



STAFF REPORT

DATE: DECEMBER 6, 2011
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER
PREPARED BY: AMER JAKHER, PUBLIC WORKS AND UTILITY SERVICES DIRECTOR
SUBJECT: COLTON QUIET ZONE AND LAUREL GRADE SEPARATION PROJECTS

A handwritten signature in blue ink, appearing to read "Rod Foster".

Handwritten initials "AJ" in blue ink, enclosed in a circle.

RECOMMENDED ACTION

1. It is recommended that the City Council approve the following Agreements for Colton Quiet Zone Project and Laurel Grade Separation Project and to authorize the Mayor to execute the agreement with any minor non-substantive changes as recommended by the City Attorney.
 - a. Colton Quiet Zone Project – Construction Cooperative Agreement between San Bernardino Associated Government (SANBAG) and City of Colton.
 - b. Colton Quiet Zone Project – E Street Crossing Closure Agreement
 - c. Colton Quiet Zone Project – H Street Crossing Closure Agreement
 - d. Laurel Grade Separation Project – Right of Way (ROW) and Construction Cooperative Agreement.
2. It is recommended that the City Council direct staff to re-file, within five (5) days, the CEQA Notices of Exemption for the Colton Quiet Zone Project and the Laurel Grade Separation Project, as discussed in the “Environmental Review” section below.
3. It is recommended that the City Council approve Resolution No. R-96-11 authorizing increasing the Fiscal Year 2011/2012 Capital Improvement Budget by \$1,019,855, for the Colton Quiet Zone Improvements funded by SANBAG and an increase of \$255,940, for the Colton Crossing Grade Separation Landscaping, Lighting, Wall Treatment and Graffiti Abatement Project funded by UPRR.
4. It is recommended that the City Council authorize the City Manager to accept acquired properties for the Laurel Grade Separation Project and to sign the necessary certificates of acceptance, as is required under Article I, Section 2 of the ROW and Construction Cooperative Agreement.

GOAL STATEMENT

The proposed action will support the City's goal to improve the traffic circulation and the quality of life for Colton residents and business owners.

BACKGROUND

The Colton Quiet Zone Project and Laurel Grade Separation Project are two of the four improvement projects identified in the Funding Agreement Related to the Colton Crossing Railgrade Separation Project ("Funding Agreement"), approved on or about October 5, 2011, between the City of Colton, San Bernardino Associated Government (SANBAG), Burlington Northern Santa Fe Rail Company (BNSF) and Union Pacific Rail Road (UPRR).

The Colton Quiet Zone Project includes the closure of existing grade crossings at the BNSF rail line and the installation of cul-de-sacs at E Street and H Street, and installation of quadrant gates and signal system improvements at Valley Boulevard and Olive Street. These improvements also entail installation of a wrought iron fence, sidewalk and raised median island (Valley Boulevard and Olive Street), and pavement striping and markings.

The Laurel Grade Separation Project will separate the street, as an underpass, from the BNSF rail (6 tracks). The scope of work for this project includes construction of the railroad bridge, right of way acquisition, landscaping and irrigation, drainage improvements, and utility relocations.

ISSUES/ANALYSIS

Colton Quiet Zone Project:

For the Colton Quiet Zone Project, SANBAG is preparing the environmental and engineering documentation (final designs, specifications and estimates), though the City is the lead agency for California Environmental Quality Act (CEQA) purposes, and will be responsible for construction (other than all railroad signals and quadrant gate works necessary for these projects, which will be performed by BNSF).

The City, SANBAG and BNSF need to execute various agreements (Attachments A, B, and C) to address each agencies' role for this project. As provided for in the Funding Agreement, the Quiet Zone Project is required to commence construction within 3 months after the construction of the Colton Crossing Project begins.

SANBAG is contributing 100% of all construction capital and construction support costs for the project. The total construction cost estimate, including construction capital costs (construction cost, contingency, permits, and flagging), and construction support costs (administration and contingency), is \$1,019,855.

After completion of the project, the City will be responsible for maintaining all roadway improvements within City right of way, such as asphalt, curb, gutter, sidewalk and steel fencing,

while BNSF will maintain all improvements that relate to crossing safety, such as crossing signal and gates.

Laurel Grade Separation Project:

For the Laurel Grade Separation Project, SANBAG is preparing the environmental and engineering documentation (final designs, specifications and estimates), and will be responsible for all right of way acquisition and construction. The City is the lead agency for CEQA purposes.

SANBAG and the City are required to execute the attached agreement (Attachment D) to address each agencies' role for this project. As provided for in the Funding Agreement, this project should commence construction within 18 months of the start of construction of the Colton Crossing Project, subject to funding availability contingencies.

Colton Crossing Project

On October 4, 2011, City Council approved a Letter Agreement with Union Pacific Railroad Company (UPRR) for utility improvements, additional work and graffiti abatement related to the Colton Crossing Project (See Attachment E for your reference). The agreement stipulated that UPRR would be responsible for the utility relocation of City owned facilities along La Cadena Drive, and further addressed graffiti abatement, mural painting, landscaping and lighting. The agreement allocates \$255,940, to the City of Colton to complete the necessary improvements. The allocation will be paid by UPRR.

Additional Future Agreements

The only additional agreements staff anticipates coming forward for these two projects are as follows (other agreements may be needed for the other projects contemplated within the Funding Agreement):

Colton Quiet Zone Project: A Construction and Maintenance Agreement between the City, SANBAG and BNSF. The agreement is currently being reviewed by City staff and the other parties. We anticipate that it will be presented to the SANBAG Major Projects Committee on December 15, 2011 and the SANBAG Board at its January 2012 meeting. Staff expects to present it to the City Council on Dec. 20, 2011.

Laurel Grade Separation Project: A Cooperative Agreement with BNSF. It is not known when this will be coming forward, but certainly before the project commences in next 18 months or so.

FISCAL IMPACTS

The City's financial commitments to the Laurel Grade Separation Project are currently estimated to be \$5,511,000, though this can change. The City has set aside \$1.8 million in both

the prior and current fiscal years toward this commitment, with the balance being funded in 2012-13.

The improvements for the Colton Quiet Zone are estimated to be \$1,019,855. The City will be the lead agency for construction of this project including submitting payments for all construction and project related costs. All expenses incurred by the City for this project are 100% covered through SANBAG on a reimbursement basis. The costs of maintaining the City improvements after construction will be covered under the Public Works Department annual budget for street maintenance.

The Colton Crossing Wall Treatments, Graffiti Abatement and Remediation is funded by UPRR, and any monies owed to the City in advance will be paid to the City prior to project commencement. The Letter Agreement allocates \$255,940, to the City from UPRR to complete the necessary improvements.

ENVIRONMENTAL REVIEW

Colton Quiet Zone Project and Laurel Grade Separation Project are exempt projects under CEQA. The Colton Quiet Zone Project is Categorically Exempt (State CEQA Guidelines Section 15301(c)) and Statutorily Exempt (State CEQA Guidelines Section 15282(g) and Section 21080.13 of the Public Resource Code), since it involves the elimination of existing at-grade railroad crossings at two locations and the installation of new crossing equipment and roadway work that implicates negligible or no expansion of uses currently existing. The Laurel Grade Separation Project is Statutorily Exempt (Section 21080.13 of the Public Resource Code; see also State CEQA Guidelines Section 15282(g)), since it only proposes the reconstruction of an at-grade railroad crossing in order to render it "grade-separated". Since there is no federal funding involved, these projects don't require compliance under the National Environmental Policy Act (NEPA). Both of the Notices of Exemption for these projects were filed with the San Bernardino County Clerk's office on September 28, 2011; however, pursuant to State CEQA Guidelines Section 15061(d), the Notices of Exemption will be re-filed with the County Clerk should Council take the actions recommended by Staff.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

- Attachment A – Colton Quiet Zone Project – Construction Cooperative Agreement No. C12006 between City of Colton and SANBAG
- Attachment B – Colton Quiet Zone Project – E Street Crossing Closure Agreement
- Attachment C – Colton Quiet Zone Project – H Street Crossing Closure Agreement

Attachment D – Laurel Grade Separation Project – ROW and Construction
Cooperative Agreement No. C12037

Attachment E – Approved Letter Agreement for the Colton Crossing Wall
Treatments, Graffiti Abatement and Remediation

Attachment F – Resolution R-96-11

Attachment A

Colton Quiet Zone Project – Construction Cooperative
Agreement No. C12006 between City of Colton and SANBAG

COOPERATIVE AGREEMENT NO. C12006

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

THE CITY OF COLTON

COLTON QUIET ZONE

CONSTRUCTION PHASE

This Cooperative Agreement (hereinafter referred to as this "Agreement") is entered into as of the Effective Date as defined herein, by and between among the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public body, corporate and politic ("AUTHORITY"), and the CITY OF COLTON, a public body, corporate and politic ("CITY") for the Right-of-Way Phase and Construction Phase for the establishment of responsibilities for the construction of the Colton Quiet Zone Project ("PROJECT"). The AUTHORITY and CITY are referred to herein individually as "Party" and collectively as "Parties".

RECITALS:

WHEREAS, the intersection of the Union Pacific Railroad ("UPRR") rail line and the Burlington Northern Santa Fe Railway Company ("BNSF") rail line immediately south of Interstate 10, east of South Rancho Avenue and west of South La Cadena Drive in the City of Colton, is generally referred to as the Colton Crossing (the "Colton Crossing"). The Parties are preparing to design a project to grade-separate the Colton Crossing to improve freight and passenger rail mobility and efficiency by eliminating conflicting train movements (the "Colton Crossing Project"); and

WHEREAS, residents adjacent and near the rail lines in the general vicinity of the Colton Crossing, specifically those adjacent to the BNSF rail line north of I-10, are seeking relief from railroad train horn noise; and

WHEREAS, the local traffic circulation for the CITY is affected by the numerous trains passing through at-grade crossings within the CITY's limits; and

WHEREAS, in relation to but separate from the Colton Crossing Project, the San Bernardino Associated Governments ("SANBAG"), UPRR, BNSF, and the CITY entered into a Funding Agreement Related to the Colton Crossing Railgrade Separation Project ("Funding Agreement"), approved on or about October 5, 2011, to implement a series of projects that the CITY believes are needed to address the noise and circulation issues described above; and

WHEREAS, one of the projects identified in the above recital is known in the Funding Agreement as the BNSF Quiet Zone Improvement Project, which would establish a quiet zone by eliminating two existing grade crossings at "H" Street and "E" Street respectively and

improving rail crossing signals at two existing grade crossing gates at Valley Boulevard and Olive Street to meet the California Public Utilities Commission and the Federal Railroad Administration quiet zone crossing standards as depicted on Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, SANBAG is the agency responsible for the preparation of the final PROJECT plans and specifications; and

WHEREAS, PROJECT consists of two components; the first is the removal and installation of rail crossing signals and second is construction of roadway improvements; and

WHEREAS, AUTHORITY and CITY will enter into a separate construction and maintenance Agreement with BNSF for the removal and installation of rail crossing signals.

NOW THEREFORE, the PARTIES now desire to define herein below the terms and conditions under which the PROJECT is to be financed, PROJECT is to be constructed, and maintained.

SECTION I

AUTHORITY AGREES:

1. To pay one hundred percent (100%) of all construction capital and construction support costs for construction of roadway improvements for PROJECT. PROJECT layouts for construction of roadway improvements are provided in Exhibit A. The total construction cost estimate for construction of roadway improvements, including construction capital costs (construction capital cost, contingency, permits, and flagging) and construction support costs (administration and contingency), is \$1,019,855 as shown in Exhibit B, attached hereto and made part of this Agreement by this reference. Cost estimates shown in Exhibit B are "estimates" to be used for budgetary and planning purposes. PARTIES understand that there is a potential for cost increases or decreases. If it becomes necessary for an increase in PROJECT funding, said increase will be paid in full by the AUTHORITY.
2. To review and comment on CITY's invoice for construction costs as described in Section II, Article 7 below within 15 days of receipt of the invoice package, which shall include all back up and support materials required to substantiate the invoice. AUTHORITY shall make payments to CITY within thirty (30) working days after receipt of invoice.

SECTION II

CITY AGREES:

1. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all applicable laws, regulations, and policies.
2. To advertise, award, and administer the construction of roadway improvements for

PROJECT. CITY shall construct PROJECT according to final PROJECT plans and specifications. CITY will advertise, award, and administer the construction contract for roadway improvements for PROJECT in accordance with CITY requirements and the California Labor Code, including its prevailing wage provisions. CITY retains the option to utilize its own staff to construct PROJECT, provided the AUTHORITY accepts the CITY's construction bid in writing.

3. To provide construction management for PROJECT according to the Construction Management work plan as shown in Exhibit C, attached hereto and made part of this Agreement. CITY shall provide a construction manager who is a Professional Engineer (PE) licensed in the State of California. CITY will include AUTHORITY in related communications on progress and to provide monthly schedule updates to AUTHORITY for PROJECT.
4. That CITY will obtain, as a PROJECT cost (as defined in the MOU), all necessary permits and/or agreements from appropriate agencies for PROJECT, unless PARTIES agree otherwise in writing.
5. That CITY shall be fully responsible for complying with and implementing any and all commitments set forth in, or arising from, the environmental document, any permit(s), and agreement(s). The cost of said compliance and implementation shall be a PROJECT cost, as defined in the MOU.
6. That CITY will process payments to the construction contractor for the actual costs of construction as required for satisfactory completion of PROJECT, including changes pursuant to contract change orders. CITY will inform AUTHORITY on all change orders and any change order greater than \$5,000 will require written consent of the AUTHORITY.
7. To submit to AUTHORITY, on a monthly basis, an invoice and itemized accounting of actual construction management and construction costs for the preceding month. Upon completion of the PROJECT construction and all work incidental thereto, CITY shall furnish AUTHORITY with a detailed statement of the construction support and roadway construction capital costs.
8. That upon completion of the PROJECT roadway construction, CITY will operate and maintain, at CITY's sole cost, any part of PROJECT located within CITY Right of Way and as specified in the construction and maintenance agreement with BNSF.
9. That CITY shall prepare and submit financial, program progress, and other reports as reasonably required by AUTHORITY. CITY shall maintain such program, property, personnel, financial, statistical and other records, supporting documents, and accounts as are considered necessary by AUTHORITY to assure proper accounting for all agreement funds. Said records, documents and accounts are to be retained by CITY for a minimum of five (5) years following completion of PROJECT. Records and accounts subject to litigation or audit must be maintained for five (5) years or until the litigation or audit is resolved, whichever is longer. All CITY records pertaining to PROJECT shall be made available to representatives of AUTHORITY.

SECTION III

IT IS MUTUALLY AGREED:

1. The recitals above are true and correct, and are fully incorporated herein by this reference.
2. That eligible PROJECT reimbursement shall include only those costs incurred for PROJECT specific work as shown in the final PROJECT plans and specifications and activities that are described in this Agreement. PROJECT eligible reimbursements shall not include escalation, interest, or other fees.
3. All of the exhibits attached to this Agreement are hereby incorporated by this reference.
4. In the event of any conflict between the Agreement and Exhibit(s), Table(s), or Figure(s) attached to the Agreement and incorporated by reference, the Agreement shall take precedence over the Exhibit(s), Table(s), and Figure(s).
5. Severability – If any term, provision, covenant, or condition of this Agreement is held to be invalid, void, or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
6. Assignment – Neither this Agreement, nor any of the PARTIES rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either PARTY without the prior written consent of the other PARTY in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.
7. Governing Law – The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.
8. Waiver – No waiver of any default shall constitute a waiver of any other default whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a PARTY shall give the other PARTY any contractual rights by custom, estoppel, or otherwise.
9. Attorney Fees – If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorney fees directly arising from any third party legal action against a Party hereto and payable under the indemnification provisions of this Agreement.
10. To the fullest extent permitted by law, the PARTIES agree to save, indemnify, defend, and hold harmless each other and their respective officers, employees and agents, from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other.

Following a determination of the percentage of fault and or liability by agreement between the PARTIES or a court of competent jurisdiction, the PARTY responsible for liability to the other will indemnify the other PARTY to this Agreement for the percentage of liability determined. The indemnification obligation of the PARTIES hereunder does not apply to claims, actions, losses, damages, and/or liability arising out of a PARTY's "willful misconduct" within the meaning of Civil Code Section 2782.

11. The PARTIES or their agents have participated fully in the preparation of this Agreement; therefore, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for any or against any PARTY. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

12. Termination

i. Termination for Cause

Any PARTY to this Agreement may declare a breach hereof by serving written notice describing the nature of the breach to the other PARTY. The PARTY alleged to have breached the Agreement shall be afforded thirty (30) days from service of the notice of breach to take whatever steps necessary to cure the breach. If the breach is not cured within the time parameters set forth herein, this Agreement may be terminated as to that PARTY deemed to be in breach of this Agreement.

ii. Termination for Convenience

In the event any PARTY terminates this Agreement for convenience, the PARTY terminating this Agreement for convenience shall furnish a thirty (30) day written notice to the other PARTY.

iii. Termination Costs

If this Agreement is terminated for cause, the non-breaching PARTY shall not be liable for any costs incurred as a result of such termination.

13. This Agreement shall terminate upon completion of PROJECT and Construction obligations of AUTHORITY and the delivery of required PROJECT documents to each PARTY, or on December 31, 2013, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of PROJECT be asserted against one of the PARTIES, the PARTIES agree to extend the fixed termination date of this Agreement, until such time as the claims are settled, dismissed or paid.

14. Notices – All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested, or by

facsimile transmission with a confirmation copy to be sent by mail. Any such notice shall be effective as of the date it is transmitted and mailed or delivered, if transmitted by facsimile transmission on or before 5:00 p.m., Pacific Time; or on the following day if transmitted after 5:00 p.m., Pacific Time. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

To AUTHORITY: Garry Cohoe
Director of Project Delivery
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92405

To CITY: Amer Jakher
Public Works Director
City of Colton
160 S. 10th Street
Colton, CA 92324

15. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person or entity whatsoever.
16. This Agreement may be signed in counterparts, each of which shall constitute an original.
17. The Effective Date of this Agreement is the date that all PARTIES have executed this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURES

PARTIES declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

CITY OF COLTON

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

APPROVED

APPROVED

By: _____
Sarah Zamora
Mayor

By: _____
Larry McCallon
Board President

Date: _____


Date: _____

APPROVED AS TO FORM:

Attest: _____
Vicki Watson
Clerk of the Board

By: _____
Dean Derleth
City Attorney

APPROVED AS TO FORM:

By:  _____
Penny Alexander-Kelley
General Counsel

CONCURRENCE:


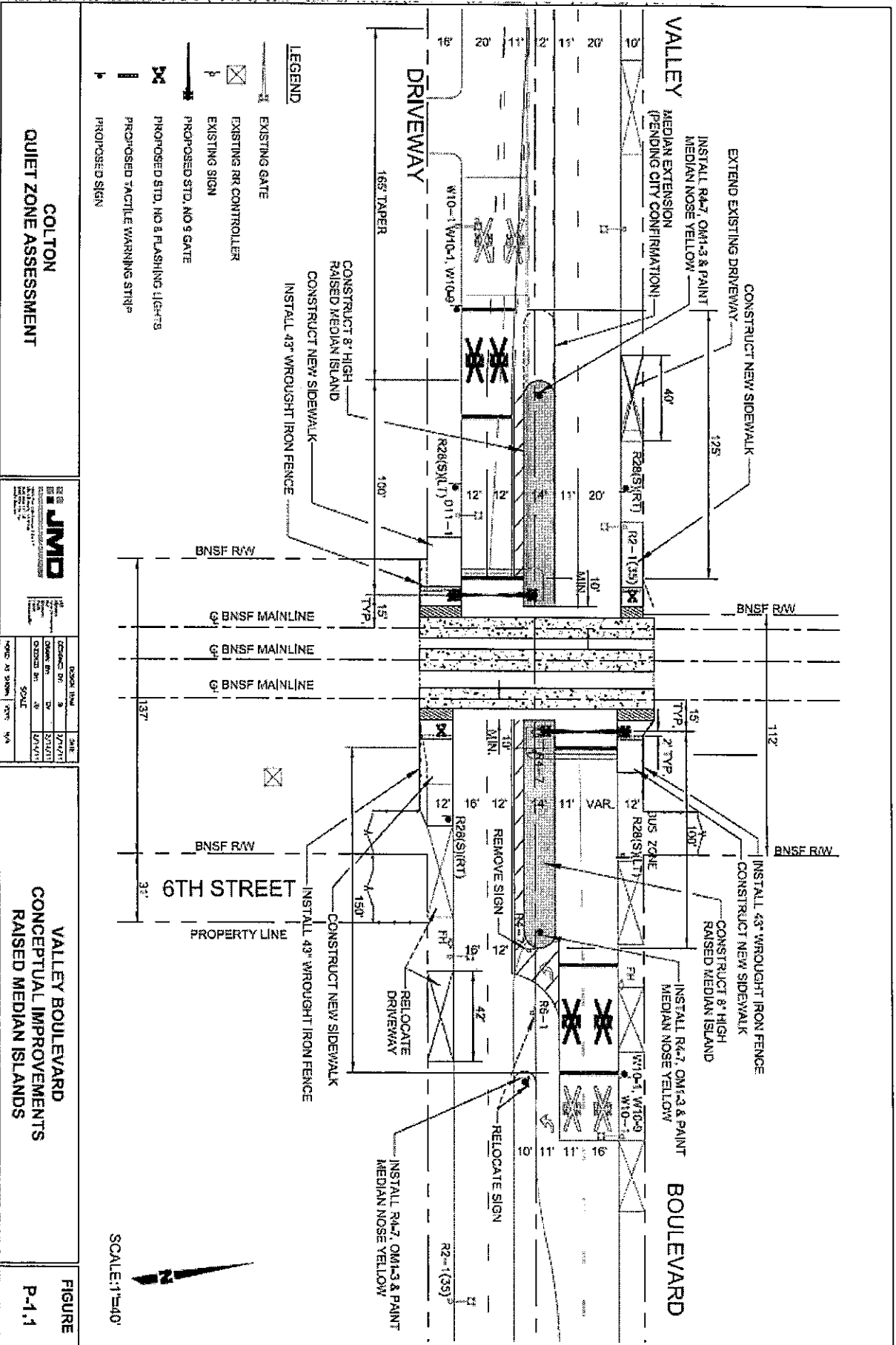
By:  _____
Kathleen Murphy-Perez
Contracts Manager

EXHIBIT A

Colton Quiet Zone

Design Layouts for Roadway Improvements



- LEGEND**
- Existing Gate
 - ⊗ Existing RR Controller
 - ⊕ Existing Sign
 - ➔ Proposed Std. No. 9 Gate
 - ⊗ Proposed Std. No. 8 Flashing Lights
 - ⊕ Proposed Tactile Warning Strip
 - ⊕ Proposed Sign

COLTON
QUIET ZONE ASSESSMENT

JMWD
JAMES M. WILSON & ASSOCIATES, INC.
1000 N. 10TH AVENUE, SUITE 100
DENVER, CO 80202
TEL: 303.733.1111
WWW.JMWD.COM

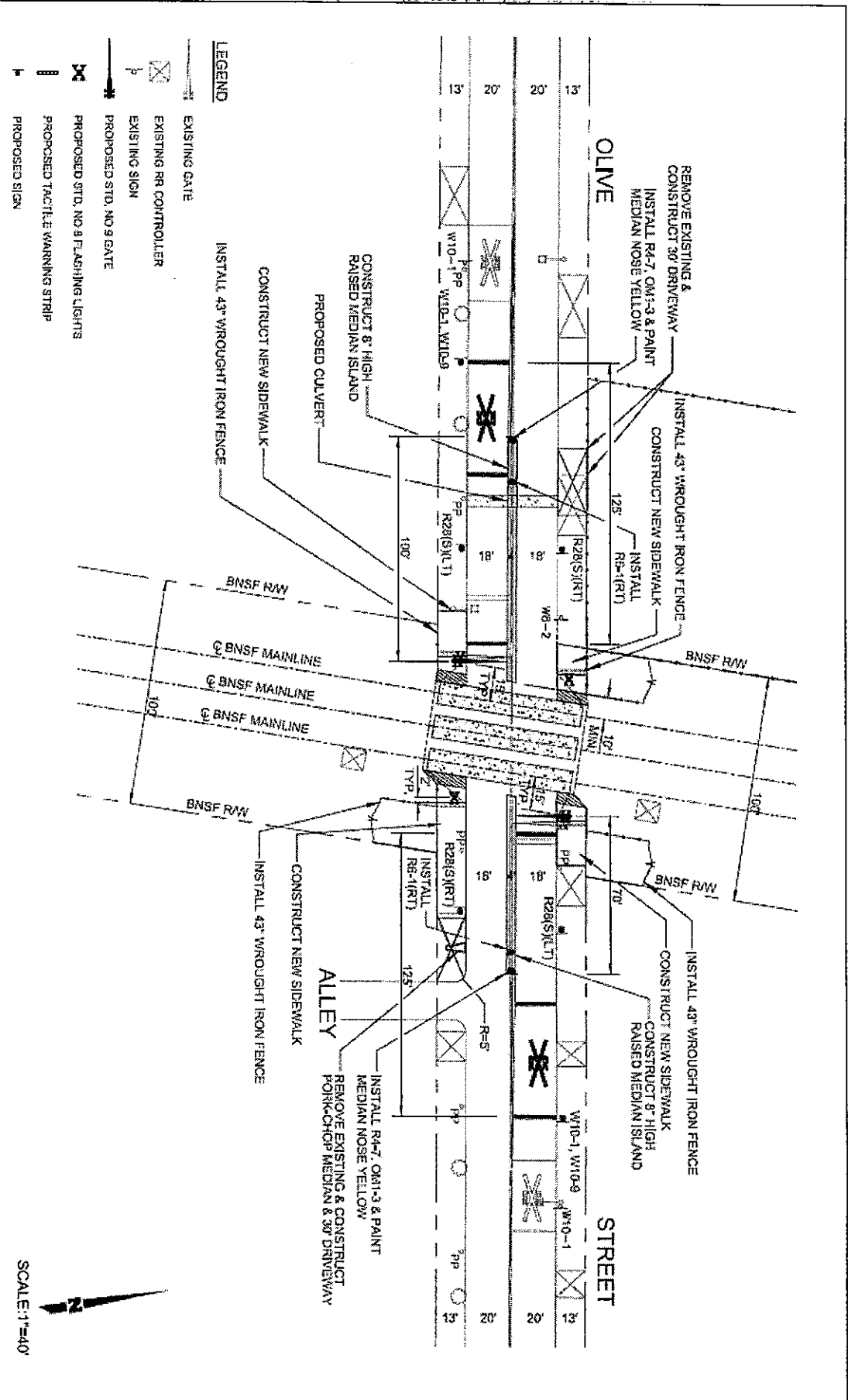
DATE	DESCRIPTION	BY	CHKD.
07/11/11	ISSUED FOR PERMITS	SW	JW
07/11/11	ISSUED FOR CONSTRUCTION	SW	JW
07/11/11	ISSUED FOR AS-BUILT	SW	JW

SCALE: AS SHOWN

VALLEY BOULEVARD
CONCEPTUAL IMPROVEMENTS
RAISED MEDIAN ISLANDS

FIGURE
P-1.1





- LEGEND**
- EXISTING GATE
 - EXISTING RR CONTROLLER
 - EXISTING SIGN
 - PROPOSED STD. NO. 9 GATE
 - PROPOSED STD. NO. 9 FLASHING LIGHTS
 - PROPOSED TACTILE WARNING STRIP
 - PROPOSED SIGN

COLTTON
QUIET ZONE ASSESSMENT

JMJD	
DATE: 07/27/21	SCALE: AS SHOWN
DESIGNER: JMD	CHECKED: JMD
DRAWN BY: JMD	DATE: 07/27/21
SCALE: AS SHOWN	DATE: 07/27/21

OLIVE STREET
CONCEPTUAL IMPROVEMENTS
RAISED MEDIAN ISLANDS

SCALE: 1"=40'

FIGURE
P-2.1

EXHIBIT B

Colton Quiet Zone

Cost Estimate

Colton Quiet Zone
Construction Cost Estimate
Roadway Improvements

CAPITAL COST ESTIMATE

Construction Capital Cost:	\$719,280
Contingency (15%):	\$107,892
Permits and Flagging:	\$64,000

Total Construction Capital: \$891,172

CONSTRUCTION SUPPORT COST ESTIMATE

Administration:	\$128,683
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Total Construction Support: \$128,683

TOTAL CONSTRUCTION COST

\$1,019,855

EXHIBIT C

Colton Quiet Zone

Construction Management Workplan

PROJECT CONSTRUCTION ENGINEERING

**COLTON QUIET ZONE
PROJECT**

110 WORKING DAYS (approx. 22 weeks)

1	BIDDING AND AWARD	\$ 85.00	20	HRS	\$ 1,700.00
2	PRECONSTRUCTION CONFERENCE	\$ 85.00	8	HRS	\$ 680.00
3	SUBMITTALS REVIEW	\$ 120.00	16	HRS	\$ 1,920.00
4	CONTRACT ADMINISTRATION	\$ 85.00	176	HRS	\$ 14,960.00
5	FINAL INSPECTION/ START UP/ ACCEPTANCE	\$ 85.00	40	HRS	\$ 3,400.00
6	INSPECTION	\$ 85.00	840	HRS	\$ 71,400.00
7	ENGINEERING	\$ 120.00	140	HRS	\$ 16,800.00
8	GEOTECHNICAL AND MATERIAL TESTING	\$ 17,823.44	1	LUMP SUM	\$ 17,823.44
ENGINEERING COST					\$ 128,683.44
	SURVEYING	By Contractor	1	LUMP SUM	\$ -
TOTAL PROJECT ENGINEERING COST					\$ 128,683.44

Construction Management Workplan – Colton Quiet Zone Project:

Resident Engineer: Victor Ortiz

1. Oversight of all work and subconsultants.
2. Conduct Pre-construction Meeting.
3. Project Coordination with AUTHORITY, Utilities, and Railroad.
4. Manage Schedule and CCOs.
5. Oversee all Public Relations and traffic advisory.

Construction Inspector/OE:

During Construction -

1. Prepare Contractor progress payments and maintain payment records/supporting documents.
2. Establish and maintain filing system / project records.
3. Review and Monitor Contractor's schedule.
4. Prepare Quality Assurance Plan
5. Prepare monthly report.
6. Review and ensure all environmental/QA/and certified payroll requirements.
7. Review and ensure compliance with SWPPP and AQMD requirements.
8. Field Coordination with property owners, businesses, cities, flood control district.
9. Field Coordinate with Utilities and Railroad.
10. Review contract change order, RFI, RFQ, shop drawings, TCP.
11. Perform all construction inspection.
12. Maintain awareness of safety and health requirements. Monitor contractor's compliance with applicable regulations and contract provisions.
13. Prepare complete and accurate daily reports, calculations, project records, payment quantity documents, CCO, reports, and correspondence related to project activities.
14. Coordinate with materials testers and surveying personnel
15. Labor Compliance
16. Weekly safety review

Post Construction / Closeout -

1. Prepare punch list for final corrections.
2. Collect and furnish all as-built information and forward to Engineer.
3. Verify completeness of as-built prepared by designer.
4. Conduct final walk-through with AUTHORITY and Railroad.
5. Prepare final construction reports and documents to be submitted for project closeout.
6. Prepare and deliver to SANABG copies of project files.
7. Assist in getting final release of all permits.

Engineering:

1. Review of bid document / prepare bid tabulation.
2. Review of contract change orders, RFI, RFQ, shop drawings, TCP.
3. Design Support
4. Prepare As-Built Plans.

Construction Materials Testing:

1. Perform requested materials testing per City requirements.
2. Document and file all materials testing.

Contract Administration:

1. Process monthly payments
2. Weekly meetings

Attachment B

Colton Quiet Zone Project – E Street Crossing Closure Agreement

CROSSING CLOSURE AGREEMENT

HIGHWAY-RAILROAD GRADE CROSSING CLOSURE OF E Street at Railroad Milepost 2.77 City of Colton, California

THIS AGREEMENT is made and entered into on this ___ day of _____, 2011, for reference purposes only, by and between the BNSF RAILWAY COMPANY, hereinafter referred to as "BNSF", the CITY OF COLTON, California, hereinafter referred to as the "CITY", and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, hereinafter referred to as "AUTHORITY". (BNSF, CITY, and AUTHORITY are each referred to individually as "Party" and collectively as the "Parties")

WITNESSETH:

WHEREAS, the intersection of the Union Pacific Railroad (UPRR) rail line and the BNSF rail line immediately south of Interstate 10, east of South Rancho Avenue and west of South La Cadena Drive in the City of Colton, is generally referred to as the Colton Crossing (the "**Colton Crossing**"). The Parties are preparing to design a project to grade-separate the Colton Crossing to improve freight and passenger rail mobility and efficiency by eliminating conflicting train movements (the "**Colton Crossing Project**").

WHEREAS, residents adjacent and near the rail lines in the general vicinity of the Colton Crossing, specifically those adjacent to the BNSF rail line north of I-10, are seeking relief from railroad train horn noise; and

WHEREAS, the local traffic circulation for the CITY is affected by the numerous trains passing through at-grade crossings within the CITY's limits; and

WHEREAS, in relation to but separate from the Colton Crossing Project, UPRR, AUTHORITY, BNSF, and the CITY executed that certain Memorandum of Understanding, dated May 4, 2010, in which they agreed to a series of projects to address the noise and circulation issues described in the recital below; and

WHEREAS, one of the projects identified in the above recital would establish a quiet zone by eliminating two existing grade crossings at "H" Street and "E" Street respectively and improving two existing grade crossing gates to meet the California Public Utilities Commission and the Federal Railroad Administration quiet zone crossing standards (the "**Project**"); and

WHEREAS, elimination of a grade crossing by closing a street includes the abandonment and permanent vacating of roadway right-of-way across BNSF right-of-way; and

WHEREAS, AUTHORITY shall be the implementing agency for the Project and will fund the design and construction costs of the Project; and

WHEREAS, AUTHORITY will perform the necessary street closure work at the “E” Street public crossing located at Railroad milepost 2.77 and

WHEREAS, necessary street closure work is defined as environmental compliance, engineering design, and construction of the street closure; and

WHEREAS, BNSF agrees to pay AUTHORITY for eliminating the crossing at “E” Street; and

WHEREAS, the CITY in cooperation with BNSF and AUTHORITY will vacate its “E” Street right-of-way across the BNSF right-of-way (the “E Street Public Crossing”), to the extent necessary to accommodate the Project, prior to the construction and closure of the “E” Street Public Crossing; and

WHEREAS, BNSF will perform the necessary removal work of BNSF crossing surfaces and warning devices.

NOW THEREFORE, in consideration of these facts, the Parties hereto agree as follows:

SECTION 1: The CITY shall take all actions necessary to permanently close and vacate the “E” Street Public Crossing and easement across the BNSF’s right-of-way. Prior to construction, CITY shall vacate the “E” Street Public Crossing by passing and approving a valid resolution pursuant to applicable California statutes, shall record such resolution if required by California statutes, and shall make available to the Parties a copy of such closure resolution. AUTHORITY shall submit a Notice of Completion to BNSF after removing both roadway approaches and installing the appropriate end-of-road treatment. A copy of the CITY’s resolution shall be attached to the Notice of Completion.

SECTION 2: BNSF hereby agrees to pay AUTHORITY the sum of fifty thousand dollars and no cents (\$50,000.00), within thirty (30) days of receipt of the above mentioned notice.

SECTION 3: BNSF further agrees to remove BNSF crossing surface, crossbuck signs, and crossing signals that currently exist on BNSF’s right-of-way, upon Railroad’s receipt of the above-mentioned notice.

SECTION 4: The CITY shall own and maintain its end-of-road treatment, which will be comprised of the cul-de-sac at “E” Street, sidewalks, curbs, gutters, iron wrought fencing, and bollards.

SECTION 5: The CITY agrees, to the extent permitted by law that this crossing shall remain closed and will not be re-opened by the CITY.

SECTION 6: Except on subjects preempted by Federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7: The Parties agree that each Party and any authorized representative designated in writing by the Parties, and upon reasonable notice, shall have the right at all reasonable times during normal business hours to examine all Parties' accounting books and records relative to this Agreement. The Parties agree to make such books and records available for a period of three (3) years from the completion of the street closure work.

SECTION 8: Any notice required or authorized to be given hereunder or any other communications between Parties provided for under this Agreement shall be in writing, unless otherwise provided, and shall be served personally or by US Mail service at the address listed below. A proof of such service and receipt, it shall be sufficient to produce a receipt showing delivery, or attempted delivery. The Parties addresses for service are:

If to CITY: Amer Jakher
Public Works Director
650 N. La Cadena Drive
Colton, CA 92324

If to SANBAG: Garry Cohoe
Director of Project Delivery
1170 West Third Street, 2nd Floor
San Bernardino, CA 92410-1715

If to BNSF: Melvin Thomas
Manager Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408

SECTION 9: This Agreement cannot be amended or modified in any way except in writing, and signed by all Parties.

SECTION 10: This Agreement constitutes a single, integrated, written contact expressing the entire agreement of the Parties. No covenants, agreements, representations, or warranties of any kind have been made by any Party, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated in this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the City of Colton, acting by and through its Mayor or his designee, authorizing such execution, the San Bernardino County Transportation Authority, and by BNSF attested by its duly qualified and authorized officials as of the date first hereinabove written.

BNSF RAILWAY COMPANY

A Delaware corporation

CITY OF COLTON

A public body

Sarah S. Zamora
Mayor

Approved as to Legal Form

Dean Derleth
City Attorney

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY,**
A joint powers authority

Larry McCallon
President, Board of Directors

Approved as to Legal Form

Penny Alexander-Kelley
General Counsel

Concurrence

Kathleen Murphy-Perez
Contracts Manager

Attachment C

Colton Quiet Zone Project – H Street Crossing Closure Agreement

CROSSING CLOSURE AGREEMENT

HIGHWAY-RAILROAD GRADE CROSSING CLOSURE OF H Street at Railroad Milepost 3.00 City of Colton, California

THIS AGREEMENT is made and entered into on this ___ day of _____, 2011, for reference purposes only, by and between the BNSF RAILWAY COMPANY, hereinafter referred to as "BNSF", the CITY OF COLTON, California, hereinafter referred to as the "CITY", and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, hereinafter referred to as "AUTHORITY". (BNSF, CITY, and AUTHORITY are each referred to individually as "Party" and collectively as the "Parties")

WITNESSETH:

WHEREAS, the intersection of the Union Pacific Railroad (UPRR) rail line and the BNSF rail line immediately south of Interstate 10, east of South Rancho Avenue and west of South La Cadena Drive in the City of Colton, is generally referred to as the Colton Crossing (the "**Colton Crossing**"). The Parties are preparing to design a project to grade-separate the Colton Crossing to improve freight and passenger rail mobility and efficiency by eliminating conflicting train movements (the "**Colton Crossing Project**").

WHEREAS, residents adjacent and near the rail lines in the general vicinity of the Colton Crossing, specifically those adjacent to the BNSF rail line north of I-10, are seeking relief from railroad train horn noise; and

WHEREAS, the local traffic circulation for the CITY is affected by the numerous trains passing through at-grade crossings within the CITY's limits; and

WHEREAS, in relation to but separate from the Colton Crossing Project, UPRR, AUTHORITY, BNSF, and the CITY executed that certain Memorandum of Understanding, dated May 4, 2010, in which they agreed to a series of projects to address the noise and circulation issues described in the recital below; and

WHEREAS, one of the projects identified in the above recital would establish a quiet zone by eliminating two existing grade crossings at "H" Street and "E" Street respectively and improving two existing grade crossing gates to meet the California Public Utilities Commission and the Federal Railroad Administration quiet zone crossing standards (the "**Project**"); and

WHEREAS, elimination of a grade crossing by closing a street includes the abandonment and permanent vacating of roadway right-of-way across BNSF right-of-way; and

WHEREAS, AUTHORITY shall be the implementing agency for the Project and will fund the design and construction costs of the Project; and

WHEREAS, AUTHORITY will perform the necessary street closure work at the “H” Street public crossing located at Railroad milepost 3.00 and

WHEREAS, necessary street closure work is defined as environmental compliance, engineering design, and construction of the street closure; and

WHEREAS, BNSF agrees to pay AUTHORITY for eliminating the crossing at “H” Street; and

WHEREAS, the CITY in cooperation with BNSF and AUTHORITY will vacate its “H” Street right-of-way across the BNSF right-of-way (the “E Street Public Crossing”), to the extent necessary to accommodate the Project, prior to the construction and closure of the “H” Street Public Crossing; and

WHEREAS, BNSF will perform the necessary removal work of BNSF crossing surfaces and warning devices.

NOW THEREFORE, in consideration of these facts, the Parties hereto agree as follows:

SECTION 1: The CITY shall take all actions necessary to permanently close and vacate the “H” Street Public Crossing and easement across the BNSF’s right-of-way. Prior to construction, CITY shall vacate the “H” Street Public Crossing by passing and approving a valid resolution pursuant to applicable California statutes, shall record such resolution if required by California statutes, and shall make available to the Parties a copy of such closure resolution. AUTHORITY shall submit a Notice of Completion to BNSF after removing both roadway approaches and installing the appropriate end-of-road treatment. A copy of the CITY’s resolution shall be attached to the Notice of Completion.

SECTION 2: BNSF hereby agrees to pay AUTHORITY the sum of fifty thousand dollars and no cents (\$50,000.00), within thirty (30) days of receipt of the above mentioned notice.

SECTION 3: BNSF further agrees to remove BNSF crossing surface, crossbuck signs, and crossing signals that currently exist on BNSF’s right-of-way, upon Railroad’s receipt of the above-mentioned notice.

SECTION 4: The CITY shall own and maintain its end-of-road treatment, which will be comprised of the cul-de-sac at “H” Street, sidewalks, curbs, gutters, iron wrought fencing, and bollards.

SECTION 5: The CITY agrees, to the extent permitted by law that this crossing shall remain closed and will not be re-opened by the CITY.

SECTION 6: Except on subjects preempted by Federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7: The Parties agree that each Party and any authorized representative designated in writing by the Parties, and upon reasonable notice, shall have the right at all reasonable times during normal business hours to examine all Parties' accounting books and records relative to this Agreement. The Parties agree to make such books and records available for a period of three (3) years from the completion of the street closure work.

SECTION 8: Any notice required or authorized to be given hereunder or any other communications between Parties provided for under this Agreement shall be in writing, unless otherwise provided, and shall be served personally or by US Mail service at the address listed below. A proof of such service and receipt, it shall be sufficient to produce a receipt showing delivery, or attempted delivery. The Parties addresses for service are:

If to CITY: Amer Jakher
Public Works Director
650 N. La Cadena Drive
Colton, CA 92324

If to SANBAG: Garry Cohoe
Director of Project Delivery
1170 West Third Street, 2nd Floor
San Bernardino, CA 92410-1715

If to BNSF: Melvin Thomas
Manager Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408

SECTION 9: This Agreement cannot be amended or modified in any way except in writing, and signed by all Parties.

SECTION 10: This Agreement constitutes a single, integrated, written contact expressing the entire agreement of the Parties. No covenants, agreements, representations, or warranties of any kind have been made by any Party, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated in this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the City of Colton, acting by and through its Mayor or his designee, authorizing such execution, the San Bernardino County Transportation Authority, and by BNSF attested by its duly qualified and authorized officials as of the date first hereinabove written.

BNSF RAILWAY COMPANY
A Delaware corporation

CITY OF COLTON
A public body

Sarah S. Zamora
Mayor

Approved as to Legal Form

Dean Derleth
City Attorney

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY,**
A joint powers authority

Larry McCallon
President, Board of Directors

Approved as to Legal Form

Penny Alexander-Kelley
General Counsel

Concurrence

Kathleen Murphy-Perez
Contracts Manager

Attachment D

Laurel Grade Separation Project – ROW and Construction Cooperative
Agreement No. C12037

COOPERATIVE AGREEMENT NO. C12037

BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

AND

THE CITY OF COLTON

LAUREL STREET GRADE SEPARATION PROJECT

RIGHT OF WAY AND CONSTRUCTION PHASES

This Cooperative Agreement (hereinafter referred to as this "Agreement") is entered into as of the Effective Date as defined herein, by and between the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, a public body, corporate and politic ("COMMISSION") and the CITY OF COLTON, a public body, corporate and politic ("CITY") for the Right-of-Way Phase and Construction Phase for LAUREL STREET GRADE SEPARATION PROJECT ("PROJECT"). The COMMISSION and CITY are referred to herein individually as "Party" and collectively as "Parties".

RECITALS:

WHEREAS, the intersection of the Union Pacific Railroad ("UPRR") rail line and the Burlington Northern Santa Fe Railway Company ("BNSF") rail line immediately south of Interstate 10, east of South Rancho Avenue and west of South La Cadena Drive in the City of Colton, is generally referred to as the Colton Crossing (the "Colton Crossing"). The Parties are preparing to design a project to grade-separate the Colton Crossing to improve freight and passenger rail mobility and efficiency by eliminating conflicting train movements (the "Colton Crossing Project"); and

WHEREAS, residents adjacent and near to the rail lines in the general vicinity of the Colton Crossing, specifically those adjacent to the BNSF rail line north of I-10, are seeking relief from railroad train horn noise; and

WHEREAS, the local traffic circulation for the CITY is affected by the numerous trains passing through at-grade crossings within the CITY's limits; and

WHEREAS, in relation to but separate from the Colton Crossing Project, the San Bernardino Associated Governments ("SANBAG"), UPRR, BNSF, and the CITY entered into a Funding Agreement Related to the Colton Crossing Railgrade Separation Project ("Funding Agreement"), approved on or about October 5, 2011, to implement a series of projects that the CITY believes are needed to address the noise and circulation issues described above; and

WHEREAS, one of the projects identified in the Funding Agreement is the Laurel Street Grade Separation Project, which consists of constructing a grade separation (undercrossing) between the BNSF rail line and Laurel Street, as depicted on Exhibit "A" attached hereto and incorporated herein by this reference ("PROJECT"). PROJECT is divided into an Engineering Design and Environmental Compliance Phase ("Engineering/Environmental Phase"), Right-of-Way Phase ("Right-of-Way Phase") and a Construction Phase ("Construction Phase"). Total PROJECT Costs, as described in the Funding Agreement, include, among other things, the costs associated with all phases of PROJECT; and

WHEREAS, SANBAG, COMMISSION, the San Bernardino County Transportation Authority, CITY, UPRR, and BNSF will enter into a separate multi-project funding agreement to address funding for the Right-of-Way Phase and Construction Phase of PROJECT.

WHEREAS, the Parties now desire to enter into this Agreement for purposes of defining the roles and responsibilities of the Parties with respect to the Right-of-Way Phase and Construction Phase of the Project; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

SECTION I

CITY AGREES:

1. To designate a qualified representative who shall have the authority to discuss and resolve issues concerning PROJECT Right-of-Way work and Construction and to serve as PROJECT liaison for the purpose of attending Project Development Team ("PDT") meetings all at no cost to the COMMISSION.
2. To accept PROJECT acquired rights-of-way located within the CITY's jurisdictional boundaries within thirty (30) days of COMMISSION's request to accept such acquired property and at no expense to COMMISSION. CITY's Council, by approval of this Agreement, authorizes and directs CITY staff to execute an acceptance, in substantially the form attached hereto as Exhibit "B", within thirty (30) days of receipt of a quit claim deed from COMMISSION conveying its interest in such acquired rights-of-way.
3. To participate with COMMISSION in the review of all right-of-way work, property acquisition, and construction including, but not limited to, utility agreements, appraisals for properties subject to acquisition, right-of-way documents to convey property rights, construction bid package, and construction change orders. CITY agrees to complete such review and provide written comments to COMMISSION within 10 working days upon receipt of such documentation, and COMMISSION shall not proceed with any action subject to CITY review without the consent of the CITY, which consent shall not be unreasonably withheld.

4. CITY shall be the lead agency under the California Environmental Quality Act (CEQA) and lead responsible permittee under other applicable environmental regulations including, but not limited to, the United States Clean Water Act and the California Department of Fish and Game Code.
5. CITY shall be the lead agency in the application to the California Public Utilities Commission (CPUC).
6. Issue a no-cost permit to COMMISSION's right-of-way consultants, construction contractor, and other designated persons for work in CITY's right-of-way.
7. Upon completion of the construction of the PROJECT, CITY will operate and maintain, at CITY's sole cost, any part of PROJECT located within CITY right-of-way.

SECTION II

COMMISSION AGREES:

1. To continue to provide project management for the PROJECT, and act as the lead agency for the PROJECT Right-of-Way and Construction Phases.
2. To include CITY in PDT meetings, if and when such meetings are held, and in related communications on PROJECT progress and to provide at least quarterly schedule updates to CITY.
3. To provide all necessary right-of-way services to acquire right-of-way for PROJECT through negotiated purchases of property, or if necessary, through Eminent Domain. Voluntary acquisitions shall be acquired in COMMISSION's name.
4. To consider using the power of Eminent Domain to acquire any necessary right-of-way for PROJECT in COMMISSION's name at a public hearing noticed and conducted in accordance with California Code of Civil Procedure, Section 1245.235, for the purpose of considering the adoption of a resolution of necessity, should COMMISSION be unable to acquire through negotiated purchases the necessary right-of-way for the PROJECT. If COMMISSION is unsuccessful in obtaining necessary right-of-way for the PROJECT, then COMMISSION and the CITY shall endeavor to agree upon an alternative course of action. If, after ninety (90) days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated and the terms of the Funding Agreement shall control.
5. In the event that COMMISSION exercises its powers of eminent domain and acquires property, COMMISSION agrees to convey by quit claim deed to CITY all PROJECT acquired rights-of-way located within CITY's jurisdiction within thirty (30) days of COMMISSION's request to accept such acquired property and at no expense to COMMISSION. Said properties shall be clean and all rubbish, excess materials, falsework, temporary structures and equipment shall be removed. All parts of the properties shall be left in a neat and presentable condition.

6. To undertake and lead the advertisement, award, administration and construction management for the Construction Phase of the PROJECT.
7. COMMISSION, at COMMISSION's sole discretion, may assign additional resources to the PROJECT Right of Way or Construction Phase to facilitate its timely completion.
8. If unanticipated hazardous waste, cultural, archaeological, paleontological, or other protected materials are encountered during PROJECT Construction Phase, COMMISSION shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and plan is approved for the remediation, removal, or protection of the material.

SECTION IV

IT IS MUTALLY AGREED:

1. The above recitals are true and correct, and are fully incorporated by this reference.
2. All of the exhibits attached to this Agreement are hereby incorporated by this reference.
3. In the event of any conflict between the Agreement and Exhibit(s), Table(s), or Figure(s) attached to the Agreement and incorporated by reference, the Agreement shall take precedence over the Exhibit(s), Table(s), and Figure(s).
4. Severability – If any term, provision, covenant, or condition of this Agreement is held to be invalid, void, or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
5. Assignment – Neither this Agreement, nor any of the PARTIES rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either PARTY without the prior written consent of the other PARTY in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.
6. Governing Law – The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.
7. Waiver – No waiver of any default shall constitute a waiver of any other default whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a PARTY shall give the other PARTY any contractual rights by custom, estoppel, or otherwise.
8. Attorney Fees – If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorney fees directly

arising from any third party legal action against a Party hereto and payable under the indemnification provisions of this Agreement.

9. To the fullest extent permitted by law, the PARTIES agree to save, indemnify, defend, and hold harmless each other and their respective officers, employees and agents, from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other. Following a determination of the percentage of fault and or liability by agreement between the PARTIES or a court of competent jurisdiction, the PARTY responsible for liability to the other will indemnify the other PARTY to this Agreement for the percentage of liability determined. The indemnification obligation of the PARTIES hereunder does not apply to claims, actions, losses, damages, and/or liability arising out of a PARTY's "willful misconduct" within the meaning of Civil Code Section 2782.

10. The PARTIES or their agents have participated fully in the preparation of this Agreement; therefore, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

11. Termination

i. Termination for Cause

Any PARTY to this Agreement may declare a breach hereof by serving written notice describing the nature of the breach to the other PARTY. The PARTY alleged to have breached the Agreement shall be afforded thirty (30) days from service of the notice of breach to take whatever steps necessary to cure the breach. If the breach is not cured within the time parameters set forth herein, this Agreement may be terminated as to that PARTY deemed to be in breach of this Agreement.

ii. Termination for Convenience

In the event any PARTY terminates this Agreement for convenience, the PARTY terminating this Agreement for convenience shall furnish a thirty (30) day written notice to the other PARTY.

iii. Termination Costs

If this Agreement is terminated for cause, the non-breaching PARTY shall not be liable for any costs incurred as a result of such termination.

12. This Agreement shall terminate upon completion of the PROJECT Construction Phase, disposition of excess properties, and payment of final billing by CITY and their shares of the PROJECT Right-of-Way and Construction costs or December 30, 2016 (whichever occurs first), except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of PROJECT be asserted against one of the PARTIES, the PARTIES agree to extend the fixed termination date of this Agreement, until such time as the claims are settled, dismissed or paid.
13. Notices – All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested, or by facsimile transmission with a confirmation copy to be sent by mail. Any such notice shall be effective as of the date it is transmitted and mailed or delivered, if transmitted by facsimile transmission on or before 5:00 p.m., Pacific Time; or on the following day if transmitted after 5:00 p.m., Pacific Time. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

To COMMISSION: Garry Cohoe
Director of Project Delivery
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92405

To CITY: Amer Jakher
Public Works Director
City of Colton
160 S. 10th Street
Colton, CA 92324

14. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person or entity whatsoever.
15. This Agreement may be signed in counterparts, each of which shall constitute an original.
16. The Effective Date of this Agreement is the date that all PARTIES have executed this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURES

PARTIES declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

CITY OF COLTON

**SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION**

APPROVED

APPROVED

By: _____
Sarah Zamora
Mayor

By: _____
Larry McCallon
Board President

Date: _____


Date: _____

APPROVED AS TO FORM:

Attest: _____
Vicki Watson
Clerk of the Board

By: _____
Dean Derleth
City Attorney

APPROVED AS TO FORM:

By: 
Penny Alexander-Kelley
General Counsel

CONCURRENCE:

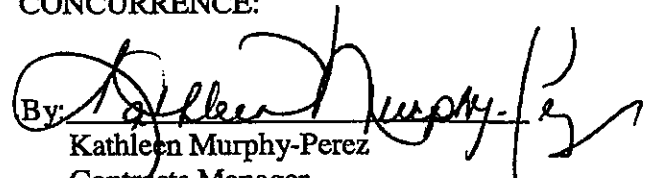
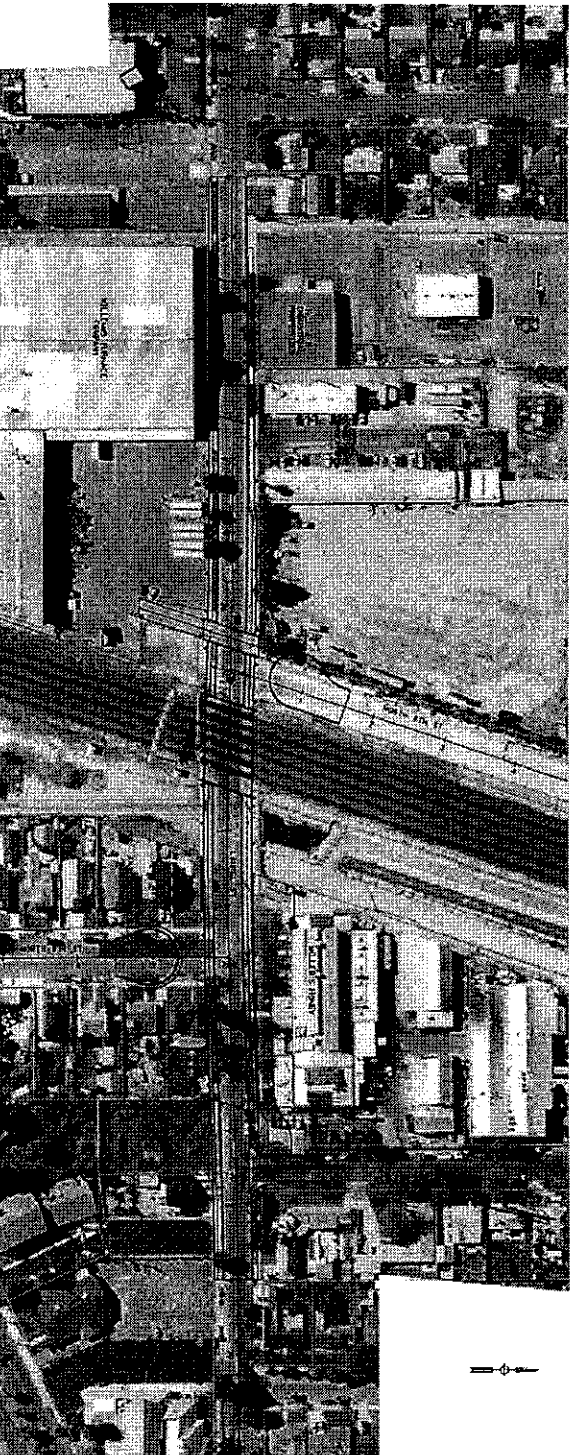
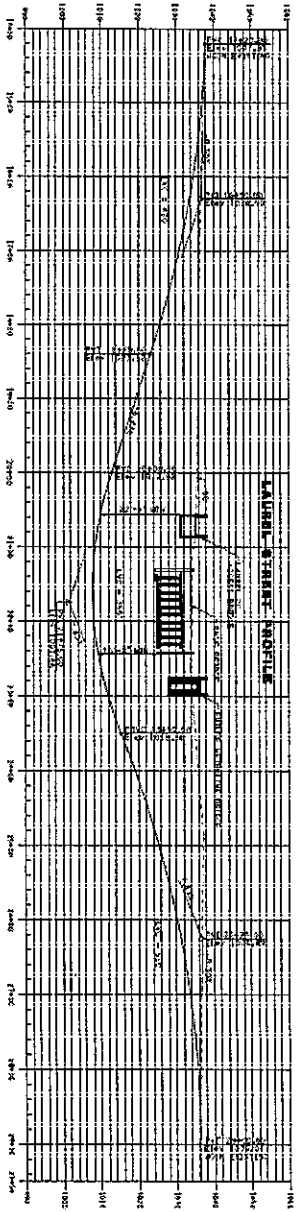
By: 
Kathleen Murphy-Perez
Contracts Manager

Exhibit A
Project Map

The Project located in the City of Colton, in San Bernardino County, California.



Governments
SANBAG
Working Together



**LAUREL STREET GRADE SEPARATION
UNDERPASS
PRELIMINARY CONCEPTUAL EXHIBIT**

SCALE: 1"=200'
DATE: 07-21-2011

Exhibit B

QUIT CLAIM DEED CERTIFICATION

California Government Code 27281

Exhibit "B"

CITY OF COLTON
[STREET ADDRESS]
[CITY], CALIFORNIA [ZIP CODE]

QUIT CLAIM DEED CERTIFICATION
California Government Code 27281

This is to certify that the real property conveyed by the attached instrument dated _____, from the San Bernardino County Transportation Commission, a California transportation commission, as Grantor to the City of _____, as Grantee, is hereby accepted by order of the City Council of the City of _____, County of San Bernardino, State of California, as the governing board of said grantee, and consents to the recordation thereof by its duly authorized officer.

Date: _____

By: _____

Name: _____

Title: _____

Attachment E

Approved Letter Agreement for the Colton Crossing Wall Treatments,
Graffiti Abatement and Remediation



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2811

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Riverside
(951) 688-1450

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

3500 Porsche Way, Suite 200, Ontario, CA 91764
Phone: (909) 989-8584 | Fax: (909) 944-1441 | www.bbklaw.com

Dean Derleth
(909) 483-6655
dean.derleth@bbklaw.com
File No. 23152.06163

October 6, 2011

VIA OVERNIGHT MAIL

David M. Pickett
General Attorney
Union Pacific Railroad Company
Law Department
10031 Foothills Boulevard, Suite 200
Roseville, CA. 95747-7101

Re: Colton Crossing Project

Dear Mr. Pickett:

We are pleased to enclose a fully executed copy of the Agreement between the Union Pacific Railroad Company ("Union Pacific") and the City of Colton, regarding the Colton Crossing Project. We have also enclosed an original copy of the "Program Outline" executed by Union Pacific regarding the graffiti abatement program.

Should you have any questions, please feel free to call me.

Sincerely,

Dean Derleth
of Best Best & Krieger LLP
City Attorney
City of Colton

DD:ja

Enclosure

cc: Rod Foster, City Manager
Eileen Gomez, City Clerk

October 4, 2011

Mr. Rod Foster
City of Colton
650 N. La Cadena Drive
Colton, CA 92324

Re: *Program Outline - Colton Crossing Wall Treatments – Graffiti Abatement and Remediation*

Dear Mr. Foster:

On October 4, 2011, Union Pacific Railroad Company ("Union Pacific") and the City of Colton (the "City") entered into a letter agreement (the "Agreement") related to construction and maintenance of the Colton crossing grade separation. Exhibit E of the Agreement sets forth the parties' agreement to establish a graffiti abatement and remediation program (the "Program"). At the City's request, Union Pacific has written this letter (the "Program Outline") to provide supplemental information about how Union Pacific plans to meet its abatement and remediation commitments in the Agreement. This Program Outline is not a contract or an amendment to the Agreement – it is provided for information only. For simplicity, the capitalized terms used here are the same as those terms in the Agreement.

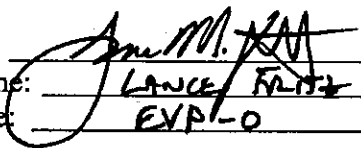
- **Selection of Wall Treatment Product** – As part of the selection of the product to be applied to the Wall Treatments, Union Pacific will evaluate treatment options for the type of surface that will comprise the Wall Treatments and will make a determination about the most effective option to assist Union Pacific with graffiti removal and maintaining compliance under the Agreement.
- **Graffiti Removal Methods** - Union Pacific anticipates that the graffiti will be removed using a high pressure water source, but the parties understand that Union Pacific may modify the method of removal from time to time to utilize more effective removal techniques.
- **Frequency of Working Group Meetings** - The working group established pursuant to the Agreement will meet from time to time at a mutually agreed upon location. For the first six (6) months after the Completion Date, the working group will meet monthly. Thereafter, the frequency of the working group's meetings will be adjusted by the

working group depending on the success of the Program and the enhanced enforcement and prosecution by the City related thereto.

- Contractor Assistance - It is anticipated that the Program will include Union Pacific's hiring of a contractor (the "Contractor") whose job responsibilities will entail, in part, removal of graffiti on the Wall Treatments.
- Frequency of Remediation - Union Pacific will initially perform (or cause the Contractor to perform) graffiti removal four (4) days per week (subject to holidays). The working group may confer to evaluate the amount of time devoted to graffiti removal by Union Pacific or the Contractor and make recommendations to Union Pacific to adjust the amount of time if deemed necessary. Union Pacific may adjust the time spent by Union Pacific or the Contractor based on the recommendations made by the working group, together with consideration of the current frequency of the graffiti activities, the efficiency of the graffiti removal methods and preserving the functionality of freight rail operations.
- E-mail Notices. Any e-mail notices to be sent to Union Pacific's Vice President, Public Affairs, Western Region shall be sent to Mr. Scott Moore and Ms. Lupe Valdez at the following e-mail addresses: sdmoore@up.com and lvaldez@up.com. Any e-mail notices to be sent to the Project Representatives shall be sent to Mr. David Miller and Mr. Joel Adams at the following e-mail addresses: davidmiller2@bnsf.com and joeladams@up.com.

Sincerely,

UNION PACIFIC RAILROAD COMPANY

By: 
Name: LANCE FOSTER
Title: EXPL-O

Mr. Rod Foster
City of Colton
650 N. La Cadena Drive
Colton, CA 92324

Re: Colton Crossing Grade Separation

Dear Mr. Foster:

This letter agreement ("Agreement") is entered into on the 4th day of October, 2011 between Union Pacific Railroad Company, a Delaware corporation ("Union Pacific") and the City of Colton ("City") for the purposes of defining the roles and responsibilities for the utility work and certain additional project work identified herein necessitated by the proposed construction of a grade separation at Colton Crossing (the "Project").

Summary of Work

This Agreement addresses the following:

1. Union Pacific's identification, design, construction, protection and relocation of and modifications to certain utility facilities owned by the City and located within either Union Pacific's right of way or the City's right of way, at or near the streets of the City as described below and as more particularly shown on the final plans and specifications attached hereto as Exhibit A (collectively, the "Utility Work"):

- (a) 3rd Street:
 - (i) Location of existing sewer and water lines.
 - (ii) Evaluation and design for full concrete encasement for the existing 18" VCP sewer and 12" ACP water line.
 - (iii) Evaluation and preparation of relocation plan for existing power lines currently on joint-use agreement with Southern California Edison.
- (b) 4th Street:
 - (i) Location of existing aerial crossing of power (west of street CL) and communication cables (east of street CL).

- (ii) Evaluate and prepare relocation plan for existing fiber optic communication cables on existing transmission steel poles.
- (c) 5th Street:
 - (i) Perform pothole and survey to locate and verify existing utilities.
 - (ii) Evaluate and prepare plan for existing 14" sewer line.
- (d) 7th Street:
 - (i) Perform pothole and survey of existing sewer and water lines.
 - (ii) Evaluate and design full concrete encasement for the existing 10" CIP sewer and 12" ACP water line.
- (e) 9th Street:
 - (i) Perform pothole and survey of existing water line.
 - (ii) Evaluate and design full concrete encasement for the existing 16" water line.
 - (iii) Evaluate and design new underground duct bank to relocate existing underground power cables and communication cables. This duct bank will also need to accommodate all power cables that are currently overhead at this location. Remove all overhead power lines and poles.
 - (iv) Replace the existing electrical vaults (LV153 and LV 154) for splice-in.
 - (v) New single-phase and three-phase power pedestals at 9th Street and I-10 eastbound on-ramp.
- (f) 11th Street:
 - (i) Perform pothole and survey of existing sewer line.
 - (ii) Evaluate and prepare relocation plan to extend existing 18" VCP sewer line further north, remove and replace the existing raised manhole and modify the existing drop manhole south of I-10 for new tie-in.

(In the event of a conflict between the summary above and the Utility Work Plans (defined below), the Utility Work Plans shall control.)

2. The proposed commitments of Union Pacific described by Garry Cohoe, Director of Freeway Construction in his Agreement to Mr. Rod Foster, City of Colton, dated March 18, 2011 attached hereto as Exhibit B as to the following (the "Additional Project Work"):

- (a) The murals to be painted, one on each side of La Cadena Drive between the existing southern railroad bridge abutments and the existing stairways south of I-10.
- (b) The landscaping, lighting and work on the approach to the southern railroad bridge.
- (c) The photographic and architectural survey of the Depot (as defined below) prior to demolition.
- (d) Installation of wall treatments for the Project (collectively, the "Wall Treatments").
- (e) Graffiti remediation for Wall Treatments.

Utility Work:

The parties hereby acknowledge and agree:

1. In connection with the Project, the City is required to perform the Utility Work at its sole cost and expense. The City has informed Union Pacific that it does not have and has not budgeted for, sufficient funds to cover the cost of the Utility Work. In furtherance of the Project, and in consideration of the Additional Project Work described herein, Union Pacific has agreed to perform the Utility Work on behalf of the City.

2. The plans and specifications attached hereto as Exhibit A for the Utility Work (collectively, the "Utility Work Plans") have been approved by each of the City and Union Pacific and represent plans and specifications for the Utility Work at the 100% design completion level. At any time that Union Pacific determines the Utility Work Plans should be modified to address any required and necessary modifications to the Utility Work, Union Pacific shall request the City's approval for such modifications. The City shall promptly review and provide to Union Pacific any comments it may have to such modified plans and specifications and shall not unreasonably withhold, condition or delay its approval to the same. Union Pacific shall not be responsible to reimburse the City for any review or comment to the Utility Work Plans or any modifications thereto or for any other costs incurred by the City or its contractors or agents in connection therewith.

3. In consideration of the City's obligations in connection with the Additional Project Work, Union Pacific agrees, at its cost and expense, to perform or cause to be performed the Utility Work with its own forces or its contractors, subcontractors or agents, employed by written contract, provide all necessary labor, materials, tools and equipment required therefor and to prosecute said work to completion. All construction, protection, relocations and

modifications performed as part of the Utility Work shall be completed in accordance with the Utility Work Plans. The City shall cooperate with Union Pacific to complete the Utility Work, including, prior to the start of and throughout the performance of the Utility Work, issuing to Union Pacific or its contractors, subcontractors or any other agent performing the Utility Work on Union Pacific's behalf any and all permits or licenses necessary to complete the Utility Work, at no cost to Union Pacific. Union Pacific's insurance coverage provisions requiring insurance to be maintained by the contractors, subcontractors or agents performing the Utility Work shall permit the City to be named as an additional insured to such insurance, and Union Pacific shall require the City to be named as an additional insured to such insurance. **All work shall conform to City and other applicable standards and be subject to inspection by the City (or the City's contractors or agents); provided that the City shall provide to Joel Adams, Manager Construction Projects, Union Pacific Railroad Company, 2015 South Willow Ave. Bloomington, CA 92316, five business days prior written notice of its intent to inspect the work and all persons performing the inspections on behalf of the City must at all times during such inspections be accompanied by a Union Pacific representative.**

4. The City and Union Pacific have entered into various licenses, indentures and agreements setting forth the terms and conditions pursuant to which the utility facilities subject to the Utility Work are permitted to reside within Union Pacific's right-of-way (each an "Existing Utility Agreement" and collectively, the "Existing Utility Agreements"). Nothing contained in this Agreement, modifies, amends or otherwise alters the rights and obligations of the parties under the Existing Utility Agreements. To the extent the completed Utility Work requires any Existing Utility Agreement to be amended to accurately reflect modifications caused by the Utility Work, which determination shall be made by Union Pacific in its reasonable discretion, upon completion of the Utility Work, the parties agree to cooperate to enter into such amendments. In no event shall the City pay any additional fees or other consideration to Union Pacific for such amendments to the Existing Utility Agreements, nor shall the City pay a fee or other consideration to Union Pacific for any additional licenses, indentures and agreements otherwise required to accomplish the purposes of this Agreement. Except as expressly set forth herein, this Agreement shall not affect the parties' respective rights and obligations under the Existing Utility Agreements.

5. To the fullest extent permitted by law, each party shall save, indemnify, defend, and hold harmless the other party from any and all liability resulting from any third party claims, suits, actions, arbitration proceedings, administrative proceedings and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorneys' fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the negligence or willful act or omission of the other party or its officials, officers, employees, agents, contractors or consultants. Following a determination of the percentage of fault and/or liability by agreement between the parties or a court of competent jurisdiction, the party responsible for liability to the other party shall indemnify the other party for the percentage of liability determined. Notwithstanding anything to the contrary contained in this Agreement, this Section shall survive termination of this Agreement.

6. The City and Union Pacific agree that each party is obligated to comply with all applicable Federal, State and local laws, statutes, regulations, ordinances and policies. Each party shall be responsible for determining the applicability of any such laws, statutes, regulations, ordinances or policies to that party's responsibilities under this Agreement. Union Pacific is governed by the Federal Railway Labor Act with respect to the wages paid to its employees and will not be subject to state or local minimum wage or prevailing wage laws or regulations. All collective bargaining agreements with employees of Union Pacific (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by Union Pacific pursuant to this Agreement. Wages established through collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. To the extent Federal funds will be expended in connection with the Utility Work, Union Pacific shall require contractors performing the Utility Work to pay the contractor's employees according to prevailing wage rates. Further information regarding prevailing wage rates is attached as Exhibit C.

7. If laws, ordinances, or governmental rules or regulations require any portion of the Utility Work to be inspected and/or tested, Union Pacific shall perform, as part of the Utility Work, the inspection and/or tests so required, as determined by Union Pacific in its reasonable discretion. Without limiting the City's obligation to issue the demolition permit described in the Additional Project Work section below, to the extent that any permits or other approvals are required to be issued by the City in connection with the Utility Work, the City will cooperate with Union Pacific in connection therewith. The City acknowledges that the Utility Work is conditioned upon Union Pacific being able to obtain any and all other approvals required by any governmental entities having jurisdiction over the Utility Work.

8. Upon completion of the Utility Work, as determined by Union Pacific in its sole discretion, Union Pacific shall provide the City with a preliminary notice of completion and upon receipt of such notice the City shall have twenty (20) days thereafter to conduct an inspection of the Utility Work. If the City fails to conduct an inspection within such time, the Utility Work shall be deemed approved by the City. If following timely inspection of the completed Utility Work the City finds the completed Utility Work acceptable, it shall notify Union Pacific in writing that it accepts such Utility Work ("Acceptance Notice"). If the City finds the completed Utility Work unacceptable, then the City shall prepare and provide Union Pacific a "punch list" of items that must be completed or repaired. Union Pacific shall complete such punch list items and upon such completion shall provide written notice to the City of completion of the Utility Work ("Notice of Completion"). The time for completion of any such punch list items shall be subject to coordination with Union Pacific's construction schedule for the Project, which determination shall be made by Union Pacific in its sole discretion. For all inspections by the City (or the City's contractors or agents), the City shall provide Joel Adams (contact information in Section 3 above) five business days prior written notice of its intent to inspect the work and all persons performing the inspections on behalf of the City must at all times during such inspections be accompanied by a Union Pacific representative.

9. Within a reasonable time after either (i) Union Pacific's receipt of the Acceptance Notice or (ii) the City's receipt of a Notice of Completion, Union Pacific shall furnish the City one set of "as-built plans" and execute and deliver to the City a bill of sale for the utility facilities

installed in connection with the Utility Work. Upon Union Pacific's delivery to the City of such plans and bill of sale, all of Union Pacific's obligations with respect to the Utility Work shall be automatically terminated, and Union Pacific shall be released from any such obligations hereunder.

10. It is understood that the Project is a federal aid Project and accordingly, 23 CFR Part 645 is hereby incorporated into this Agreement by reference.

Additional Project Work:

The parties hereby acknowledge and agree:

1. The Murals.

- (a) The parties agree to jointly decide on the murals content.
- (b) Once the mural design has been agreed to by the parties, the City shall commission an artist to paint the murals and issue any license or permit necessary to perform such work.
- (c) Union Pacific shall fund up to \$255,940 for the cost of painting the murals. Union Pacific shall deposit such monies into a separate bank account established by the City (the "Account"). The City shall maintain, administer and use such funds in the Account for the purposes described in Section 1(b).

2. The Landscaping; Lighting and Approach to Southern Railroad Bridge Work.

- (a) Union Pacific agrees to fund \$101,273 of the costs for landscaping, lighting and the work related to the approach to the southern railroad bridge. Union Pacific shall deposit such monies into the Account.
- (b) The City shall maintain, administer and use such funds in the Account as follows:
 - (i) Each of the 29 addresses identified on Schedule 1 attached hereto, shall be entitled to \$240 of the fund's monies (\$6,960 in the aggregate) towards the purchase and installation of not less than two (2) trees to be planted on the property at such address. The City will be required to ensure the distribution and proper use by the residents of such monies.
 - (ii) The City shall be entitled to \$72,313 of the fund's monies to:
 - (A) install 38 new trees within City owned right of way on West K Street and East K Street between 6th Street and Ninth Street;
 - (B) install landscaping along La Cadena Drive;

(C) enhance the existing southern railroad abutments with a treatment such as sandblast medallions;

(D) paint a background color on the abutments of the existing northern and southern railroad bridge structure and the retaining walls on each side of the underpass to the existing stairways south of I-10; and

(E) perform a one-time enhancement of the southern approach to the existing bridge by refreshing the existing hardscape (e.g., washing staining, and/or sealing) and landscape (replacement planting and/or mulch) located on the slopes above the sidewalk.

(iii) The City shall be entitled to \$22,000 of the fund's monies to install lighting underneath the La Cadena overpass.

3. The American Railway Express Company Building and Southern Pacific Passenger Depot (collectively, the "Depot").

(a) Union Pacific agrees, at its sole cost and expense, and prior to the demolition of the Depot and related buildings, to:

(i) search its archives for historic photographs of the Depot;

(ii) commission a photographer to take photographs of the Depot; and

(iii) commission a LIDAR survey of the Depot, the results of which shall be presented digitally and on a set of plans.

(b) The City agrees that once the above Depot work has been completed, it will, upon request, issue the appropriate permits or licenses to allow the demolition of the Depot and related buildings.

(c) The parties agree that each of the City and Union Pacific shall be entitled to copies of the photographs and the LIDAR survey.

(d) Union Pacific agrees to fund \$2,000 for the fabrication and installation of a historical marker to commemorate the Depot. Union Pacific shall deposit such monies into the Account. The City shall maintain, administer and use such funds in the Account for the fabrication and installation of the historical marker.

4. Wall Treatments. Union Pacific shall incorporate into the final designs for the Project the wall treatment design plans attached hereto as Exhibit D and shall construct and install the Wall Treatments in accordance such design plans.

5. Graffiti Remediation for Wall Treatments. Union Pacific and the City agree to the graffiti remediation provisions set forth in Exhibit E attached hereto.

The Environmental Assessment attached to that certain Finding of No Significant Impact for Colton Crossing Rail to Rail Grade Separation Project issued by the Federal Highway Administration on May 26, 2011 (the "EA") identifies performance of certain mitigation activities. The City acknowledges and agrees that the funds being delivered to the City hereunder are being delivered with the understanding that the performance of the Additional Work related thereto is intended to satisfy the mitigation activities in the EA that correspond with such Additional Work.

The Summary of Work, Utility Work and Additional Project Work described and summarized herein does not consist of or assume all of the mitigation activities required by the EA. Any additional measures required under the EA that do not correspond with the work contemplated hereunder, are outside the scope of this Agreement.

Notwithstanding any other provision herein, Union Pacific may terminate this Agreement at any time, with or without cause, by giving thirty (30) days prior written notice to the City. If not earlier terminated, this Agreement shall automatically terminate on June 30, 2014. In the event of a termination, the parties shall be relieved of all obligations hereunder, except with respect to those obligations that expressly survive the termination of this Agreement.

The invalidity or unenforceability of any particular provision of this Agreement shall not affect or limit the validity or enforceability of the remaining provisions of this Agreement.

By signature below, the parties agree to the provisions of this Agreement effective as of the date first set forth above.

Union Pacific:

By: [Signature]
Name: LANCE FERRELL
Title: EVP-D

City of Colton:

By: [Signature]
Name: José Zamora
Title: Mayor

ATTEST:

[Signature]
CITY CLERK
CITY OF COLTON

APPROVED AS TO FORM

[Signature]
CITY ATTORNEY
CITY OF COLTON

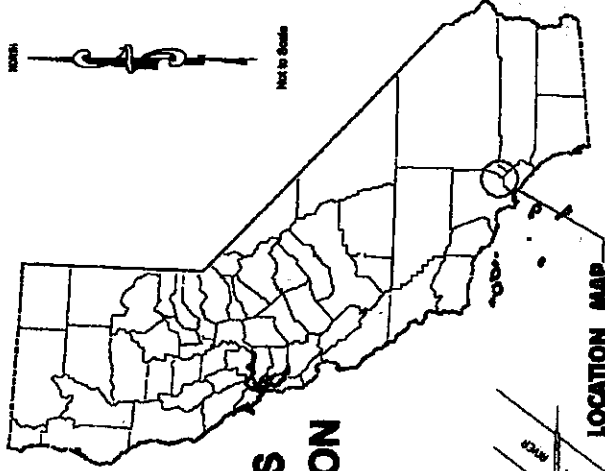
Exhibit A

**Final Plans and Specifications for Utility Work
[attached hereto]**

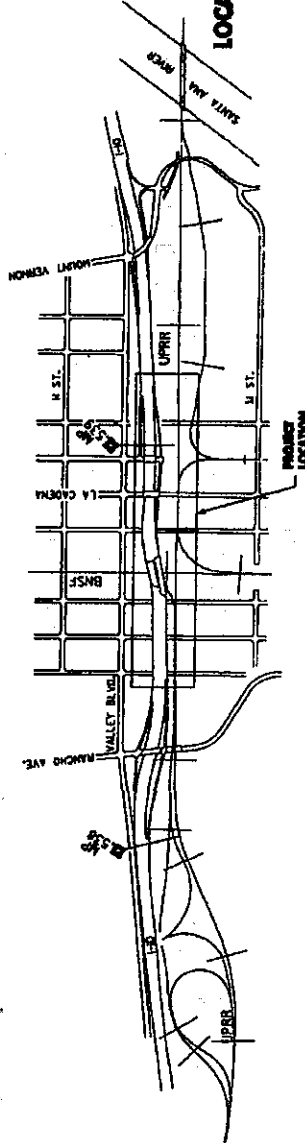
ENGINEERING DESIGN & CONSTRUCTION

COLTON, CALIFORNIA
MP 537.7 TO MP 539.7

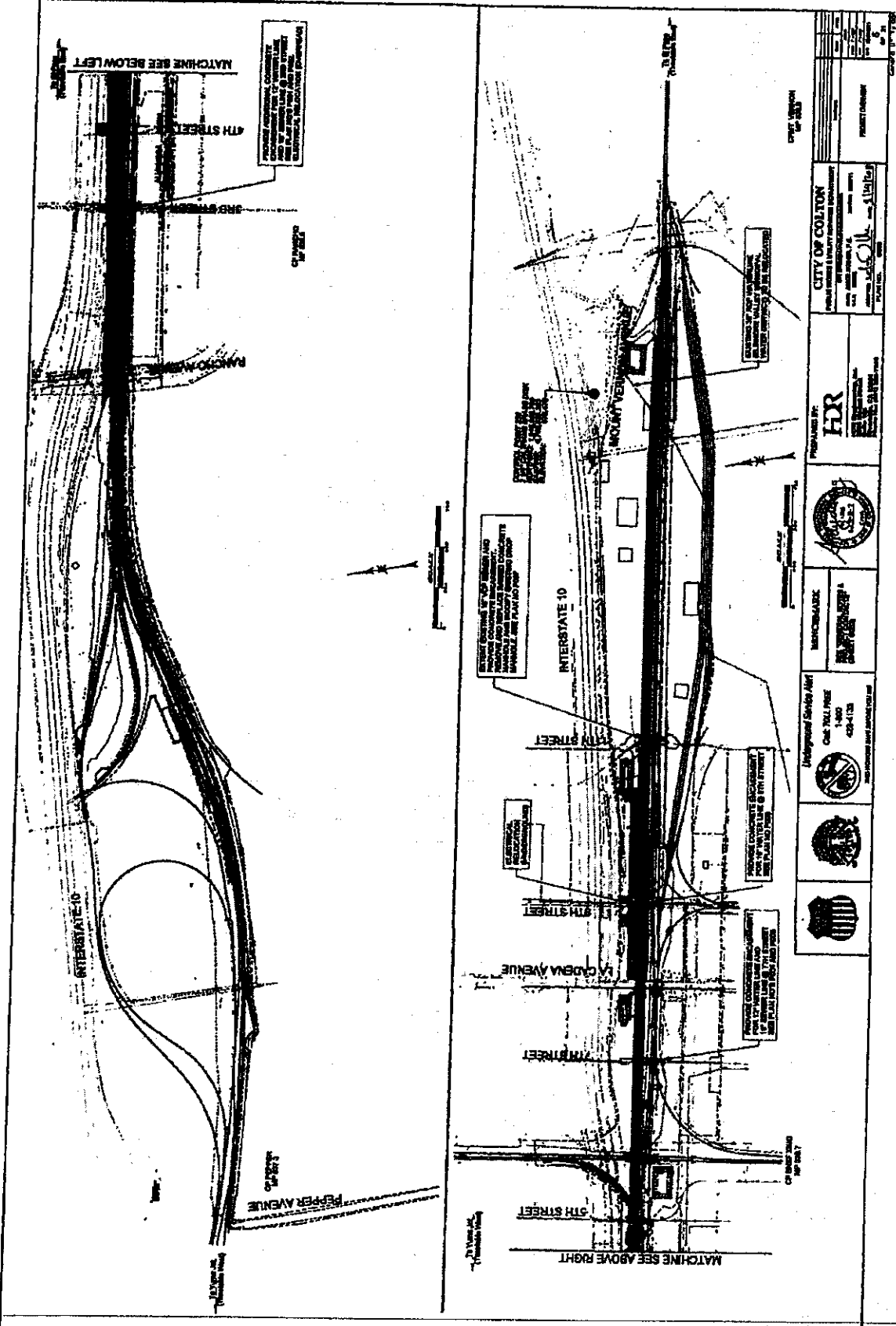
ALHAMBRA, MOJAVE, AND YUMA SUBDIVISIONS FLYOVER OF BNSF SAN BERNARDINO SUBDIVISION



LOCATION MAP



City of Colton Public Works & Safety Department 1000 W. Main St., Colton, CA 92316 Phone: (951) 261-1111	Engineering & Construction 1000 W. Main St., Colton, CA 92316 Phone: (951) 261-1111	PROPOSED BY: HR HARRIS & RICHARDS 1000 W. Main St., Colton, CA 92316 Phone: (951) 261-1111	PROJECT LOCATION: RANCH AVE. / VALLEY BLVD. / BNSF / LA COLTON / N. ST. / M. ST. / HOMER LUTON / UPRR	CITY OF COLTON 1000 W. Main St., Colton, CA 92316 Phone: (951) 261-1111



NATCHLINE SEE BELOW LEFT

NATCHLINE SEE ABOVE RIGHT

PROJECT NO.	DATE
100-100000000	10/1/00
PROJECT NAME	PROJECT LOCATION
INTERCHANGING I-10 AND 15TH STREET	COLTON, MISSISSIPPI

CITY OF COLTON
 MISSISSIPPI
 OFFICE OF THE CITY ENGINEER
 100 NORTH MAIN STREET
 COLTON, MISSISSIPPI 39024

PREPARED BY
FDR
 ENGINEERING & ARCHITECTURE
 100 NORTH MAIN STREET
 COLTON, MISSISSIPPI 39024



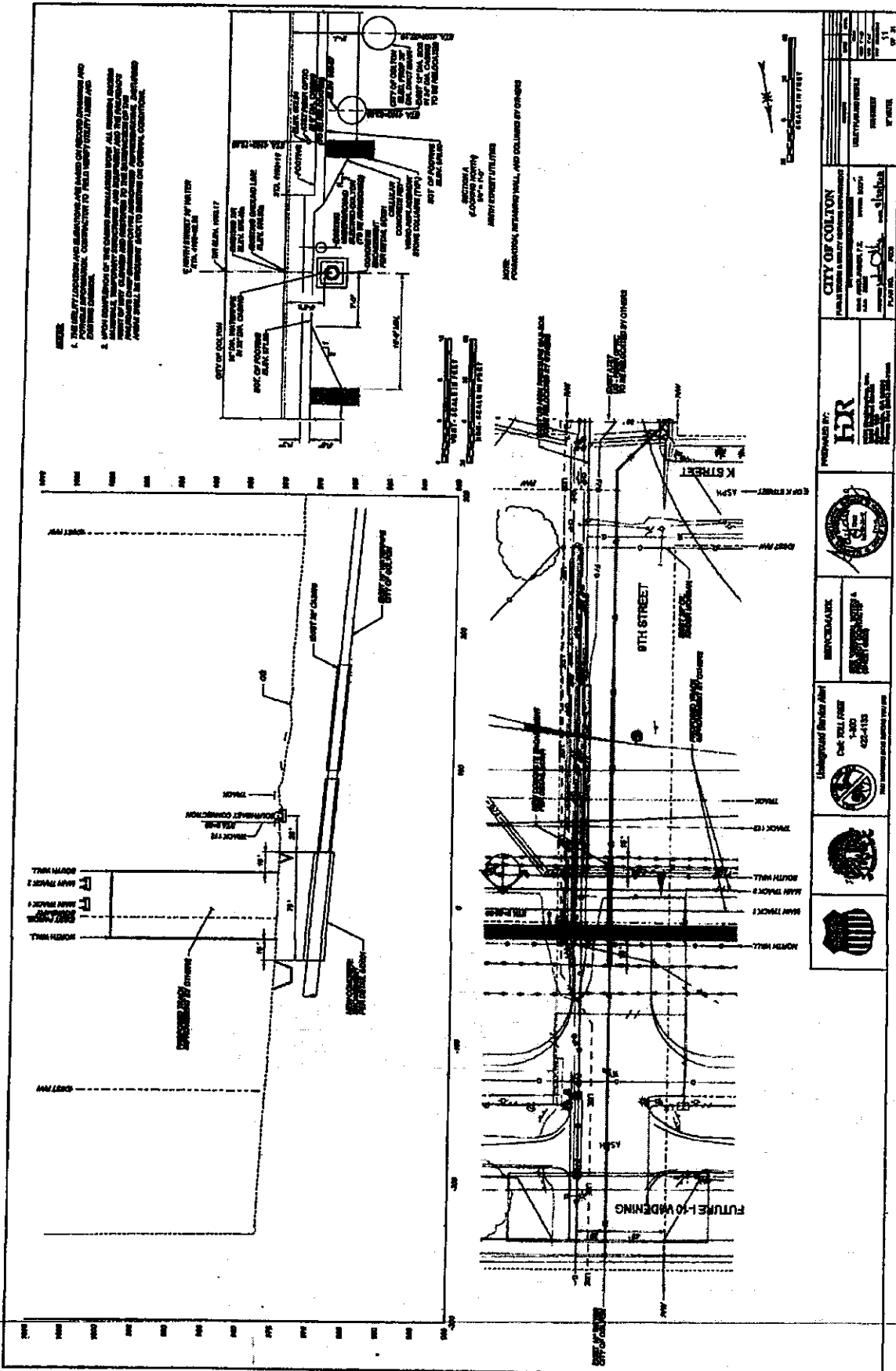
REGISTERED PROFESSIONAL ENGINEER
 STATE OF MISSISSIPPI
 LICENSE NO. 100000000

Independent Service Alert
 ONE TOLL FREE
 1-800-438-4125

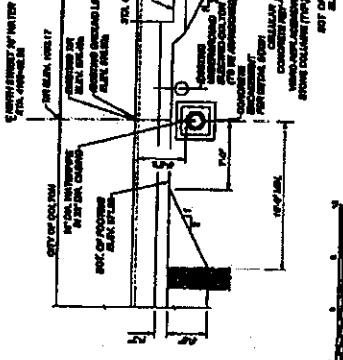


DATE: 10/1/00
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

10/1/00 10:00 AM



1. THE LAYOUT AND DIMENSIONS ARE BASED ON THE RECORD DRAWINGS AND SURVEY DATA FOR THE PROJECT. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DIMENSIONS OF ALL UTILITIES AND STRUCTURES BEFORE CONSTRUCTION. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLTON AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) BEFORE CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) BEFORE CONSTRUCTION.



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PROJECT NO.	1000
DATE	10/1/00
BY	W. WHITE
CHECKED BY	
APPROVED BY	
CITY OF COLTON	
UTILITY ENGINEER	

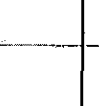
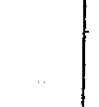
CITY OF COLTON
 PUBLIC UTILITIES AND WATER DEPARTMENT
 1000 MAIN STREET, COLTON, CA 95307
 (530) 932-1100
 FAX (530) 932-1101
 WWW.CITYOFCOLTON.CA.GOV

PREPARED BY:
HR
 HERRING CONSULTANTS
 1000 MAIN STREET, COLTON, CA 95307
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 FAX (530) 932-1101
 WWW.HERRINGCONSULTANTS.COM

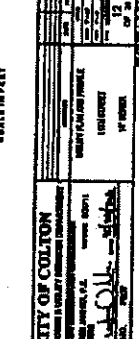
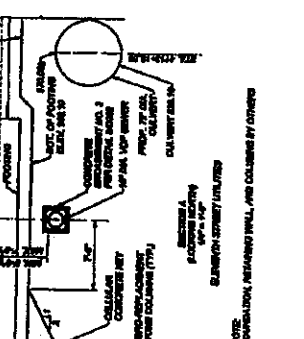
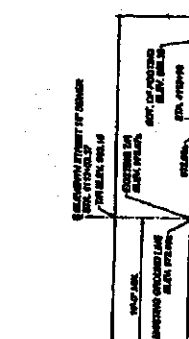


REGISTERED PROFESSIONAL ENGINEER
 CIVIL ENGINEERING
 STATE OF CALIFORNIA
 NO. 10000

THE ENGINEERING FIRM'S OFFICE
 1000 MAIN STREET
 COLTON, CA 95307
 (530) 932-1100
 FAX (530) 932-1101
 WWW.HERRINGCONSULTANTS.COM



- NOTES:**
1. THE CITY ENGINEER AND BOARD OF PUBLIC WORKS HAS REVIEWED AND APPROVED THE GENERAL PLAN AND SPECIFICATIONS, AND APPROVED THE FINAL CONTRACT DOCUMENTS.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY ENGINEER AND BOARD OF PUBLIC WORKS, AND FOR OBTAINING ALL NECESSARY PERMITS FROM THE STATE ENGINEER AND BOARD OF PUBLIC WORKS.
 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY ENGINEER AND BOARD OF PUBLIC WORKS, AND FOR OBTAINING ALL NECESSARY PERMITS FROM THE STATE ENGINEER AND BOARD OF PUBLIC WORKS.
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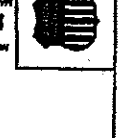
CITY OF COLTON
 ENGINEER
 100 WEST MAIN STREET
 COLTON, CALIFORNIA 95310
 PHONE: (530) 932-1111
 FAX: (530) 932-1112



PREPARED BY:
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 HATCH RASMUSSEN
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 FAX: (530) 932-1112



UNDERGROUND SERVICE AGENCY
 CAR TALK SERVICE
 100 WEST MAIN STREET
 COLTON, CALIFORNIA 95310
 PHONE: (530) 932-1111
 FAX: (530) 932-1112

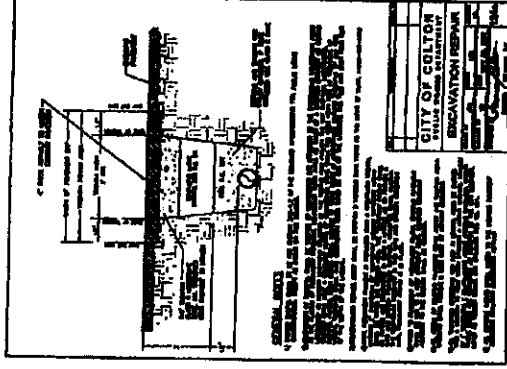


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 PHONE: (530) 932-1111
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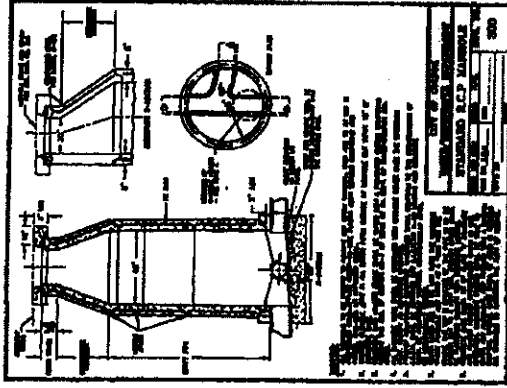


UNDERGROUND SERVICE AGENCY
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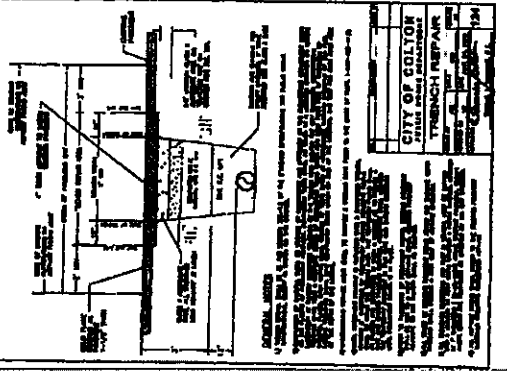
UNDERGROUND SERVICE AGENCY
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 PHONE: (530) 932-1111
 FAX: (530) 932-1112



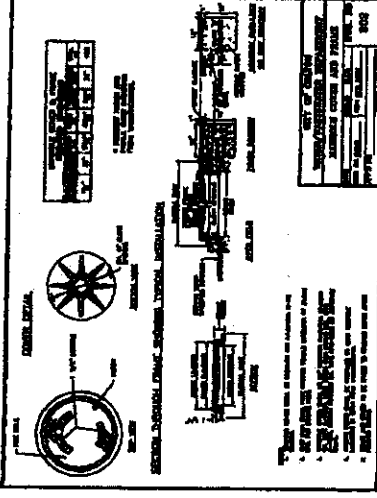
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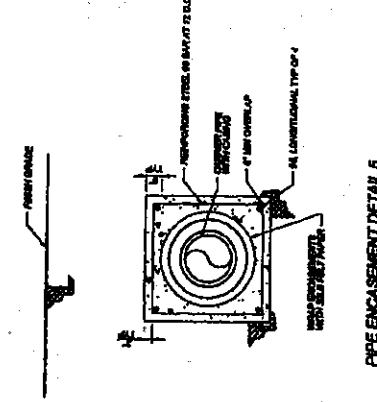
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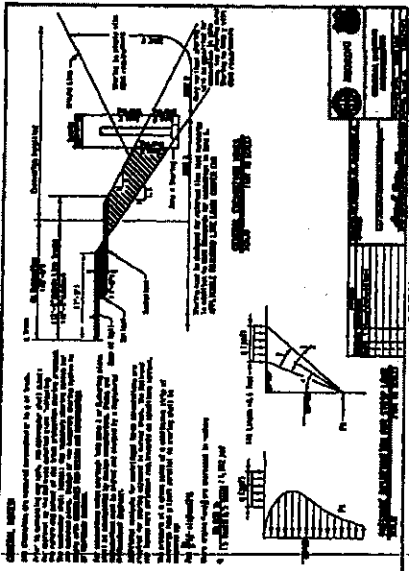
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DETAIL 4

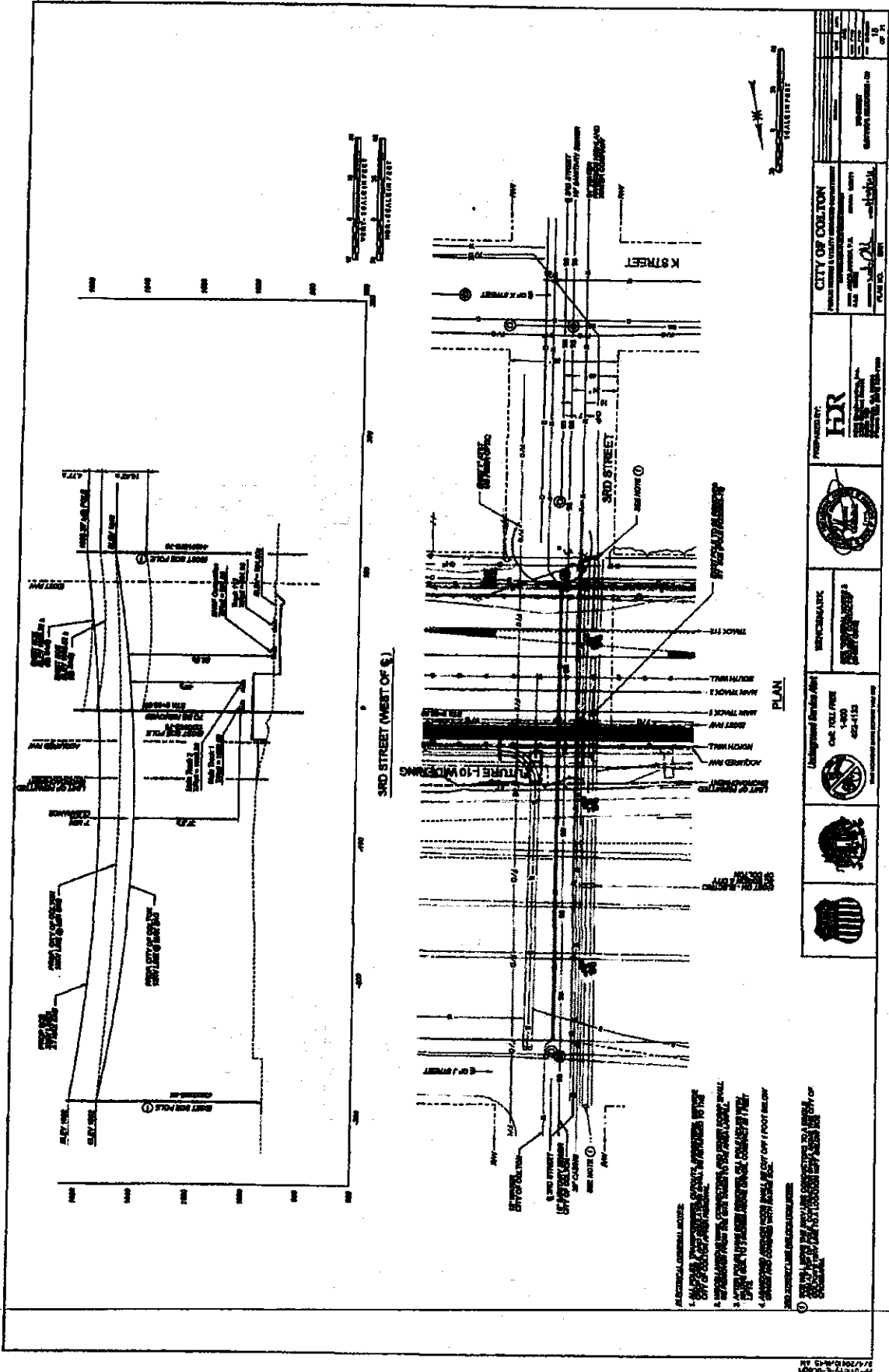


DETAIL 5



DETAIL 6

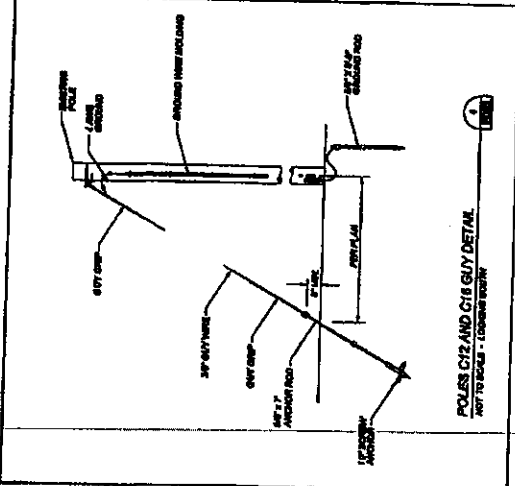
	CITY OF COLTON PUBLIC WORKS & UTILITY DEPARTMENT 1000 W. COLTON AVENUE COLTON, CA 92324 PHONE: (951) 261-1000 FAX: (951) 261-1001	HR HERRING RICHARDS ENGINEERS ARCHITECTS 1000 W. COLTON AVENUE COLTON, CA 92324 PHONE: (951) 261-1000 FAX: (951) 261-1001					
	PREPARED BY: HR HERRING RICHARDS ENGINEERS ARCHITECTS 1000 W. COLTON AVENUE COLTON, CA 92324 PHONE: (951) 261-1000 FAX: (951) 261-1001	CITY OF COLTON PUBLIC WORKS & UTILITY DEPARTMENT 1000 W. COLTON AVENUE COLTON, CA 92324 PHONE: (951) 261-1000 FAX: (951) 261-1001	PROJECT NO.: SHEET NO.:	DATE:	DRAWN BY:	CHECKED BY:	APPROVED BY:



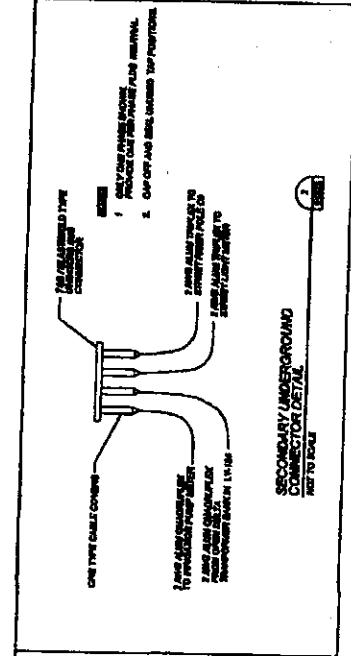
PLAN

- GENERAL NOTES:**
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 2. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY.
 3. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 4 FEET BELOW FINISH GRADE.
 4. ALL UTILITIES SHALL BE PROTECTED BY A 1 FOOT BENCH.
- SEE SHEET 100-100-100-100 FOR CONTINUATION

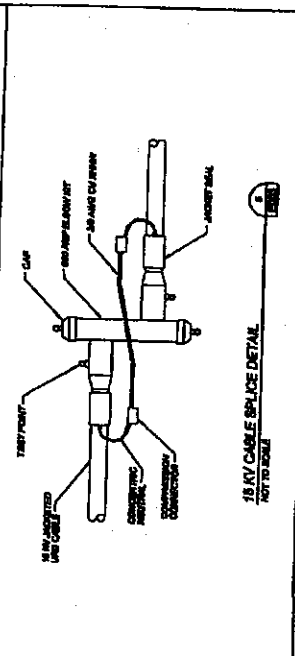
	CITY OF COLTON PUBLIC WORKS & UTILITY DEPARTMENT 1000 COLTON AVENUE COLTON, CALIFORNIA 95711 PHONE: (925) 261-1111 FAX: (925) 261-1112 WWW: COLTON.CA.GOV	PREPARED BY: 	
	CONTRACT NO.: 100-100-100-100 DATE: 10/1/2010	SCALE: AS SHOWN DATE: 10/1/2010	



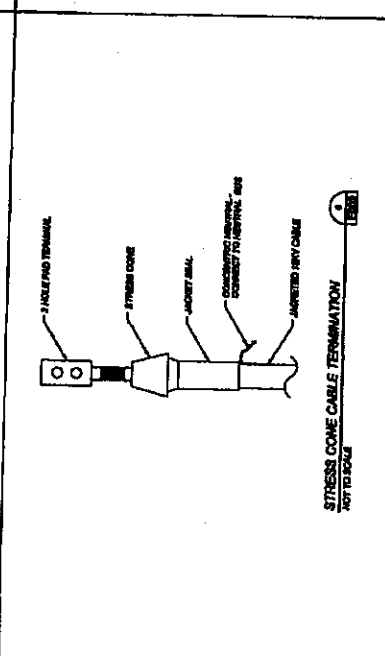
POLES C12 AND C18 GUY DETAIL
NOT TO SCALE - LOOKING NORTH



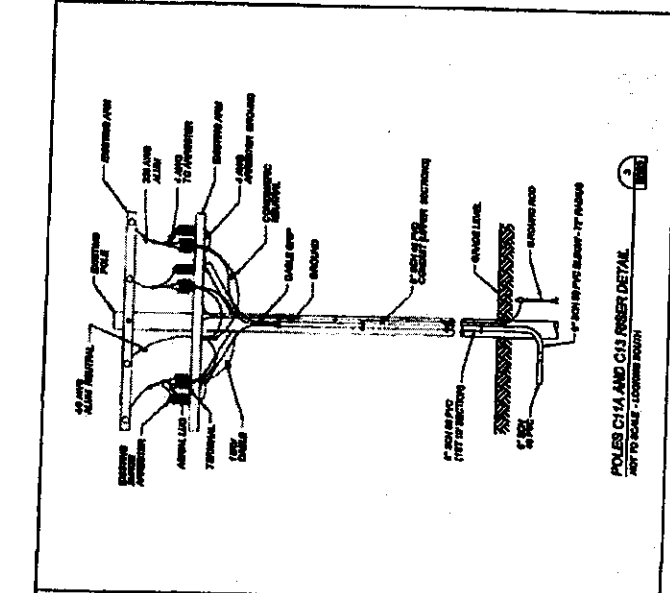
SECONDARY UNDERGROUND CONNECTOR DETAIL
NOT TO SCALE



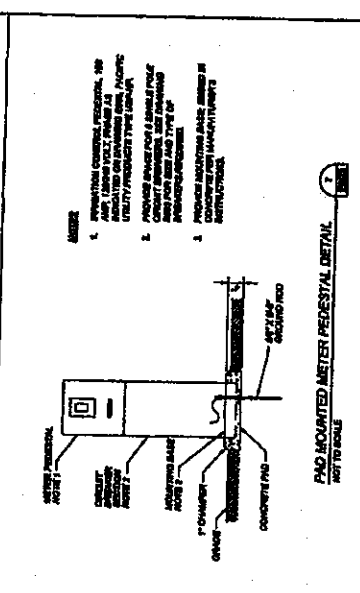
15 KV CABLE SPICE DETAIL
NOT TO SCALE



STRESS CONE CABLE TERMINATION
NOT TO SCALE



POLES C14 AND C18 RISER DETAIL
NOT TO SCALE - LOOKING NORTH



P40 MOUNTED METER PEDESTAL DETAIL
NOT TO SCALE

- NOTES**
1. PROVIDE CONDUIT PROTECTORS, 1/2\"/>

	<p>CITY OF COLTON 1000 COLTON AVENUE COLTON, CA 92316 TEL: 951-261-1000</p>
	<p>APPROVED BY: HJR HARRIS J. RAY CITY MANAGER</p>
<p>UNDERGROUND SERVICE ALERT ONE CALL FREE 1-800-4-A-SHIELD 422-7122</p>	<p>RECYCLED PAPER PRINTED ON RECYCLED PAPER</p>
<p>PROJECT NO. 15-001 DATE: 10/15/15</p>	<p>DATE: 10/15/15</p>

Exhibit B

Letter Summarizing Additional Work
[attached hereto]



San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbog.gov



• San Bernardino County Transportation Consultant • San Bernardino County Transportation Authority
• San Bernardino County Congestion Management Agency • Service Authority for Freeway Emergencies

March 18, 2011

Mr. Rod Foster
City of Colton
650 N. La Cadena Drive
Colton, CA 92324

Regarding: Colton Crossing Grade Separation Project
UPRR's Commitments

Dear Rod,

During our last Council Sub-Committee meeting we discussed and concurrence was reached on the aesthetic treatment of the Colton Crossing structure and other aesthetic improvements including the La Cadena Drive underpass. The final design of the Colton Crossing is proceeding and we have been working with the project team to have these aesthetic improvements incorporated into the design. The topics addressed below include Colton Crossing wall treatment, La Cadena Drive underpass, landscaping, and the American Railway Express Company Building.

Colton Crossing Wall Treatment

At the February 22, 2011 City Council Sub-Committee meeting HDR provided a PowerPoint presentation of the proposed wall treatment on the elevated rail structure. The treatments and textures have been influenced by the San Salvador Church and designed in such a manner to reduce graffiti. While the north and south side of the structure do not have the same design, the San Salvador Church elements provide a common thread to link the two sides. Attached (Attachment A) are two slides from the PowerPoint presentation of both sides of the structure. The final design team is currently drawing plans to implement these designs concurred to by the Sub-Committee.

La Cadena Drive Underpass

The La Cadena Drive Underpass will ultimately include three bridges. The southern bridge currently exists and will remain in place to accommodate the existing yard connector track and SE quadrant BNSF connector track. The middle bridge will be the new crossing of the elevated rail structure over La Cadena Drive. Finally, the northern bridge is the existing I-10 crossing.

During the Sub-Committee meeting we presented a rendering of La Cadena Drive that showed improvements to the existing structure and the proposed design of the new structure. As discussed and agreed to, the Colton Crossing project will incorporate the components shown in that rendering, which is included as Attachment B, as follows:

- Enhancement to the existing southern railroad bridge abutments with a treatment such as sandblasting medallions onto the face.
- Paint a background color on the abutments of the existing southern railroad bridge structure and the retaining walls on each side of the underpass to the existing stairways south of I-10.
- Implement the proposed design treatment on the new structure.
- Perform a one-time enhancement of the southern approach to the existing bridge by refreshing the existing hardscape (i.e. washing, staining, and/or sealing) and landscape (replacement planting and/or mulch) located on the slopes above the sidewalk.

In addition to the above, the project will fund the painting of two murals, one on each side of La Cadena Drive between the existing southern railroad bridge abutments to the existing stairways south of I-10. The area available for murals will be located approximately 10 feet above existing grade to discourage graffiti and will measure approximately 275 feet by 16 feet. There are several options for the design of the murals. One is to incorporate a railroad theme, such as depicting the American Railway Express Company building or something similar. The other option is to have local artists contribute a design that has Colton themes. Further discussions between UPRR and the City will be necessary to finalize the details of the implementation, cost, and design of the murals.

Landscaping

The Environmental Documents analyzed the opportunity for new landscaping in the area of the elevated structure and determined that the only viable location for landscaping exists on private property and within City right-of-way. Therefore, UPRR will create a fund for the eligible residents and the City to purchase and install landscaping as follows.

The residential areas generally include those lots north of West K Street from Rancho Avenue to 5th Street. Our preliminary research shows approximately 29 residential lots are eligible. The addresses of those lots are included in Attachment C.

Based on our aerial photograph research, the ability of each residential lot to handle additional landscaping varies. Some lots appear to be almost completely covered with either structure or driveway. Other lots are more open and could accept two or three trees

depending on the species. On average, the typical wholesale cost of a 15-gallon tree is \$30 to \$50. The cost of installation is similar to the tree cost. Therefore, each eligible residence would receive a budget of \$240 for the purchase and installation of three trees at \$40 per tree for purchase and \$40 per tree for installation. Of course a resident could choose to purchase two more expensive trees and remain within the allotment. Therefore, UPRR will commit a budget of \$6,960 for residential landscaping.

City right-of-way occurs along West K Street, between the BNSF tracks and La Cadena Drive. Additional right-of-way occurs on East K Street between La Cadena Drive and the 9th Street tracks. The length of right-of-way along West K Street is approximately 710 linear feet and East K Street is approximately 425 linear feet. Assuming street trees at 30 feet on center, this right-of-way would support 38 new trees. Based on similar values as discussed above, UPRR will commit an additional landscape budget of \$3,040 for City right-of-way street trees that are drought tolerant and consistent with the City's Tree Replacement Palette.

For both the residential and City right-of-way landscaping areas, UPRR will not be responsible for installation, irrigation, or ongoing maintenance. All work would be performed by the City or private residents and/or their contractors.

American Railway Express Company Building

The HDR/LSA team conducted extensive analysis of potential historical and cultural resources in the project area. That analysis determined that the American Railway Express Company building is not eligible for State or Federal listing. The Sub-Committee expressed concern that while the structure may not be eligible for State or Federal listing, the structure is important to the community. Therefore, UPRR has committed to assemble a photographic and architectural survey of the American Railway Express Company Building as follows:

- UPRR will search its archives for historic photographs of the structure.
- UPRR will commission a photographer to take photos of the existing structure in high quality digital format and those photos will be printed on resin coated paper and included on an archival gold CD.
- UPRR will commission a LIDAR survey of the existing structure. The LIDAR survey is a laser technology that sweeps the structure and generates a 3 dimensional model. The detail can be as tight as 1/8". This survey would be presented digitally and on a set of plans.

The information prepared by UPRR will allow the City to have excellent historical documentation of the structure and if an opportunity arises in the future, the City could use the plans to recreate the structure at a different location as part of a separate project.

UPRR's Commitments
Page 4
March 18, 2011

We anticipate this information could be presented to the City sometime this summer, prior to the start of construction.

The Colton Crossing is on schedule to begin construction this fall. We expect a three-year construction schedule. The HDR final design team is currently preparing the construction drawings and all of the details are being pulled together. The topics in this letter are important and I want to make sure all parties agree and have a shared understanding as to how these issues will be addressed. As more details become available I will let you know. If you have any questions or comments, please give me a call.

Sincerely,

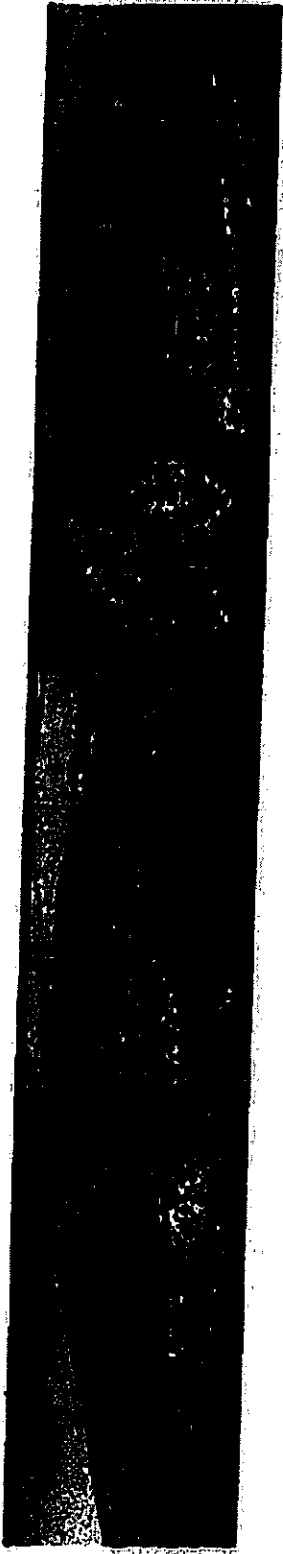


Garry Cohoe
Director of Freeway Construction

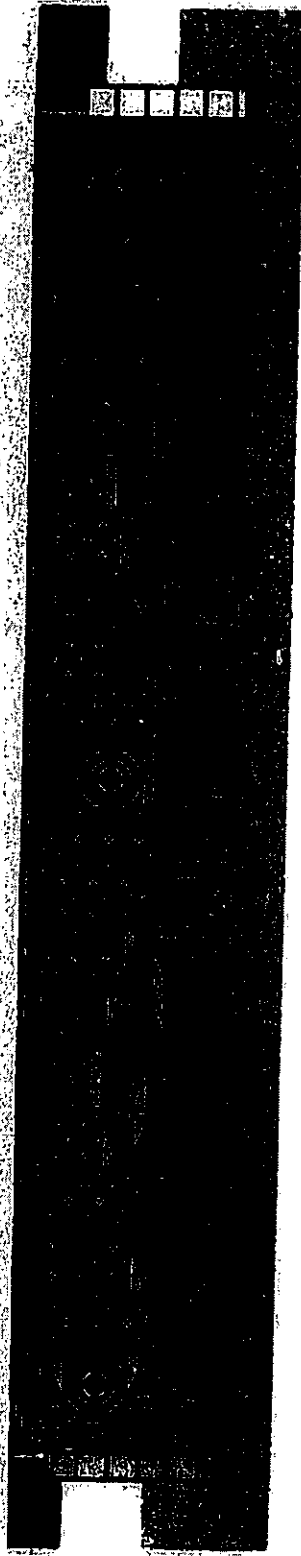
Attachments:

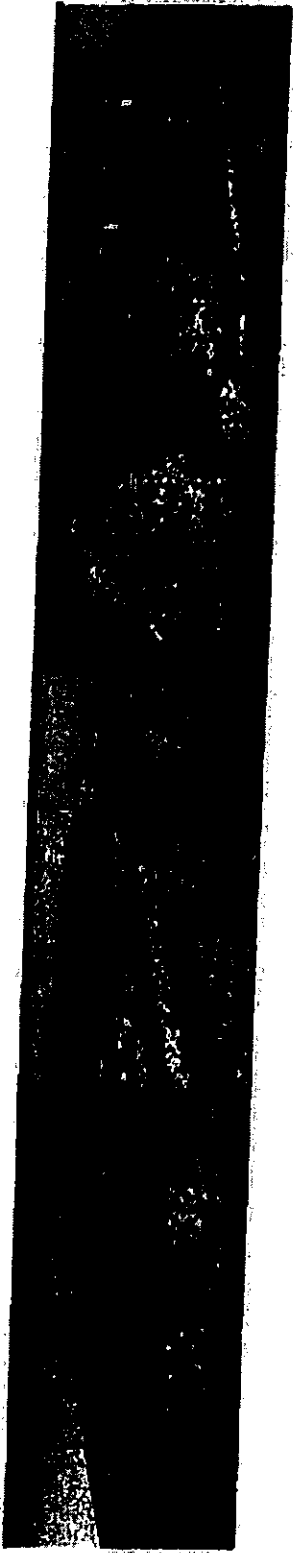
- A: Graphics depicting aesthetic treatment on the structure**
- B: La Cadena Underpass concept**
- C: List of resident addresses eligible for landscaping program**

Attachment A

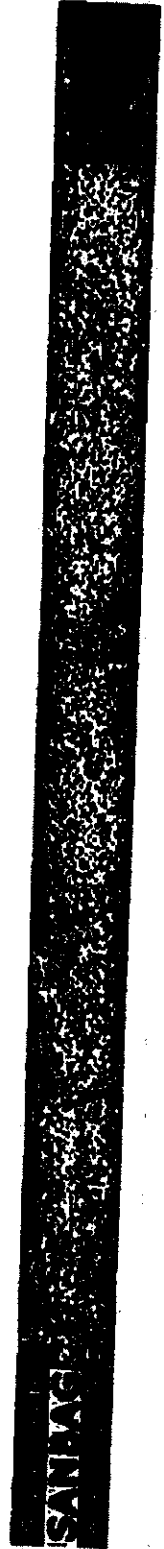
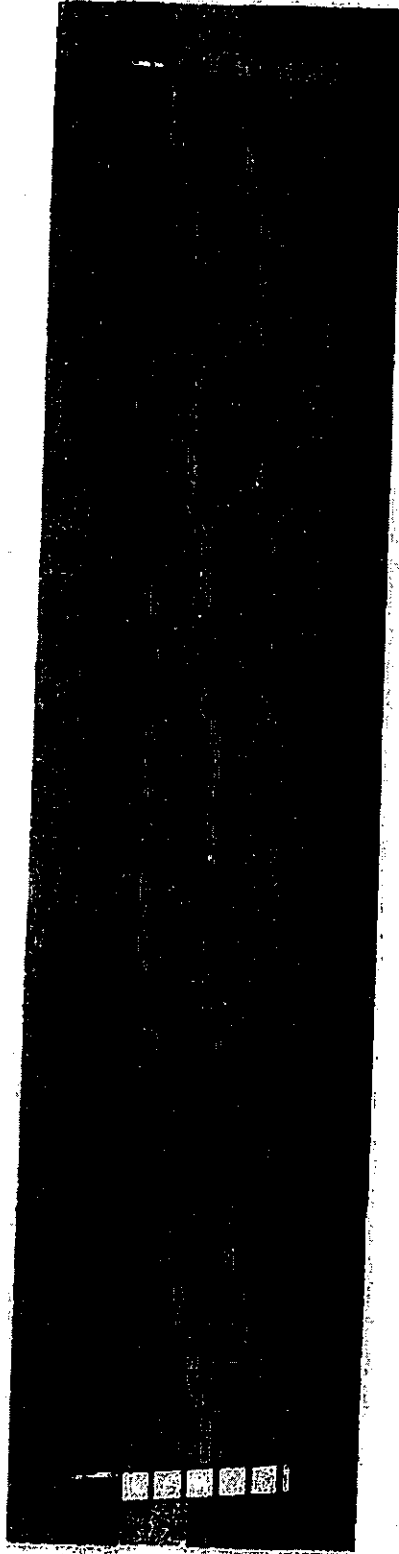


• Example of wall design on south side of the structure:





•Example of wall design on north side of the structure:



Attachment B

•Example of La Cadena Drive Underpass treatment option:



Government's
SANBAG

Residences Eligible for Landscaping

781 W. K Street
775 W. K Street
745 W. K Street
735 W. K Street
725 W. K Street
709 W. K Street
705 W. K Street
699 W. K Street
697 W. K Street
687 W. K Street
681 W. K Street
649 W. K Street
639 W. K Street
125 S. 3rd Street
181 S. 3rd Street
191 S. 3rd Street
595 W. K Street
579 W. K Street
565 W. K Street
547 W. K Street
537 W. K Street
523 W. K Street
511 W. K Street
503 W. K Street
146 S. 4th Street
483 W. K Street
481 W. K Street
469 W. K Street
457 W. K Street
264 W. K Street
252 W. K Street
248 W. K Street
192 W. K Street
** W. K Street
** E. K Street
148 E. K Street
162 E. K Street
** E. K Street

** The address numbers are unknown at this time.

Exhibit C

PREVAILING WAGES

Contractors performing any work pursuant to this Agreement shall be required to comply with the applicable portions of prevailing wages.

The Director of the California Department of Industrial Relations determines the general prevailing wage rates. Obtain the wage rates at the DIR Web site, <http://www.dir.ca.gov>.

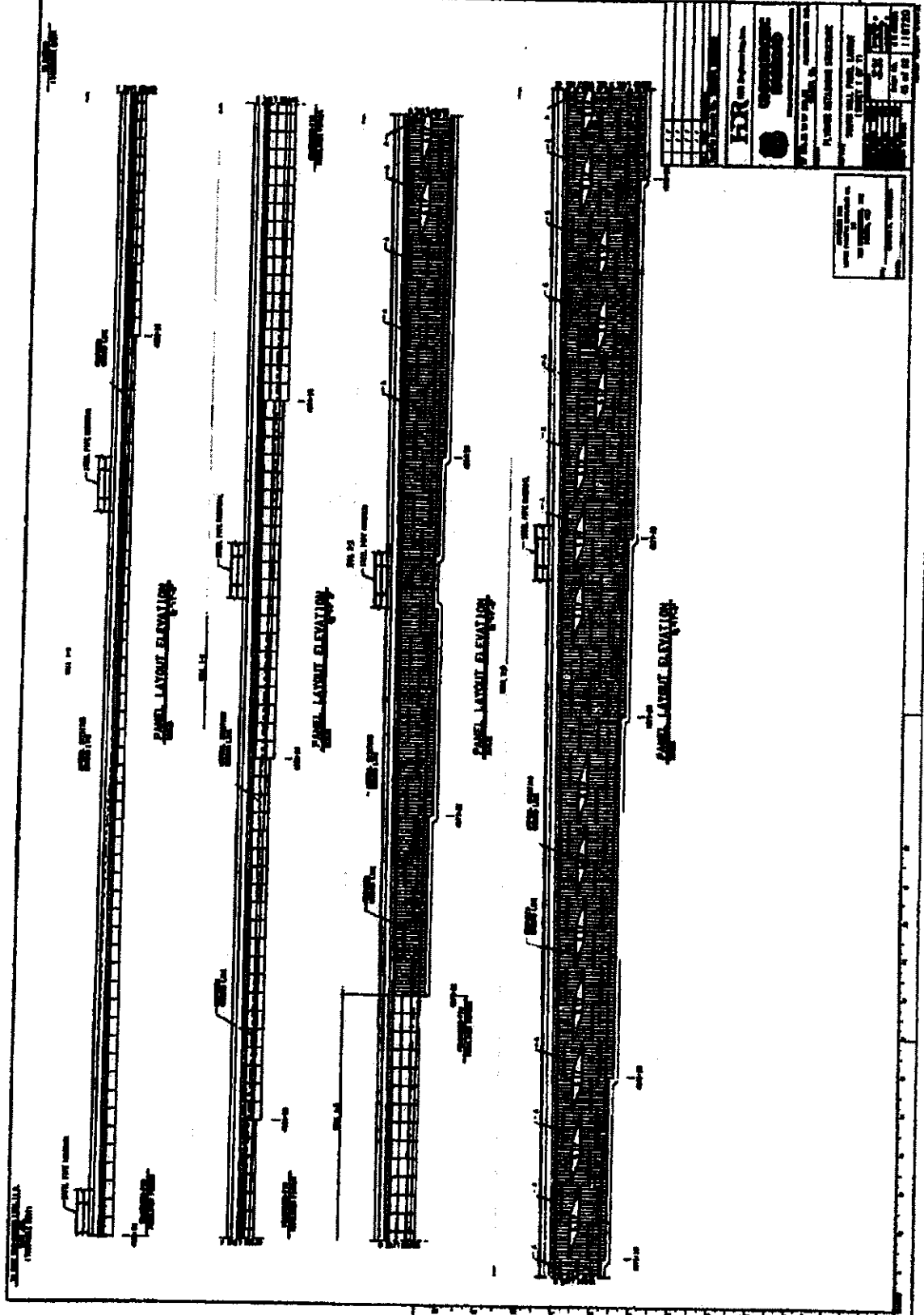
The federal minimum wage rates as determined by the United States Secretary of Labor are available at <http://www.dot.ca.gov/hq/esc/oe/federal-wages>.

If the minimum wage rates as determined by the United States Secretary of Labor differs from the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the contractor and subcontractors must not pay less than the higher wage rate. Lower State wage rates not specifically included in the Federal minimum wage determinations will not be accepted. This includes helper, or other classifications based on hours of experience, or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the contractor and subcontractors, the contractor and subcontractors must not pay less than the Federal minimum wage rate that most closely approximates the duties of the employees in question.

Changes in general prevailing wage determinations apply to the contract when the Director of Industrial Relations has issued them at least 10 days before advertisement (Labor Code § 1773.6 and 8 CA Code of Regs 16204).

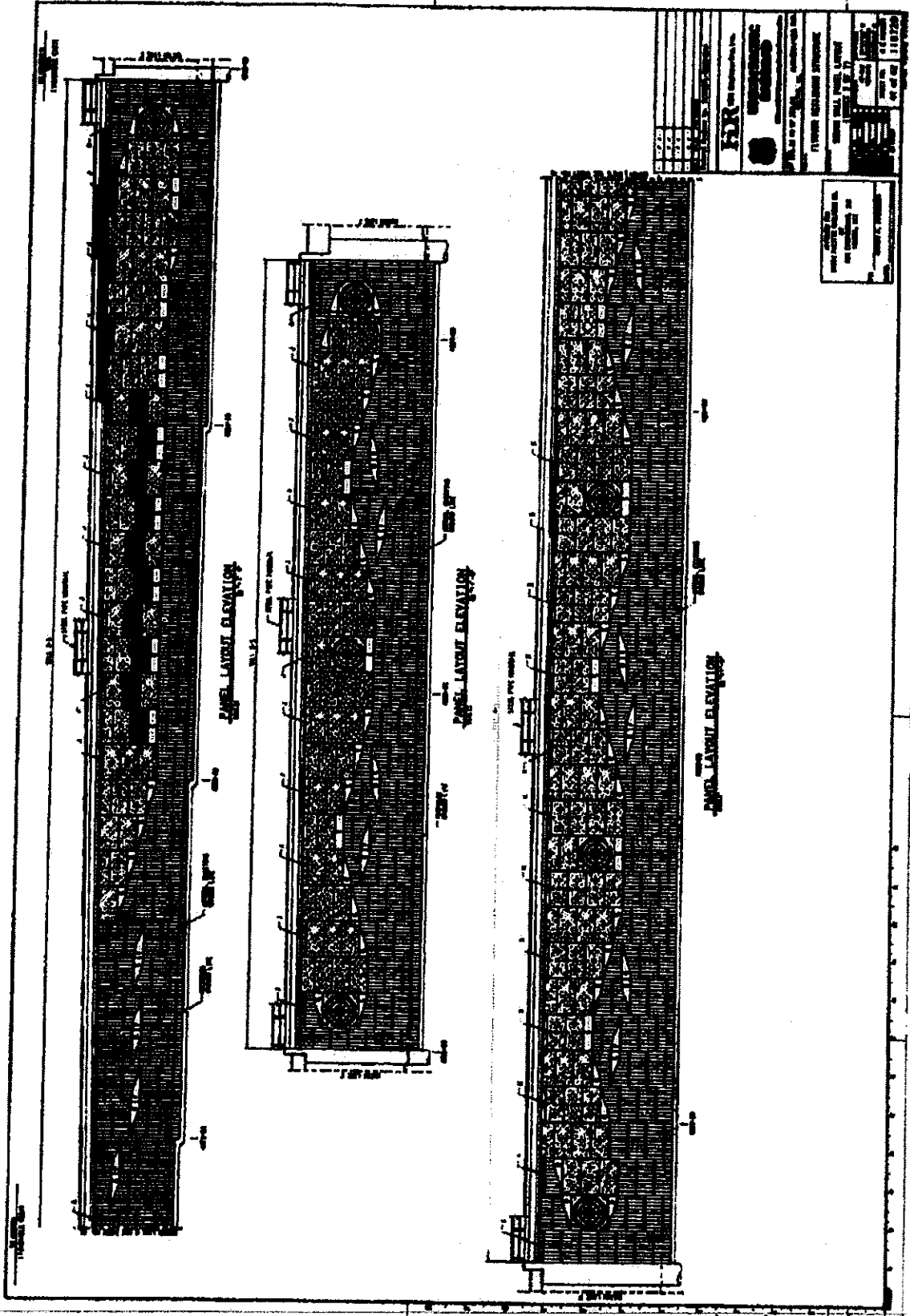
Exhibit D

**Wall Treatment Design Plans
[attached hereto]**



FEDERAL BUREAU OF INVESTIGATION
 U.S. DEPARTMENT OF JUSTICE
 WASHINGTON, D. C. 20535
 FILE NO. 100-442887
 PAGE NO. 118720

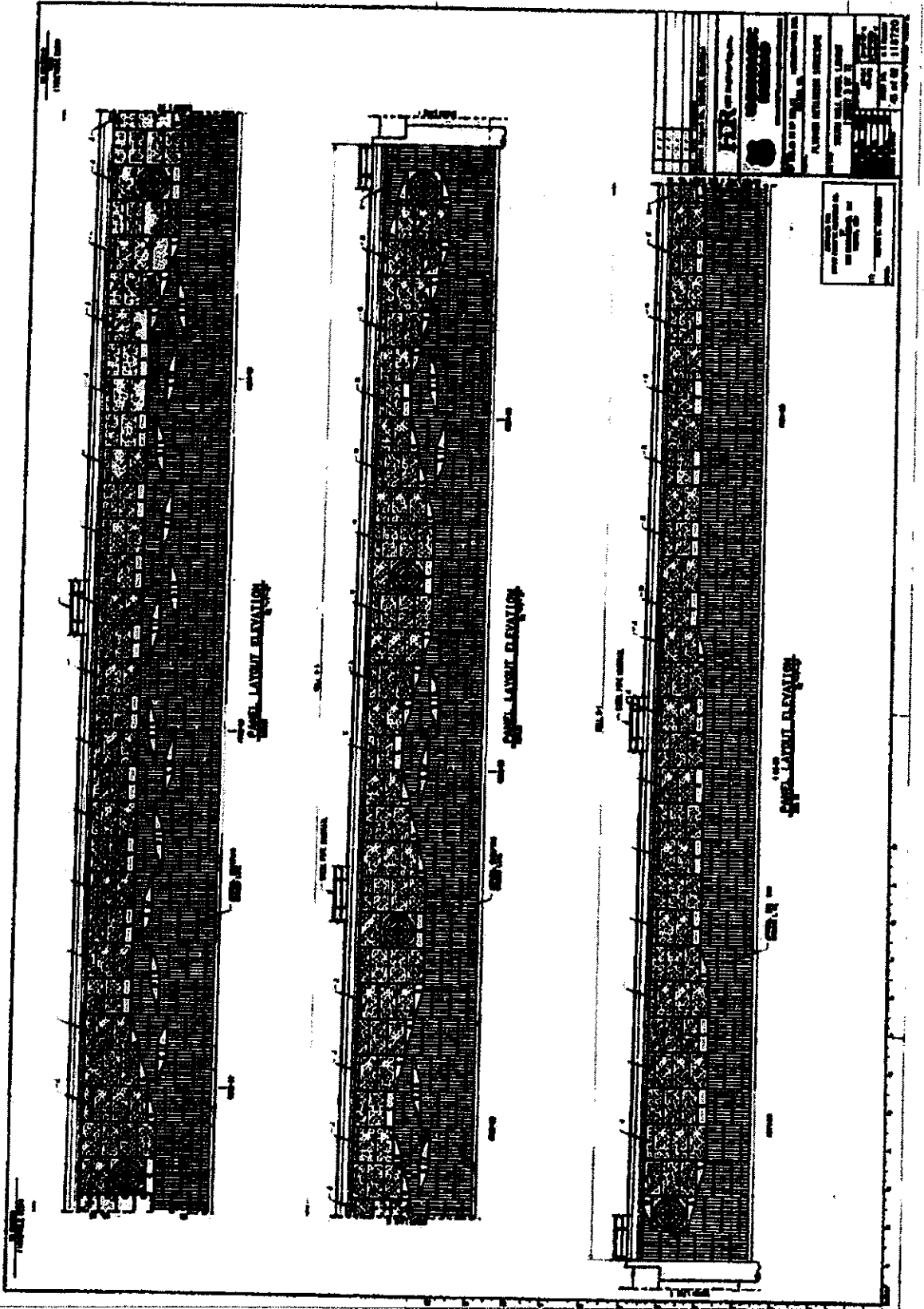
THIS DOCUMENT IS UNCLASSIFIED
 DATE 08-14-2013 BY 60322
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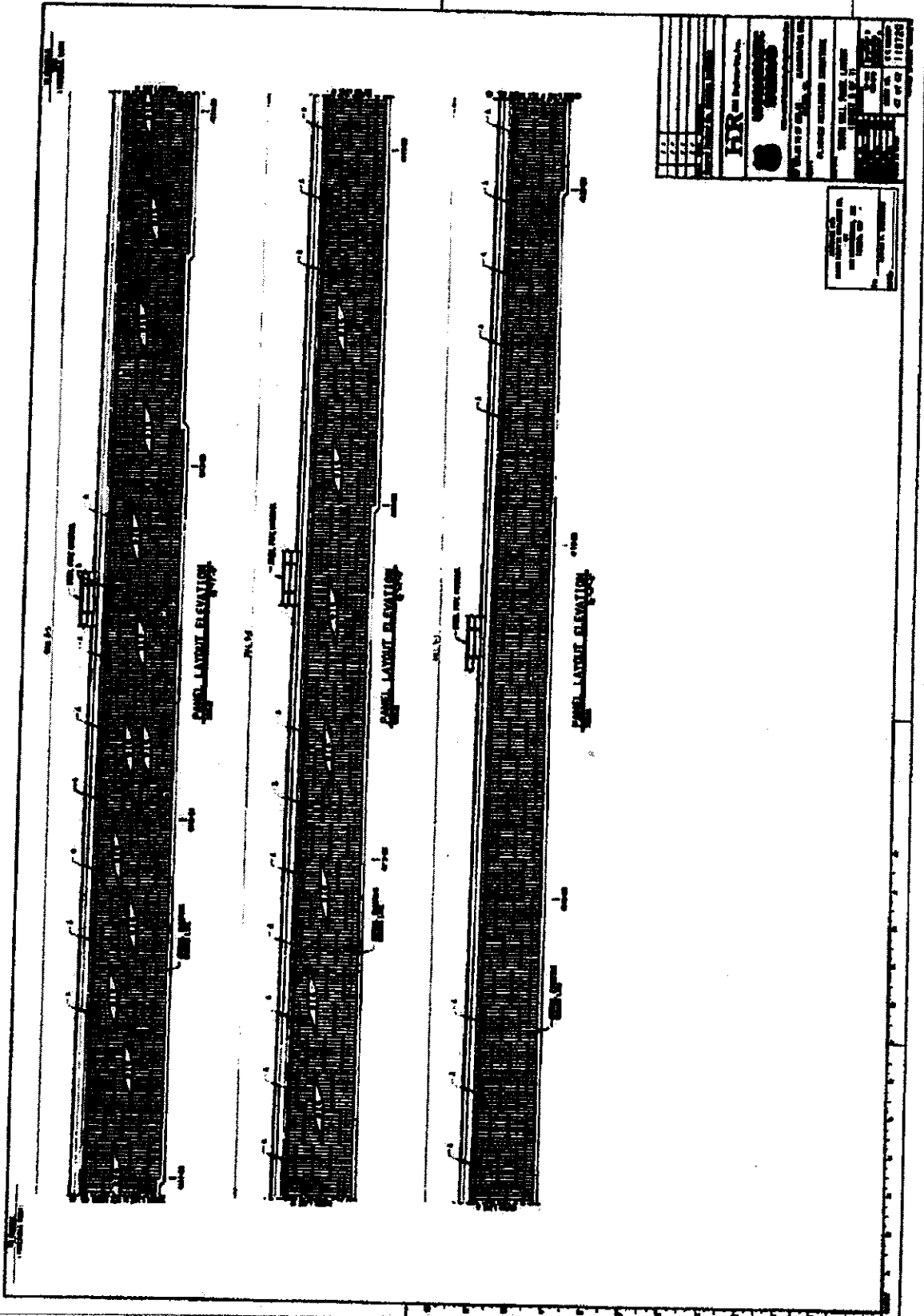
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DATE: 11/11/2010
 TIME: 10:00 AM
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 DRAWING NO: [illegible]



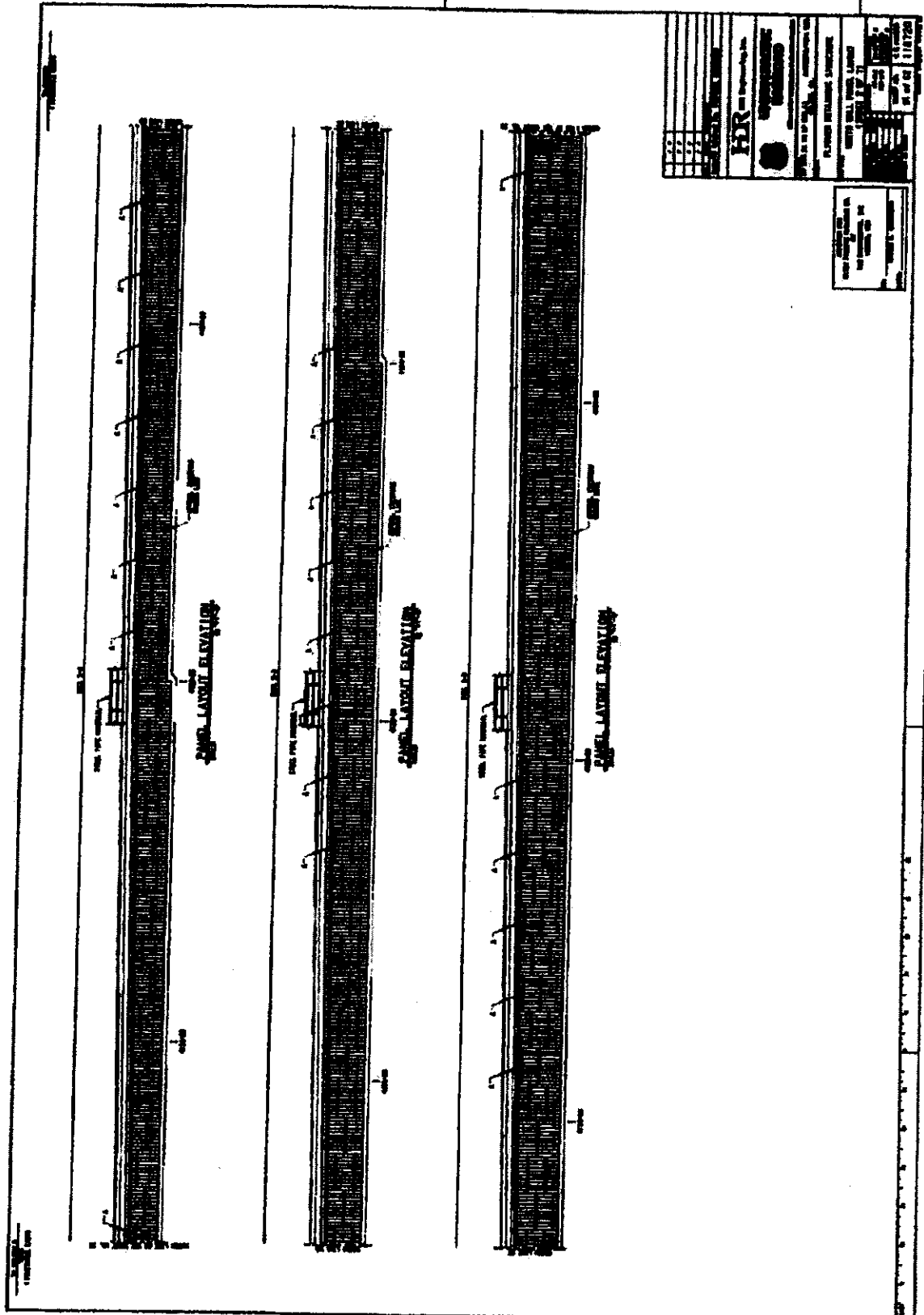
	FEDERAL BUREAU OF INVESTIGATION U.S. DEPARTMENT OF JUSTICE 400 ANDREWS AVENUE, N.W. WASHINGTON, D.C. 20535 TEL. (202) 452-2000 FAX (202) 452-2000
PROJECT NO. 100-100000 DRAWING NO. 100-100000-100	DATE: 11/17/70

NOT TO SCALE
 SEE PLAN FOR DIMENSIONS
 SEE ELEVATION FOR FINISHES



DATE	1/1/20
BY	J. J. J.
CHECKED BY	
APPROVED BY	
PROJECT NO.	101720
REV.	
DESCRIPTION	
DATE	
BY	
CHECKED BY	
APPROVED BY	

- CABLE LAYOUT ELEVATION
 - CABLE LAYOUT ELEVATION
 - CABLE LAYOUT ELEVATION



NO.	DATE	DESCRIPTION

HR

ARCHITECTS

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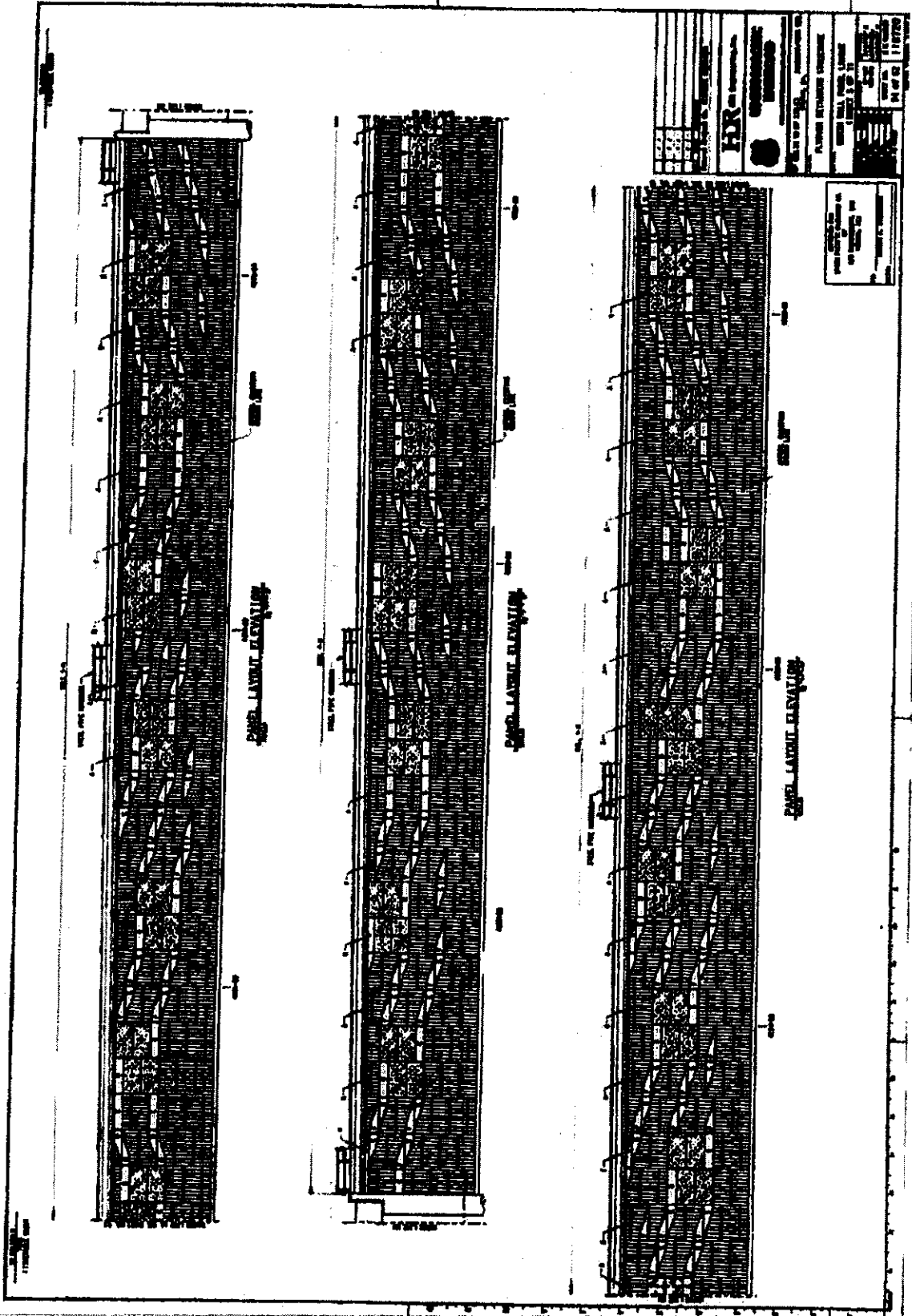
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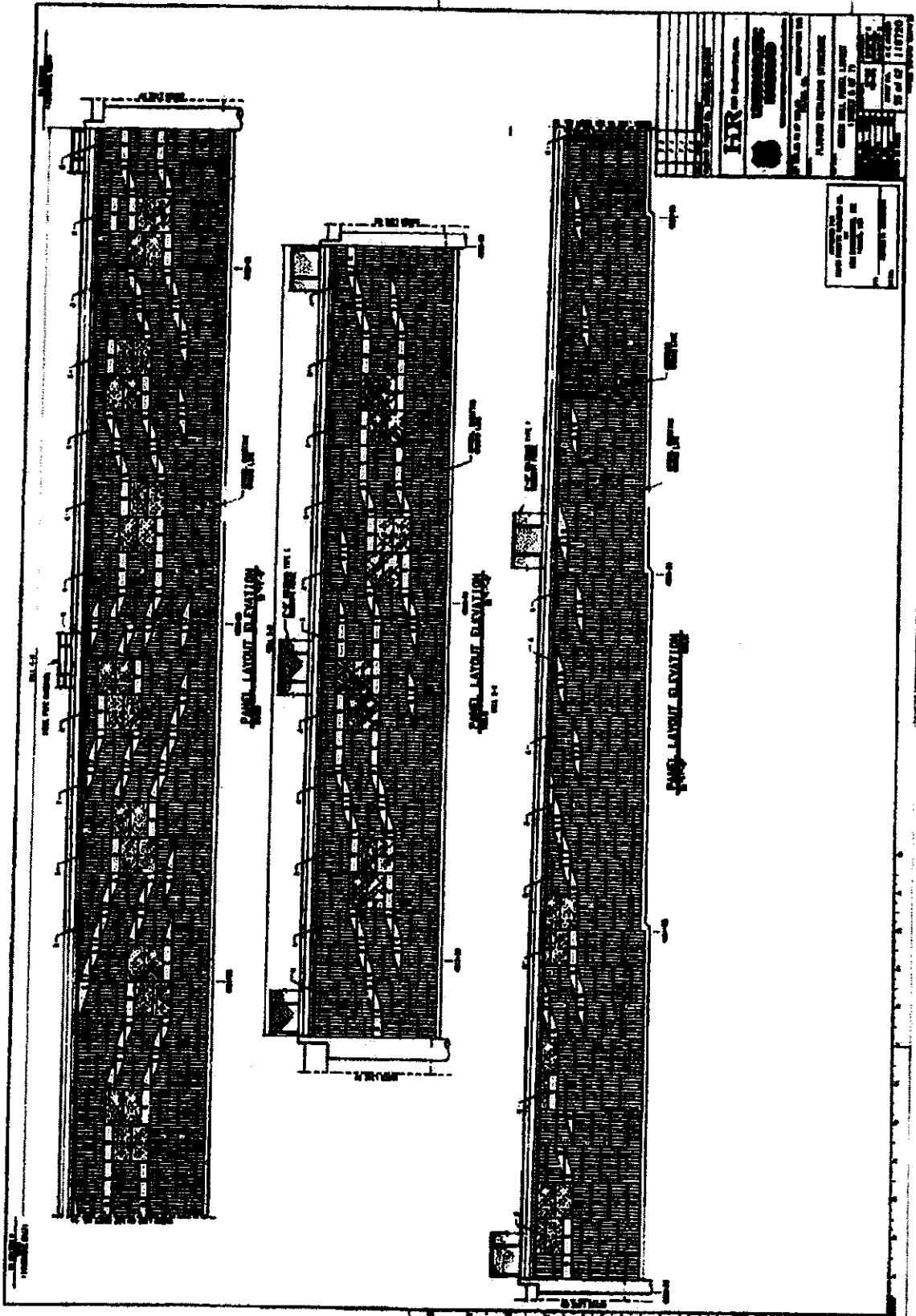
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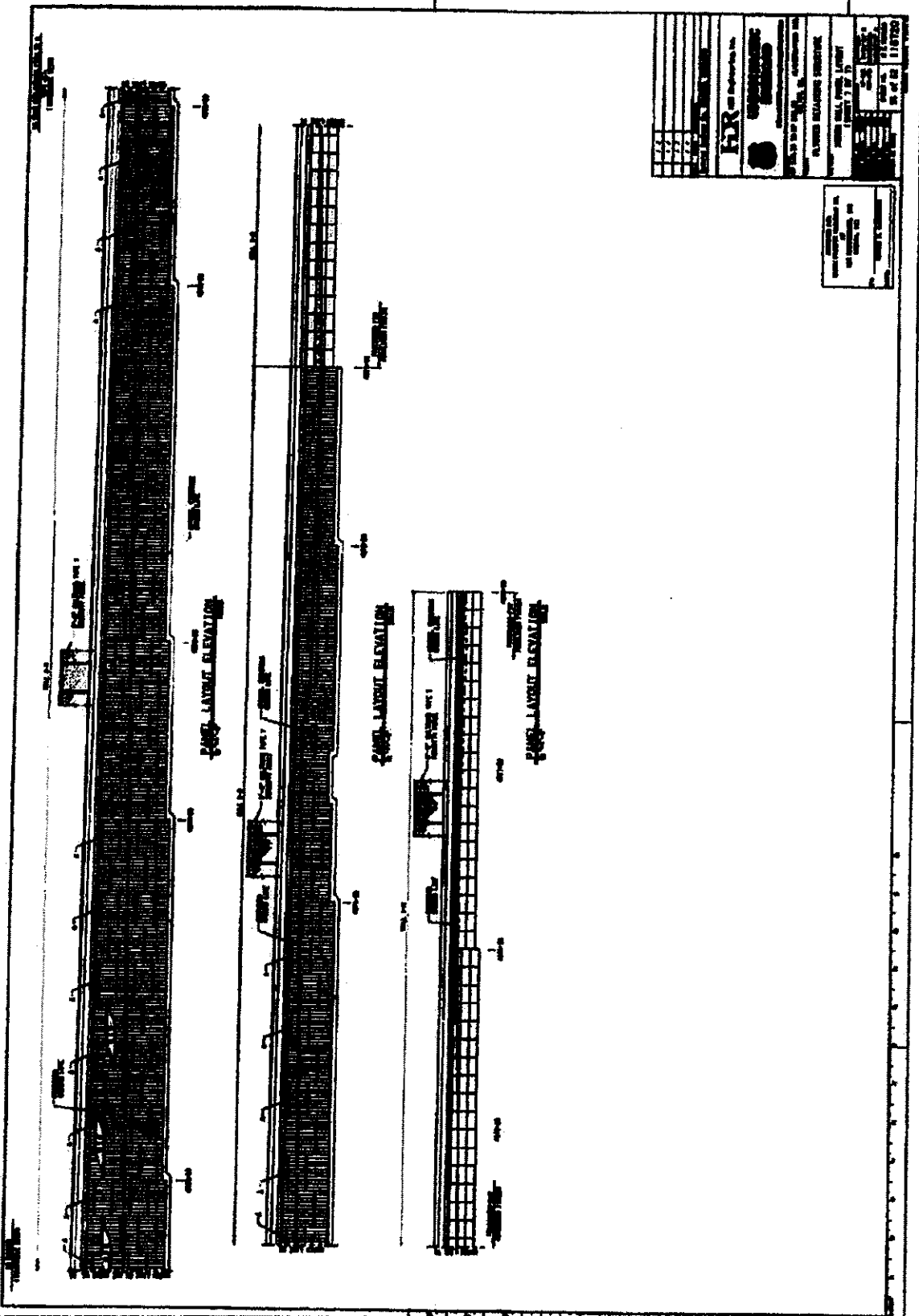
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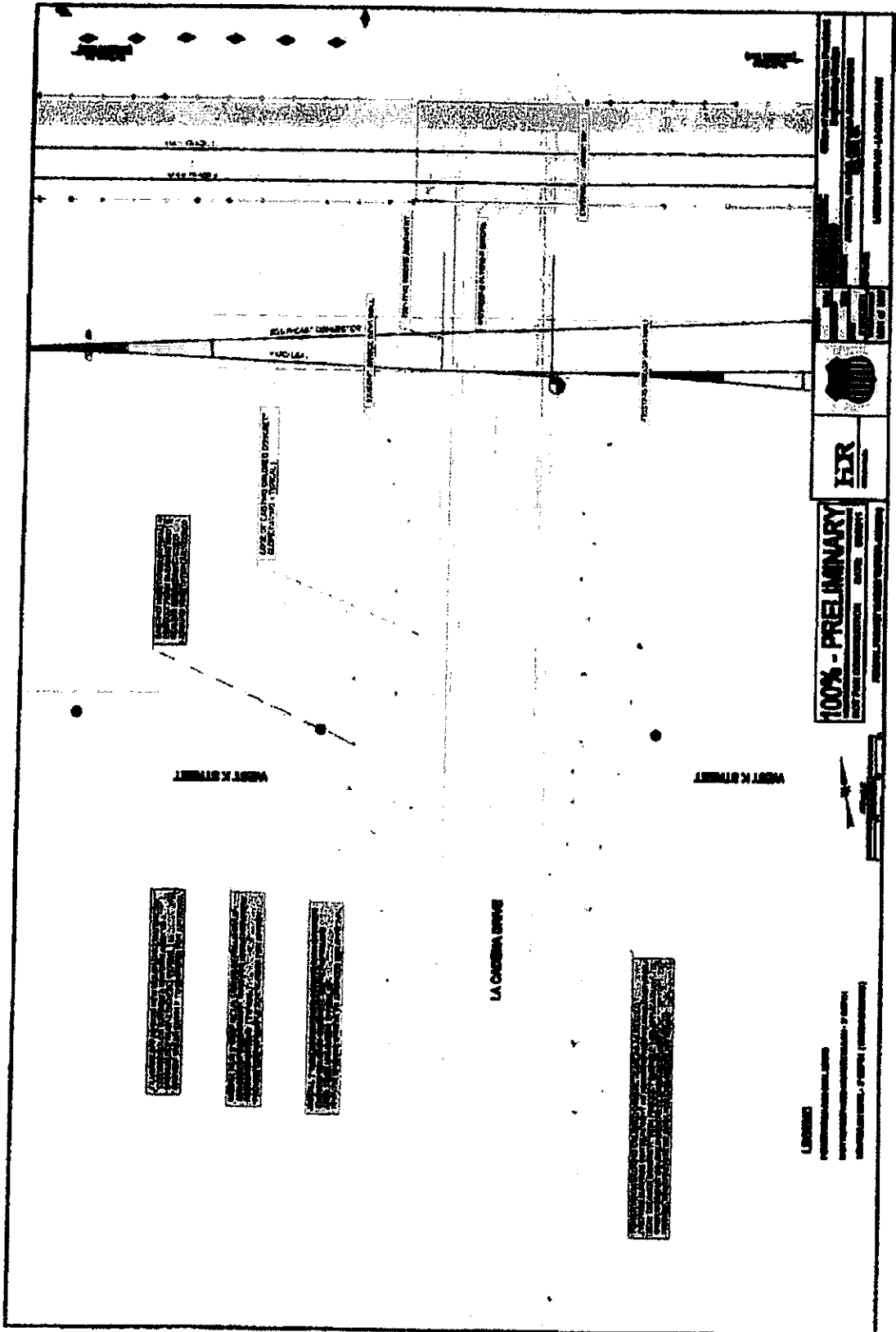




NO.	REV.	DATE	BY	CHKD.

HR
 HERRING RAYMOND
 ARCHITECTS
 1000 BROADWAY, NEW YORK, N.Y. 10003
 PHONE (212) 675-1000
 FAX (212) 675-1001

PROJECT NO. 110720
 SHEET NO. 110720-1
 DATE 11/11/03



DATE: 10/15/2010
 PROJECT: [illegible]
 SCALE: [illegible]
 BY: [illegible]
 CHECKED BY: [illegible]
 APPROVED BY: [illegible]

Exhibit E

Graffiti Remediation and Abatement for Wall Treatments

The City and Union Pacific agree that graffiti causes serious economic consequences and negatively impacts the City and associated infrastructure, that the structure on which the Wall Treatments are located presents a unique and challenging situation, and, thus, the parties desire to establish a consistent, manageable plan for remediation of graffiti placed on the Wall Treatments. Accordingly, the City and Union Pacific hereby agree to the following plan for graffiti abatement and remediation:

1. Graffiti Abatement and Remediation.

- a. In connection with the initial installation of the Wall Treatments, Union Pacific shall apply a product to the Wall Treatments that is intended to aid in the remediation of graffiti.
- b. After the date that the structure on which the Wall Treatments will be installed is completed (the "Completion Date"), Union Pacific will implement and follow a proactive program to monitor the structure and abate and remediate graffiti as needed to ensure that the Wall Treatments are kept reasonably free of graffiti. On or before the date of this Agreement, Union Pacific has provided to the City that certain Program Outline - Colton Crossing Wall Treatments – Graffiti Abatement and Remediation, dated of even date with this Agreement (the "Program Outline"), which provides certain additional information about the remediation and abatement program.
- c. Union Pacific agrees that after the Completion Date it shall remove any graffiti from the Wall Treatments no later than thirty (30) days after such graffiti appears. If at any time the City believes that Union Pacific may not meet this obligation, the City may give Union Pacific notice to remove such graffiti. The graffiti does not have to be present for a minimum amount of time before the City gives the notice. The City must give the notice via e-mail to Union Pacific's Vice President, Public Affairs, Western Region (or such other representative as Union Pacific may designate by written notice) and the Project Representatives identified in the Right of Entry (defined below). The notice shall begin the notice period under the Right of Entry. If the graffiti has not been removed within thirty (30) days after the e-mail notice has been sent to Union Pacific and the Project Representatives, the City may use the Right of Entry process to enter the property to remove the graffiti. Union Pacific will reimburse the City for its actual costs to remove the graffiti.
- d. The City will deem Union Pacific to be compliant with the City's municipal code provisions now or hereafter promulgated regarding graffiti remediation, removal or abatement, including without limitation the graffiti provisions contained in Chapter 9.27 of the City of Colton's Municipal Code (collectively, the "City's

Graffiti Laws") on the structure if Union Pacific removes graffiti from the Wall Treatments within thirty (30) days after such graffiti appears, or, if the City provides notice to remove graffiti, within thirty (30) days after Union Pacific's receipt thereof.

- e. The parties anticipate that graffiti may appear on the structure prior to the Completion Date. During that time Union Pacific's contractor installing the structure will be required to remove graffiti. If the City believes that the contractor is not meeting its obligation to remove the graffiti, the City may provide notice via e-mail to Union Pacific's Vice President, Public Affairs, Western Region (or such other representative as Union Pacific may designate by written notice). Upon receipt of the notice, Union Pacific will notify the contractor and direct it to remove the graffiti.
2. **City's Enforcement of Graffiti Laws.** The City shall proactively enforce and prosecute the City's Graffiti Laws with respect to any graffiti placed on the Wall Treatments, and Union Pacific shall cooperate with the City in connection with the City's enforcement efforts. Such enforcement by the City shall be at the highest and strictest level permitted under the City's Graffiti Laws, and, within its prosecutorial discretion, the City shall refer to the District Attorney for prosecution any offender allegedly violating the City's Graffiti Laws against whom the City believes there is a reasonably likelihood of successful prosecution. The City agrees to reasonably cooperate with Union Pacific from time to time to identify additional measures that may be implemented by the City to further deter the placement of graffiti on the Wall Treatments (e.g., increased fines and additional punishment for offenders).
 3. **Graffiti Abatement and Remediation Working Group.** Union Pacific and the City agree to create a working group consisting of two representatives from Union Pacific and two representatives from the City for purposes of evaluating the success of and making recommendations to Union Pacific about the graffiti abatement and remediation program (including proposing recommendations to the Program Outline) and the City's efforts to enforce and prosecute the City's Graffiti Laws, and collaborating to identify additional abatement, remediation and enforcement measures that may improve the same. Each party shall have sole discretion in appointing its representatives to the working group.
 4. **Enforceability; Approval of Changes in Law.** Subject to the provisions contained herein, Union Pacific hereby agrees that the City's Graffiti Laws in effect as of the date of this Agreement apply to the Wall Treatments and that Union Pacific will not challenge the enforceability of such laws with respect to the Wall Treatments. The City may from time to time provide Union Pacific with proposed modifications to the City's Graffiti Laws. Union Pacific will provide a response to the City as to whether Union Pacific consents to the enforceability of any such proposed modifications against Union Pacific with respect to the Wall Treatments within sixty (60) days after receipt thereof. If Union Pacific fails to timely respond to any such proposed modifications, Union Pacific shall be deemed to have consented to the enforceability of such proposed modifications against Union Pacific with respect to the Wall Treatments.

5. **Survival.** In the event this Agreement is terminated or expires, the provisions of this exhibit shall survive such termination or expiration with respect to any liabilities or obligations of the parties that arise or accrue prior to such termination or expiration.
6. **No Precedent.** Given the unique nature and scope of the Project, the obligations of Union Pacific set forth in this Agreement are limited to the Project and none of the terms or conditions contained herein shall be deemed to set precedent for any other transactions now or in the future between Union Pacific and City or any other party.
7. **Evaluation of Graffiti Remediation and Abatement Provisions; Term.** Prior to date that is eighteen (18) months after the Completion Date, the parties shall meet to review the working group's findings and to otherwise evaluate the success of the graffiti abatement and remediation program (including the Program Outline) and the City's efforts to enforce and prosecute the City's Graffiti Laws. During such period, the parties shall in good faith determine whether to modify and/or continue the program based on such review and evaluation, and, if the parties so determine, shall modify or amend this **Exhibit E** accordingly. If the parties fail to agree to modify and/or continue the program, this **Exhibit E** shall continue for a term of one (1) month, renewing monthly automatically thereafter, unless terminated by either party for any reason with prior written notice to the other party. In the event of the termination or expiration this **Exhibit E**, the City may enforce the City's Graffiti Laws in relation to graffiti on the Wall Treatments. Both parties reserve all rights and defenses in relation to such enforcement activities.
8. **Contractor's Right of Entry.** The City will execute the then-current standard form of the Contractor's Right of Entry Agreement applicable to the property prior to entry ("Right of Entry"). The parties intend to enter into one (1) Right of Entry to cover any failures by Union Pacific to remove graffiti. The City will require any City contractor to execute the Right of Entry. The City and its contractors will comply with the terms of the Right of Entry.

Schedule 1

**List of Addresses
[attached hereto]**

Residences Eligible for Landscaping

781 W. K Street
775 W. K Street
745 W. K Street
735 W. K Street
725 W. K Street
709 W. K Street
705 W. K Street
699 W. K Street
697 W. K Street
687 W. K Street
681 W. K Street
649 W. K Street
639 W. K Street
125 S. 3rd Street
181 S. 3rd Street
191 S. 3rd Street
595 W. K Street
579 W. K Street
565 W. K Street
547 W. K Street
537 W. K Street
523 W. K Street
511 W. K Street
503 W. K Street
146 S. 4th Street
483 W. K Street
481 W. K Street
469 W. K Street
457 W. K Street
264 W. K Street
252 W. K Street
248 W. K Street
192 W. K Street
** W. K Street
** E. K Street
148 E. K Street
162 E. K Street
** E. K Street

** The address numbers are unknown at this time.

Attachment F

Resolution

RESOLUTION NO. R-96-11

1 **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA**
2 **APPROVING INCREASE OF THE FISCAL YEAR 2011-2012 CAPITAL IMPROVEMENT**
3 **BUDGET IN THE AMOUNT OF 1,019,855. FOR THE COLTON QUIET ZONE PROJECT**
4 **AND \$255,940 FOR THE COLTON CROSSING GRADE SEPARATION WALL**
5 **TREATMENTS, GRAFFITI ABATEMENT AND REMEDIATIONS.**

6 **WHEREAS**, the City Council of the City of Colton desires to provide maintenance and
7 remediation for the Colton Crossing Grade Separation to maintain the aesthetics of the vicinity
8 surrounding Colton Crossing Grade Separation; and

9 **WHEREAS**, the City Council of the City of Colton has approved a Letter Agreement
10 with Union Pacific Railroad identifying the roles and responsibilities of the City of Colton for
11 providing Wall Treatments, Graffiti Abatement and Remediations to the Colton Crossing Grade
12 Separation Project; and

13 **WHEREAS**, UPRR is funding \$255,940. for costs related to the **COLTON CROSSING**
14 **GRADE SEPARATION PROJECT** Wall Treatments, Graffiti Abatement and Remediations;
15 and,

16 **WHEREAS**, the City Council of the City of Colton desires to improve the local rail
17 traffic noise conditions for the City of Colton by establishing a quiet zone; and

18 **WHEREAS**, the City Council of the City of Colton is establishing a quiet zone by
19 eliminating two existing grade crossings at "H" Street and "E" Street respectively and improving
20 the rail crossing signals at two existing grade crossing gates at Valley Boulevard and Olive Street
21 to meet the California Public Utilities Commission and the Federal Railroad Administration quiet
22 zone crossing standards; and:

23 **WHEREAS**, the City shall be the lead agency to construct the PROJECT according to
24 SANBAG's final PROJECT plans and specifications, provide project advertisement, project
25 award and construction management for the Colton Quiet Zone Project; and

26 **WHEREAS**, the City will process payments regarding construction and construction
27 management and thereafter, submit for payment from the **SAN BERNARDINO COUNTY**
28 **TRANSPORTATION AUTHORITY**, for 100% of all construction, capital, and construction

support cost for construction of roadway improvements for the **COLTON QUIET ZONE**

PROJECT; and

NOW, THEREFORE, be it resolved that the City Council of the City of Colton does hereby authorize:

- Amend the FY 2011/2012 Capital Improvement Program Budget to reflect the Colton Quiet Zone Project as follows:

- Increase account 225-1000-1000-5993-0004-451 by \$1,019,855
- Increase account 225-5886-000 by \$1,019,855
- Increase account 451-1103-6987-3890 by \$1,019,855
- Increase account 451-5993-225 by \$1,019,855.

- Amend the 2011/2012 Capital Improvement program Budget to reflect the Colton Crossing Grade Separations Wall Treatment, Graffiti Abatement and Remediation's as follows:

- Increase account 225-1000-1000-5993-0004-451 by \$255,940
- Increase account 225-5886-000 by \$255,940
- Increase account 451-1203-6987-3890 by \$255,940
- Increase account 451-5993-225 by \$255,940.

PASSED, APPROVED AND ADOPTED THIS 6th DAY OF DECEMBER 2011.

SARAH S. ZAMORA, CITY MAYOR

ATTEST:

EILEEN GOMEZ, CITY CLERK