time to gain possession of the interest of Grantee under the Agreement through legal proceedings if necessary to cure such default, provided the Mortgagee commences the proceedings within one hundred eighty (180) days after the initial written notice by Grantor and thereafter diligently prosecutes such proceedings) which period will be extended as necessary for a Mortgagee to obtain relief from any stay in a bankruptcy proceeding in which Grantee is a debtor, provided the Mortgagee is diligently prosecuting such relief and has assumed the obligations of this Agreement in writing (and such written assumption shall have been delivered to Grantor), and Grantor will accept performance by such Mortgagee within the time specified herein as timely performance by Grantee; provided, however, that (i) nothing contained herein will be deemed to impose upon any Mortgagee the obligation to perform any obligation of Grantee under this Agreement or to remedy any default by Grantee hereunder, and (ii) in the event that the Mortgagee or a third party succeeds to Grantee's interest under this Agreement pursuant to foreclosure of the Security Agreement, exercise of a power of sale thereunder or a deed in lieu thereof, Grantor waives, as against the Mortgagee or such third party, any default by Grantee that is not susceptible to cure by said Mortgagee or third party due to the default being personal to Grantee, including without limitation and as an example only, an obligation of Grantee to provide a financial statement. For avoidance of doubt, any default that can be cured with the payment of money is susceptible to cure. Any provision of this Agreement to the contrary notwithstanding, no performance by or on behalf of a Mortgagee will cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Property or bound by or liable under this Agreement, unless the Mortgagee is actually in possession of the Property. In addition, the Parties agree that if there is more than one (1) Mortgagee (or collateral assignee), then all cure periods provided in this paragraph will run concurrently. Upon the full and timely performance by Mortgagee of the obligation or obligations the nonperformance of which was the subject of the notice of default given to Mortgagee pursuant to this Section, such default shall be deemed cured and shall no longer give rise to any rights and remedies of Grantor; provided, however, that Mortgagee's cure of any default under this Agreement by Grantee shall not excuse or waive any future default under this Agreement by Grantee or preclude or limit the exercise of any rights or remedies afforded Grantor under this Agreement as a result of such future default. Notwithstanding any provision to the contrary contained elsewhere in this Agreement, Grantor will not have the right to terminate this Agreement or re-enter the Property by reason of a default by Grantee that is reasonably susceptible of cure by Mortgagee, during the period specified in this Section 14 in which a Mortgagee is entitled to cure a default by Grantee.

(b) In each instance of a default, Grantor may in its reasonable discretion determine that no party with a right to cure is diligently prosecuting a cure to completion; provided, however, that where cure of the subject default has not been completed within three hundred (300) days of Grantor's first notice to Grantee to cure said default, such a determination shall be deemed reasonable under this Agreement. Should Grantor reasonably determine that no party is diligently

prosecuting a cure to completion, subject to the prior sentence, then all cure periods for the default subject to Grantor's determination shall be deemed to have run their course and Grantor has the right to immediately terminate this Agreement.

15. **Hazardous Materials.**

(a) Grantee covenants that it will not handle or transport Hazardous Materials in the Easement Area except for removal, transportation and disposal in compliance with laws regarding excavated soils which are or may be contaminated with Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles or passenger trains; and (d) asbestos. Notwithstanding the foregoing, Grantee may handle and transport Hazardous Materials normally and customarily used in the development, construction and operation of railroad infrastructure, including passenger stations, that are used, stored, transported and disposed of in accordance with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record. As an example only, train infrastructure typically entails refueling maintenance vehicles or using cleaning supplies for routine maintenance.

(b) Grantee further agrees that, at Grantor's request, it will furnish Grantor with proof, satisfactory to Grantor, that Grantee is in compliance with all such laws, rules, regulations, orders, decisions and ordinances regarding Hazardous Materials.

(c) Notwithstanding anything else contained in this Agreement, Grantee shall indemnify, defend and hold harmless Grantor Entities from and against any and all claims, demands, liabilities, losses, damages, costs and expenses arising out of, resulting from or relating

to injuries to any person, including wrongful death, or damage to property, including without limitation, property of Grantor and Grantee, or otherwise (including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs) resulting in whole or in part from Grantee's acts or omissions with respect to Hazardous Materials; provided, however, that the foregoing shall not apply to the extent which a release of Hazardous Materials is the result of Grantor Entities' negligence or willful misconduct following the Effective Date. Grantee agrees to reimburse Grantor for all reasonable costs of any kind incurred as a result of the Grantee's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of Grantee's handling, transporting, or disposing of Hazardous Materials on, over, or across the Improvements and or adjacent property.

(d) Grantor shall have the right at any time to inspect the Improvements and Public Improvements in order to monitor Grantee's compliance with this Agreement, subject to the provisions of Section 10 above.

16. **Insurance.** Grantee shall obtain and maintain insurance, at its sole cost and expense, as required in **Exhibit "D"** attached hereto.

17. **Indemnity.** Grantee shall defend, indemnify and hold Grantor Entities free and harmless of, from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind, including attorneys' fees and costs, in any manner arising out of, resulting from or relating to any acts, omissions or willful misconduct of or by Grantee or the Grantee Parties in performance of this Agreement, breach, default or failure of performance of this Agreement, including failure of timely performance, use of the Easement Area or the construction, use, or operation of the Improvements or the failure to comply with law, including the failure to comply (or failure of its contractors to comply) with California Labor Code Section 1720 et seq., including without limitation Labor Code Section 1781, which are (a) suffered or incurred by or alleged against Grantor, Grantor Entities and/or any of the Grantee Parties, in law or equity, and/or (b) to persons or property, including death. Grantee shall further defend, indemnify and hold harmless Grantor Entities from any and all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings brought against the Grantor Entities to challenge, attack, seek to modify, set aside, void or annul any Grantor decision made in connection with this Agreement or Grantee's use of the Easement Area (based on noncompliance with the California Environmental Quality Act or otherwise). Grantee shall defend, with counsel reasonably acceptable to Grantor and at Grantee's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, which may be brought or instituted against any Grantor Entities. Grantee shall pay and satisfy any judgment, award or decree that may be rendered against any Grantor Entities. Grantee shall reimburse such parties for any and all legal expenses and costs incurred by one or more of them in connection with this Agreement or the indemnity and/or related rights, remedies and other protections herein provided. Grantee's obligations hereunder shall survive termination or expiration of this Agreement, and shall not be restricted to insurance proceeds, if any, received by Grantor Entities.

18. **Covenant Running With Land.** This Agreement shall be deemed a covenant running with the land with respect to the Easement Area, burdening the Easement Area and benefitting the real property interests associated with the HSR System. All of the covenants,

obligations, and provisions of this Agreement shall be binding upon and inure to the benefit of successors, legal representatives, assigns and successors-in-interest to the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of the Easement Area shall be conclusively deemed to have notice of this Agreement, whether or not reference to this Agreement is contained in the instrument by which such person acquires an interest in the Easement Area. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying the Easement Area or any portion thereof or interest therein shall conclusively be deemed to have been executed, delivered and accepted subject to this Agreement.

19. **Estoppel Certificates.** Each of the Parties hereto agrees, promptly following a request from the other Party hereto, to furnish from time to time in writing certificates containing truthful estoppel information and/or confirmations of the agreements, obligations and easements contained in this Agreement, or otherwise appurtenant to this Agreement, in a form and substance reasonably satisfactory to the Party from whom such certificate is sought.

20. **Attorneys' Fees.** In the event either Party brings a suit, action, or other proceeding against the other Party that in any way relates to or arises out of this Agreement, each Party shall bear its own legal costs and expenses.

21. **Miscellaneous.**

(a) **Notices.** All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Grantee:	DesertXpress Enterprises, LLC 8329 W. Sunset Road, Suite 150 Las Vegas, NV 89113 Attn: Legal Department
City:	City of Rancho Cucamonga 10500 Civic Center Drive Rancho Cucamonga, CA 91730 Attn: City Manager
SBCTA	San Bernardino County Transportation Authority 1170 W. Third Street, 2nd Floor San Bernardino, CA 92410 Attn: Director of Transit and Rail

Such notice shall be deemed made when delivered by certified mail, return receipt requested, or by reputable overnight messenger delivery service, and addressed to the Party at its applicable address and shall be deemed delivered on the date of delivery or refusal to accept or inability to effect delivery shown on the return receipt, or one (1) business day after delivery to the messenger service for overnight delivery, as applicable.

(b) Entire Understanding. This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein. The recitals are hereby incorporated herein by reference.

(c) Invalidity. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors of the respective Parties. Except as set forth in Section 7 above, this Agreement may not be assigned by either Party without the prior written consent of the other Party.

(e) Governing Law. Except on subjects preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to Grantee because of its status as a common carrier regulated by the federal government.

(f) Venue. Venue for any legal action between the Parties related to this Agreement will be in the Superior Court of San Bernardino County, California or the United States District Court, Central District Court of California. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located.

(g) Exhibits. All exhibits attached hereto form material parts of this Agreement.

(h) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(i) Survival. All defense, indemnity, and payment obligations of Grantee that arise or relate to events occurring prior to the termination of this Agreement shall survive such termination.

(j) Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, should any fire or other casualty, act of nature, earthquake, flood, hurricane (or tropical cyclone), lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, or other occurrence beyond Grantee's or Grantor's control prevent performance of this Agreement in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing Party, (a "**Force Majeure Event**") then performance of this Agreement by either Party will be suspended or excused to the extent and for a period commensurate with such occurrence.

22. Property Taxes, Including Possessory Interest Taxes. This Agreement creates a possessory interest that may be subject to possessory interest tax (a type of California property tax), and Grantee shall pay any such possessory interest taxes that may be assessed. If the

Improvements are taxed as an improvement on the Easement Area, Grantee shall, upon demand, pay such taxes allocable to the Improvements, as determined by the taxing authority. Grantor shall reasonably cooperate and assist Grantee, at no costs to Grantor, in efforts to obtain a separate assessment for the Improvements, including executing any reasonably required applications or reasonable documents. Grantee shall pay when due all personal property taxes levied against or relating to the Improvements.

[Signature Page Follows]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

The Parties have executed this Agreement as of the date first written above.

CITY:
CITY OF RANCHO
CUCAMONGA,
a California municipal
corporation

SBCTA:
SAN BERNARDINO
COUNTY
TRANSPORTATION
AUTHORITY,
a California county
transportation authority

Grantee:
DESERTXPRESS
ENTERPRISES, LLC,
a Nevada limited liability
corporation

By: _____
L. Dennis Michael
Mayor
City of Rancho Cucamonga

By: _____
Art Bishop
Board President
San Bernardino County
Transportation Authority

By: _____
Sarah Watterson
President
DesertXpress Enterprises, LLC

ATTEST:

By: _____
Janice C. Reynolds
City Clerk
City of Rancho Cucamonga

APPROVED AS TO FORM

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Nicholas R. Ghirelli,
City Attorney
Richards, Watson & Gershon

By: _____
Julianna K. Tillquist
General Counsel
San Bernardino County
Transportation Authority

By: _____
David Pickett
Associate General Counsel
DesertXpress Enterprises, LLC

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A'**Legal Description of Grantor's Property**

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

All that portion of said Parcel 15, together with all that portion of said Rancho Cucamonga Metrolink Station Phase I;

Excepting therefrom that portion lying easterly of the following described line:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 359.10 feet to the **Point of Beginning**;

Thence South 00°10'37" West 569.98 feet to the southerly line of said Parcel 15, also being the **Point of Terminus**;

Parcel contains 227,529 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.00 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).



Signature: 
Sean M. Smith, PLS 8233

Date: 9/23/2022

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "B"

DESCRIPTION OF AERIAL EASEMENT AREA

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B'
Legal Description

APN: 0209-272-11

That portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of San Bernardino County, in the City of Rancho Cucamonga, in said County, State of California, described as follows:

Commencing at the northeast corner of said Section 13 of Township 1 South, Range 7 West, S.B.M., as shown on Parcel Map No. 14647, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County;

Thence along the easterly line of said Section 13, as shown on said Parcel Map, South 00°29'50" East 50.00 feet to the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said northerly line South 89°43'55 West 359.10 feet to the **Point of Beginning**;

Thence continuing along said northerly line South 89°43'55 West 651.28 feet;

Thence leaving said northerly line South 02°09'27" East 60.00 feet;

Thence North 87°54'30" East 649.57 feet;

Thence North 00°10'37" West 39.29 feet to said northerly line and the **Point of Beginning**.

Parcel contains 32,283 square feet, more or less.

Excepting therefrom all that portion below a level plane 16.00 feet above the existing ground.

Preliminary
02/26/2024 5:15:14 PM

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'B-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____



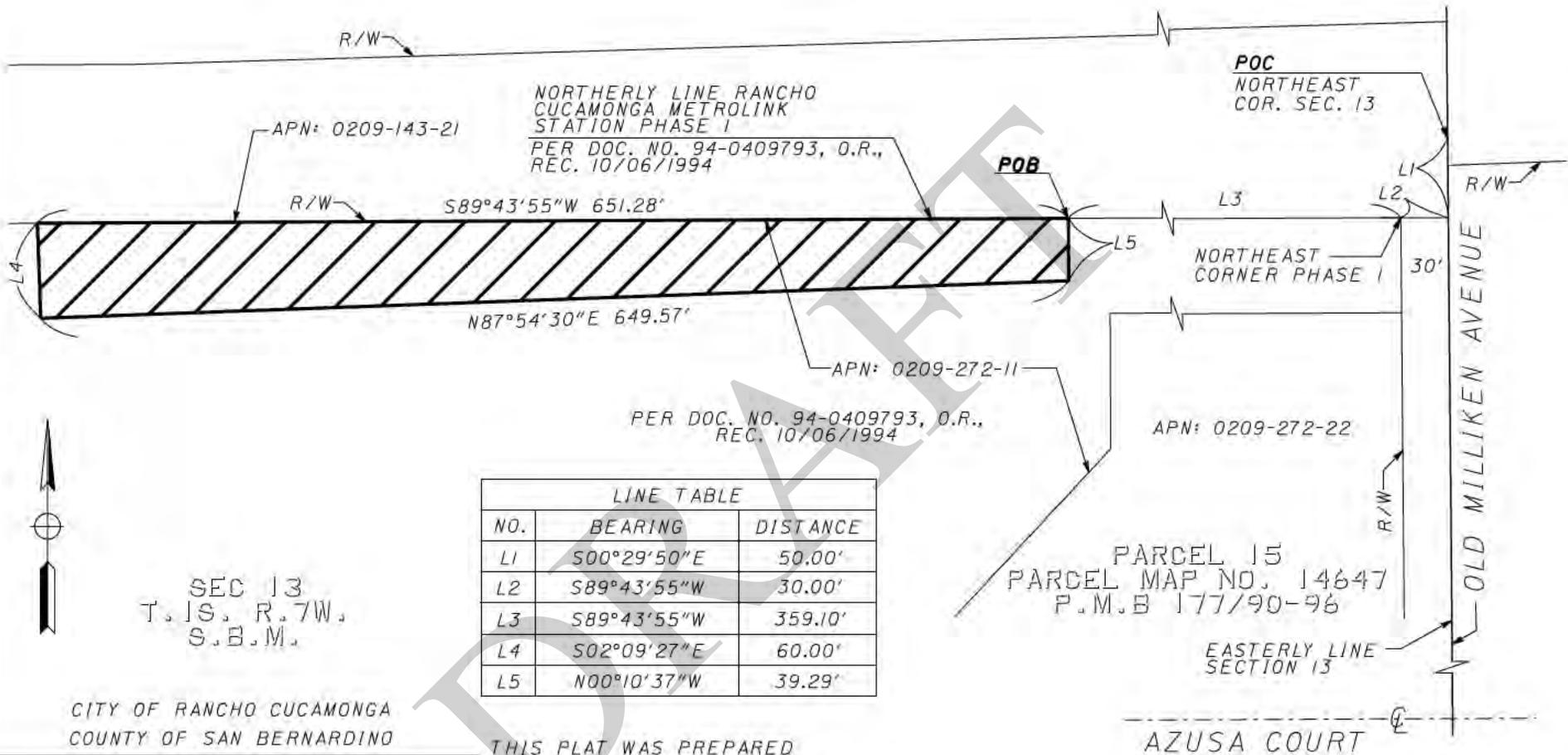
DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Preliminary
02/26/2024 5:15:16 PM

EXHIBIT 'B-1'

APN	TYPE OF ESTATE	AREA
0209-272-11	EASEMENT	32,283 SF



LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	359.10'
L4	S02°09'27"E	60.00'
L5	N00°10'37"W	39.29'

SEC 13
T. 1S. R. 7W.
S.B.M.

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

02/26/2024 2:15:18 PM

SEAN M. SMITH, PLS 8233 DATE



LEGEND

- Indicates area to be acquired
- POC Point Of Commencement
- POB Point of Beginning
- SF Square Feet
- R/W Right-of-Way

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
19511787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	1



Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "C"
INTENTIONALLY OMITTED

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "D"

Required Insurance

(a) Prior to Construction. On or before Grantee's entry onto the Easement Area, Grantee shall procure and maintain, at its sole cost and expense, the following insurance:

(1) Commercial General Liability (CGL) with a limit not less than twenty-five million dollars (\$25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars (\$25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from Grantor) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must provide coverage to the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 and CG 20 24, or their equivalent. Coverage shall be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement and the location and placement of improvements within the Easement Area, unless caused by an Indemnified Party's gross negligence or willful misconduct.

(b) Insurance During Construction. Prior to commencing physical construction within the Easement Area, Grantee shall procure or cause to be procured and maintained throughout construction the following insurance coverage:

(1) Liability Insurance. Commercial General Liability (CGL) with a limit not less than three hundred million dollars \$300,000,000 each occurrence, three hundred million dollars (\$300,000,000) products and completed operations aggregate, and a general aggregate limit of not less than three hundred million dollars (\$300,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the Project. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from Grantor) substitute forms providing equivalent coverage. All excess or umbrella policies must be "follow form" and afford no less coverage than the primary policy. Such CGL must cover the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 (or CG 20 26, CG 20 24, and 20 10 with the restriction that the work is being done for or on behalf of an additional insured removed from the endorsement accompanied by 20 37 or equivalent forms and subject to market availability with approval from SBCTA providing coverage to the additional insured for completed operation losses with the restriction that the work is being done for or on behalf of an additional insured removed from the endorsement). Coverage must be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement, unless caused by an Indemnified Party's gross negligence or willful misconduct.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years from the completion date of the Project. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

(2) Commercial Automobile Insurance. During all phases of the Project, Grantee shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from Grantor, substitute form providing equivalent liability coverage) with a limit not less than one million dollars (\$1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). During all phases of the Project, Grantee shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from Grantor, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars (\$25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

(3) Workers' Compensation and Employers Liability Insurance. During all phases of the Project, Grantee shall provide evidence of Workers' Compensation insurance as required under California statute including coverage for Employer's Liability with limits of at least one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee by disease, and a policy limit of one million dollars (\$1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars (\$25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies.

The workers' compensation policies must provide the following:

- a. A waiver of subrogation in favor of Grantor and the Indemnified Parties;
- b. A provision extending coverage to all states' operations;
- c. A voluntary compensation endorsement;

- d. An alternative employer endorsement, if applicable to Grantee operations;
- e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;
- f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and
- g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

(4) Professional Liability Insurance. During all phases of the Project, Grantee shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in constructing the Project on the Easement Area, procured, and maintained by those third parties performing such work for or on behalf of Grantee. For the lead design contractor for the improvements in privity with Grantee, the coverage must not be less than ten million dollars (\$10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to the Project, the coverage must not be less than five million dollars (\$5,000,000) per claim and in the aggregate. Grantee shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of the Project, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars (\$1,000,000) per claim and in the aggregate. Grantee shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars (\$25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against Grantee by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for Grantee or any lead design entity is permitted to exceed five hundred thousand dollars (\$500,000), unless commercially unavailable and without prior written approval from Grantor, in its good faith discretion. Coverage must apply specifically to professional activities performed or contracted by Grantee in support of the Project. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. Grantee agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the

commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and Grantee shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after the commencement of revenue service or to purchase an extended reporting period for no less than three (3) years after the commencement of revenue service.

(5) Contractor's Pollution Liability. Grantee shall procure or cause to be procured contractor's pollution liability ("CPL") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with Project dedicated limits of no less than twenty-five million dollars (\$25,000,000) per occurrence and twenty-five million dollars (\$25,000,000) in the aggregate per policy period dedicated to the Project. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Project. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Grantee shall furnish Grantor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars (\$5,000,000) per loss and an annual aggregate of five million dollars (\$5,000,000).

(6) Railroad Protective Liability. Grantee shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from Grantor, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad. 20.2.1.7. Aircraft Liability. If applicable, Grantee shall procure, or cause to be procured and maintained, aircraft liability insurance with a limit of not less than ten million dollars (\$10,000,000) per occurrence in all cases where any aircraft is used on the Project that is owned, leased or chartered by any contractor-related entity or its subcontractors of any tier, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project or on any property owned, rented or leased by

Grantor or any of the Indemnified Parties is subject to review and written acceptance by Grantor prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance is acceptable in lieu of the coverage listed above but must be provided prior to use of the aircraft.

(7) Builder's Risk Insurance. Grantee shall, upon commencement of construction and with approval of Grantor, obtain and maintain a policy of builder's risk insurance for the Project. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Project. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and Grantor. Coverage must include property owned by Grantor and the Indemnified Parties that is part of the Project and must not be limited by use of the phrase "as their interests may appear." The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for incorporation into the works located at the Easement Area, in storage or in the course of transit to the Easement Area and all improvements that are within the Easement Area.

The builder's risk policy must include coverage for:

- a. Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;
- b. Machinery accidents and operational testing involving equipment covered by the policy;
- c. Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars (\$25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;
- d. Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;
- e. Replacement value of any property or equipment stored either on or off the Easement Area;
- f. Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:
 - Collapse;
 - Terrorism;
 - Earthquake;

- Flood;
- g. Plans, blueprints and specifications; and
- h. Demolition and increased cost of construction as required by law or ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of Grantee.

The policy must provide a “severability of interests provision,” “multiple insured’s clause” or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

Grantee shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction of the Project and prior to commencing operations of the Project within the Easement Area, Grantee shall provide evidence of “all risk” property insurance covering the Project/Improvements, with coverage sufficient to cover the probable maximum loss of such improvements and alterations made by Grantee pursuant to the terms hereof, which must include “all risk” coverage using the ISO Causes of Loss - Special Form or (with approval from Grantor) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

(c) Insurance During Operations. Upon the commencement of revenue service operations, Grantee shall procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) with a limit not less for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars (\$323,000,000), or such other limit of liability as Congress may establish from time to time applicable to Grantee’s passenger rail operations. Such policy or policies must provide coverage to all Indemnified Parties as additional insureds. All excess or umbrella policies must be “follow form” and afford no less coverage than the primary policy and the policies up to three hundred twenty-three million dollars \$323,000,000 must include one reinstatement limit for the period of the policy(ies) term.

(d) Self Insurance. The policy or policies under which coverage required by this Agreement is provided may include a deductible or self-insured retention not in cumulative excess of ten million dollars (\$10,000,000) on the condition that:

(1) Each insurance policy expressly provides that the obligations of the policy issuer to Grantor as an additional insured are not to be diminished in any way by Grantee’s failure to pay its deductible or self-insured retention obligation for any reason;

(2) Grantee provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to Grantor and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that Grantee has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars (\$1,000,000); and

(3) Grantee promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

(e) Definition of “Self Insurance”. As used in this Agreement, “self insurance” means that Grantee is itself acting as if it were the insurance company providing the insurance required under the provisions of this Agreement.

(f) Evidence of Insurance. In accordance with the insurance requirements above, Grantee shall furnish evidence of insurance reasonably acceptable to Grantor before Grantee enters the Easement Area, before commencing physical construction of the Project within the Easement Area, and before the beginning of operations, as applicable. Grantee shall provide Grantor with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. Grantee shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder’s risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to Grantee starting work on the Project, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of Grantee, any of the coverage required becomes unavailable, Grantee shall provide good faith alternative insurance packages and programs, subject to prior approval by Grantor, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

(f) Additional Insured Coverage. All policies, except those for Workers’ Compensation and Professional Liability insurance, must be endorsed by the ISO Form CG 20 10 11 85, CG 20 37, CG 20 24 and CG 20 26 as outlined in Paragraphs (a) and (b) above, to name the Indemnified Parties as additional insureds. The additional insured endorsements must not have any restriction requiring that the work is being done for or on behalf of an additional insured. With respect to general liability arising out of or connected with work or operations performed by or on behalf of Grantee under this Agreement, coverage for such additional insureds must not extend to liability to the extent prohibited by Section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for Grantor to vicarious liability but shall allow coverage for Grantor to the full extent provided by the policy.

(h) Waiver of Subrogation Rights. To the fullest extent permitted by law, Grantee hereby waives all rights of recovery under subrogation against the additional insureds named herein, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of Grantor, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, Grantee shall require similar

written express waivers and insurance clauses from each of its subcontractors of every tier. Grantee shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit Grantee from waiving the right of subrogation prior to a loss or claim.

(i) Eligible Insurers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and 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 Grantor. Grantee shall furnish to Grantor, not less than fifteen (15) days before the date the insurance is first required to be carried by Grantee, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, evidencing the coverages required under this Section, with a copy of each policy, if requested by Grantor. Such certificates must provide that should any policies described therein be cancelled before the expiration date thereof, notice is to be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, Grantee agrees that the insurance coverage required hereunder is not to be terminated or modified in any material way without thirty (30) days advance written notice from Grantee to Grantor.

(j) Cure. If Grantee fails to procure and maintain insurance required under this Agreement or fails to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, subject to the provisions herein, Grantor is entitled, after thirty (30) days prior written notice to Grantee of Grantee's default hereunder and Grantee's failure to cure such default within said thirty (30) days, ten (10) days for non-payment, to require Grantee to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Project until Grantee has provided Grantor reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of Grantee under this Section have been met. No cessation of construction or operations required by Grantor under this Section releases or relieves Grantee of any of its other obligations under this Agreement.

EXHIBIT "G"

MILLIKEN TRIANGLE EASEMENT

[See Attached]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

RECORDING REQUEST BY,
AND WHEN RECORDED RETURN TO:

DesertXpress Enterprises, LLC
3920 W. Hacienda Ave.
Las Vegas, NV 89118
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Free Recording Requested per Government Code 27383.

EASEMENT
(RAMPS AND DRIVEWAYS)

THIS EASEMENT (“**Agreement**”) is dated as of _____, 202__ and is entered into by and between the CITY OF RANCHO CUCAMONGA, a California municipal corporation (“**City**”), and DESERTXPRESS ENTERPRISES, LLC, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California (“**DXE**”). City and DXE are sometimes hereinafter referred to individually as “**Party**” and collectively as the “**Parties.**”

RECITALS

A. DXE plans to construct a high-speed passenger rail system from Las Vegas, Nevada to Rancho Cucamonga, California (“**HSR System**”). One portion of this system will include a train station in Rancho Cucamonga (the “**Train Station**”) on property DXE is acquiring from the City and the San Bernardino County Transportation Authority (“**SBCTA**”) (the “**Station Site**”). DXE desires an easement over a portion of property owned by the City adjacent to the Station Site for transit purposes, including without limitation, the right to construct, operate, and maintain (i) an access road (the “**Access Road**”) to provide access between the Station Site and the Driveway (as defined below) and Milliken Avenue when widened to the boundary of the Access Road and (ii) vehicle ramps (the “**Ramp**” and together with the Access Road, “**Road and Ramp Improvements**”) to service the parking structure to be constructed as part of the Train Station on the Station Site, both within the area described in **Exhibit “A”** attached hereto (the “**Easement Area**”). Further, DXE desires the right to construct, operate, and maintain an extension of the Access Road to provide access from the Easement Area to Milliken Avenue (the “**Driveway**”) within a separate area described in **Exhibit “B”** attached hereto (the “**20 Foot Area**”). The Road and Ramp Improvements and the Driveway are collectively referred to herein as the “**Improvements**”.

B. The City’s public purposes in entering into this Agreement include facilitating the

development of transportation that will benefit the public, providing employment opportunities resulting from the work to be performed by DXE and the operation of a high-speed rail project, and obtaining fair market compensation for the easement interest granted herein (and such compensation shall become part of the general funds of the City and in turn used for public purposes).

AGREEMENT

1. **Grant of Easement; Term; Consideration.** City hereby grants to DXE an exclusive perpetual easement (“Easement”) in and through the Easement Area for transit purposes, including, without limitation and subject to all applicable laws, the right to construct, operate, and maintain the Road and Ramp Improvements and appurtenant to the Easement the right to construct, operate, and maintain the Driveway within the 20 Foot Area. For the avoidance of doubt, the Road and Ramp Improvements are only allowed within the Easement Area and not the 20 Foot Area and only the Driveway is permitted within the 20 Foot Area. The location of the Driveway within the 20 Foot Area will be determined by DXE through its station design process, provided that the Driveway shall be no wider than sixty (60) feet unless a larger width is approved in writing by the City Engineer after finding that a wider Driveway is needed to accommodate vehicular traffic into and out of the Train Station and will not unreasonably impact surrounding City infrastructure and Milliken Avenue (including its future widening). The analysis regarding further widening of the Driveway shall involve the traffic study for the Train Station that DXE is currently preparing to assist the City Engineer in making any such finding and to the extent the pending traffic study does not sufficiently analyze the driveway wider than sixty (60) feet or impacts on surrounding infrastructure and Milliken Avenue (including its future widening), such additional traffic study (or peer review) prepared in cooperation between DXE and City/SBCTA (at DXE’s expense) that is necessary for the City Engineer to make the finding. DXE shall coordinate the pending traffic study with the City/SBCTA in an effort to ensure that the pending traffic study is sufficient to avoid the necessity of an additional traffic study. Upon the determination of the location of the Driveway, the Easement Area shall be amended to include such portion of the 20 Foot Area on which the Driveway will be located. The installation, maintenance, and operation of the Improvements shall be subordinate to any existing easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances, and other matters of record on or under the Easement Area and the 20 Foot Area, as applicable. If the City widens Milliken Avenue, the City shall be responsible at its cost to modify the Driveway to the extent necessary to accommodate such widening and the Easement Area shall be automatically modified to exclude any portion of the Easement Area that included the Driveway affected by the widening of Milliken Avenue. As a condition precedent to DXE’s occupancy or use of the Easement Area and the limited use of the 20 Foot Area, DXE will pay to City the one-time sum equal to the fair market price of the easement interest and rights described herein, as determined by an appraisal obtained by City.

2. **AS-IS.** DXE accepts the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) in its current “AS-IS” condition, without representation or warranty, express or implied, and subject to all existing matters of record and all matters that would be revealed by a diligent inspection of the Easement Area and the 20 Foot Area. DXE also acknowledges that City makes no representations, express or implied, as to the physical condition of or title to the Easement Area or the 20 Foot Area. This Agreement does

not constitute, nor grant permission to use or occupy property not belonging to, or under the control of City, and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this Agreement.

3. **Authorized Improvements; Street Closures.** The rights of DXE to install, maintain, and operate the Improvements are subject to any applicable laws and permitting requirements and conditions (and the City does not waive any of its rights or powers in its governmental capacity in that regard to the extent applicable). In addition, City will review and approve all such Improvement plans in its proprietary capacity as property owner prior to construction of the Improvements only to ensure consistency and no material interference with the Public Improvements (as defined below) and not to review the HSR System. Any and all street closures required for installation, maintenance, or repairs of the Improvements must be approved in advance in writing by the City Manager, and DXE shall pay or reimburse City within thirty (30) days after written demand for all costs incurred by City in connection with any such closures.

4. **Standards for Rail Facilities.** City acknowledges that standards promulgated by and decisions issued by the Federal Railroad Administration (“FRA”) and Surface Transportation Board (“STB”) govern the design, construction, operation, and maintenance of railroad facilities within their jurisdiction and that such regulations, standards, and decisions might as a matter of law preempt and supersede requirements that may otherwise apply under state or local laws. City acknowledges that it is not a regulatory agency under federal law or with respect to California utilities regulated by the California Public Utilities Commission, and the Parties agree that the City will have no liability for not inspecting access facilities or operations on the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) for purposes of enforcing compliance with laws and regulations within the jurisdiction of the STB, the FRA, or the California Public Utilities Commission. Notwithstanding this Section 4, City reserves all of its governmental rights and powers, and DXE acknowledges that City is entering into this Agreement solely in its proprietary capacity.

5. **Repair of Damage.**

(a) **Damage to Public Improvements.** DXE shall promptly notify the City in writing if it becomes aware of any damage to Milliken Avenue or public utilities near the location of the Driveway (“**Public Improvements**”). Whether or not DXE notifies the City, if any damage is caused to Milliken Avenue or Public Improvements directly or indirectly by DXE or its contractors, such repair work will be conducted by the City at DXE’s sole cost and expense, or if so authorized in writing by City, may be repaired by DXE at its sole cost and expense (whereupon DXE shall promptly coordinate with City on any necessary street closures, and promptly perform the repairs).

(b) If City elects to perform repair work for which DXE has some or all responsibility, DXE shall reimburse City for its share of the reasonable costs of the repair work within thirty (30) days after delivery of a statement from City describing the costs, including a statement detailing such costs and expenses. In the event payment is not made within said thirty (30) day period, said payment shall include interest at a rate of ten percent (10%) per annum from the end of said thirty (30) day period until paid.

6. **Encumbrance.** DXE may, at any time and from time to time, encumber to any bank, insurance company or other institutional lender, herein called “**Mortgagee,**” by one or more deeds of trust (the “**Security Instrument**”), all of DXE’s interest under this Agreement and the interest created hereunder provided that (i) such Security Instrument is subject to the terms of this Agreement and all interests of the City hereunder, (ii) such Security Instrument shall not constitute in any way a lien or encumbrance on the City’s interests, and (iii) the Security Instrument shall not encumber any obligations that do not relate to the HSR System. No Mortgagee shall be liable to City as the successor to the rights and obligations of DXE under this Agreement unless and until such Mortgagee acquires the easement interest hereunder through foreclosure or other proceedings in the nature of foreclosure or as a result of an assignment in lieu of foreclosure or other assignment, action or remedy, nor shall a Mortgagee be liable for any defaults that occur after it conveys its interest in the property associated with the Easement hereunder.

7. **Ownership of Improvements.** All Improvements shall be owned by DXE during the duration of this Agreement, and upon the termination of this Agreement, shall become the sole property of City without compensation to DXE, or, if City so elects and upon written notice to DXE within ninety (90) days of termination, shall be demolished and removed by DXE from the Easement Area at DXE’s sole expense in a reasonable time period. If City has not provided written notice within such ninety (90) day period, DXE shall provide written notice of the termination to City. If City does not respond within thirty (30) days of delivery of such written notice, then DXE shall have no obligation to remove the Improvements. The foregoing (and defense and indemnity obligations of DXE under this Agreement) shall survive the termination of this Agreement. Nothing herein affects City’s rights or remedies as a governmental entity, such as the right to cause DXE to abate a nuisance, and in connection therewith, remove Improvements (if City has such a right as a governmental entity under applicable law). For the avoidance of doubt, the City acknowledges and agrees that the construction and operation of the HSR System in accordance with this Agreement and applicable law is not a nuisance.

8. **Waiver and Release.** DXE expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies DXE may now or hereafter have against City, and its officials, officers, employees, consultants, attorneys and agents (collectively, “**City Entities**”), whether known or unknown, arising prior to the date of this Agreement and relating to the condition of the Easement Area or Milliken Avenue, and all claims of contribution and reimbursement for costs of remediating Hazardous Materials (defined in Section 10 below) released or existing prior to the date of this Agreement in, on or near the Easement Area.

DXE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“**SECTION 1542**”), WHICH IS SET FORTH BELOW:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

BY INITIALING BELOW, DXE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

DXE's Initials

The waivers and releases by DXE contained herein shall survive the termination of this Agreement and shall be binding upon the assignees, transferees, and successors-in-interest of DXE.

9. **Utilities.** As between DXE and the City, any required relocation of a utility that interferes with DXE's project within the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) is the sole responsibility of DXE. Upon written request by DXE, City will provide utility contact information known to City and make its right-of-way utility staff available (on a reimbursable basis) for meetings with third-party utility owners to help facilitate DXE's property access and construction and maintenance activities.

10. **Hazardous Materials.**

(a) DXE covenants that it will not handle or transport Hazardous Materials in the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) except for removal, transportation and disposal in compliance with laws regarding excavated soils that are or may be contaminated with Hazardous Materials. As used in this Agreement, the term "**Hazardous Materials**" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "**the State Toxic Substances Law**"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or

federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles or passenger trains; and (d) asbestos. Notwithstanding the foregoing, DXE may handle and transport Hazardous Materials normally and customarily used in the development, construction and operation of railroad infrastructure, including passenger stations, that are used, stored, transported and disposed of in accordance with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record. As an example only, train infrastructure typically entails refueling maintenance vehicles or using cleaning supplies for routine maintenance.

(b) DXE further agrees that at City's request it will furnish City with proof, satisfactory to City, that DXE is in compliance with all such laws, rules, regulations, orders, decisions and ordinances regarding Hazardous Materials.

(c) Notwithstanding anything else contained in this Agreement, DXE shall indemnify, defend and hold harmless City from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to injuries to any person, including wrongful death, or damage to property, including without limitation, property of City and DXE, or otherwise (including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs) resulting in whole or in part from DXE's failure to comply with DXE's obligations under this Agreement with respect to Hazardous Materials, provided, however, that the foregoing shall not apply to releases of Hazardous Materials by City Entities' active negligence or willful misconduct or to Hazardous Materials not brought onto the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) by DXE or its contractors. DXE agrees to reimburse City for all reasonable costs of any kind incurred as a result of the DXE's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of DXE's handling, transporting, or disposing of Hazardous Materials on, over, or across the Improvements and or Milliken Avenue or adjacent property.

(d) City shall have the right at any time to inspect the Improvements in order to monitor DXE's compliance with this Agreement.

11. **Insurance.** DXE shall obtain and maintain insurance, at its sole cost and expense, as required in **Exhibit "C"** attached hereto.

12. **Indemnity.** DXE shall defend, indemnify and hold City and its officials, officers, agents, employees and contractors free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of DXE, its partners, affiliates, agents officials, officers, employees or contractors in performance of this Agreement, use of the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) or the construction, use, or operation of the Improvements or the failure to comply (or failure of its contractors to comply) with California Labor Code Section 1720 et seq., including without limitation Labor Code Section 1781. DXE shall further defend, indemnify and hold harmless the City and its officials, officers, agents and employees from all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings (brought against the City or its

departments, commissions, agents, officers, officials, or employees to challenge, attack seek to modify, set aside, void or annul any City decision made in connection with this Agreement or DXE's use of the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located) (based on noncompliance with the California Environmental Quality Act or otherwise). DXE shall defend, with counsel reasonably acceptable to City and at DXE's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, that may be brought or instituted against City, its officials, officers, agents, employees or contractors. DXE shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, agents, employees or contractors. DXE shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this Agreement or the indemnity herein provided. DXE's obligations hereunder shall survive termination or expiration of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, agents or, employees or contractors.

13. **Covenant Running With Land.** This Agreement shall be deemed a covenant running with the land with respect to the Easement Area (as modified to include and later exclude the portion of the 20 Foot Area on which the Driveway is located), burdening said Easement Area and benefitting the real property interests associated with the HSR System. All of the covenants, obligations, and provisions of this Agreement shall be binding upon and inure to the benefit of successors, legal representatives, assigns and successors-in-interest to the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of said Easement Area shall be conclusively deemed to have notice of this Agreement, whether or not reference to this Agreement is contained in the instrument by which such person acquires an interest in said Easement Area. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying said Easement Area or any portion thereof or interest therein shall conclusively be deemed to have been executed, delivered and accepted subject to this Agreement.

14. **Estoppel Certificates.** Each of the Parties hereto agrees, promptly upon request from the other Party hereto, to furnish from time to time in writing certificates containing truthful estoppel information and/or confirmations of the agreements, obligations and easements contained in this Agreement and otherwise in a form and substance reasonably satisfactory to the Party from whom such certificate is sought.

15. **Cooperation; Further Assurances.** The Parties agree to execute any reasonable documents necessary to effectuate or protect a Party's rights under this Agreement.

16. **Attorneys' Fees.** In the event either Party brings a suit, action, or other proceeding against the other Party that in any way relates to or arises out of this Agreement, the prevailing Party (meaning the Party that obtains substantially the relief sought by it) shall be entitled to have and recover from the other Party all reasonable costs and expenses of the suit, action or proceeding, including attorneys' fees, from the commencement of the suit, action or proceeding through the entry of judgment. The trial court shall determine which Party is the prevailing Party as well as the amount of attorneys' fees and costs to be awarded immediately following the entry of judgment (and without awaiting any appeal) in a post-trial proceeding, such as is conducted when a cost bill is submitted. If an appeal is timely filed and if the awarding or amount of attorneys' fees and costs is at issue in the appeal, then the appellate court (or the trial court, acting pursuant to an order of

the appellate court) shall determine such issue, and the recoverable attorneys' fees and costs shall include those incurred through the entry of final judgment following the appeal.

17. **Miscellaneous.**

(a) **Notices.** All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

DXE: DesertXpress Enterprises, LLC
3920 W. Hacienda Ave.
Las Vegas, NV 89118
Attn: General Counsel

City: City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

Such notice shall be deemed made when delivered by certified mail, return receipt requested, first class postage prepaid, or by reputable overnight messenger delivery service, and addressed to the Party at its applicable address and shall be deemed delivered on the date of delivery or refusal to accept or inability to effect delivery shown on the return receipt, or one (1) business day after delivery to the messenger service for overnight delivery, as applicable.

(b) **Entire Understanding.** This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein.

(c) **Invalidity.** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the successors of the respective Parties. Except as set forth in Section 6 above, this Agreement may not be assigned by either Party without the prior written consent of the other Party.

(e) **Governing Law.** Except on subjects preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to DXE because of its status as a common carrier regulated by the federal government.

(f) **Venue.** Venue for any legal action between the Parties related to this Agreement will be in the Superior Court of San Bernardino County, California or the United States

District Court, Central District Court of California. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located.

(g) Exhibits. All exhibits attached hereto form material parts of this Agreement.

(h) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(i) Survival. All defense, indemnity, and payment obligations of DXE that arise or relate to events occurring prior to the termination of this Agreement shall survive such termination.

(j) Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, should any fire or other casualty, act of nature, earthquake, flood, hurricane (or tropical cyclone), lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, or other occurrence beyond City's or DXE's control prevent performance of obligations relating to construction, repair, operation, maintenance, or demolition of the Improvements under this Agreement in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing party, (a "**Force Majeure Event**") then performance of this Agreement by either party will be suspended or excused to the extent and for a period commensurate with such occurrence.

(k) Limits to Remedies. Under no circumstances shall either party be liable to the other party under this Agreement for any speculative, consequential, collateral, indirect or punitive damages or for any loss of profits suffered or claimed to have been suffered; provided, however, the foregoing prohibitions shall not prohibit the recovery of any direct damages.

18. Property Taxes, Including Possessory Interest Taxes. This Agreement creates a possessory interest that may be subject to possessory interest tax (a type of California property tax), and DXE shall pay any such possessory interest taxes that may be assessed. If the Improvements are taxed as an improvement on the Easement Area, DXE shall, upon demand, pay such taxes allocable to the Improvements, as determined by the taxing authority. City shall cooperate and assist DXE, at no costs to City, in any efforts to obtain a separate assessment for the Improvements, including executing any reasonably required applications or reasonable documents. DXE shall pay when due all personal property taxes levied against or relating to the Improvements.

19. Termination. If the City and/or SBCTA reverts title to the fee property owned by DXE and described on Exhibit "D" attached hereto, this Agreement shall automatically terminate.

[Signature Page Follows]

The Parties have executed this Agreement as of the date first written above.

DXE:

DESERTXPRESS ENTERPRISES, LLC, a
Nevada limited liability company

CITY:

CITY OF RANCHO CUCAMONGA,
a California municipal corporation

By: _____
Sarah Watterson
President

By: _____, Mayor

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

Nicholas Ghirelli,
City Attorney

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

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

State of California)
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A'**Legal Description of Easement Area**

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with those portions of Milliken Avenue, as shown on said Parcel Map No. 14647 and Parcel Map No. 7555 in said City, filed in Book 77, pages 42 and 43, of Parcel Maps, in the Office of the County Recorder of said County, together with the Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County described as follows:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map No. 14647;

Thence along the easterly line of said Section 13 South 00°29'50" East 17.04 feet to the **Point of Beginning**;

Thence continuing along said easterly line South 00°29'50" East 32.96 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said northerly line South 00°00'00" West 311.62 feet;

Thence North 89°36'24" East 45.54 feet to said easterly line of Section 13;

Thence continuing North 89°36'24" East 28.02 feet to the beginning of a non-tangent curve, concave southeasterly, having a radius of 2,058.70 feet, a line radial to said beginning bears North 73°05'58" West;

Thence northeasterly, along said curve an arc length of 379.13 feet through a central angle of 10°33'06" to the southerly SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on said Parcel Map No. 7555;

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

Thence along said southerly line South 87°55'10" West 174.03 feet to the **Point of Beginning**.

Parcel contains 46,425 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'A-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: 
Sean M. Smith, PLS 8233

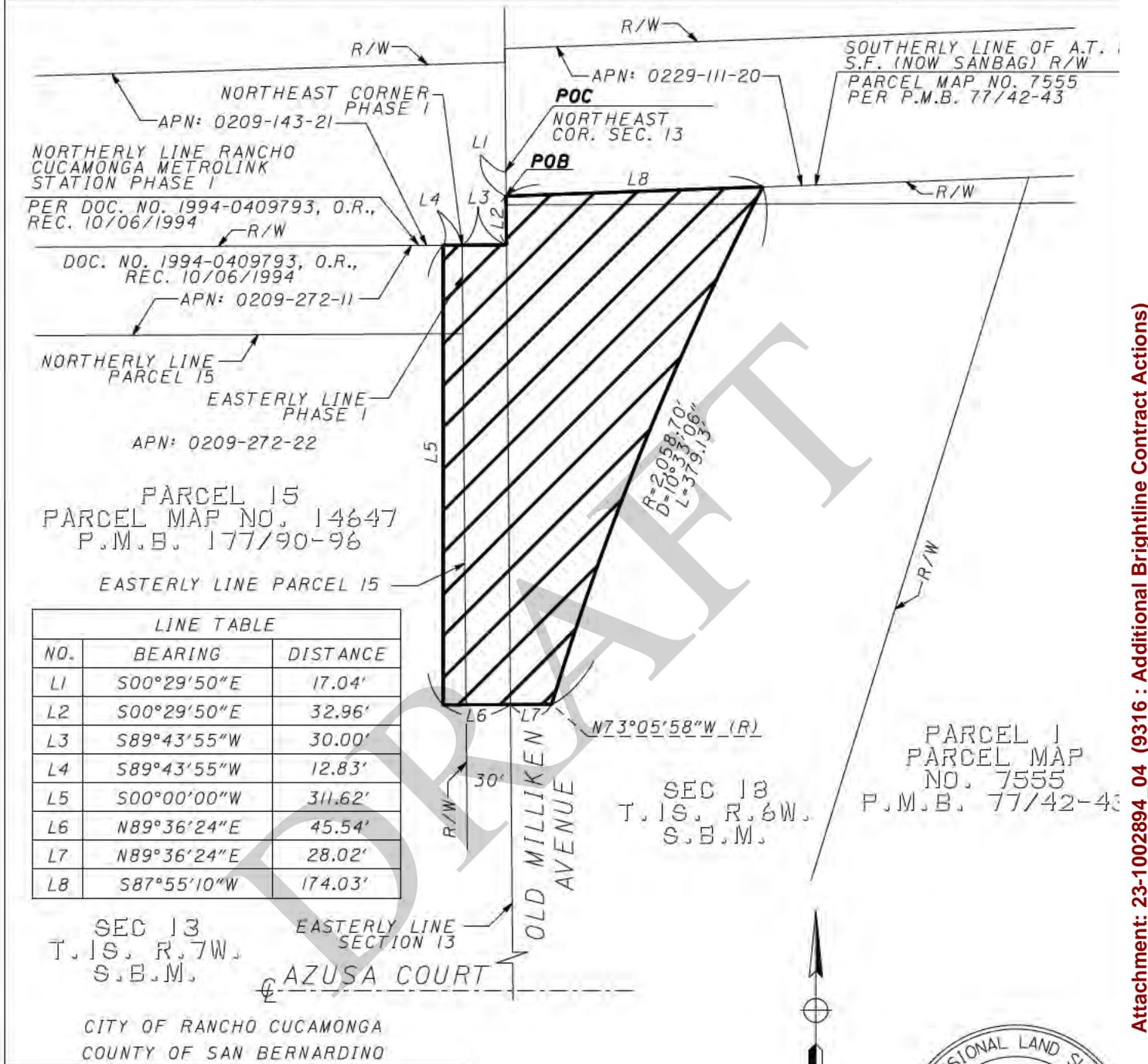
Date: 9/22/2022



DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

APN	TYPE OF ESTATE	AREA
0209-272-11 & 0209-272-22	EASEMENT	46,425 SF



LEGEND

Indicates area to be acquired

POC Point Of Commencement

POB Point of Beginning

SF Square Feet

R/W Right-of-Way

(R) Radial Bearing

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
1951787-8421 www.psomas.com

THIS PLAT WAS PREPARED UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE 9/27/2022

PROFESSIONAL LAND SURVEYOR
SEAN M. SMITH
No. 8233
STATE OF CALIFORNIA

FEET 0 50 100 200 300

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B'**Legal Description of 20 Foot Area****APN: N/A**

That portion of "Additional Widening to Milliken Avenue" shown on Parcel Map No. 7555, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 77, pages 42 and 43, of Parcel Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13 South $00^{\circ}29'50''$ East 17.04 to the southerly line of A.T. & S.F. Railroad Right-of-Way as shown on said Parcel Map;

Thence along said southerly line North $87^{\circ}55'10''$ East 174.03 feet to the beginning of a non-tangent curve, concave southeasterly, having a radius 2,058.70 feet, a radial line to said beginning bears North $62^{\circ}32'52''$ West, said beginning also being the **Point of Beginning**;

Thence southwesterly, along said curve an arc length of 379.13, feet through a central angle of $10^{\circ}33'06''$;

Thence leaving said curve North $89^{\circ}36'24''$ East 20.96 feet to the beginning of a non-tangent curve, concave southeasterly, having a radius of 2,038.70 feet, a radial line to said beginning bears North $72^{\circ}55'27''$ West, said curve being concentric with and distant 20.00 feet southeasterly, as measured radially, to last said curve course;

Thence northeasterly, along said curve, an arc length of 380.57 feet, through a central angle of $10^{\circ}41'44''$ to said southerly line;

Thence along said southerly line South $87^{\circ}55'10''$ West 23.02 feet to the **Point of Beginning**.

Parcel contains 7,597 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.0 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

See Exhibit 'B-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: 
Sean M. Smith, PLS 8233

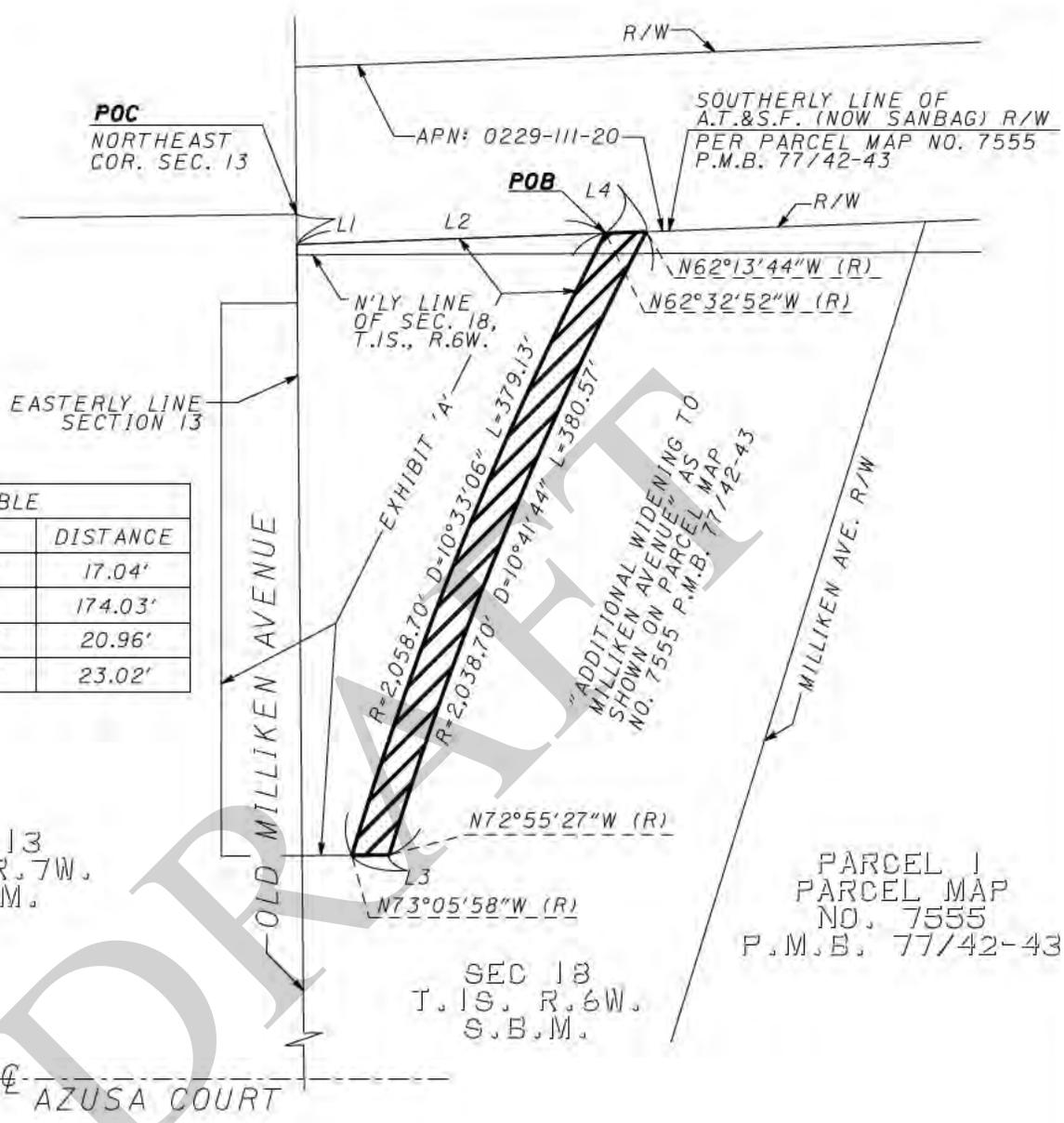
Date: 9/27/2022



DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

PARCEL	TYPE OF ESTATE	AREA
N/A	EASEMENT	7,597 SF



NO.	BEARING	DISTANCE
L1	S00°29'50"E	17.04'
L2	N87°55'10"E	174.03'
L3	N89°36'24"E	20.96'
L4	S87°55'10"W	23.02'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

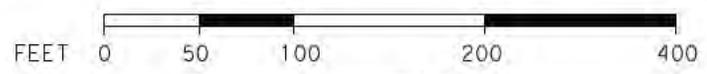
- Indicates area to be acquired
- POC Point Of Commencement
- POB Point of Beginning
- SF Square Feet
- (R) Radial Bearing
- R/W Right-of-Way

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233

9/28/2022

DATE



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
1951787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT “C”
REQUIRED INSURANCE

(a) Prior to Construction. On or before DXE’s entry onto the Easement Area, DXE shall procure and maintain, at its sole cost and expense, the following insurance:

(1) Commercial General Liability (CGL) with a limit not less than twenty-five million dollars (\$25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars (\$25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be “follow form” and afford no less coverage than the primary policy. Such CGL must provide coverage to the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 10. Coverage shall be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement and the location and placement of improvements within the Easement Area, unless caused by an Indemnified Party’s gross negligence or willful misconduct.

(b) Insurance During Construction. Prior to commencing physical construction within the Easement Area, DXE shall procure or cause to be procured and maintained throughout construction the following insurance coverage:

(1) Liability Insurance. Commercial General Liability (CGL) with a limit not less than three hundred million dollars \$300,000,000 each occurrence, three hundred million dollars (\$300,000,000) products and completed operations aggregate, and a general aggregate limit of not less than three hundred million dollars (\$300,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the Project. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from City) substitute forms providing equivalent coverage. All excess or umbrella policies must be “follow form” and afford no less coverage than the primary policy. Such CGL must cover the Indemnified Parties as additional insureds using ISO Additional Insured Endorsement CG 20 26 or 20 10 and accompanied by 20 37 or equivalent forms with approval from City providing coverage to the additional insured for completed operation losses. Coverage must be provided to the Indemnified Parties for claims proximately caused by reason of the uses authorized by this Agreement, unless caused by an Indemnified Party’s gross negligence or willful misconduct.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years from the completion date of the Project. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

(2) Commercial Automobile Insurance. During all phases of the Project, DXE shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than one million dollars (\$1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). During all phases of the Project, DXE shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from City, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars (\$25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

(3) Workers' Compensation and Employers Liability Insurance. During all phases of the Project, DXE shall provide evidence of Workers' Compensation insurance as required under California statute including coverage for Employer's Liability with limits of at least one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee by disease, and a policy limit of one million dollars (\$1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars (\$25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies.

The workers' compensation policies must provide the following:

- a. A waiver of subrogation in favor of City and the Indemnified Parties;
- b. A provision extending coverage to all states' operations;
- c. A voluntary compensation endorsement;
- d. An alternative employer endorsement, if applicable to DXE operations;
- e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;
- f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on

an “if any” basis or as otherwise appropriate; and

g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer’s Liability Act on an “if any” basis or as otherwise appropriate.

(4) Professional Liability Insurance. During all phases of the Project, DXE shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in constructing the Project on the Easement Area, procured, and maintained by those third parties performing such work for or on behalf of DXE. For the lead design contractor for the improvements in privity with DXE, the coverage must not be less than ten million dollars (\$10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to the Project, the coverage must not be less than five million dollars (\$5,000,000) per claim and in the aggregate. DXE shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of the Project, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars (\$1,000,000) per claim and in the aggregate. DXE shall procure and maintain a project specific Owner’s Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars (\$25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against DXE by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for DXE or any lead design entity is permitted to exceed five hundred thousand dollars (\$500,000), unless commercially unavailable and without prior written approval from City, in its good faith discretion. Coverage must apply specifically to professional activities performed or contracted by DXE in support of the Project. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. DXE agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and DXE shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after the commencement of revenue service or to purchase an extended reporting period for no less than three (3) years after the commencement of revenue service.

(5) Contractor's Pollution Liability. DXE shall procure or cause to be procured contractor's pollution liability ("CPL") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with Project dedicated limits of no less than twenty-five million dollars (\$25,000,000) per occurrence and twenty-five million dollars (\$25,000,000) in the aggregate per policy period dedicated to the Project. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Project. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, DXE shall furnish City evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars (\$5,000,000) per loss and an annual aggregate of five million dollars (\$5,000,000).

(6) Railroad Protective Liability. DXE shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from City, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad. 20.2.1.7.

(7) Builder's Risk Insurance. DXE shall, upon commencement of construction and with approval of City, obtain and maintain a policy of builder's risk insurance for the Project. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Project. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and SBCTA, and City. Coverage must include property owned by City and the Indemnified Parties that is part of the Project and must not be limited by use of the phrase "as their interests may appear." The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for

incorporation into the works located at the Easement Area, in storage or in the course of transit to the Easement Area and all improvements that are within the Easement Area.

The builder's risk policy must include coverage for:

- a. Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;
- b. Machinery accidents and operational testing involving equipment covered by the policy;
- c. Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars (\$25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;
- d. Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;
- e. Replacement value of any property or equipment stored either on or off the Easement Area;
- f. Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:
 - Collapse;
 - Terrorism;
 - Earthquake;
 - Flood;
- g. Plans, blueprints and specifications; and
- h. Demolition and increased cost of construction as required by law or ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of DXE.

The policy must provide a "severability of interests provision," "multiple insured's clause" or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

DXE shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment

owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction of the Project and prior to commencing operations of the Project within the Easement Area, DXE shall provide evidence of “all risk” property insurance covering the Project/Improvements, with coverage sufficient to cover the probable maximum loss of such improvements and alterations made by DXE pursuant to the terms hereof, which must include “all risk” coverage using the ISO Causes of Loss - Special Form or (with approval from City) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

(c) Insurance During Operations. Upon the commencement of revenue service operations, DXE shall procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) with a limit not less for personal injury, death, and property damage in an amount not less than three hundred twenty-three million dollars (\$323,000,000), or such other limit of liability as Congress may establish from time to time applicable to DXE’s passenger rail operations. Such policy or policies must provide coverage to all Indemnified Parties as additional insureds. All excess or umbrella policies must be “follow form” and afford no less coverage than the primary policy and the policies up to three hundred twenty-three million dollars \$323,000,000 must include one reinstatement limit for the period of the policy(ies) term.

(d) Self Insurance. The policy or policies under which coverage required by this Agreement is provided may include a deductible or self-insured retention not in cumulative excess of ten million dollars (\$10,000,000) on the condition that:

(1) Each insurance policy expressly provides that the obligations of the policy issuer to City as an additional insured are not to be diminished in any way by DXE’s failure to pay its deductible or self-insured retention obligation for any reason;

(2) DXE provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to City and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that DXE has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars (\$1,000,000); and

(3) DXE promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

(e) Definition of “Self Insurance”. As used in this Agreement, “self insurance” means that DXE is itself acting as if it were the insurance company providing the insurance required under the provisions of this Agreement.

(f) Evidence of Insurance. In accordance with the insurance requirements above, DXE shall furnish evidence of insurance reasonably acceptable to City before DXE enters the Easement

Area, before commencing physical construction of the Project within the Easement Area, and before the beginning of operations, as applicable. DXE shall provide City with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. DXE shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder's risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to DXE starting work on the Project, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of DXE, any of the coverage required becomes unavailable, DXE shall provide good faith alternative insurance packages and programs, subject to prior approval by City, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

(g) Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, must be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name the Indemnified Parties as additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of DXE under this Agreement, coverage for such additional insureds must not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for City to vicarious liability but shall allow coverage for City to the full extent provided by the policy.

(h) Waiver of Subrogation Rights. To the fullest extent permitted by law, DXE hereby waives all rights of recovery under subrogation against the additional insureds named herein, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of City, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, DXE shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. DXE shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit DXE from waiving the right of subrogation prior to a loss or claim.

(i) Eligible Insurers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and 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 City. DXE shall furnish to City, not less than fifteen (15) days before the date the insurance is first required to be carried by DXE, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, evidencing the coverages required under this Section, with a copy of each policy, if requested by City. Such certificates must provide that should any policies described therein be cancelled before the expiration date thereof, notice is to be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, DXE agrees that the insurance coverage required hereunder is not to be terminated or modified in any material way without thirty (30) days advance written notice from DXE to City.

(j) Cure. If DXE fails to procure and maintain insurance required under this Agreement or fails to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, subject to the provisions herein, City is entitled, after thirty (30) days prior written notice to DXE of DXE's default hereunder and DXE's failure to cure such default within said thirty (30) days, ten (10) days for non-payment, to require DXE to immediately discontinue all construction activities related to the Project and immediately discontinue operation of the Project until DXE has provided City reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of DXE under this Section have been met. No cessation of construction or operations required by City under this Section releases or relieves DXE of any of its other obligations under this Agreement.

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

EXHIBIT "D"
DESCRIPTION OF THE FEE PROPERTY

[SEE ATTACHED]

DRAFT

Attachment: 23-1002894_04 (9316 : Additional Brightline Contract Actions)

**RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:**

DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: David Pickett, Esq.

With a copy to:

City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

San Bernardino County Transportation
Authority
1170 W. Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Director of Transit and Rail

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Free Recording Requested per Government Code 27383.

**CONDITIONS, COVENANTS, RESTRICTIONS AND
EASEMENTS**

(RANCHO CUCAMONGA HSR STATION)

These Conditions, Covenants, Restrictions and Easements (RANCHO CUCAMONGA HSR STATION) (this "*Agreement*") are entered into by and among the **CITY OF RANCHO CUCAMONGA**, a California municipal corporation (the "*City*"), the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**, a public entity ("*SBCTA*"), and together with the City, the "*Public Agencies*", and **DESERTXPRESS ENTERPRISES, LLC**, a Nevada limited liability company d/b/a Brightline West and qualified to do business in California ("*Developer*"). The City, SBCTA, and the Developer may hereinafter be referred to individually as a "*Party*" and collectively as the "*Parties*".

R E C I T A L S :

A. Concurrently herewith, Developer acquired from the Public Agencies that certain real property legally described on *Exhibit A* attached hereto (the "*Station Property*") for the purpose of developing a train station and related infrastructure for a privately owned and publicly

accessible high-speed passenger railroad and local rail service, including station parking facilities and related station uses, subject to easements reserved by the Public Agencies (the “**Reserved Easements**”) in the grant deed, recorded immediately prior hereto, whereby Developer acquired the Station Property (the “**Grant Deed**”), all in accordance with the terms and conditions of that certain Disposition and Development Agreement, dated October 5, 2022, entered into between the Parties (as amended by the first, second, third and fourth amendments, the “**DDA**”). The Station Property expressly excludes the Surface Property (defined below).

B. The Public Agencies retained ownership of that certain real property legally described on **Exhibit B** attached hereto (the “**Surface Property**”) for the purpose of continuing to operate surface parking separate and distinct from the HSR Station (defined below).

C. The Station Property and the Surface Property (each individually a “**Property**” and collectively, the “**Properties**”) are adjacent to a transit center owned and operated by the Public Agencies and which currently includes public parking and connections to the passenger railroad service operated and maintained by SCRRA (“**Metrolink**”) and public buses (collectively, “**Transit Center**”). The Transit Center includes without limitation the real property on which the Transit Center is located as legally described on **Exhibit C** attached hereto.

D. The Station Property and the Surface Property are two legally independent separate interests in real property. The Station Property is above and below the Surface Property, there are easements that travel through specific limited areas of the Surface Property that permit columns and specific utilities adjacent to such columns to traverse through and exist within such specific limited areas of the Surface Property to support the HSR Station and the Surface Property requires certain easements over the Station Property to connect with the adjacent Transit Center, all as further described herein. The Parties are entering into this Agreement to establish easements, covenants and restrictions, all intended to establish and protect the estates, general plan of ownership, use and enjoyment of each Party’s Property.

E. The Public Agencies and the Developer intend that this Agreement be a covenant running with the land pursuant to Section 1468 of the California Civil Code.

NOW, THEREFORE, for good and valuable consideration, the Parties hereby confirm the accuracy of the foregoing recitals, and covenant and agree as follows:

A G R E E M E N T :

1. **DEFINITIONS.** The following is not an exhaustive list of all defined terms in this Agreement and excludes many defined terms used in only one Section hereof, but instead includes certain key defined terms that are used throughout this Agreement.

1.1 **Agreement.** As set forth in the preamble above, **Agreement** means these Conditions, Covenants, Restrictions and Easements, as amended from time to time.

1.2 **City.** As set forth in the preamble above, **City** means the City of Rancho Cucamonga, California.

1.3 **Developer Permittee.** *Developer Permittee* means employees, agents, visitors, contractors, patrons, guests or invitees of Developer.

1.4 **DDA.** *DDA* is defined in Recital A.

1.5 **HSR Station.** *HSR Station* means that certain private, but publicly accessible, passenger train station, including all train platforms, common areas, and parking areas located on the Station Property and columns within easements within the Surface Property, but otherwise expressly excluding the Surface Property, including:

1.5.1 the shell (including the exterior skin) and core of the HSR Station;

1.5.2 all structural support elements existing in, on, under and throughout the HSR Station shell and core, including all footings, girders, columns, braces, foundations, load-bearing walls, utility-bearing walls and other standard support elements, and every wall, column, floor, ceiling, footing, foundation or other vertical or horizontal improvement in the HSR Station;

1.5.3 the elevators, including the elevator shafts, elevator cabs, doors, elevator lobbies, and related machinery and equipment rooms, if any, in, to and serving the HSR Station;

1.5.4 area drains, scuppers, stairways, vaults, mechanical shafts, pipes, lines, mains, conduits, flues, risers, auxiliary generator room, clarifier, and any other equipment, fixtures, machinery, system or apparatus in, to and which benefit the HSR Station; and

1.5.5 any fire and life safety and sprinkler systems in, to and serving the HSR Station, including alarms, fire sprinkler pipes, and the sensors, pipes and fire sprinkler heads.

1.6 **Metrolink.** *Metrolink* is defined in Recital C.

1.7 **Official Records.** *Official Records* means the Official Records of San Bernardino County, California.

1.8 **Party.** *Party* is defined in the preamble.

1.9 **Permittee.** *Permittee* means either a Developer Permittee or a Public Agency Permittee.

1.10 **Properties.** *Properties* is defined in Recital C.

1.11 **Public Agencies Permittee.** *Public Agencies Permittee* means employees, agents, visitors, contractors, patrons, guests or invitees of either or both of the Public Agencies.

1.12 **San Gabriel Subdivision Lease Agreement.** *San Gabriel Subdivision Lease Agreement* means that certain San Gabriel Subdivision Lease Agreement entered into between SBCTA and Developer, dated March 2, 2022.

1.13 **SBCTA.** As set forth in the preamble above, **SBCTA** means San Bernardino County Transportation Authority.

1.14 **Station Property.** *Station Property* is defined in Recital A and legally described on *Exhibit A* attached hereto.

1.15 **Surface Property.** *Surface Property* is defined in Recital B and legally described on *Exhibit B* attached hereto. For purposes of interpreting the maintenance rights and obligations described in this Agreement, the actual boundaries of the Surface Property shall be deemed to extend to the interior unfinished surfaces of the walls, floors, and ceilings that surround the ground floor level (first floor) of the HSR Station and shall exclude all components of the HSR Station described below.

1.16 **Transit Center.** *Transit Center* is defined in Recital C; and the Transit Center includes the real property on which it is located, as legally described on *Exhibit C* attached hereto.

2. USE RESTRICTIONS.

2.1 **Use Restrictions.** The Properties shall only be operated for transit and transit-related purposes, including without limitation appurtenances and appurtenant uses thereto.

2.2 **Maintenance and Security.** To the extent permitted by any applicable law, each Party hereby covenants and agrees to use commercially reasonable efforts to limit loitering, smoking, panhandling, vagrancy and other nuisance and/or unlawful conduct in and on its respective Property, including, without limitation, posting and maintaining signs that prohibit such activities in reasonable locations; however, (a) the Public Agencies' obligations under this Section shall be satisfied by enforcing the prohibitions for the Surface Property with the same level of security services that the Public Agencies obtain and provide for the Transit Center, and (b) the Developer's obligations under this Section shall be satisfied by enforcing the prohibitions for the Station Property with the level of security services required by this Section 2.2 or the highest level that Developer obtains and provides for any the other train station that is owned or operated by Developer within the State of California.

2.2.1 **Repair and Maintenance of Vehicles and Equipment.** Except for short-term emergency situations, repair or maintenance of vehicles or mechanical equipment shall not be permitted within/in or on the Properties.

2.2.2 **Security.** Each Party shall hire and maintain all such security services, including, without limitation, the presence of onsite security personnel and the placement of security cameras or devices within their respective Properties, as such Party reasonably determines may be appropriate.

2.2.3 **Ceiling, Wall, Column and Floor Penetrations.** The Public Agencies and Public Agency Permittees shall be permitted to install signs, lighting, traffic safety mirrors, security systems and other parking related equipment on walls, floors and ceilings surrounding the Surface Property and columns within the Surface Property, and in connection therewith, reasonably bolt or otherwise affix and install items on the walls, columns, floors, and

ceilings that surround, or are within, the Surface Property; provided, however, that in connection with the foregoing, the Public Agencies shall not adversely impact the structural integrity of the HSR Station or any improvements therein. If a necessary repair or property improvement requires a penetration that would be reasonably likely to adversely affect the HSR Station, then the Public Agencies and/or Public Agency Permittee(s) shall reasonably coordinate such repairs or property improvements with the Developer. Notwithstanding the foregoing, nothing contained herein shall be deemed to prohibit the Public Agencies and Public Agency Permittees from reasonably painting or repainting (as necessary) parking stripes, parking stalls or directional signage on the paved floors, columns, and walls that enclose, or are within, the Surface Property.

3. MAINTENANCE AND OPERATIONAL OBLIGATIONS.

3.1 **Maintenance and Repair.** Except to the extent any damage is caused by another Party or Parties, in which event the damaging Party or Parties shall be responsible for such repair, each Party or Parties (that is, the Public Agencies) shall be solely responsible to perform all maintenance and repair obligations with respect to its or their respective Property, such that each Property is maintained in good condition and repair, including ensuring that its or their Property is on a reasonable periodic basis cleaned, swept and otherwise kept reasonably free of all trash, debris and standing water. For the avoidance of doubt, subject to the proviso at the beginning of the first sentence of this Section 3.1, Developer shall be solely responsible for maintaining the Station Property, including, without limitation, (a) the HSR Station, (b) the structural integrity of the columns which traverse the Surface Property and (c) any utilities serving the HSR Station that traverse the Surface Property adjacent to the columns while the Public Agencies shall be solely responsible for maintaining the Surface Property, including without limitation the interior surfaces of each of the walls, columns, floors, and ceilings that surround the Surface Property, including graffiti removal. For the purposes of clarity, subject to the proviso at the beginning of the first sentence of this Section 3.1 and except for periods in which Developer is installing subterranean improvements under the Surface Property such that maintenance by the Public Agencies would interfere therewith, if the paved floor is damaged, the Public Agencies shall have the right and the obligation to repair said floor and sufficient access is hereby granted by Developer to the Public Agencies to perform such repair work. The Public Agencies' right and obligation to make such repairs to the paved floor shall automatically terminate upon the Developer's installation of any subterranean improvements (other than utilities or other similar installations) under the Surface Property, if ever. For the avoidance of doubt, when a Party is responsible for repair or maintenance under this Section 3.1, such responsibility shall include all costs relating thereto.

3.2 **Cooperation.** The Developer and the Public Agencies shall reasonably cooperate with one another in good faith in the performance of their obligations under this Section 3.

3.3 **Operation of HSR Station.** Developer shall operate the HSR Station at the Station Property at all times Developer maintains a high-speed passenger rail system in Southern California so as to ensure that all regularly scheduled passenger trains stop at the Station Property in accordance with the San Gabriel Subdivision Lease Agreement. Express, special event, and charter train services are not required to stop at the Station Property; however, Developer may not provide only express, special event and/or charter train services.

3.4 **Modifications After Initial Construction.** Following the completion of the HSR Station by Developer and the surface parking improvements by the Public Agencies, neither Party shall materially alter, renovate, modify or add to the exterior of any improvements without the prior written consent of the other Party, which consent is not to be unreasonably withheld, conditioned or delayed.

4. EASEMENTS.

4.1 **Easements for the Benefit of the Surface Property.** The Public Agencies and Public Agency Permittees shall benefit from, and there are hereby established and granted for the benefit of the Public Agencies and Public Agency Permittees, the following easements over portions of the Station Property, which shall be appurtenant to the Surface Property:

4.1.1 **Access Easements.** Nonexclusive access easements over and across those portions of the Station Property for the purposes described below and subject to Public Agencies' approval of plans as described in DDA Section 3.4:

(a) a pedestrian access easement under, through and across those portions of the Station Property, including, without limitation, the stairs and elevator shown thereon, for free and unrestricted ingress and egress between the Surface Property and the Transit Center, as depicted on **Exhibit D** attached hereto (other than typical improvements, such as benches, signs, landscaping, etc., which do not interfere with the free and unrestricted ingress and egress between the Surface Property and the Transit Center). For the avoidance of doubt, such pedestrian access easement shall include a passenger elevator and stairs leading from the Surface Property to the P3 level of the Station Property, and then a walkway of at least six (6) feet in width within the Station Property leading from such elevator and stairs to the top of the exterior ramp leading down to the Transit Center, which walkway will not cross any garage drive aisles. For the avoidance of doubt, such pedestrian access easement as depicted on **Exhibit D** shall correspond to the actual constructed stairs, elevator, and walkway consistent with the foregoing description and plans approved by the Public Agencies in lieu of the area depicted on Exhibit D. Developer and the Public Agencies shall modify the CC&Rs if desired by either party in order to revise **Exhibit D** to conform with the as-built improvements. Additionally, when such elevator is inoperable or under maintenance or repair, Developer shall provide alternative access to the Public Agencies and Public Agency Permittees via access to and from and use of the elevators serving the Station Property until such elevator is operable, as referenced on the Site Plan.

(b) a pedestrian access easement over and across those portions of the Station Property designated by Developer, including stair and elevator access, that provides reasonable ingress and egress between the Surface Property and the communications building on adjacent property owned by the City ("**Communications Building**"). For equipment trucks that are too large to fit in the Surface Property, or which are necessary to be located within close proximity to the Communications Building when performing work on or inside of the Communications Building, and for fire and/or emergency vehicle access, Developer shall designate and maintain reasonable vehicular and parking access for such vehicles within the loading area off of Milliken Avenue or the drop off/pick up area on the main floor of the Station Property, together with pedestrian access designated by Developer that provides reasonable ingress and egress between such parking area and the Communications Building. Additionally, Developer

shall provide and maintain an access gate through the existing fence between the San Gabriel Subdivision right of way and the Communications Building and a gate through any other Developer owned physical barrier that would block access to the Communications Building, as applicable.

(c) For the avoidance of any doubt, the Grant Deed reserves to the Public Agencies additional utility, access, construction, and use easements over portions of the Station Property, as described and depicted in the Grant Deed.

4.2 Easements for the Benefit of the Station Property. The Developer and the Developer Permittees shall benefit from, and there are hereby established and granted for the benefit of the Developer and the Developer Permittees, the following easements over portions of the Surface Property, which shall be appurtenant to the Station Property:

4.2.1 Developer Maintenance Obligations. Nonexclusive easements within, through and across the Surface Property as reasonably necessary for the purpose of performing the maintenance obligations described herein. The rights of Developer and Developer's Permittees under this easement are subject to the obligation not to unreasonably interfere with the use or operation of the Surface Property, and, except in an "Emergency Situation" (as that term is defined below), to notify the Public Agencies at least thirty (30) days in advance of the dates, times and scope of maintenance and to cooperate in good faith with the Public Agencies in minimizing interference with the use and operation of the Surface Property; provided, however, if such maintenance or repair work does not impact access to or parking at the Surface Property, then Developer shall only be obligated to provide the Public Agencies with at least five (5) business days advance notice. At all times Developer shall ensure that a minimum of four hundred (400) parking spaces total across the Surface Property and Transit Center (or such lesser amount if less than 400 parking spaces total exist at such time), including sufficient ADA compliant parking stalls to satisfy ADA requirements, are available to Public Agencies' Permittees. Anytime Developer reasonably determines that immediate maintenance or repair work is required to address an imminent threat to public health or safety (each, an "**Emergency Situation**"), Developer shall give notice of such Emergency Situation to the Public Agencies as soon as possible after such determination and shall have the right to immediately act on providing such maintenance and repair work as is required to address the Emergency Situation; provided, however, that the foregoing language shall not be in denigration of any obligation, liability or duty of Developer under or pursuant to this Agreement or as provided by law, and the foregoing right shall not release or relieve Developer from any responsibility, liability or indemnification obligations arising out of, resulting from or relating to this Agreement.

4.2.2 Public Easements. Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the HSR Station for the performance of their respective duties. Additionally, easements are hereby reserved in favor of all Parties for emergency ingress and egress over, through and across all portions of the HSR Station.

4.2.3 Support Columns, Utilities, and Beams Serving HSR Station. Exclusive easements within, through and across only those portions of the Surface Property expressly and specifically designated and developed with columns and beams and specified

utilities (i.e., only the following utilities: storm drain; water; sewer; electrical; telecommunication; and data, including similar future technologies) adjacent to such columns and beams per plans approved in advance and in writing by the Public Agencies which plans specifically show such beams, columns and utilities, for the purpose of installing, constructing, inspecting, placing, maintaining, repairing, replacing, and removing the structural columns, support beams, utilities within or adjacent to such columns, footings and any other structural components or support elements existing in, on, under and throughout the HSR Station, including incidental access as necessary to access such columns, utilities and beams for such purposes (“**Column and Beam Easement**”). Developer and the Public Agencies shall reasonably cooperate to designate the locations of such columns, utilities and beams on such plans to facilitate the optimal, but commercially reasonable, parking and vehicular and pedestrian circulation within the Surface Property. Developer, at Developer’s sole cost and expense, shall ensure that, at all times, the columns, beams and utilities are located to provide at least 210 parking stalls available to Public Agencies’ Permittees within the Surface Property, including sufficient ADA compliant parking stalls to satisfy ADA requirements. For the avoidance of doubt, Developer, at Developer’s sole cost and expense, shall ensure that the Surface Property and the adjacent Transit Center, upon delivery by Developer to the Public Agencies following the initial construction of the Station Property by or for the benefit of Developer and temporary use and reconfiguration of the Transit Center pursuant to Section 4.2.4 below, collectively provide at least 650 parking stalls. Additionally, Developer, at Developer’s sole cost and expense, shall ensure that the beams and any utilities adjacent to such beams are located to provide and maintain at least eight (8) feet of clear height space throughout the Surface Property. Except in an Emergency Situation, Developer shall notify the Public Agencies in writing at least thirty (30) days in advance for maintenance and at least sixty (60) days in advance for any construction, placing, repairing or removing work, of the dates, times and scope of maintenance or other work, and to cooperate in good faith with the Public Agencies in minimizing interference with the use and operation of the Surface Property; provided, however, if such maintenance or repair work does not impact parking at the Surface Property, then Developer shall only be obligated to provide the Public Agencies with at least five (5) business days advance notice. For the avoidance of doubt, if Developer desires to modify or add utilities in the future, the Public Agencies shall have reasonable review and approval rights with respect to any such modification or addition. Consistent with Section 4.2.1 above, anytime Developer reasonably determines that there is an Emergency Situation, Developer shall give notice of such Emergency Situation to the Public Agencies as soon as possible after such determination and shall have the right to immediately act on providing such maintenance and repair work as is required to address the Emergency Situation; provided, however, that the foregoing language shall not be in denigration of any obligation, liability or duty of Developer under or pursuant to this Agreement or as provided by law, and the foregoing right shall not release or relieve Developer from any responsibility, liability or indemnification obligations arising out of, resulting from, or relating to this Agreement.

4.2.4 Temporary Construction Easement on Transit Center and Milliken Site during the Initial Construction. In connection with development of the HSR Station by Developer and during the construction thereof, the Public Agencies hereby grant to Developer a temporary construction easement for construction parking and staging purposes on the Transit Center, as well as the construction of ramps and stairs on the Transit Center, per plans approved by Public Agencies in accordance with Section 3.4 of the DDA, to facilitate ingress and egress between the Station Property and the Transit Center and the reconfigured pedestrian ramp for

access to the Pedestrian Tunnel, and the City hereby grants to Developer a temporary construction easement for construction parking on the adjacent parking lot owned by the City on Anaheim Place, abutting Azusa Court and Milliken Avenue (“*Milliken Site*”) until the completion of the HSR Station, but in any event no later than seven (7) years after Close of Escrow. However, with respect to the Milliken Site, the City may terminate the temporary construction easement no earlier than six (6) months after written notice from the City to Developer indicating that the City has reached agreement with a buyer for the sale of all of the Milliken Site (or for a material portion of the Milliken Site that requires termination of such temporary construction easement), subject only to City Council approval of the agreement, if such date is earlier than the completion of the HSR Station. Developer shall ensure that the design and construction of the long ramp from the Station Property to the Transit Center is in accordance with all ADA requirements. Additionally, Developer shall ensure that the design and construction of such ramp includes and utilizes drains and non-slip surfaces; provided, however, that Developer shall ensure that such design and construction also provides for and is conducive to the commercially reasonable subsequent addition of an overhead covering to shield the ramp from rain. The Public Agencies shall assume responsibility for the ramps and stairs on the Transit Center following (i) the initial construction by Developer, at the sole cost of Developer, (ii) the inspection and acceptance thereof by the Public Agencies, at the sole cost of the Public Agencies, and (iii) the inspection and approval by a CASp certified inspector as part of the Inspector of Record process, at the sole cost of Developer. The Public Agencies and Developer shall coordinate regarding the location(s) and scope(s) of such construction parking and staging such that the combined Transit Center and Milliken Site continue to provide at least 400 parking stalls are available to Public Agencies’ Permittees, at least four bus drop off locations (including on Azusa Court if necessary), pedestrian access between such parking and bus drop off locations and the Metrolink platforms and legally compliant ADA parking, all in a manner reasonably acceptable to the Public Agencies. Prior to exercising any such rights described within this Section 4.2.4, Developer shall provide the Public Agencies with thirty (30) days’ notice of Developer’s plans for any occupancy or use of the easement, and the Developer must demonstrate to the reasonable satisfaction of the Public Agencies that safe and adequate circulation of pedestrian, vehicular, and bus movements are and will be provided for at all times during the term(s) of the easement. Developer shall provide the Public Agencies at least thirty (30) days’ notice of any changes to the affected area, to enable the Public Agencies to provide notice to Metrolink and/or its patrons, and such changes must otherwise be in accordance with the terms of this Agreement. Commencing on the date which Developer takes possession of any temporary construction easement area, Developer shall compensate the Public Agencies for the temporary construction easement by paying them, on a monthly basis, on or before the first business day of each calendar month, without offset or deduction, a sum of money which is equal to the product of the following factors: (i) the total number of square feet then affected by the temporary construction easement, (ii) the affected property’s fee value per square foot, multiplied by (iii) one third of a percent (1/3%). The fee value per square foot of the affected property shall first be established by an appraisal no older than six months at the time Developer first takes possession of any temporary construction easement area and shall be scaled by a factor of one and four hundredths (1.04) each year on the anniversary of said appraisal’s date of valuation. If payment is not made within ten (10) business days after written notice from the City, then the outstanding sum shall immediately begin to accrue interest at the rate identified in Section 7 until paid. During the term of the temporary construction easement, Developer shall maintain the temporary construction easement area in good condition and repair. Following the termination of the

temporary construction easement, Developer shall promptly return the portion of the Transit Center and Milliken Site used for the temporary construction easement to their condition immediately prior to the easement term.

For all facilities that the Public Agencies will own and control, Developer shall obtain customary and usual construction and installation warranties, shall assign all such warranties, on a non-exclusive basis and to the extent assignable, to the Public Agencies with respect thereto, and shall, whether or not such warranties are assigned, reasonably cooperate with the Public Agencies to enforce such warranties as necessary, including filing and pursuing warranty claims on behalf of the Public Agencies for non-assignable warranties.

4.2.5 Future Construction. During the redevelopment of the Station Property, Developer on advance written notice, including without limitation the prior written approval of the Public Agencies of replacement parking as provided below, of not less than twelve (12) months, shall have the right to temporarily close the Surface Property for a reasonable period of time not exceeding thirty-six (36) months (as the same may be extended by force majeure, but not otherwise) during the actual construction on the Station Property and subject to the terms of this Section 4.2.5. If, as a consequence of Developer's future construction, the Public Agencies would not have at least 400 parking spaces available during the period of construction, Developer shall provide reasonable replacement parking, compliant with ADA and all other applicable law, taking into account both then existing ADA parking areas located on the Transit Center and ADA requirements relating to the replacement parking, as applicable, and otherwise reasonably acceptable to the Public Agencies during the construction period and thereafter until the Surface Property is returned to its prior condition. The amount of such replacement parking provided by Developer shall ensure that the Public Agencies would have (i) 400 parking spaces if the Public Agencies had 400 or more parking spaces just prior to Developer's construction, or (ii) if the Public Agencies had less than 400 parking spaces just prior to Developer's construction, an amount equal to such lesser amount. Following such construction, Developer shall promptly return the Surface Property to its prior condition as of the date Developer took possession. As an example only, if Developer develops a larger HSR station with below grade parking and the Surface Property, at the time of such construction, is used as a gated surface parking lot, Developer shall restore the Surface Property to a surface parking lot, including striping, lighting, and gates, as applicable (including any equipment that was previously installed by the Public Agencies).

4.2.6 Baggage Elevator Access. Developer may in the future, without any obligation to do so or to continue such service once commenced, build a baggage elevator entirely on the Station Property that would open onto the Pedestrian Tunnel via a vestibule, also entirely on the Station Property, between the Pedestrian Tunnel and such elevator, to enable baggage service between BLW trains and Metrolink Trains. As part of the work to reconfigure the ramps and stairs providing access to the Pedestrian Tunnel, Developer shall construct the vestibule per plans approved in advance and in writing by the Public Agencies and gate such vestibule from the Pedestrian Tunnel to prevent access and vagrancy issues when not in use; said gate to be located entirely on the Station Property. Developer shall coordinate with the Public Agencies regarding the design thereof to maximize the continued functionality of the tunnels and any construction work relating thereto to minimize impacts to the Transit Center.

5. INSURANCE.

5.1 **Public Agency Insurance Requirements.** With respect to the Surface Property, at all times the Public Agencies (or one of them) shall maintain property insurance coverage in amounts and types consistent with the coverage and amounts maintained on the Transit Center. To the extent both possible and reasonably available at commercially reasonable rates, Developer will be named as an Additional Insured on said insurance coverage and the Public Agencies will provide Developer reasonable evidence of said insurance upon request.

5.2 **Developer Insurance Requirements.** Developer at all times shall maintain the following insurance coverage:

5.2.1 **Commercial General Liability (CGL).** Developer shall maintain the insurance coverage set forth below in this Section 5.2.1 when the provisions of Section 5.3 do not apply. Commercial General Liability (CGL) with a limit not less than twenty-five million dollars (\$25,000,000) per each occurrence and a general aggregate limit of not less than twenty-five million dollars (\$25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from the Public Agencies) substitute forms at least as broad as CG 00 01 04 13 coverage. All excess or umbrella policies must be “follow form” and afford no less coverage than the primary policy. Such CGL must provide coverage to the Insured Party as additional insureds using ISO Additional Insured Endorsement CG 20 10 and CG 20 26. Coverage shall be provided to the Insured Party for all claims arising from the Property of the Insured Party (as defined in Section 5.4.4 below), respectively, or proximately caused by reason of construction activities and the location and placement of improvements within the Property, unless caused by an Insured Party's gross negligence or willful misconduct.

5.3 **Insurance During Construction.** Developer shall maintain the following insurance coverage at all times during which it is performing construction work within either of the Properties:

5.3.1 **Commercial General Liability (CGL).** Commercial General Liability (CGL) with a limit not less than fifty million dollars (\$50,000,000) each occurrence, fifty million dollars (\$50,000,000) products and completed operations aggregate, and a general aggregate limit of not less than fifty million dollars (\$50,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to the HSR Station. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or (with approval from the Public Agencies) substitute forms providing equivalent coverage. All excess or umbrella policies must be “follow form” and afford no less coverage than the primary policy. Such CGL must cover the Insured Party as additional insureds using ISO Additional Insured Endorsement CG 20 26 or and 20 10 and accompanied by 20 37 or equivalent forms with approval from the Public Agencies providing coverage to the Insured Party for completed operation losses. Coverage must be provided to the Insured Party for claims proximately caused by reason of the uses authorized, unless caused by the gross negligence or willful misconduct of the Insured Party.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There must not be any endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage must extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage must extend for at least ten (10) years from the completion date of such improvements. All excess or umbrella policies must contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

5.3.2 Commercial Automobile Insurance. Developer shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from the Public Agencies, substitute form providing equivalent liability coverage) with a limit not less than one million dollars (\$1,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad, and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). Developer shall require its general contractor to provide (and shall ensure that its general contractor does provide) evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or, with approval from the Public Agencies, substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars (\$25,000,000) for each accident. Such insurance must cover liability arising out of any auto (including owned, hired, and non-owned autos) and can be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act - Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000). All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

5.3.3 Workers' Compensation and Employers Liability Insurance. Developer shall provide evidence of Workers' Compensation insurance as required under California statutes including coverage for Employer's Liability with limits of at least one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee by disease, and a policy limit of one million dollars (\$1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars (\$25,000,000) and can be satisfied by a combination of primary and excess and/or umbrella policies. The workers' compensation policies must provide the following:

- (a) A waiver of subrogation in favor of the Insured Party and the Permittees of the Insured Party;
- (b) A voluntary compensation endorsement;
- (c) An alternative employer endorsement, if applicable to the Insured Party's operations;

(d) Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;

(e) Coverage for liability under Title 46 of the U.S.C. § 688 on an "if any" basis or as otherwise appropriate; and

(f) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

5.3.4 Professional Liability Insurance. The Developer shall provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any professional services, including without limitation engineering, architectural, or land surveying work required in connection with such construction, procured, and maintained by those third parties performing such work for or on behalf of Developer. For the lead design contractor for the improvements in privity with Developer, the coverage must not be less than ten million dollars (\$10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage must not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to such construction, the coverage must not be less than five million dollars (\$5,000,000) per claim and in the aggregate. Developer shall also require any member of its design build team, any subconsultant, or any subcontractor performing professional design services for any portion of such construction work, to obtain and maintain (and shall ensure that they do obtain and maintain) professional liability insurance providing the same coverage, with limits of at least one million dollars (\$1,000,000) per claim and in the aggregate. Developer shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars (\$25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage must include coverage for claims filed directly against Developer by third-parties alleging negligence (arising from professional services of design firms).

No self-insured retention for Developer or any lead design entity is permitted to exceed five hundred thousand dollars (\$500,000), without prior written approval from the Public Agencies, in their good faith discretion (which shall factor in whether such insurance is commercially available). Coverage must apply specifically to professional activities performed or contracted by Developer in support of the construction. The policy(ies) must have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued. Developer agrees to maintain or to require its design professionals, subconsultants, or design-build subcontractors to maintain (and shall ensure that they do maintain), as appropriate, this required coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the contractor is working with a separate lead design entity, contractor must (and Developer shall ensure that contractor does) require the lead design entity to agree to maintain this coverage for a period of no less than three (3) years after completion of such construction.

5.3.5 Contractor's Pollution Liability. Developer shall procure or cause to be procured contractor's pollution liability ("CPL") coverage throughout the period of construction. Coverage must be provided by a stand-alone policy with dedicated limits of no less than twenty-five million dollars (\$25,000,000) per occurrence and twenty-five million dollars (\$25,000,000) in the aggregate per policy period dedicated to the Property. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the Property. The CPL policy must include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy must have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos. Coverage as required in this Section shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy must also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation. If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, Developer shall furnish the Insured Party evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars (\$5,000,000) per loss and an annual aggregate of five million dollars (\$5,000,000).

5.3.6 Railroad Protective Liability. Developer shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or, with approval from the railroad requiring such insurance, substitute form providing equivalent coverage) on behalf of any railroad as a named Insured, with a limit specified by any railroad.

5.3.7 Builder's Risk Insurance. Developer shall, upon commencement of construction, obtain and maintain a policy of builder's risk insurance for the construction. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the Property. The insureds must include the contractor, all subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and the Insured Party. The policy must cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the construction, and the works of improvement, including permanent and temporary works and on-site materials, and including goods intended for incorporation into the works located at the Property, in storage or in the course of transit to the Property and all improvements that are within the Property. The builder's risk policy must include coverage for:

- (a) Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;
- (b) Machinery accidents and operational testing involving equipment covered by the policy;
- (c) Removal of debris, with a sublimit of twenty-five percent (25%) of the loss subject to a limit of twenty-five million dollars (\$25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all Properties
- (d) Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;
- (e) Replacement value of any property or equipment stored either on or off the Property;
- (f) Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:
 - (i) Collapse;
 - (ii) Terrorism;
 - (iii) Earthquake;
 - (iv) Flood;
- (g) Plans, blueprints and specifications; and
- (h) Demolition and increased cost of construction as required by law or ordinance subject to applicable sub-limits.

There must be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions must be the sole responsibility of Developer.

The policy must provide a “severability of interests provision,” “multiple insured’s clause” or similar wording that the policy is to apply to each insured as if a separate policy had been issued to each insured except as to limits.

Developer shall also require the general contractor and its subcontractors to procure and maintain (and shall ensure that they do procure and maintain) coverage for tools and equipment owned, leased or used by the general contractor or subcontractors in the performance of their work under this contract.

Upon completion of construction, Developer shall provide evidence of “all risk” property insurance covering the improvements, with coverage sufficient to cover the probable maximum

loss of such improvements and alterations made by Developer pursuant to the terms hereof, which must include “all risk” coverage using the ISO Causes of Loss - Special Form or (with approval from the Public Agencies) its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such improvements.

5.4 General Insurance Requirements.

5.4.1 *Self Insurance/Deductible.* The policy or policies under which coverage is provided by Developer may include a deductible or self-insured retention not in cumulative excess of ten million dollars (\$10,000,000) on the condition that:

(a) Each insurance policy expressly provides that the obligations of the policy issuer to the Insured Party and additional insured are not to be diminished in any way by Developer failure to pay its deductible or self-insured retention obligation for any reason;

(b) Developer provides a declaration under penalty of perjury by a Certified Public Accountant (CPA) acceptable to the Insured Party and who shall apply a Fiduciary Standard of Care, certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming that Developer has sufficient funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of one million dollars (\$1,000,000); and

(c) Developer promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

5.4.2 *Definition of “Self Insurance”.* As used in this Section, “self insurance” means that Developer is itself acting as if it were the insurance company providing the insurance required.

5.4.3 *Evidence of Insurance.* Developer shall furnish evidence of insurance reasonably acceptable to the Insured Party before Developer commences physical construction within the Properties. Developer shall also provide the Insured Party with satisfactory evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. Developer shall submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder’s risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to Developer starting work on the Properties, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of Developer, any of the coverage required becomes unavailable, Developer shall provide good faith alternative insurance packages and programs, subject to prior approval by the Public Agencies, with the goal of reaching agreement in good faith on a package providing coverage equivalent to that specified herein.

5.4.4 *Additional Insured Coverage.* All Developer policies including property, except those for Workers’ Compensation and Professional Liability insurance, must

name the Insured Party as additional insured. Commercial General Liability policies must be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name the Insured Party as additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of Developer on the Property, coverage for such additional insureds must not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements must not limit the scope of coverage for the Insured Party to vicarious liability but shall allow coverage for the Insured Party to the full extent provided by the policy. **Insured Party** means the Public Agencies and their directors, council members, officers, employees, contractors and agents.

5.4.5 Waiver of Subrogation Rights. To the fullest extent permitted by law, Developer hereby waives all rights of recovery under subrogation against the Insured Party, and any other tenant, contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of the Insured Party, in connection with the planning, development and construction of any improvements. To the fullest extent permitted by law, Developer shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. Developer shall require all of the policies and coverages required in this Section to waive all rights of subrogation against the additional insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided must not prohibit Developer from waiving the right of subrogation prior to a loss or claim.

5.4.6 Eligible Insurers. If policies are written by insurance carriers authorized and admitted to do business in the State of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and 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 the Public Agencies.

5.5 Coverage Amounts. All insurance coverage amounts hereunder shall be increased every five (5) years based on increases, if any, in the consumer price index.

6. INDEMNITY.

6.1 Indemnity. Subject to the provisions of Section 6.2 below, Developer shall protect, indemnify, defend, and hold harmless the Public Agencies from and against all claims, demands, expenses, liabilities, losses, damages, and costs, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, howsoever caused, to, any person or loss or damage arising as a result of Developer's or Developer's Permittees' acts or omissions on or related to the Station Property, including without limitation, the Tunnel Easement Area as defined in the Grant Deed and the Temporary Construction Easement described in Section 4.2.4. Subject to the provisions of Section 6.2 below, the Public Agencies shall protect, indemnify, defend, and hold harmless the Developer from and against all claims, demands, expenses, liabilities, losses, damages, and costs, including without limitation any actions or proceedings in connection therewith and reasonable attorneys' fees related thereto, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss, or damage, howsoever caused, to, any person or loss or damage arising

as a result of the Public Agencies' or their Permittees' acts or omissions on or related to the Surface Property.

6.2 **General Provisions.** Notwithstanding anything to the contrary in this Section 6, neither Party shall be entitled to indemnification for damage to the extent caused by or arising from its negligence or willful misconduct or the negligence or willful misconduct of its Permittees.

7. **ENFORCEMENT AND REMEDIES.** If any Party defaults in the performance of any obligation under this Agreement ("**Defaulting Party**" with respect to each individual instance of such default), and if such default remains uncured thirty (30) days after written notice from the other Party ("**Nondefaulting Party**" with respect to each such individual instance of such default), stating with particularity the nature and extent of such default, then Nondefaulting Party shall have the right to (i) perform such obligation on behalf of such Defaulting Party, (ii) be reimbursed by such Defaulting Party within thirty (30) days of written demand therefor, together with interest at the lesser of the rate of twelve percent (12%) per annum or the maximum rate permitted by law, and/or (iii) commence an action against the Defaulting Party for injunctive relief (including mandatory injunction or specific performance) and/or damages; and nothing in this Agreement, including without limitation the foregoing language and including that a cure period is provided and that a cure may timely occur, shall limit or be in denigration of the rights and remedies of the Nondefaulting Party, including the right to damages and/or other legal or equitable remedies or relief. The failure of the Nondefaulting Party to insist, in any one or more cases, upon the strict performance of any provision of this Agreement shall not be construed as a waiver of the future breach of such provision or any other provision of this Agreement.

8. **APPROVALS AND DISPUTE RESOLUTION.** Except as otherwise specifically provided herein, no approval shall be unreasonably withheld or delayed. If the Parties are not able to agree on any matter which is to be approved by Party or Parties pursuant to this Agreement, the matter shall, upon demand of any Party, be determined pursuant to the provisions set forth below.

8.1 **Meet and Confer.** If the Parties are unable to resolve a dispute within ten (10) days of written notice of a dispute, the Parties will, at the written request of any Party, require that the matter be reviewed by a senior level executive of each Party (in the case of Developer, by a Senior Vice President or higher, and in the case of the Public Agencies, by the Assistant City Manager or higher or the Deputy Executive Director or higher, as applicable). If senior level executives cannot reach a resolution within ten (10) days of commencing their meet and confer then any Party may seek judicial resolution.

8.2 **Costs.** Each Party will bear its own costs, including attorneys' fees, which it incurs. In the event the parties use a mediator or arbitrator, they will share equally in the costs of the mediator's services.

9. REVERSIONARY RIGHT.

9.1 **Reversionary Right.** Reference is hereby made to the reversionary right of the Public Agencies with respect to the Station Property as set forth in Section 5.2.2 of the DDA.

With respect to such reversionary right, as a matter of clarification, the Parties agree that, if the Public Agencies repay the amount set forth in Section 5.2.2 of the DDA, and there is any secured loan or lien encumbering the Station Property, then the amount paid shall be paid to the secured lender or lienholder to the extent necessary to require a reconveyance/release of the applicable deed of trust or other lien under California law. Additionally, the reversionary right shall no longer apply following the completion of the required improvements set forth in the DDA by Developer and commencement of revenue service on the high speed rail line from the HSR Station.

10. RIGHT OF FIRST NEGOTIATION.

10.1 **First Negotiation.** If the Public Agencies elect to sell all or a portion of the Surface Property (which shall be subject to easements and/or licenses provided to Developer), or the Public Agencies receive a bona fide offer to buy all or a portion of the Surface Property from a purchaser which is acceptable to the Public Agencies, Developer shall have the right of first negotiation to purchase the Surface Property from the Public Agencies pursuant to the following terms and conditions:

10.1.1 **Sale Notice.** If the Public Agencies elect to sell all or a portion of the Surface Property, the Public Agencies shall first notify Developer (or its successor owner of the Station Property) in writing before the Surface Property (or such portion) becomes available for sale to third parties, or if the Public Agencies receive the bona fide offer described above, the Public Agencies shall notify Developer that the Public Agencies have received such an offer (“**Sale Notice**”). Pursuant to such Sale Notice, the Public Agencies shall then negotiate with Developer to sell the Surface Property (or such portion) to Developer. The Sale Notice shall set forth the proposed economic terms (including, without limitation, purchase price) and conditions upon which the Public Agencies are willing to sell the Surface Property (or such portion) (collectively, the “**Economic Terms**”).

10.1.2 **Procedure for Acceptance.** If Developer wishes to exercise Developer’s right of first negotiation, then within ten (10) business days of the delivery of the Sale Notice to Developer, Developer shall deliver a written notice to the Public Agencies of Developer’s exercise of its right of first negotiation, whereupon the Public Agencies and Developer shall then negotiate the terms of the sale for a period of sixty (60) days (“**Negotiation Period**”). Developer must elect to exercise its right of first negotiation to purchase all of the Surface Property offered (not less than what is offered). If Developer does not so notify the Public Agencies within the ten (10) business day period, or terms acceptable to the staff of the Public Agencies (which they would recommend to decision-makers for approval) are not reached during the Negotiation Period, then the Public Agencies shall be free to sell the portion of the Surface Property offered to Developer to anyone the Public Agencies desire on any terms the Public Agencies desire, and Developer shall no longer have any right to purchase such portion of the Surface Property; provided, however, if the Public Agencies desire to sell such portion of the Surface Property (i) for less than ninety percent (90%) of the purchase price, or (ii) later than the date which is one year after the Negotiation Period, then the Public Agencies shall be obligated to give another Sale Notice to Developer in accordance with the terms of this Section 10.1.1 above.

10.1.3 **Agreement.** If Developer and the Public Agencies agree on the terms of Developer’s purchase of the Surface Property (or a portion thereof), then the Public

Agencies and Developer shall, within ninety (90) days thereafter, execute a purchase agreement upon which Developer shall agree to purchase the Surface Property (or a portion thereof) with the following terms: (a) Developer shall complete its due diligence review of the Surface Property within thirty (30) days following the date of the purchase agreement, (b) the close of escrow under the purchase agreement shall not occur later than thirty (30) days following expiration of the due diligence period, and (c) all remaining terms of the purchase and sale of real property that are in the DDA and not specified in this Section 10.1 shall apply to the purchase and sale transaction.

11. TRAFFIC SIGNAL IMPROVEMENTS AND MAINTENANCE/REPAIR.

11.1 **Azusa Court/Milliken Avenue Intersection.** Developer shall construct a traffic signal and associated intersection improvements at the intersection of Milliken Avenue and Azusa Court (“*Intersection*”) as part of the development and operation of the HSR Station.

11.2 **Milliken Avenue/Station Property Driveway.** Developer intends to utilize a right-in, right-out movement at the driveway entrance to the Station Property from Milliken Avenue (“*Driveway*”) as part of the development and operation of the HSR Station. With this configuration, the City is not requiring a traffic signal to control traffic at the Driveway. However, Developer may not utilize a left-in, left-out movement at the Driveway unless and until a fully signalized T-intersection is constructed and installed at the Driveway in accordance with Section 11.4, unless otherwise agreed to by the City.

11.3 **Anaheim Place/Azusa Court Intersection and Azusa Court/Surface Property Driveway.** Developer completed a traffic study to determine whether any additional traffic improvements are required at the intersection of Anaheim Place and Azusa Court and at the driveway entrance to the Surface Property from Azusa Court. The study concluded that no traffic signal is required at the intersection and that a two-way stop and added turn lanes will handle the traffic flow in the area and the driveway entrance. Developer shall construct and install the recommended traffic improvements in the traffic study prior to opening passenger service operation at the HSR Station. The City shall process the permits for such improvements in accordance with the process set forth in Section 11.3.

11.4 **Permitting Process for Traffic Improvements.** Prior to beginning design of any traffic improvements, Developer’s engineer shall meet with the City Engineer’s traffic engineering staff to determine the appropriate design approach and operational characteristics for each traffic improvement. Developer will submit to the City a complete “Right-of-Way Application,” including plans and specifications (the “*Application*”) for approval of the construction and installation of each traffic improvement. The City will fairly and, in accordance with the City’s customary practices, promptly process (i) the Application within one hundred twenty (120) calendar days of receipt of the Application from Developer (or its agents, representatives, or designees) and all additional applications by Developer (or its agents, representatives, or designees) for City permits necessary for the construction and installation of each traffic improvement, including not limited to, any requisite construction permits, grading permits, building permits, mechanical permits, electrical permits, drainage permits, permits, and requests for inspections and approvals. The City reserves all rights and inherent duties in processing the Application to conduct a good faith review of the Application and to perform its obligation to not approve an incomplete Application if the Application is missing required

technical information or is not in compliance with permit approval requirements. The City agrees to promptly notify Developer in writing of any incomplete items, missing information, and the City permit requirements. Developer shall construct and install all traffic improvements in accordance with then existing City standards. Provided the traffic improvements are accepted and completed in accordance with the foregoing (including applicable permits), the City agrees to accept and maintain all traffic improvements once complete.

12. **USE OF CITY-OWNED PROPERTY.** Developer and the Public Agencies cooperatively negotiated the DDA and associated easements to facilitate the development of the HSR Station. As a result thereof and as of the effective date of this Agreement, Developer acknowledges that the only City-owned property to be used for the HSR Station and any related facilities is identified in the DDA. Except as expressly set forth otherwise in the DDA, Developer shall not use or attempt to use the following City-owned property for transit uses as part of the initial development of the HSR Station without the prior written consent of the City in its sole and absolute discretion: (1) the Transit Center described in Exhibit C; (2) the Milliken Site; (3) the City-owned property adjacent to the I-15 Freeway and identified as APNs 0229-021-81-0000 and 0229-021-80-0000; and (4) property to be dedicated to the City for public use within the area governed by the Resort Specific Plan on the now-closed Empire Lakes Golf Course located north of Sixth Street, south of the BNSF/Metrolink rail line, west of Milliken Avenue, and east of Utica/Cleveland Avenues. Developer further acknowledges and agrees that if it needs additional City-owned property as part of the initial development of the HSR Station, it shall cooperatively negotiate directly with the City regarding the acquisition of such additional property. The foregoing shall not constitute a waiver of Developer's condemnation powers beyond the initial construction of the HSR Station (i.e., does not limit future use for expansions or reconstruction after the initial HSR Station is constructed and operational).

13. **PUBLIC ART.** If Developer receives approval of the Consolidated Rail Infrastructure and Safety Improvements grant ("**Grant Approval**"), Developer shall design, procure, fabricate, and install public art on the exterior facade of the parking garage as part of the HSR Station subject to the reasonable approval of the City ("**Art Installation**"), in an amount equal to 1.5% of the amount of such Grant Approval, not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00). If the City desires to enhance the design, procurement, fabrication or installation costs beyond Developer's funding commitment as outlined above, the City shall be responsible for any such additional costs. If Developer does not receive Grant Approval, Developer shall have no obligation to install the Art Installation or bear any costs relating thereto; provided, however, Developer shall include in the design of the HSR Station the future potential installation of the Art Installation by the City and shall reasonably cooperate, at no out-of-pocket cost to Developer, with the City regarding with the design, fabrication and installation of the Art Installation.

14. **MISCELLANEOUS.**

14.1 **Notices.** Except as otherwise provided herein, notice to be given to a Party must be in writing and may be delivered to the Party by nationally reputable overnight courier, charges prepaid, or by certified mail, return receipt requested, to the address below (or alternative address subsequently noted by such Party). Such notice is deemed delivered the first business day after delivery to such courier or, if sent by certified mail, the date of delivery or refusal to accept

delivery or inability to deliver shown on the return receipt. A party may change its address(es) for notices by a notice given pursuant to this Section.

City: City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: City Manager

SBCTA: San Bernardino County Transportation Authority
1170 W. Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Director of Transit & Rail Programs

With a copy to SBCTA General Counsel
At the SBCTA address above

Developer: DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113
Attn: President
With a copy to Developer's Legal Department
At the Developer address above

14.2 **Interpretation.** This Agreement is not intended to create, nor shall it be construed to create, a joint venture, a partnership, or any other similar relationship among any of the parties. The captions of the various provisions of this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents thereof. Any references to "Section" or "Sections" contained in this Agreement shall refer to that "Section" or those "Sections" contained in this Agreement. This Agreement shall be construed in accordance with the laws of the State of California. Time is of the essence in this Agreement.

14.3 **Entire Agreement.** This Agreement supersedes all prior written or verbal representations or declarations of the parties with respect to the subject matter hereof. For the sake of clarity, the subject matter of the Reserved Easements are separate and distinct from this Agreement and, as such, this Agreement does not apply to, cover or address the Reserved Easements. In the event of any conflict or inconsistency, the Reserved Easements shall control.

14.4 **Amendments.** No addition, modification, amendment or waiver of any part of this Agreement shall be binding or enforceable unless executed in writing by the Parties and recorded in Official Records.

14.5 **Remedies Cumulative.** All remedies provided in this Agreement are cumulative. Therefore, notwithstanding the exercise by a Party of any remedy hereunder, such Party shall have recourse to all other remedies as may be available at law or in equity. The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of any rights or remedies that such Party may have and shall not be deemed a waiver of any subsequent breach or default of any provision hereof by the same or any other Party.

14.6 **Covenants Running with Land.** The covenants contained in this Agreement shall constitute covenants running with the land; shall be binding upon, and shall inure to the benefit of, the Station Property, the Surface Property, and any portion thereof or interest therein; and shall be binding upon, and shall inure to the benefit of, the Developer, City, SBCTA and any person having or acquiring any interest therein and their successive owners and assigns.

14.7 **Recordation; Effective Date.** This Agreement shall be recorded in the Official Records and shall be effective upon the date thereof.

14.8 **Estoppel Certificate.** Each Party to this Agreement shall endeavor to issue to the requesting Party, or to any prospective purchaser of such requesting Party's parcel, within fifteen (15) days after the written request of any other Party, but in all events prior to thirty (30) days after such written request, an estoppel certificate stating (i) whether the Party to whom the request has been directed knows of any default under this Agreement and, if there are known defaults, specifying the nature thereof, (ii) whether this Agreement has been modified or amended in any respect and specifying the nature thereof, and (iii) whether this Agreement is, at that time, in full force and effect.

14.9 **Mechanics' Liens.** If a Party to this Agreement (the "**Responsible Party**") shall permit any mechanics' liens to be filed against another Party's parcel (an "**Affected Party**"), the Responsible Party shall either pay the same and have it discharged of record promptly, or take such action as may be required to reasonably and legally object to such lien and the placing of same against such Affected Party's parcel. In all events, the Responsible Party shall cause the lien to be discharged prior to the entry of judgment for foreclosure of such lien. Upon request of an Affected Party, the Responsible Party shall furnish such security, bond or indemnity to and for the benefit of such Affected Party as may be required to permit a title endorsement or title policy to be issued relating to such Affected Party's Parcel without showing thereon the effect of such lien.

14.10 **Duration.** Unless terminated by agreement of the Parties, including without limitation execution, acknowledgement and recording in the Official Record of an instrument confirming or otherwise reflecting such termination, this Agreement and each term, easement, covenant, restriction and undertaking contained herein will remain in effect for a term of ninety-nine (99) years following recordation hereof and will automatically be renewed for successive ten (10) year periods thereafter. Termination of this Agreement shall not discharge or excuse any unpaid obligation, and the rights and remedies for collection of any unpaid obligation shall survive the Agreement's termination. Notwithstanding any election by the Parties to terminate this Agreement, each easement created hereby which benefits the Station Property and/or the Surface Property and its respective owner or owners and Permittees shall be deemed to exist in perpetuity unless it is quitclaimed, or otherwise terminated and extinguished by each Party benefited by such easement. Any Party may request that such easement be documented by separate documentation in the event of a termination of this Agreement.

14.11 **Severability.** If any clause, sentence, or other portion of this Agreement shall become illegal, null, or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

14.12 **Governmental Powers.** Nothing in this Agreement shall be construed as a waiver or modification of any governmental rights or powers of the Public Agencies.

14.13 **Force Majeure.** Provided that the Party or Parties claiming such delay gives written notice to the other Party or Parties of the nature of the cause of delay within ten (10) business days after the inception of the delay, and not otherwise, if any Party or Parties shall be delayed or hindered in or prevented from the performance of any construction or maintenance obligation required to be performed by such Party or Parties under this Agreement by reason of acts of God, natural disaster (including earthquake, hurricane, flood or severe prolonged adverse weather conditions), the outbreak of a pandemic virus or other pandemic disease, strikes, lockouts, unavailability of materials, failure of power, governmental laws or regulations, a declaration of a national, state or local emergency, directives or orders by a Governmental Authority (including orders by the federal Centers for Disease Control or its successor, or any state, county, or local public health department), riots, insurrections, adverse weather conditions preventing the performance of work as certified to by the licensed architect, engineer, or other individual overseeing the performance of the relevant work, war or other reason beyond such Party's or Parties' control, then the time for performance of such act shall be extended for a period equal to the period of such delay. Lack of adequate funds or financial inability to perform is not and shall not be deemed to be a cause beyond the control of a Party or Parties.

14.14 **Effect of Agreement; Binding Covenants; Equitable Servitudes.** Except as otherwise expressly provided herein, no rights or privileges conferred by this Agreement upon the Parties hereto shall inure to the benefit of any Permittee or other person or entity other than the Developer, City, SBCTA, or their respective successors and assigns, nor shall any such other person be deemed to be a third-party beneficiary of any of the provisions contained herein. Each and all of the restrictions, covenants, and easements of this Agreement (i) shall constitute equitable servitudes which shall apply to and be binding on the Parties hereto and each and all of their respective successors, assigns, and Permittees; and (ii) are imposed pursuant to a general plan for the improvement and use of the HSR Station and are designed for the mutual benefit of the Parties to this Agreement.

14.15 **Time of Essence.** Time is of the essence of every provision hereof in which time is a factor.

14.16 **City Manager Authority.** The City Manager of the City may give all approvals and make all elections described herein on behalf of the City provided they are in writing.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of _____, 2024.

DEVELOPER:

DESERTXPRESS ENTERPRISES, LLC,
a Nevada limited liability company

By: _____
Sarah Watterson, President

APPROVED AS TO LEGAL FORM:

David M. Pickett,
Associate General Counsel

CITY:

CITY OF RANCHO CUCAMONGA

By: _____
L. Dennis Michael Mayor

APPROVED AS TO LEGAL FORM:

Nicholas Ghirelli, City Attorney

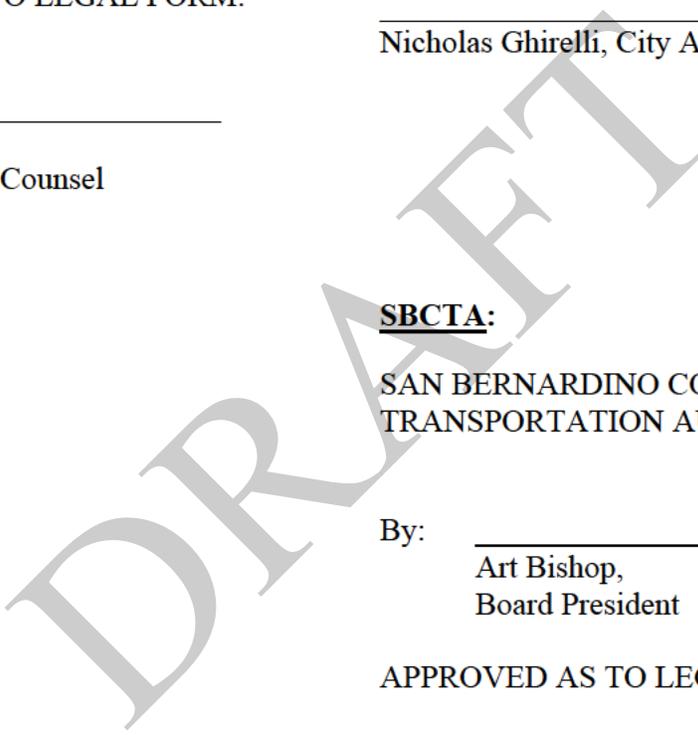
SBCTA:

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Art Bishop,
Board President

APPROVED AS TO LEGAL FORM:

Julianna K. Tillquist, General Counsel



Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

NOTARY ACKNOWLEDGEMENTS

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature (Seal)

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature (Seal)

NOTARY ACKNOWLEDGEMENTS

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature (Seal)

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature (Seal)

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT A
LEGAL DESCRIPTION OF STATION PROPERTY

[See Attached]

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A1'**Legal Description of the Station Property****APN: 0209-272-11, 0209-272-22, & 0209-143-21**

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, together with a portion of the SANBAG (formerly A.T. & S.F.) Railroad Right-of-Way, as shown on said Parcel Map, filed in the Office of said County Recorder, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, together with a portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet to the **Point of Beginning**;

Thence South 00°00'00" West 568.51 feet to the southeasterly line of Parcel 15 per said Parcel Map;

Thence along said southeasterly line South 46°46'47" West 23.71 feet to the southerly line of said Parcel 15;

Thence along said southerly line South 89°36'24" West 269.11 feet to the beginning of a non-tangent curve, concave northeasterly, a radial line to said point bears South 00°23'39" East and having a radius of 117.00 feet;

Preliminary

04/19/2024 2:45:42 PM

Page 1 of 4

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Thence northwesterly, along said curve, being the southwesterly line of said Parcel 15, through a central angle of 29°43'39" an arc length of 60.70 feet;

Thence leaving said southerly line North 00°10'37" West 569.98 feet to said northerly line of the Rancho Cucamonga Metrolink Station Phase I;

Thence along said northerly line North 89°43'55" East 346.26 feet to the **Point of Beginning**;

Excepting therefrom that portion of the land described below as **Parcel "C"**.

Parcel contains 115,115 square feet, more or less.

AND

Parcel "B"

Commencing at the northeast corner of said Section 13;

Thence along the easterly line of said Section 13 South 00°29'50" East 50.00 feet to the easterly prolongation of the northerly line of the land of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation South 89°43'55" West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55" West 12.83 feet to the **Point of Beginning**;

Thence continuing along said northerly line South 89°43'55" West 346.26 feet;

Thence leaving said northerly line North 00°10'37" West 33.38 feet;

Thence North 87°50'29" East 346.61 feet;

Thence South 00°00'00" East 44.81 feet to the **Point of Beginning**;

Parcel contains 13,539 square feet, more or less.

AND

Preliminary

04/19/2024 2:45:51 PM

Parcel "C"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said northerly line and northerly line South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 10.47 feet to the **Point of Beginning**;

Thence South 90°00'00" West 248.00 feet;

Thence South 00°00'00" East 348.75 feet;

Thence North 90°00'00" East 248.00 feet;

Thence North 00°00'00" East 348.75 feet to the **Point of Beginning**.

Parcel contains 86,490 square feet, more or less.

Excepting from Parcel "C" only that eight-foot-high portion of the real property described on Exhibit B-1 and depicted on Exhibits B-2 and B-3 attached hereto.

See Exhibits 'A2', 'A3', 'A4', and 'A5' attached hereto and made a part hereof.

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Preliminary

04/19/2024 2:45:55 PM

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____



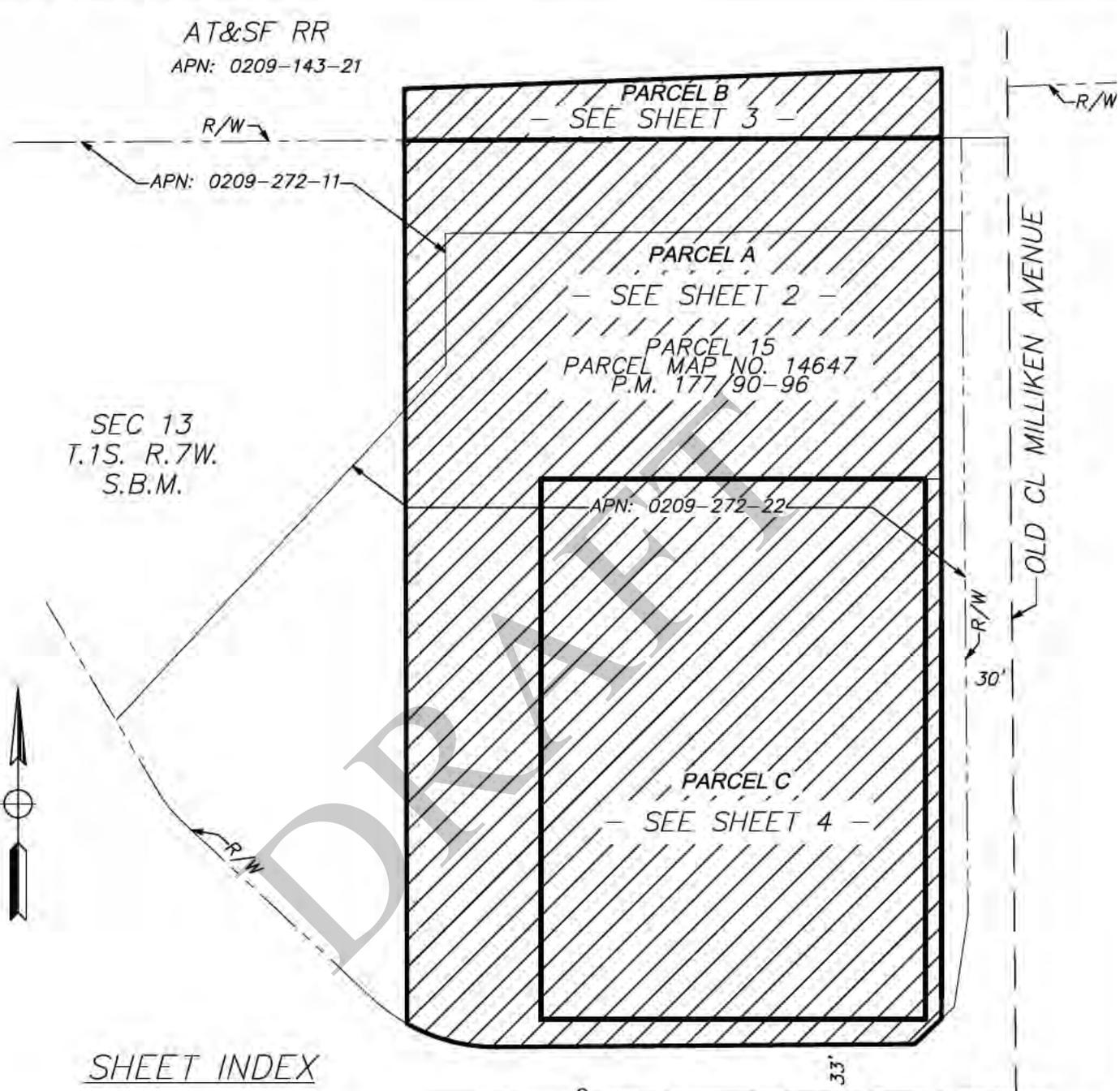
DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

Preliminary
04/19/2024 2:46:00 PM

EXHIBIT 'A-2'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: N/A



SHEET INDEX

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

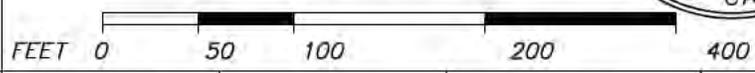
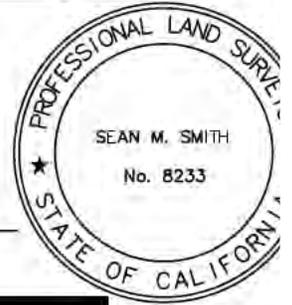
LEGEND

-  Indicates area to be described
- POC Point of Commencement
- POB Point of Beginning
- SCE Southern California Edison
- SF Square Feet

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE



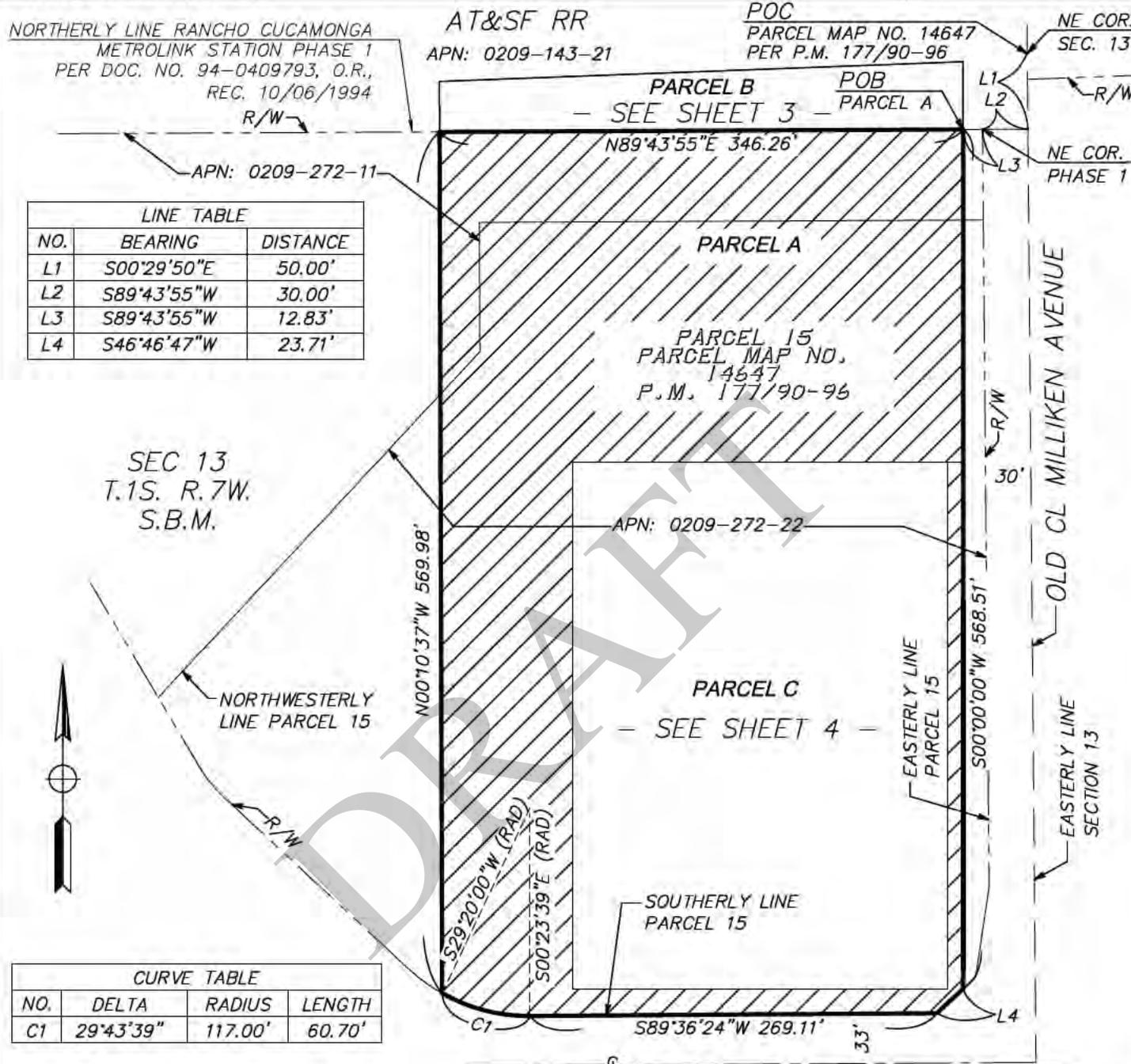
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-3'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 115,115 SF



LINE TABLE

NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S46°46'47"W	23.71'

SEC 13
T.1S. R.7W.
S.B.M.

CURVE TABLE

NO.	DELTA	RADIUS	LENGTH
C1	29°43'39"	117.00'	60.70'

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

- Indicates area to be described
- POC Point of Commencement
- POB Point of Beginning
- SCE Southern California Edison
- SF Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS B233 DATE

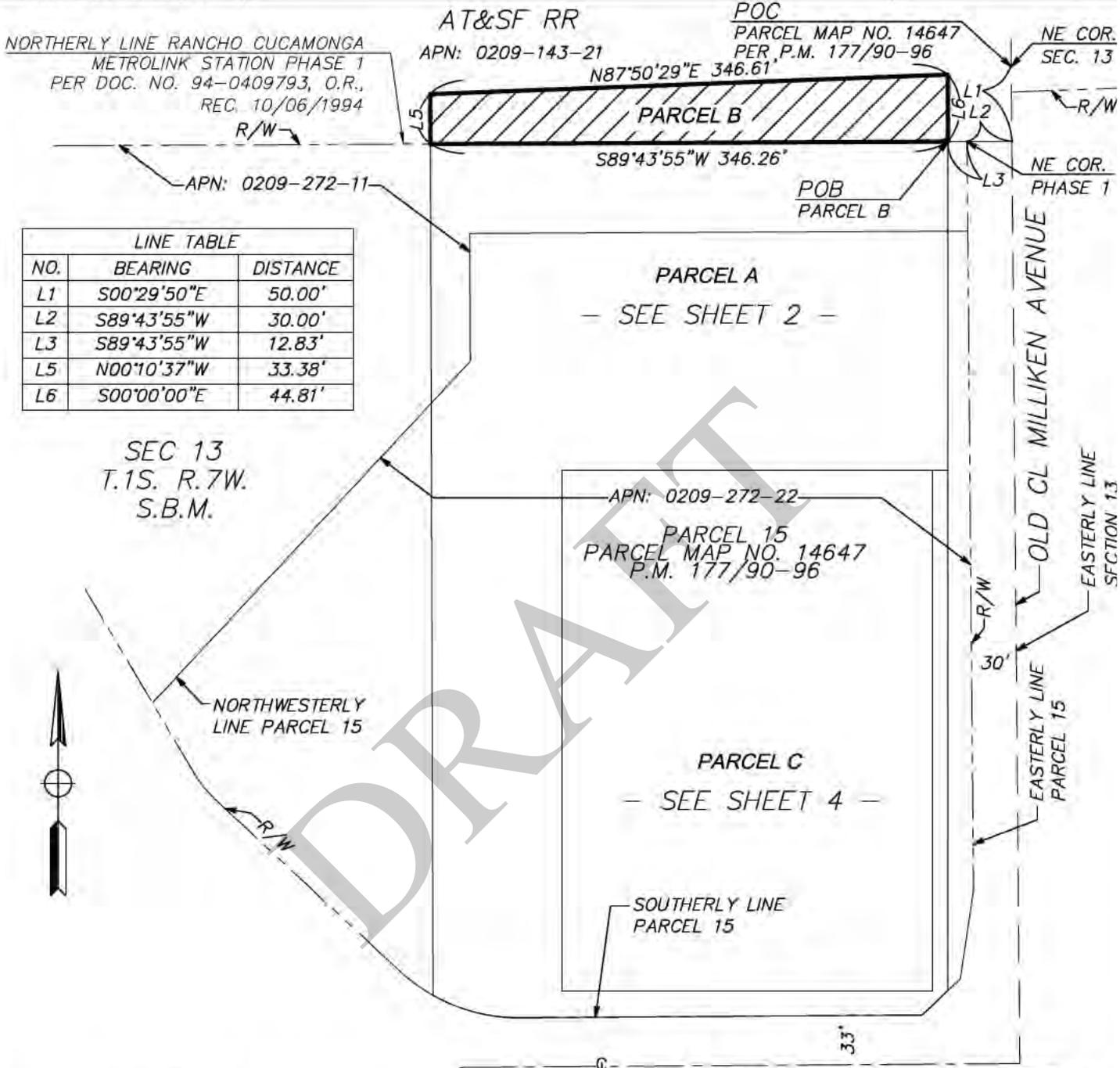


PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'A-4'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 13,539 SF



Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

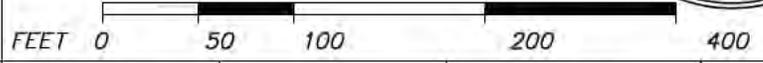
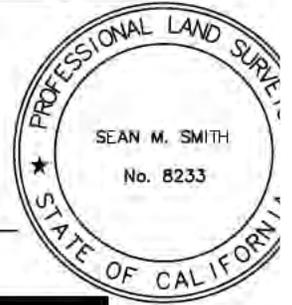
LEGEND

- Indicates area to be described
- POC Point of Commencement
- POB Point of Beginning
- SCE Southern California Edison
- SF Square Feet

THIS PLAT WAS PREPARED UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

EXHIBIT 'A-5'

APN	TYPE OF ESTATE	AREA
0209-143-21, 0209-272-11 & 22	FEE	TOTAL: 86,490 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

POC
PARCEL MAP NO. 14647
PER P.M. 177/90-96

NE COR.
SEC. 13

PARCEL B
- SEE SHEET 3 -

L1
L2
L3

NE COR.
PHASE 1

APN: 0209-272-11

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'

PARCEL A
- SEE SHEET 2 -

PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96

SEC 13
T.1S. R.7W.
S.B.M.

S90°00'00"W 10.47'
S90°00'00"W 248.00'

S00°00'00"W 220.19'

OLD CL MILLIKEN AVENUE

EASTERLY LINE
SECTION 13

APN: 0209-272-22

POB
PARCEL C

PARCEL C

30'

EASTERLY LINE
PARCEL 15



NORTHWESTERLY
LINE PARCEL 15

S00°00'00"E 348.75'

N00°00'00"E 348.75'

SOUTHERLY LINE
PARCEL 15

N90°00'00"E 248.00'

33'

AZUSA COURT

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE



LEGEND	
	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	4	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT B

LEGAL DESCRIPTION OF SURFACE PROPERTY

[See Attached]

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B1'**Legal Description of the Surface Property****APN: 0209-272-22**

That portion of Parcel 15 of Parcel Map No. 14647, in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

That certain 8-foot-high portion of land, of the real property described herein, being the air space above the above-described land, contained between a horizontal plane eight (8) feet above the existing ground surface and existing ground surface, and as depicted in Exhibit B3;

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence leaving said easterly prolongation line and northerly line South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 10.47 feet to the **Point of Beginning**;

Thence South 90°00'00" West 248.00 feet;

Thence South 00°00'00" East 348.75 feet;

Thence North 90°00'00" East 248.00 feet;

Thence North 00°00'00" East 348.75 feet to the **Point of Beginning**.

Preliminary

02/26/2024 5:03:56 PM

Parcel contains 86,490 square feet, more or less.

See Exhibits 'B2' and 'B3' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____



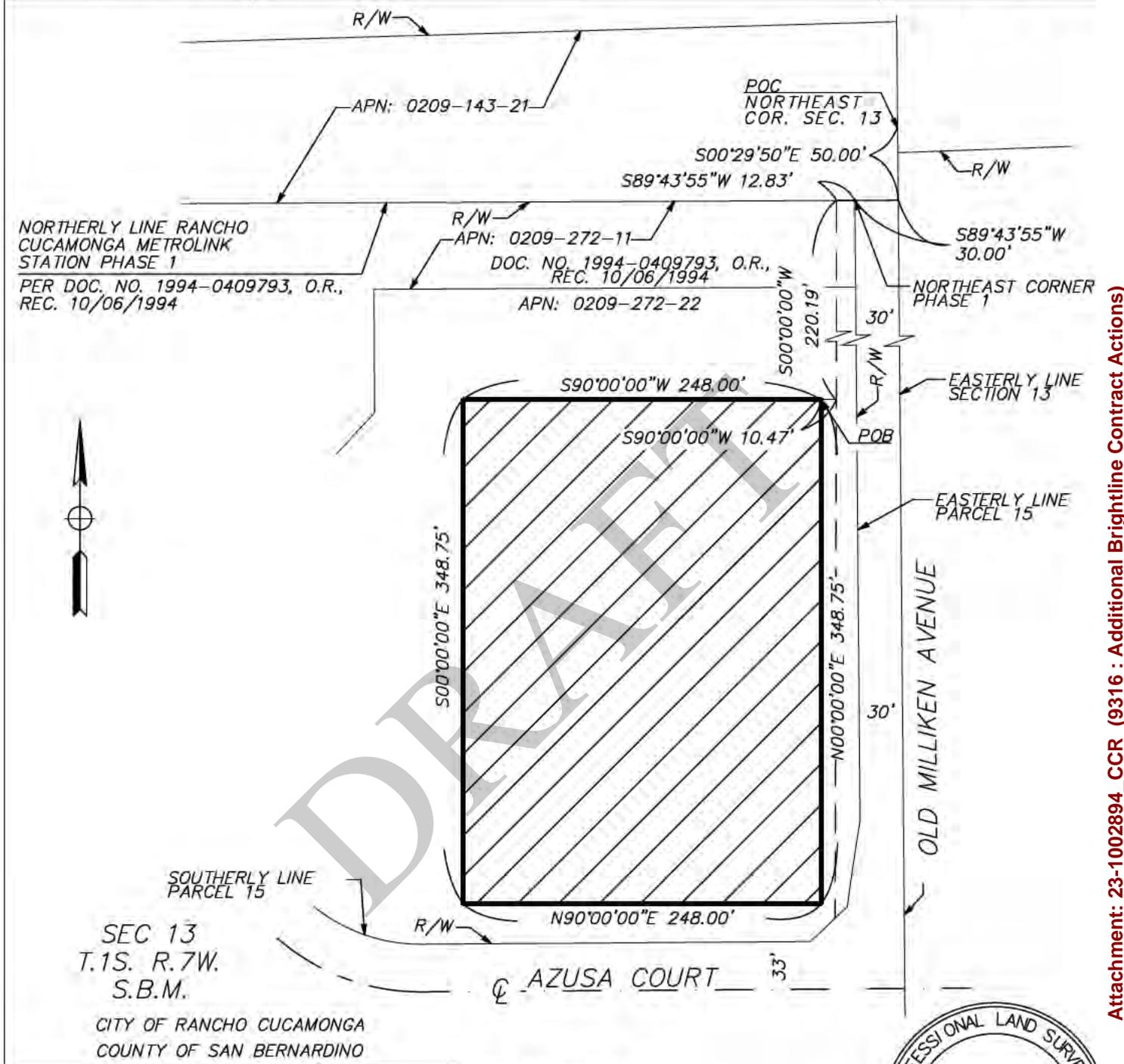
DRAFT

Preliminary
02/26/2024 5:04:01 PM

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	86,490 SF



SEC 13
T.1S. R.7W.
S.B.M.

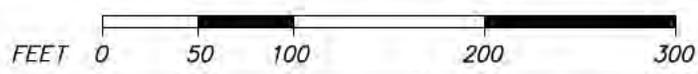
CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND	
	Indicates area to be acquired
POC	Point of Commencement
POB	Point of Beginning
SF	Square Feet
R/W	Right-of-Way

THIS PLAT WAS PREPARED
UNDER MY DIRECTION
Preliminary
02.28.2024 5:34:54 PM.



SEAN M. SMITH, PLS 8233 DATE



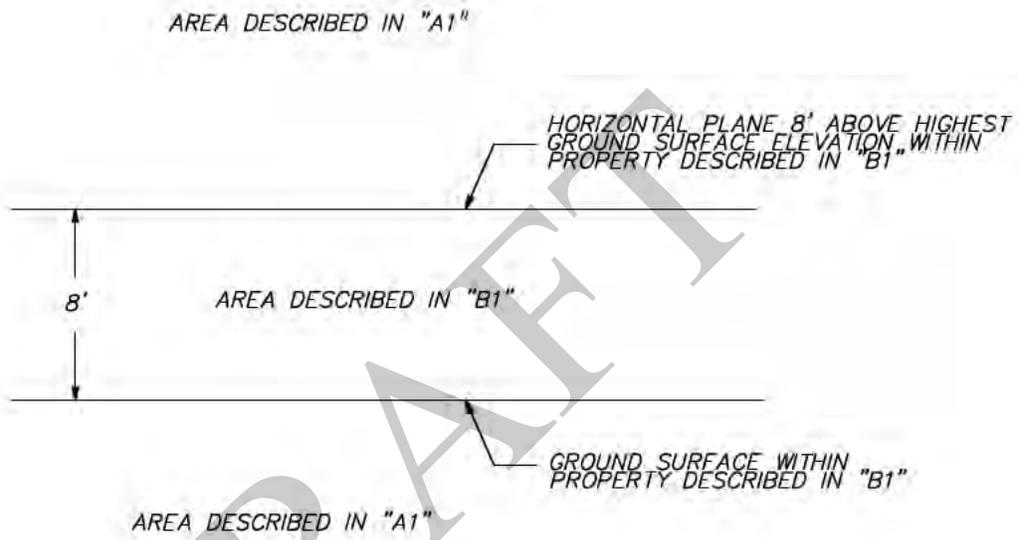
PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=100'	1	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'B-3'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 86,490 SF



AIR SPACE RESERVATION PROFILE DETAIL

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

Preliminary

SEAN M. SMITH, PLS 8233 DATE _____



CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	N/A	2	2

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C'
Legal Description

APN: 0209-272-11 & 0209-272-22

That portion of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, together with that portion of the land described as Rancho Cucamonga Metrolink Station Phase I, in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County, described as follows:

All that portion of said Parcel 15, together with all that portion of said Rancho Cucamonga Metrolink Station Phase I;

Excepting therefrom that portion lying easterly of the following described line:

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation of said northerly line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 359.10 feet to the **Point of Beginning**;

Thence South 00°10'37" West 569.98 feet to the southerly line of said Parcel 15, also being the **Point of Terminus**;

Parcel contains 227,529 square feet, more or less.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, (CCS83), Zone 5, 2010.00 epoch. Divide distances shown by 0.9999392898 to obtain ground distance.

See Exhibit 'C-1' attached hereto and made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: 
Sean M. Smith, PLS 8233

Date: 9/27/2022

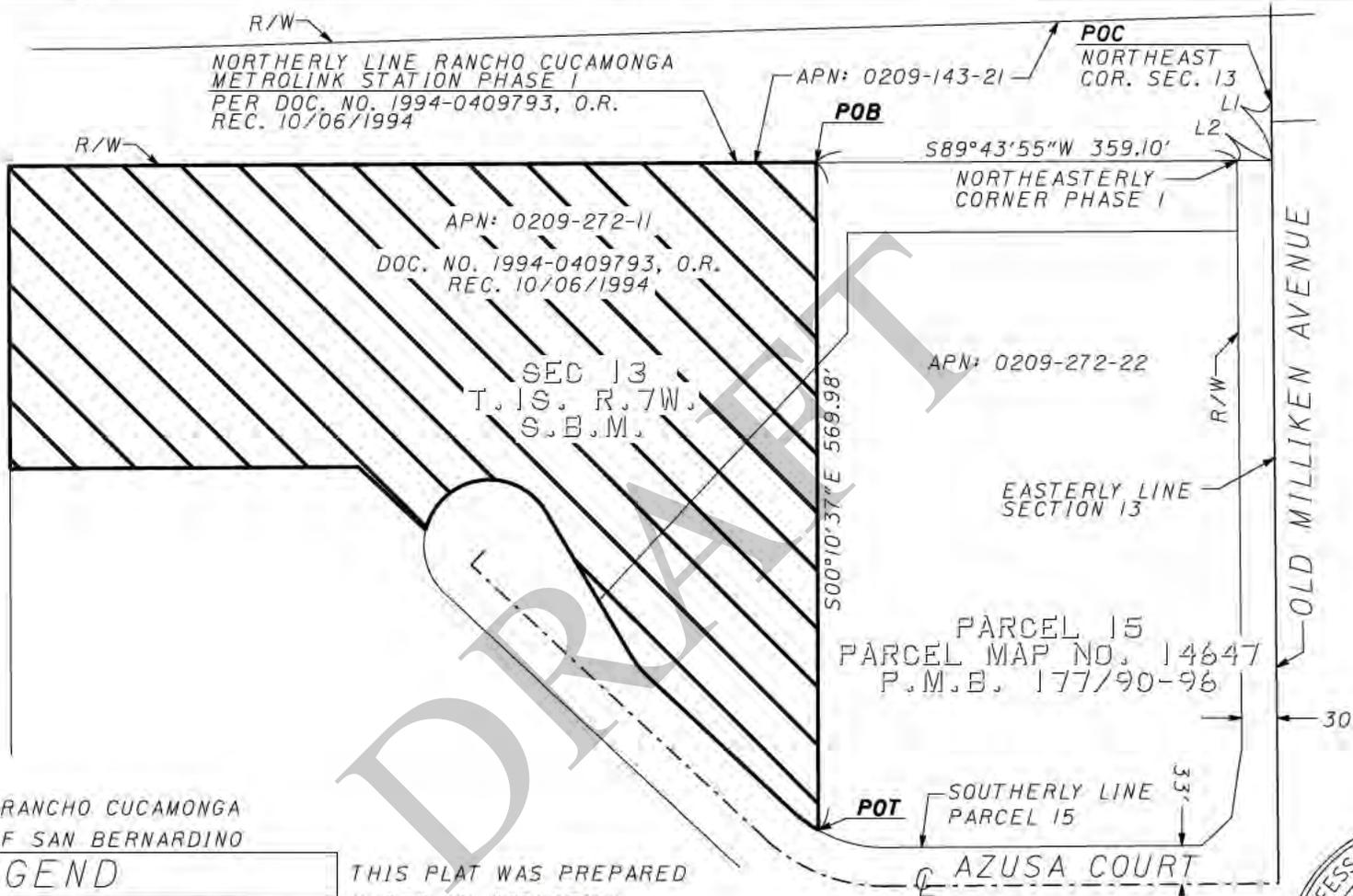


DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'C-1'

APN	TYPE OF ESTATE	AREA
0209-272-11 & 0209-272-22	EASEMENT	227,529 SF



CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

	Indicates area of Grantor's Property
POC	Point Of Commencement
POB	Point of Beginning
POT	Point of Terminus
SF	Square Feet
R/W	Right-of-Way

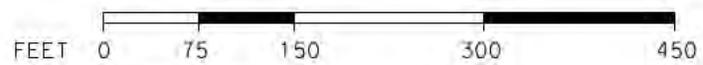
THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SM

SEAN M. SMITH, PLS 8233

9/27/2022

DATE



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
19511787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
TKR	1"=150'	1	1

NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	359.10'

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT D

**DEPICTION OF PEDESTRIAN ACCESS EASEMENT THROUGH STATION
PROPERTY TO PROVIDE ACCESS BETWEEN THE SURFACE PROPERTY AND
THE TRANSIT CENTER**

[See Attached]

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D'**Depiction of Pedestrian Access Easement through Station Property to Provide
Access Between the Surface Property and the Transit Center****APN: 0209-272-22**

Those portions of Parcel 15 of Parcel Map No. 14647 in the City of Rancho Cucamonga, County of San Bernardino, State of California, filed in Book 177, pages 90 through 96, inclusive of Parcel Maps, in the Office of the County Recorder of said County, within Section 13, Township 1 South, Range 7 West, San Bernardino Meridian, described as follows:

Parcel "A"

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of the Rancho Cucamonga Metrolink Station Phase I, as described in the Grant Deed recorded October 06, 1994, as Document No. 1994-0409793, of Official Records of said County;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 240.81 feet to the **Point of Beginning**;

Thence South 00°00'00" West 35.00 feet;

Thence North 00°00'00" East 15.50 feet;

Thence South 90°00'00" East 35.00 feet;

Thence South 00°00'00" East 15.50 feet to the **Point of Beginning**;

Parcel contains 543 square feet, more or less.

AND**Parcel "B"**

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 235.14 feet;

Thence North 00°00'00" East 0.25 feet to the **Point of Beginning**;

Thence South 90°00'00" West 40.60 feet;

Thence North 00°00'00" West 15.00 feet;

Thence South 90°00'00" East 40.60 feet;

Thence South 00°00'00" East 15.00 feet to the **Point of Beginning**;

Parcel contains 609 square feet, more or less.

AND**Parcel "C"**

Commencing at the northeast corner of Section 13, of Township 1 South, Range 7 West, San Bernardino Meridian, as shown on said Parcel Map;

Preliminary

03/06/2024 9:31:05 PM

Thence along the easterly line of said Section 13, South 00°29'50" East 50.00 feet to the intersection of the easterly prolongation of the northerly line of said Rancho Cucamonga Metrolink Station Phase I;

Thence along said easterly prolongation line South 89°43'55 West 30.00 feet to the northeasterly corner of said Rancho Cucamonga Metrolink Station Phase I;

Thence continuing along said northerly line South 89°43'55 West 12.83 feet;

Thence South 00°00'00" West 220.19 feet;

Thence South 90°00'00" West 240.89 feet;

Thence North 00°00'00" East 0.25 feet to the **Point of Beginning**;

Thence South 90°00'00" West 34.85 feet;

Thence North 00°00'00" West 15.00 feet;

Thence South 90°00'00" West 46.73 feet;

Thence North 00°00'00" West 8.00 feet;

Thence South 90°00'00" East 81.58 feet;

Thence South 00°00'00" East 23.00 feet to the **Point of Beginning**;

Parcel contains 1,175 square feet, more or less.

See Exhibits 'D2', 'D3', 'D4', and 'D5' attached hereto and made a part hereof.

Preliminary

03/06/2024 9:31:08 PM

Page 3 of 4

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act (Bus. & Prof. Code §8700).

Signature: _____
Sean M. Smith, PLS 8233

Date: _____

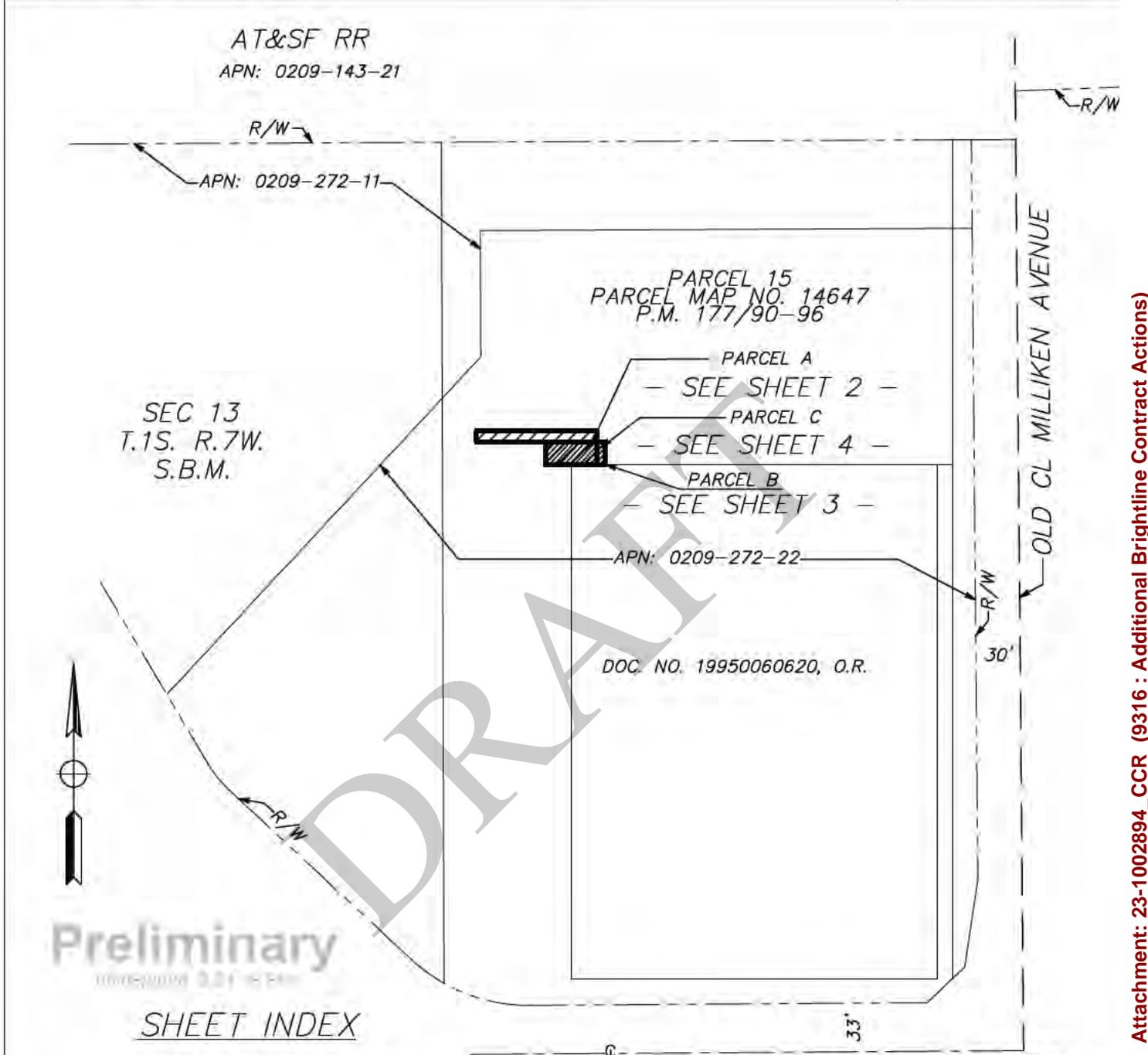


DRAFT
Preliminary
03/06/2024 9:31:10 PM

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-2'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: N/A



Preliminary
UNRECORDED 0.01 11/11/11

SHEET INDEX

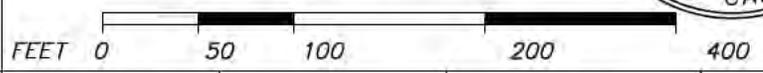
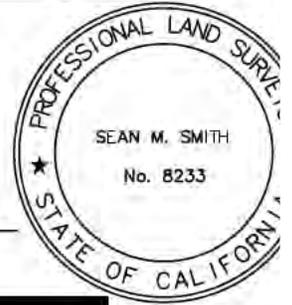
CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

LEGEND

-  Indicates area to be described
- POC Point of Commencement
- POB Point of Beginning
- SCE Southern California Edison
- SF Square Feet

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE _____



PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	1	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-3'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 543 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

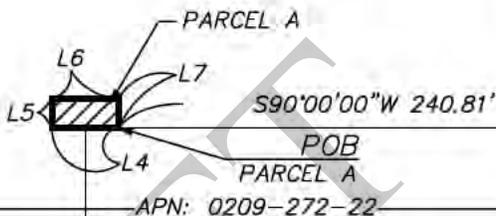
POC
PARCEL MAP NO. 14647
PER P.M. 177/90-96

NE COR.
SEC. 13

NE COR.
PHASE 1

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S00°00'00"W	35.00'
L5	N00°00'00"E	15.50'
L6	S90°00'00"E	35.00'
L7	S00°00'00"E	15.50'

DOC. NO. 19950060620, O.R.
PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96



SEC 13
T.1S. R.7W.
S.B.M.

NORTHWESTERLY
LINE PARCEL 15



R/W

500'00\"/>

R/W

30'

OLD CL MILLIKEN AVENUE

EASTERLY LINE
SECTION 13

AZUSA COURT

33'

Preliminary

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE



LEGEND	
	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	2	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-4'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 609 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

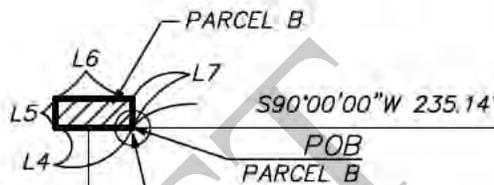
POC
PARCEL MAP NO. 14647
PER P.M. 177/90-96

NE COR.
SEC. 13

NE COR.
PHASE 1

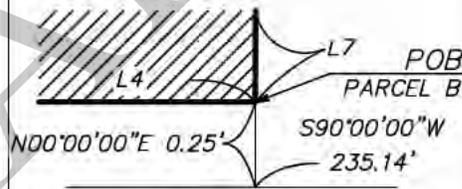
LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S90°00'00"W	40.60'
L5	N00°00'00"W	15.00'
L6	S90°00'00"E	40.60'
L7	S00°00'00"E	15.00'

DOC. NO. 19950060620, O.R.
PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96



DETAIL A

APN: 0209-272-22



DETAIL A

SEC 13
T.1S. R.7W.
S.B.M.

NORTHWESTERLY
LINE PARCEL 15



Preliminary

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

AZUSA COURT

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE



LEGEND	
	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	3	

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)

EXHIBIT 'D-5'

APN	TYPE OF ESTATE	AREA
0209-272-22	FEE	TOTAL: 1,175 SF

NORTHERLY LINE RANCHO CUCAMONGA
METROLINK STATION PHASE 1
PER DOC. NO. 94-0409793, O.R.,
REC. 10/06/1994

AT&SF RR
APN: 0209-143-21

POC
PARCEL MAP NO. 14647
PER P.M. 177/90-96

NE COR.
SEC. 13

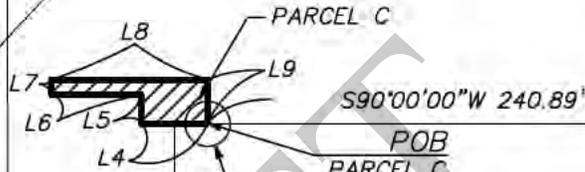
NE COR.
PHASE 1

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S00°29'50"E	50.00'
L2	S89°43'55"W	30.00'
L3	S89°43'55"W	12.83'
L4	S90°00'00"W	34.85'
L5	N00°00'00"W	15.00'
L6	S90°00'00"W	46.73'
L7	N00°00'00"W	8.00'
L8	S90°00'00"E	81.58'
L9	S00°00'00"E	23.00'

SEC 13
T.1S. R.7W.
S.B.M.

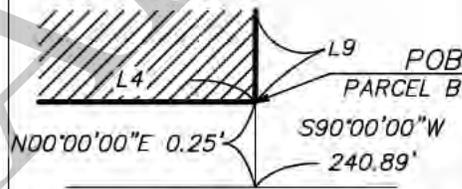
NORTHWESTERLY
LINE PARCEL 15

DOC. NO. 19950060620, O.R.
PARCEL 15
PARCEL MAP NO. 14647
P.M. 177/90-96



POB
PARCEL C
DETAIL A

APN: 0209-272-22



DETAIL A

SOUTHERLY LINE
PARCEL 15

EASTERLY LINE
PARCEL 15

EASTERLY LINE
SECTION 13

OLD CL MILLIKEN AVENUE

AZUSA COURT

Preliminary

CITY OF RANCHO CUCAMONGA
COUNTY OF SAN BERNARDINO

THIS PLAT WAS PREPARED
UNDER MY DIRECTION

SEAN M. SMITH, PLS 8233 DATE



LEGEND	
	Indicates area to be described
POC	Point of Commencement
POB	Point of Beginning
SCE	Southern California Edison
SF	Square Feet

PREPARED BY:
PSOMAS
1650 Spruce Street, Suite 400
Riverside, California 92507
(951)787-8421 www.psomas.com

PREPARED BY	SCALE	SHEET NO.	TOTAL SHEETS
AU	1"=100'	4	

TABLE OF CONTENTS

		<u>Page</u>
1.	DEFINITIONS.....	2
1.1	Agreement.....	2
1.2	City.....	2
1.3	Developer Permittee.....	3
1.4	DDA.....	3
1.5	HSR Station	3
1.6	Metrolink.....	3
1.7	Official Records	3
1.8	Party	3
1.9	Permittee	3
1.10	Properties	3
1.11	Public Agencies Permittee	3
1.12	SBCTA.....	3
1.13	Station Property	4
1.14	Surface Property.....	4
1.15	Transit Center.....	4
2.	USE RESTRICTIONS.....	4
2.1	Use Restriction.....	4
2.2	No Interference	4
3.	MAINTENANCE AND OPERATIONAL OBLIGATIONS.....	5
3.1	Maintenance and Repair	5
3.2	Cooperation.....	5
3.3	Operation of HSR Station	5
3.4	Modifications After Initial Construction	5

	<u>Page</u>
4. EASEMENTS	5
4.1 Easements for the Benefit of the Surface Property	5
4.2 Easements for the Benefit of the Station Property	5
5. INSURANCE.....	6
5.1 Insurance Requirements.....	6
5.2 Insurance During Construction.....	7
5.3 General Insurance Requirements	12
5.4 Coverage Amounts.....	13
6. INDEMNITY	13
6.1 Indemnity	13
6.2 General Provisions	13
7. ENFORCEMENT AND REMEDIES	14
8. APPROVALS AND DISPUTE RESOLUTION	14
8.1 Dispute Resolution.....	14
8.2 Meet and Confer	14
8.3 Mediation	14
8.4 Admissibility.....	14
8.5 Costs.....	15
9. REVERSIONARY RIGHT	15
9.1 Reversionary Right	15
10. RIGHT OF FIRST NEGOTIATION	15
10.1 First Negotiation	15
11. MISCELLANEOUS	16
11.1 Davis-Stirling Act, Commercial and Industrial Common Interest Development Act Inapplicable	16

	<u>Page</u>
11.2 Notices	16
11.3 Interpretation.....	17
11.4 Entire Agreement.....	17
11.5 Amendments	17
11.6 Remedies Cumulative	17
11.7 Covenants Running with Land.....	17
11.8 Recordation; Effective Date.....	17
11.9 Estoppel Certificate.....	17
11.10 Mechanics’ Liens	17
11.11 Duration	18
11.12 Severability	18
11.13 Attorneys’ Fees; Court Costs.....	18
11.14 Force Majeure	18
11.15 Effect of Agreement; Binding Covenants; Equitable Servitudes	18
11.16 Boundaries of Parcels	19

DRAFT

Attachment: 23-1002894_CCR (9316 : Additional Brightline Contract Actions)



BRIGHTLINE WEST PROJECT UPDATE for
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
July 3, 2024



Attachment: Presentation Power Point-Project Update (9316 : Additional Brightline Contract Actions)

Brightline West - Connecting Las Vegas and Southern California

All-electric trains
in a protected
corridor with **zero**
at-grade crossings

218-mile trip
Las Vegas to Rancho
Cucamonga

Up to 200 mph
true high-speed rail

+11 million
one-way
passengers/year



SBCTA AND BRIGHTLINE WEST

- Points of interface:
 - Rancho Cucamonga (RC) Metrolink station
 - BLW Viaduct adjacent to San Bernardino line from RC station to I-15
 - Coordination with Express Lanes contract
 - Local Rail Service at Hesperia Station

- Agreements:
 - Disposition and Development – RC station(2022)
 - Lease of Metrolink corridor – BLW viaduct (2022)
 - Conditions, Covenants & Restrictions (CC&R) for RC station (current)
 - Local Rail Service (current)

- RAISE Grant
 - Victor Valley and Hesperia stations - \$25M

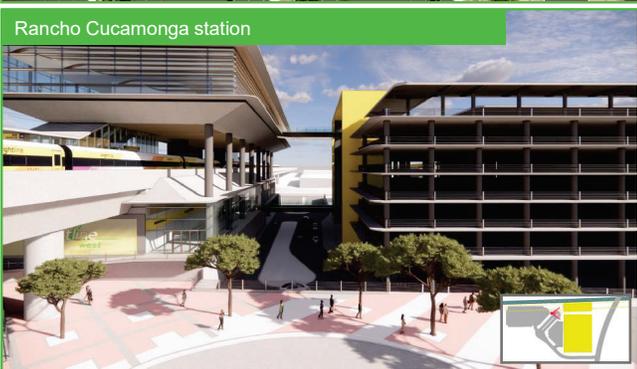


CA Stations

Victor Valley and Hesperia in-line stations



Rancho Cucamonga station



Rancho Cucamonga station

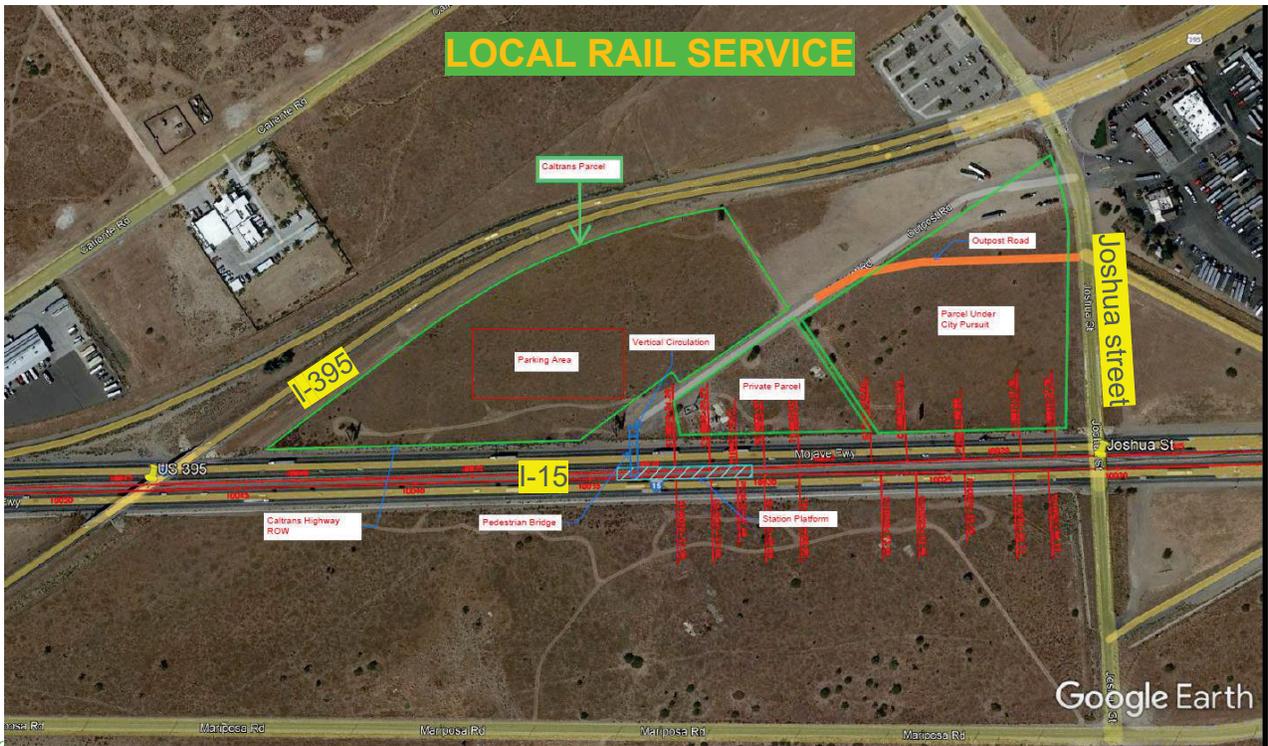


COORDINATION WITH METROLINK

- TIMETABLE SCHEDULING
- SEAMLESS TRANSFERS
- TICKETING
- BRANDING



SBCTA and Brightline West



Attachment: Presentation Power Point-Project Update (9316 : Additional Brightline Contract Actions)

Positioned for Service in 2028

\$12B project, mostly to be funded by private dollars

Already invested **~\$600M**

Awarded \$3B federal grant through NDOT

Open in **~4 years**



<input checked="" type="checkbox"/> Land & rights of way 	<input checked="" type="checkbox"/> Permits 	<input checked="" type="checkbox"/> Construction readiness
--	---	--



Groundbreaking – April 22, 2024



THANK YOU

Follow Us



TWITTER

@GoBrightline
Brightline Florida

@BrightlineWest
Brightline West



FACEBOOK

@GoBrightline
Brightline Florida

@BrightlineWest
Brightline West



INSTAGRAM

@GoBrightline
Brightline Florida

@RideBrightlineWest
Brightline West



LINKEDIN

Brightline Trains
Brightline Florida

Brightline West Trains
Brightline West