



SAN DIEGO & ARIZONA
EASTERN RAILWAY
COMPANY

A NEVADA NONPROFIT
CORPORATION

1255 IMPERIAL AVE., STE. 1000
SAN DIEGO, CA
92101-7490
(619) 231-1466

BOARD OF DIRECTORS
PAUL JABLONSKI, CHAIRPERSON
MATT DOMEN
JARED GOOCH

OFFICERS
PAUL JABLONSKI, PRESIDENT
MATT DOMEN, SECRETARY
ERIN DUNN, TREASURER

LEGAL COUNSEL
KAREN LANDERS

AGENDA

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

9:00 a.m.

Executive Committee Room
James R. Mills Building
1255 Imperial Avenue, 10th Floor

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please call the Clerk of the Board at least five working days prior to the meeting to ensure availability. Assistive Listening Devices (ALDs) are available from the Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

ACTION RECOMMENDED

1. [Approval of the Minutes of July 10, 2018](#)
Action would approve the SD&AE Railway Company Minutes of July 10, 2018. Approve
2. [Statement of Railway Finances \(Erin Dunn\)](#) Informational
3. [Report on San Diego and Imperial Valley \(SD&IV\) Railroad Operations \(Matt Domen\)](#) Informational
4. [Report on Pacific Southwest Railway Museum \(Diana Hyatt\)](#) Informational
5. [Report on the Desert Line \(Jorge Izquierdo\)](#) Informational
6. [Real Property Matters \(Tim Allison\)](#)
 - a. [Summary of SD&AE Documents Issued Since July 10, 2018](#) Informational
 - b. [License for E Street At-Grade Crossing and Sweetwater Bicycle Path and Pedestrian Promenade](#) Approve
Action would approve issuing a license to the San Diego Unified Port District for an at-grade crossing and class 1 bike path and pedestrian promenade at the existing E Street crossing on the Coronado Branch in the City of Chula Vista.
 - c. [License for Camera Tower Placement Near Mile Post 86.5 on the Desert Line](#) Approve
Action would approve issuing a license to the United States Customs and Border Protection (CBP) for a camera tower installation on the Desert Line near mile post 86.5.
7. [Removal of Abandoned Track – Proposed Capital Project](#) Approve
Action would approve the removal of unused track in Commercial Street in San Diego, Cleveland Street in National City, and F Street and J Street in Chula Vista.

8. [Approval of the 2019 SD&AE Board of Directors Meeting Schedule \(Karen Landers\)](#) Approve
Action would approve the 2019 SD&AE Board of Directors meeting schedule.
9. Board Member Communications
10. Public Comments
11. Next Meeting Date: January 15, 2019 (contingent upon approval of No. 7)
12. Adjournment



AGENDA

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

10-09-18P01:37 RCVD

SAN DIEGO & ARIZONA
EASTERN RAILWAY
COMPANY

October 9, 2018

9:00 a.m.

A NEVADA NONPROFIT
CORPORATION

Executive Committee Room
James R. Mills Building
1255 Imperial Avenue, 10th Floor

1255 IMPERIAL AVE., STE. 1000
SAN DIEGO, CA
92101-7490
(619) 231-1466

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please call the Clerk of the Board at least five working days prior to the meeting to ensure availability. Assistive Listening Devices (ALDs) are available from the Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

BOARD OF DIRECTORS
PAUL JABLONSKI, CHAIRPERSON
MATT DOMEN
JARED GOOCH

ACTION RECOMMENDED

OFFICERS
PAUL JABLONSKI, PRESIDENT
MATT DOMEN, SECRETARY
ERIN DUNN, TREASURER

LEGAL COUNSEL
KAREN LANDERS

- | | | |
|----|---|---------------|
| 1. | <u>Approval of the Minutes of July 10, 2018</u>
Action would approve the SD&AE Railway Company Minutes of July 10, 2018. | Approve |
| 2. | <u>Statement of Railway Finances (Erin Dunn)</u> | Informational |
| 3. | <u>Report on San Diego and Imperial Valley (SD&IV) Railroad Operations (Matt Domen)</u> | Informational |
| 4. | <u>Report on Pacific Southwest Railway Museum (Diana Hyatt)</u> | Informational |
| 5. | <u>Report on the Desert Line (Jorge Izquierdo)</u> | Informational |
| 6. | <u>Real Property Matters (Tim Allison)</u> | |
| | a. <u>Summary of SD&AE Documents Issued Since July 10, 2018</u> | Informational |
| | b. <u>License for E Street At-Grade Crossing and Sweetwater Bicycle Path and Pedestrian Promenade</u>
Action would approve issuing a license to the San Diego Unified Port District for an at-grade crossing and class 1 bike path and pedestrian promenade at the existing E Street crossing on the Coronado Branch in the City of Chula Vista. | Approve |
| | c. <u>License for Camera Tower Placement Near Mile Post 86.5 on the Desert Line</u>
Action would approve issuing a license to the United States Customs and Border Protection (CBP) for a camera tower installation on the Desert Line near mile post 86.5. | Approve |
| 7. | <u>Removal of Abandoned Track – Proposed Capital Project</u>
Action would approve the removal of unused track in Commercial Street in San Diego, Cleveland Street in National City, and F Street and J Street in Chula Vista. | Approve |

8. Approval of the 2019 SD&AE Board of Directors Meeting Schedule
(Karen Landers) Approve
Action would approve the 2019 SD&AE Board of Directors meeting schedule.
9. Board Member Communications
10. Public Comments
11. Next Meeting Date: January 15, 2019 (contingent upon approval of No. 7)
12. Adjournment

San Diego and Arizona Eastern Railway Company

October 9, 2018

Sign-in Sheet (VOLUNTARY)

Name	Company
1. <i>Matt Deane</i>	<i>SRM</i>
2. <i>Paul Gual</i>	<i>SDLV</i>
3. <i>Josef Fournier</i>	<i>BJRL</i>
4. <i>Diana Hyatt</i>	<i>PSRM</i>
5. <i>R. Mitchell Beaudin</i>	<i>San Diego Electric Railway Assn.</i>
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	
22.	
23.	

MINUTES

BOARD OF DIRECTORS MEETING OF THE SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY

July 10, 2018

A meeting of the Board of Directors of the San Diego & Arizona Eastern (SD&AE) Railway Company, a Nevada corporation, was held at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101, on July 10, 2018, at 9:00 a.m.

The following persons, constituting the Board of Directors, were present: Paul Jablonski, Matt Domen, and Jared Gooch. Also in attendance were members from:

San Diego Metropolitan Transit System: Tim Allison, Erin Dunn, Karen Landers,
Wayne Terry
Pacific Southwest Railway Museum: Diana Hyatt, James Caestecker

1. Approval of Minutes

Mr. Domen moved to approve the Minutes of the April 10, 2018, SD&AE Railway Board of Directors meeting. Mr. Gooch seconded the motion, and it was unanimously approved.

2. Statement of Railway Finances

Erin Dunn reviewed Statement of Railway Finances for the second quarter of 2018 (attached to the agenda item). Ms. Landers stated that there have been more expenses this year and asked if there are sufficient funds in the SD&AE account to pay some of the Desert Line expenses; i.e., travel, outside consultants, etc. Ms. Dunn clarified that the amended budget for MTS has those expenses coming out of SD&AE reserves. Ms. Landers added that there may also be expenses in FY 19 related to a legal case.

Action Taken

Informational item only. No action taken.

3. Report on San Diego & Imperial Valley Railroad (SD&IV) Operations

Matt Domen reviewed the SD&IV Periodic Report for activities for the second quarter of 2018 (attached to the agenda item).

Mr. Jablonski stated that Fernando Beltran with Baja Railroad (BJRR) told him about a possible diesel-shipping deal with suppliers, and he asked if that is on the horizon. Mr. Gooch replied that BJRR is optimistic but it will depend. He explained that one car crossed a couple of weeks ago; however to date, no companies have signed up to transport gas by rail. Discussion ensued about current and potential business and commodities via rail versus other modes of transportation.

Mr. Domen informed Mr. Jablonski that Palomar Siding is open and operational. Wayne Terry, MTS Chief Operating Officer (Rail), added that the FRA testing has not been finished, but the track work and signaling are functional. He stated that PRE has to do some additional work and

then the FRA will be scheduled to conduct witness testing. Mr. Terry will follow up on the current status (see additional comments made under Agenda Item No. 7 Board Member Communications).

Action Taken

Informational item only. No action taken.

4. Report on Pacific Southwest Railway Museum Operations

Diana Hyatt reviewed the Pacific Southwest Railway Museum (PSRM) report for the second quarter of 2018 (attached to the agenda item). Ms. Hyatt clarified that the recent fires did not affect the Campo Depot. She also stated that PSRM has been doing its weed abatement in house. Ms. Hyatt clarified that Cal Fire does its own aerial inspections—without notifying PSRM—and PSRM operates on the assumption that there are no issues if Cal Fire does not contact PSRM. She added that Cal Fire also gave PSRM a waiver for its locomotive that is used for train rides.

Action Taken

Informational item only. No action taken.

5. Report on the Desert Line

There were no representatives from BJRR present at the meeting. Ms. Landers gave a verbal report. She stated that MTS staff is working with Customs and Border Protection on siting a customs facility, and it's getting closer to the substantive phase. Ms. Landers and Ms. Hyatt are going to meet to discuss comments from PSRM. Ms. Landers went on a tour on June 28 beginning at the border in San Ysidro with Customs, Border Protection, and the Rail Director from Washington DC. They viewed the existing crossing and then went to Campo where they hi-railed out and walked the tunnel. The same was done with the SAT group on the Mexico side. Ms. Landers said that it was a good, productive meeting with a lot of cooperation and collaboration between the agencies.

Ms. Landers stated that there is a meeting scheduled in August with Union Pacific and BJRR to bring them up to speed on the project. Environmental review and analysis must still be done, and the emphasis will be to make sure that BJRR has the right people to do that work because, if not, it could delay the project. Dan Davis will also have to review and approve any of the work required. BJRR has had contractors surveying the line, but there is no new, updated formal construction plan for Mr. Davis to review. Ms. Landers clarified that BJRR is financially responsible for the construction, and there is no actual time line for completion at this point.

Action Taken

Informational item only. No action taken.

6. Real Property Matters

a. Summary of SD&AE Documents Issued Since July 10, 2018

Tim Allison reported that since the April 10, 2018, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-18-680: Right of Entry Permit to Navy Region Southwest Morale, Welfare and Recreation Department for the Navy's Annual Bay Bridge Run / Walk event.
- S200-18-681: Right of Entry Permit to San Diego County Bicycle Coalition for the Bike to Bay event.
- S200-18-682: Right of Entry Permit to the City of La Mesa for the Annual Flag Day Parade.
- S200-18-683: Right of Entry Permit to S & B Engineering, Inc. to repair a drainage pipe near the I-8 bridge crossing in El Cajon west of Chase Avenue.

Ms. Landers stated that she will be drafting a formal agreement with SDG&E for MTS billboards that are on SDG&E property near the Blue Line.

Action Taken

Informational item only. No action taken.

7. Board Member Communications

There were no Board member communications.

• Follow-up comments regarding Agenda Item No. 3

Mr. Terry stated that the absolute block was an overlay to the new Siemens signaling system on the Blue Line. He said that MTS has the signal prints and is reviewing them with the contractor. The FRA witness testing will most likely be conducted by the end of month. This will require operating a freight train through the absolute block from San Ysidro to the Palomar Siding. Once that's complete, submission can be made for final approval by the FRA—possibly by the end of August. Mr. Terry added that it should be a fairly simple approval.

Mr. Domen asked about the status of the track on Hill Street on the Orange Line. Ms. Landers responded that construction easements on the neighboring properties are being finalized so as to move forward with construction. She anticipates that construction will begin in the next several months. Mr. Terry will contact Mr. Domen with an update.

8. Public Comments

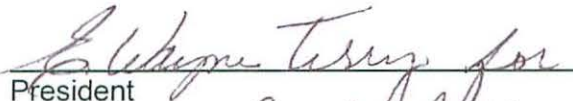
There were no public comments.

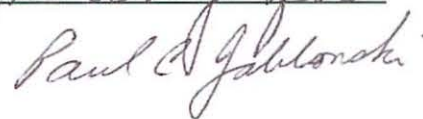
9. Next Meeting Date

The next meeting of the SD&AE Railway Company Board of Directors is on Tuesday, October 9, 2018.

10. Adjournment

The meeting was adjourned at 9:25 a.m.



President




General Counsel

Agenda Item No. 2

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

STATEMENT OF RAILWAY FINANCES

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a financial report for the year ending June 30, 2018, and period ending August 31, 2018.

Budget Impact

None.

DISCUSSION:

Attached are SD&AE's financial results for the year ending June 30, 2018, as well as the period ending August 31, 2018.

Fiscal year 2018 ended with revenues totaling \$1.147 million and expenses totaling \$328,000. Combining the resulting \$818,000 operating profit with an estimated \$30,000 in interest income, offset by \$1.0 million in Desert Line revenue contributed to MTS capital projects, reserves decreased by an estimated \$152,000 for the year. Although the financial statements have not been published, we do not expect any further changes.

As of August 31, 2018, fiscal year-to-date revenues are \$174,000 favorable to budget primarily due to the Desert Line Lease revenue not included in the budget.

Expenses are \$57,000 favorable to budget primarily due to a favorable variance in Outside Services and Personnel Costs.

The Net Income for the period ending August 31, 2018, was \$204,000.

Attachments: SD&AE Operating Statement Fiscal Year 2018
SD&AE Operating Statement for period ending August 31, 2018

SD&AE Operating Statement FY2018-17

	FY 2018			FY 2017		
	FY 2018 Actual	FY 2018 Budget	Variance	FY 2017 Actual	Variance	
Revenues						
Right of Entry Permits	\$ 16,950	\$ 30,000	\$ (13,050)	\$ 23,574	\$ (6,624)	
Lease Income	90,572	80,000	10,572	87,134	3,438	
Desert Line Lease Revenue	1,000,000	-	1,000,000	1,000,000	-	
Operator Income - SD&IV 1% Freight Fee	39,270	35,000	4,270	51,787	(12,517)	
Misc. Revenue (Cure of Default - DL lease assignment)	-	-	-	45,000	(45,000)	
Total Revenues	1,146,792	145,000	1,001,792	1,207,495	(60,703)	
Expenses						
Personnel Costs	55,554	37,200	(18,354)	40,914	(14,640)	
Outside Services	181,520	220,000	38,480	154,751	(26,769)	
Risk Management	66,773	67,300	527	15,766	(51,007)	
Misc. Operating Expenses	24,627	20,000	(4,627)	72,347	47,720	
Total Expenses	328,474	344,500	16,026	283,778	(44,696)	
Net Income/(Loss)	\$ 818,318	\$ (199,500)	\$ 1,017,818	\$ 923,717	\$ (105,399)	

Reserve Balance July 1, 2017 \$ 1,527,382

Allocated Interest Earnings - Estimated 30,000
 Operating Profit/(Loss) - FY 2018 818,318
 Less: Desert Line Lease Revenue - Contributed Operating C (1,000,000)

Estimated Reserve Balance as of June 30, 2018 \$ 1,375,700

SD&AE Operating Statement FY2019 and FY2018

	FY 2019			FY 2018		
	Jul - Aug Actual	Jul - Aug Budget	Variance	Jul - Aug Actual	Variance	
Revenues						
Right of Entry Permits	\$ 750	\$ 5,000	\$ (4,250)	\$ 750	\$ -	
Lease Income	40,435	25,834	14,601	39,240	1,195	
Desert Line Lease Revenue	166,669	-	166,669	166,669	-	
Operator Income - SD&IV 1% Freight Fee	6,667	10,000	(3,333)	6,200	467	
Total Revenues	214,520	40,834	173,686	212,859	1,662	
Expenses						
Personnel Costs	5,194	24,820	19,626	6,804	1,610	
Outside Services	1,990	35,670	33,680	7,822	5,832	
Risk Management	2,356	3,384	1,028	52,195	49,839	
Misc. Operating Expenses	1,257	4,012	2,755	299	(958)	
Total Expenses	10,796	67,886	57,090	67,120	56,324	
Net Income/(Loss)	\$ 203,725	\$ (27,052)	\$ 230,777	\$ 145,739	\$ 57,986	

Estimated Reserve Balance July 1, 2018 \$ 1,375,700

Interest Earnings - Estimated 4,000
 Operating Profit/(Loss) - YTD 203,725
 Less: Desert Line Revenue (166,669)

Estimated Reserve Balance Aug 31, 2018 \$ 1,416,756

Agenda Item No. 3

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

REPORT ON SAN DIEGO AND IMPERIAL VALLEY (SD&IV) RAILROAD OPERATIONS

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

An oral report will be given during the meeting.

Attachment: Periodic Report for the 3rd Quarter of 2018



SD&AE Board
C/O MTS
1255 Imperial Avenue, Suite 1000
San Diego, California 92101

October 1, 2018

Periodic Report

In accordance with Section 20 of the Agreement for Operational Freight Service and Control through Management of the San Diego and Arizona Eastern Railway Company activities of interest for the 3rd Quarter of 2018 are listed as follows:

1. Labor

At the end of September 30, 2018 the San Diego & Imperial Railroad had 8 employees:

- 1 General Manager
- 1 Manager - Marketing & Sales
- 1 Office Manager
- 1 Mechanical Manager
- 1 Maintenance of Way Employee
- 3 Train Service Employees

2. Marketing

Volume in the 3rd Quarter had a 3% decrease as compared to the same quarter in 2017. Bridge traffic into Mexico was up about 8% while traffic terminating or originating on the SDIY was down about 17% versus last year. The primary driver for this is a paper customer that moved from a US to a Mexican receiver.

3. Reportable Injuries/Environmental

Days through year to date, September 30, 2018, there were no FRA Reportable injuries or Environmental incidents on the SDIV Railroad.

Days FRA Reportable Injury Free: **7848**

4. Summary of Freight

	2018	2017	2016
Total rail carloads that moved by SDIY Rail Service in the quarter.	951	979	1385
Total railroad carloads Terminating/Ori­ginating Mexico in the quarter.	594	547	1058
Total railroad carloads Terminating/Ori­ginating El Cajon, San Diego, National City, San Ysidro, California in the quarter.	357	432	327
Total customers directly served by SDIY in the quarter	13	12	10
Regional Truck trips that SDIY Railroad Service replaced in the quarter	2853	2937	4155

Respectfully,

Matt Domen

General Manager

Agenda Item No. 4

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

REPORT ON PACIFIC SOUTHWEST RAILWAY MUSEUM

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

A report will be presented during the meeting.

Attachment: Quarterly Report



Pacific Southwest Railway Museum

La Mesa Depot 4695 Nebo Drive La Mesa, CA 91941 619-465-7776

October 3, 2018

SD&AE Board
c/o Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

Re: Third Quarter 2018

Dear SD&AE Board:

During the third quarter of 2018 and utilizing all volunteer crews, the Pacific Southwest Railway Museum operated 67 Golden State passenger trains, 14 Valley Flyer trains and one midweek train for NMRA convention attendees, carrying a total of 1,021 passengers during 27 operating days. There were no FRA reportable accidents or injuries during the third quarter, 2018. Earned revenue from SD&AE property for the third quarter, 2018 was \$ 18,030.20 our check for \$360.60 is enclosed.

1,021 passengers during the third quarter of 2018
822 passengers during the third quarter of 2017
773 passengers during the third quarter of 2016
658 passengers during the third quarter of 2015
1,031 passengers during the third quarter of 2014
1,254 passengers during the third quarter of 2013
1,012 passengers during the third quarter of 2012

There were no special event trains operated during the third quarter but pre-sales are now open for October's Pumpkin Express trains which will operate each weekend day in October and December's North Pole trains which will operate every Friday and Saturday evening from November 30 to December 22. I would like to extend an invitation to all members of the SD&AE and MTS meetings to visit the museum at Campo for either event or on any weekend, please e-mail dhyatt@psrm.org for arrangements.

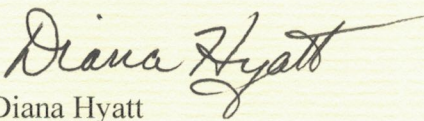
PSRM continues to maintain both signalized railroad crossings within our right of way limits; PSRM signal maintainers perform the monthly, quarterly and annual inspections. During this quarter twenty three switch ties were purchased and installed under both the west and east ends

A Federal Tax Exempt 501 (C) 3 California Non-Profit Corporation www.psr.org

of the House and Siding tracks within Campo Yard limits and another twenty ties were replaced along the mainline. Additionally, 1.5 miles of right-of-way was hand-weeded of summer Russian thistle growth, then sprayed with a combination of weed killer and pre-emergent. New growth vegetation was also removed from the drainage areas in this region.

Please mark your calendars and plan on joining us mid-morning on Thursday, November 15, 2018 for a media event marking the 99 year anniversary of the completion of the San Diego & Arizona Railway. This event will be held at the Santa Fe Depot at 1050 Kettner Blvd., San Diego. The media would like to interview one or more MTS/SDAE representatives as well as current freight operators of the SD&AE at this kickoff to the railroad's 100th year anniversary celebration next year. There are many activities planned during 2019 at Campo and locations around San Diego prior to the culminating event on Saturday, November 16, 2019 in Campo with a re-enactment of John D. Spreckels' driving of the gold spike. We will be joined by the San Diego City Guard Band who will perform the same musical piece for us that was written and performed at the 1919 celebration. All are encouraged to appear in period-appropriate attire for the 99th and 100th anniversary occasions.

Sincerely,

A handwritten signature in cursive script that reads "Diana Hyatt". The signature is written in black ink and is positioned above the printed name and title.

Diana Hyatt
President

Agenda Item No. 5

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

REPORT ON THE DESERT LINE

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

A report will be presented during the meeting.

Attachment: Not submitted in time for the mail-out.

Agenda Item No. 6a

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

SUMMARY OF SD&AE DOCUMENTS ISSUED SINCE JULY 10, 2018

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

Since the July 10, 2018, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-18-684: Right of Entry Permit to Wilson and Company for surveying at the San Ysidro border crossing.
- S200-18-685: Right of Entry Permit to Jerusalem Construction to construct street improvements on north Spring Street in the City of La Mesa.

Agenda Item No. 6b

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

LICENSE FOR E STREET AT-GRADE CROSSING AND SWEETWATER BICYCLE PATH AND PEDESTRIAN PROMENADE

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors approve issuing a license to the San Diego Unified Port District for an at-grade crossing and class 1 bike path and pedestrian promenade at the existing E Street crossing on the Coronado Branch in the City of Chula Vista.

Budget Impact

MTS expenses shall be reimbursed for review, approval, processing, and construction oversight.

DISCUSSION:

The San Diego Unified Port District (Port) is developing improvements to the E Street corridor in the City of Chula Vista west of Interstate 5 as part of the Bay Front Master Plan. The Port has asked for approval of a Class 1 Bikeway and a pedestrian promenade and eventual at-grade crossing at the current private crossing of the Coronado Branch at E Street. The Port has received an Urban Greening Program Grant for this project and wants to move forward.

Attached is a schematic of the Urban Greening Strategy Site Plan that shows the relationship of the bikeway and promenade to the existing railroad corridor (6b-2). Eventually E Street will be extended as a public street similar to H Street further south of this location. Staff and the Port have agreed to the attached draft license agreement covering this request (6b-3).

It is anticipated that in the future, the California Public Utilities Commission approval for the at-grade crossing will be obtained and, at that time, staff will revisit upgrading the agreement to an easement. The license contains language to allow for the removal of the rail at this location with consideration to upgrade the crossing at such time the railway is put back in service. The license is terminable.

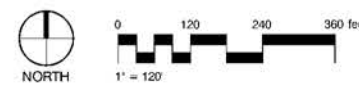
Attachments: 6b-2. Urban Greening Strategy Site Plan
6b-3. Draft License Agreement



DRAFT
4-21-17

TREE LEGEND:		LEGEND:	
●	MEDIUM - LARGE TREES - QTY: 9 (20'-30' MATURE HEIGHT) SUCH AS: <i>Quercus agrifolia</i> COAST LIVE OAK		URBAN GREENING CORRIDOR
●	SMALL - MEDIUM TREES - qty: 25 (15'-20' MATURE HEIGHT) SUCH AS: <i>Arbutus unedo</i> STRAWBERRY TREE <i>Cercis occidentalis</i> WESTERN REDBUD <i>Juglans californica</i> SOUTHERN CALIFORNIA WALNUT		NEW CLASS I BIKE PATH
●	LARGE SHRUBS / SMALL TREES - Qty: 105 (8'-12' MATURE HEIGHT) SUCH AS: <i>Heteromeles arbutifolia</i> TOYON		EXISTING CLASS III BIKE PATH ON G STREET
			EXISTING BAYSIDE PARK PROMENADE
			EXISTING CLASS I BIKE PATH BAY BLVD
			EXISTING CLASS II BIKE PATH BAY BLVD

OVERALL SITE PLAN
CHULA VISTA BAYFRONT PARK - URBAN GREENING STRATEGY



CONSTRUCTION AND MAINTENANCE AGREEMENT

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

RECITALS

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

WHEREAS, LICENSEE proposes to construct the E Street At-Grade Crossing and Sweetwater Bicycle Path and Pedestrian Promenade, which includes the construction of a Class 1 bike path and pedestrian promenade (the “Project”). The LICENSEE desires to construct a new private at-grade crossing, to serve the Project across the SDAE tracks in substantial compliance with schematic plans attached hereto as Exhibit “A” (collectively, the “Improvements”); and

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

NOW, THEREFORE, IT IS AGREED:

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

2. **Use.** If LICENSEE shall use the ROW for any purpose other than as stated in Section 1 above, or fail to act in accordance with the provisions of this CMA, or act in a manner which unreasonably interferes with the use of the ROW by SDAE (including its licensees, successors and assigns), then SDAE (or its successors and assigns) shall provide LICENSEE with a timely

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

3. Conditions and Limitations.

(a) Conditions and Limitations on Use.

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

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

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

the trackage, crossing signaling, signage, communications, and crossing equipment as required. SDAE costs for maintaining the portion of the Improvements as described herein shall be at the sole expense of the LICENSEE.

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

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

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

7. **Notice.** The exercise of any and all rights provided to LICENSEE by this CMA is also subject to the notice requirements set forth in the ROE Permits for the construction and

maintenance of the Improvements, prior to entry onto the ROW for any purpose.

8. Indemnification.

(a) LICENSEE

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

(b) SDAE

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

(c) CONCURRENT NEGLIGENCE

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

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

(a) General Liability

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

(b) Automobile Liability

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

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

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

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

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

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

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

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

- Broad Form Property Damage
- Independent Contractors

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

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

- (v) Notice. All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to SDAE of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

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

11. **Default; Termination.**

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

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

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

restore SDAE's ROW and improvements or facilities as aforementioned within ten (10) days after the effective date of termination (or other time period approved by SDAE), SDAE may proceed with such work at the expense of LICENSEE. No termination hereof shall release LICENSEE from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions, or events happening prior to the date the Improvements are removed and the ROW of SDAE restored as above provided.

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

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

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

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

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

San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112
Attn: Real Estate Dept.
Tel: 619-686-6291

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

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

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

15. Dispute Resolution.

(a) The Parties agree that they shall first meet, through their senior staff representatives, to attempt to informally resolve any dispute that arises under this CMA.

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

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

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

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

SAN DIEGO AND ARIZONA EASTERN
RAILWAY COMPANY

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Paul C. Jablonski, President

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Of Counsel

By: _____
Deputy Port Attorney

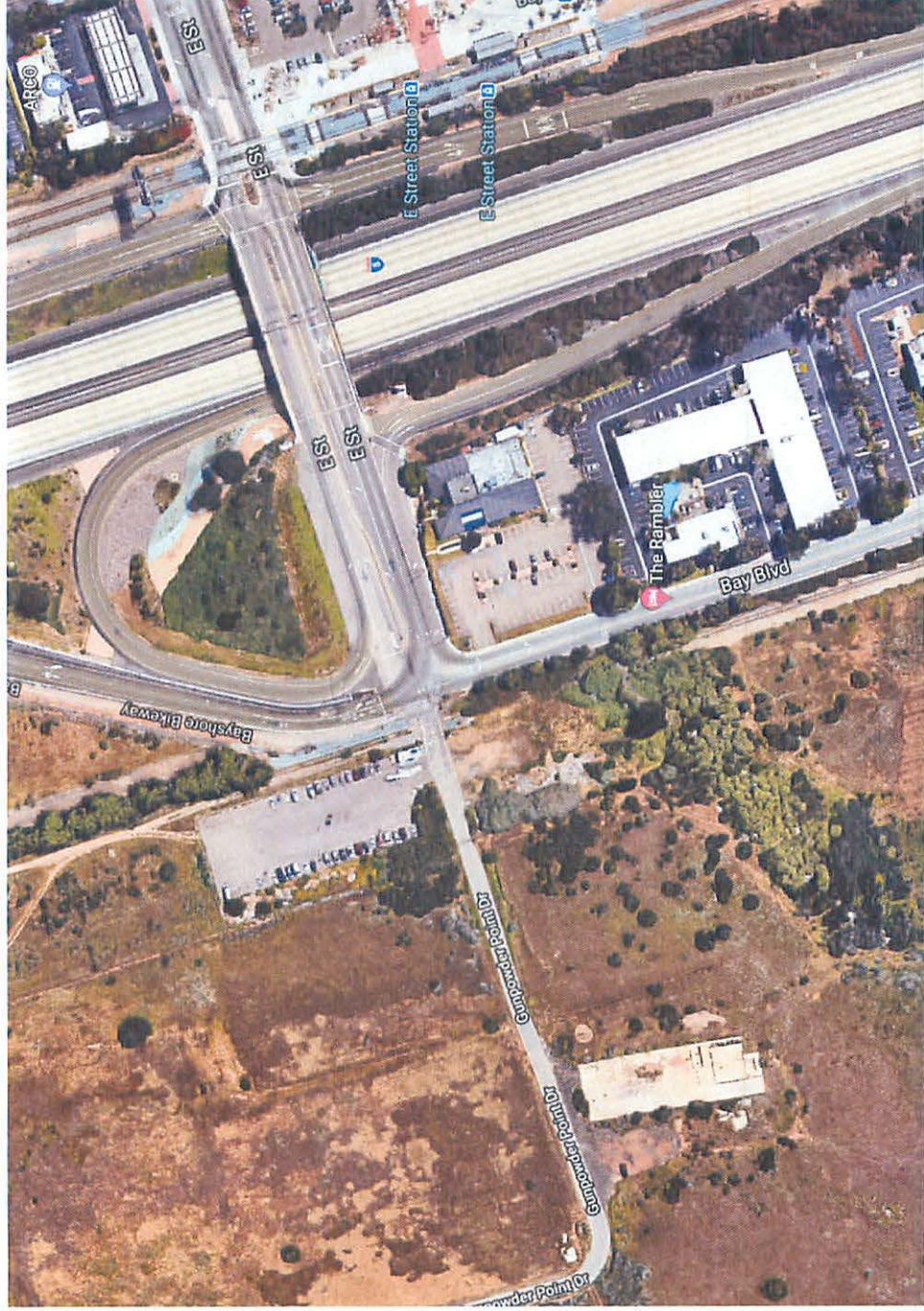
List of Exhibits

A. Project Schematic Plans

SD&AE Board of Directors
10/9/2018

San Diego Unified Port District
E Street Crossing

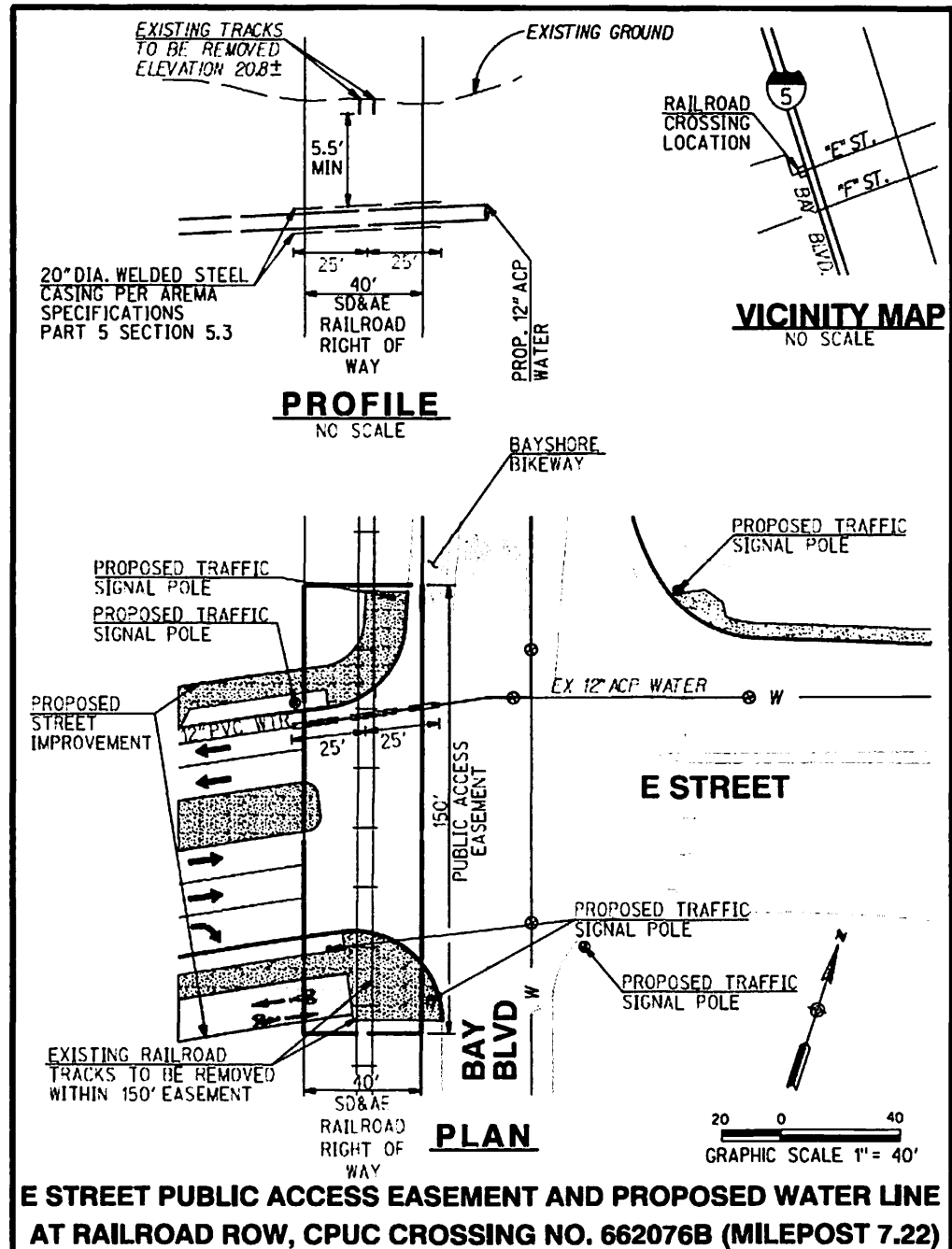
E Street Crossing



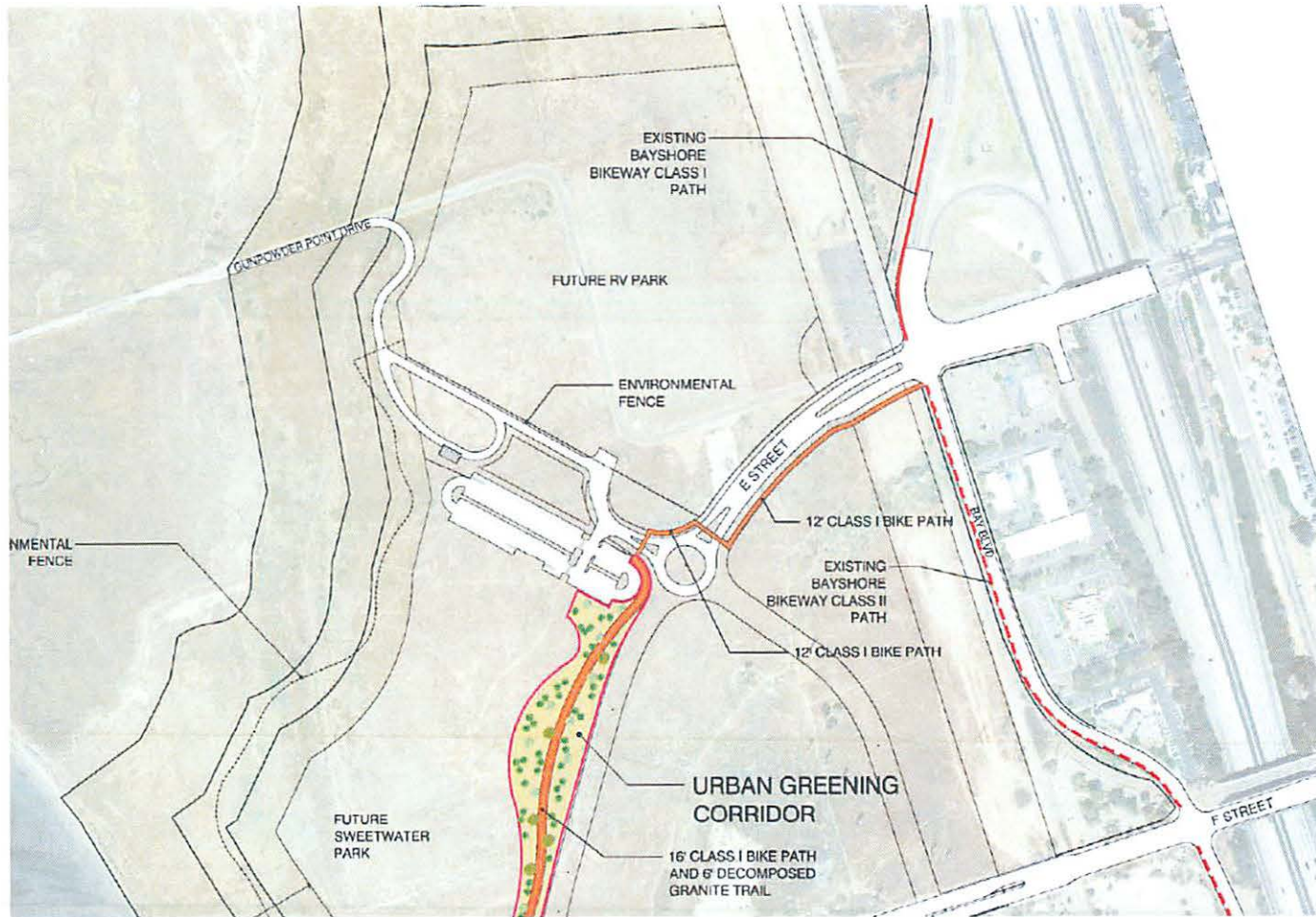
Street View



Proposed Crossing



Urban Greening Corridor



Agenda Item No. 6C

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

LICENSE FOR CAMERA TOWER PLACEMENT NEAR MILE POST 86.5 ON THE
DESERT LINE

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors approve issuing a license to the United States Customs and Border Protection (CBP) for a camera tower installation on the Desert Line near mile post 86.5.

Budget Impact

Reimbursement is not anticipated in cooperation with CBP.

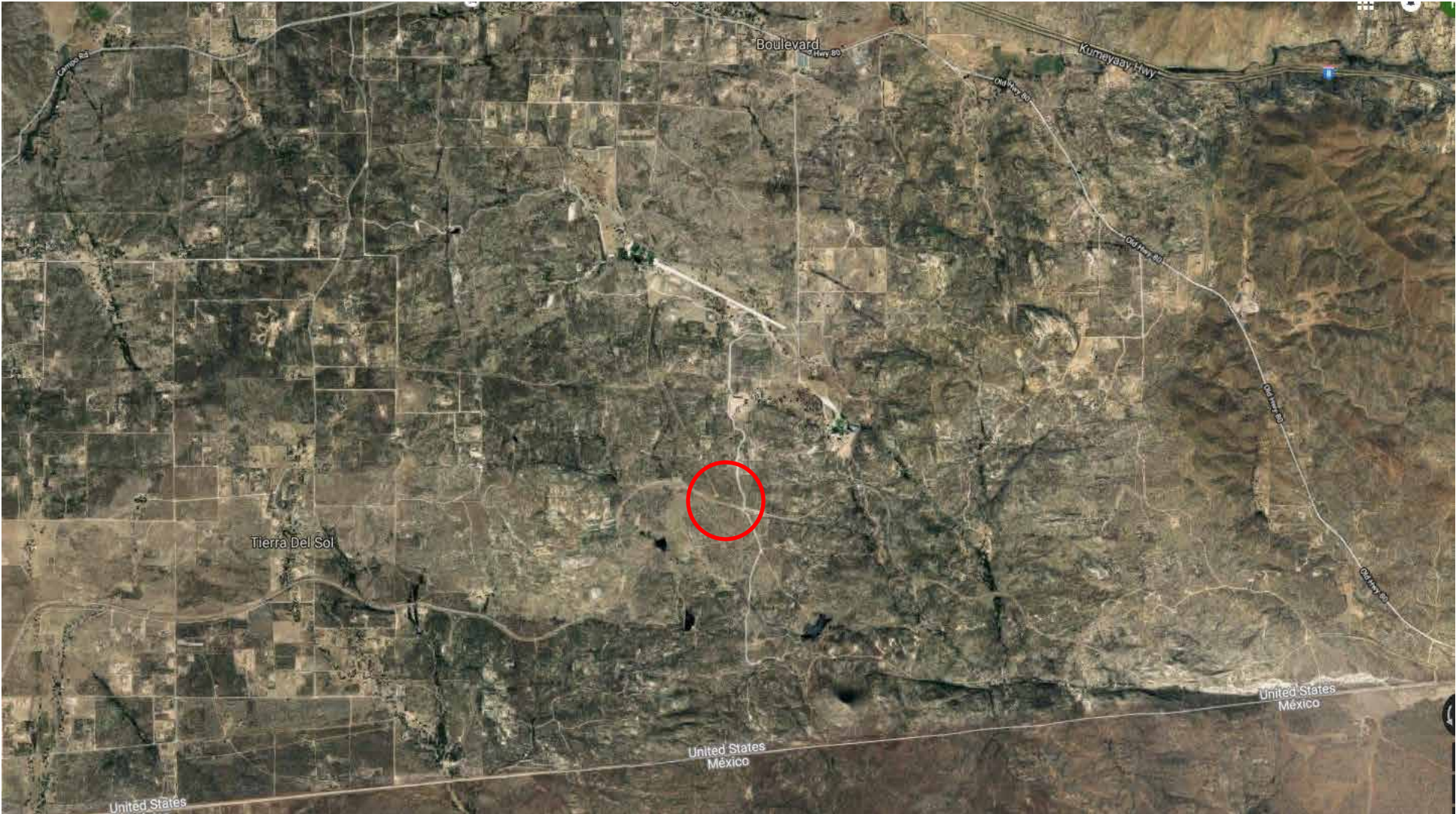
DISCUSSION:

CBP requests that a license be issued to cover the installation of a test camera tower as shown on the attached exhibit (6c-2). The tower's initial site location is east of High Pass near mile post 86.5. The tower may be moved depending on site coverage determined by CBP and approved by the MTS. The tower sites will be reviewed by appropriate specialists, such as historic preservationists and environmental experts.

It is anticipated that the installation will be for approximately 12 months. The tower placement will not be located in a manner that will be in conflict with future reopening of the Desert Line.

Attachment: Camera Tower Rendering





Desert Line milepost 86.5

SD&AE Board of Directors

10/9/2018

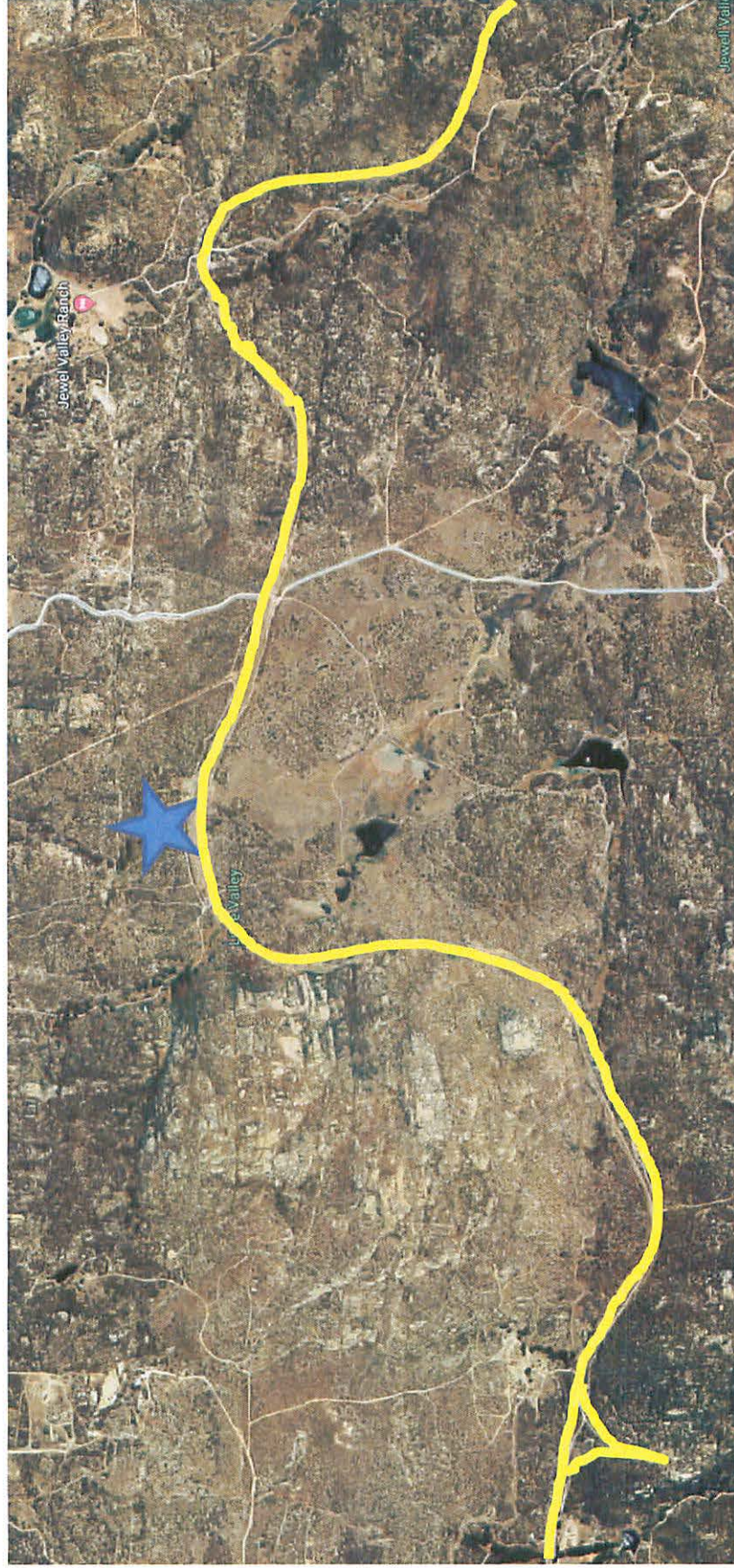
Customs and Border Protection

Camera Tower License

Camera Tower Typical



Initial Installation Site



Agenda Item No. 7

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

REMOVAL OF ABANDONED TRACK – PROPOSED CAPITAL PROJECT

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors approve the removal of unused track in Commercial Street in San Diego, Cleveland Street in National City, and F Street and J Street in Chula Vista.

Budget Impact

To be determined.

DISCUSSION:

MTS staff is currently preparing the FY 2020 Capital Improvement Project (CIP) list. One item that has been identified for potential action is removal of unused track in city streets. There are currently sections of abandoned SD&AE track in the cities of San Diego (Commercial Street), National City (Cleveland Street), and Chula Vista (F Street and J Street). MTS staff is preparing a project scope and independent cost estimate for this work and identifying potential funding sources. All or part of the funding may be identified from the SD&AE reserve account, which currently holds an estimated \$1,375,700 (as of June 30, 2018).

The proposed project is currently identified as follows: Remove track, timber panels, and warning system (where applicable).

<u>Commercial Street (City of San Diego)</u> Siding - 1600' x 10' 31 st Spur – 410' x 10' 22 nd Spur - 150' x 10' Remove 4 switch frogs and 2 split-point details	<u>F Street (City of Chula Vista)</u> Track (center of street) 1600 x 10'
<u>Cleveland Street (City of National City)</u> Track (center of street) 3500' x 10'	<u>J Street (City of Chula Vista)</u> Remove grade crossing

The current project scope includes 7,260 lineal feet of track removal and 72,600 square feet of pavement install. In addition, staff will be evaluating the cost of removing all track and ties or only removing track and repaving. If the ties are not removed, it could require future maintenance obligations; however, tie removal could significantly increase the project cost.

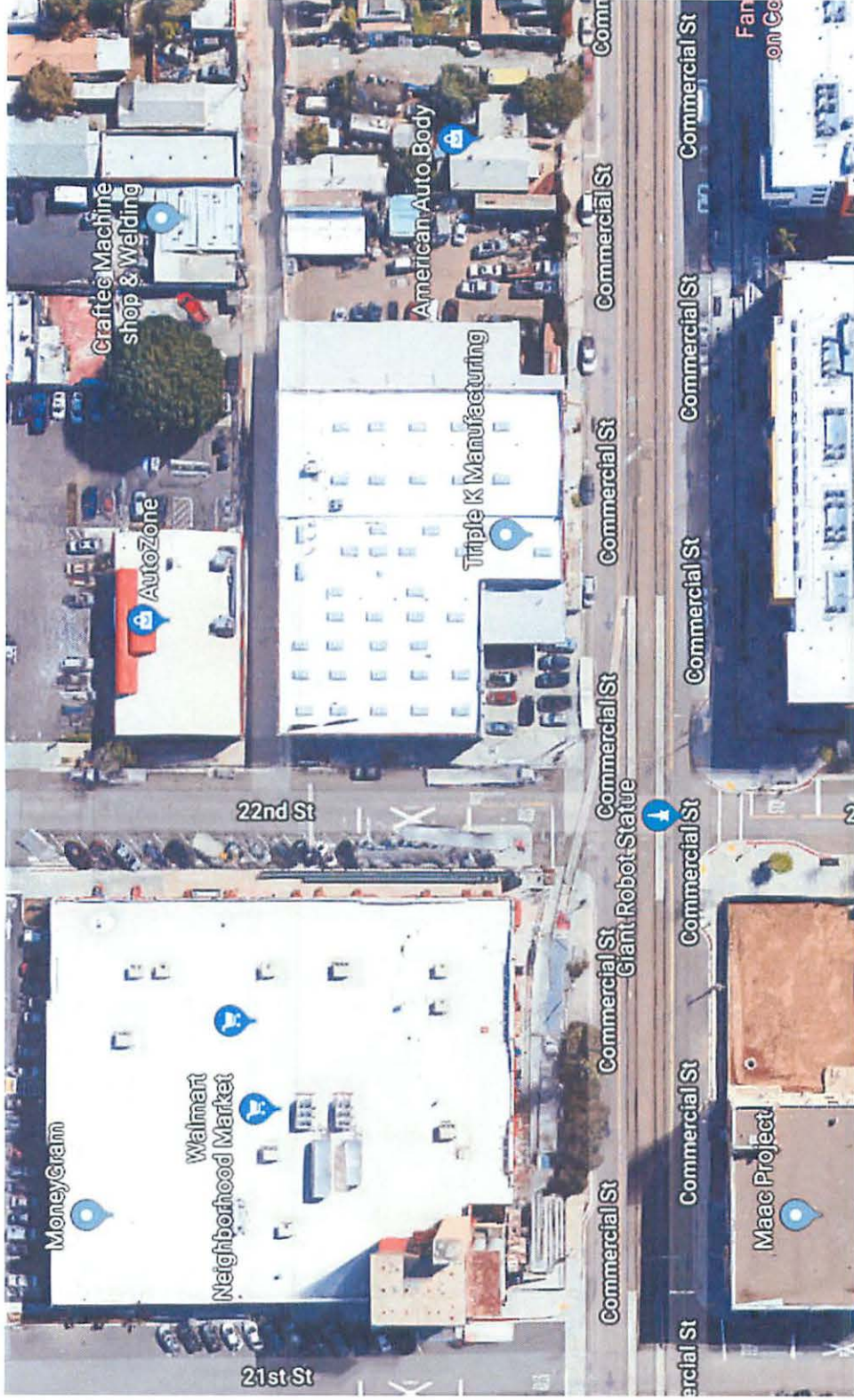
SD&AE Board of Directors
10/9/2018
Agenda Item 7

**REMOVAL OF ABANDONED TRACK –
PROPOSED CAPITAL PROJECT**

Commercial Ave Spurs

22nd Street Spur to Walmart

San Diego



Commercial Ave Spurs & Siding

29th Street to 31st Street

San Diego

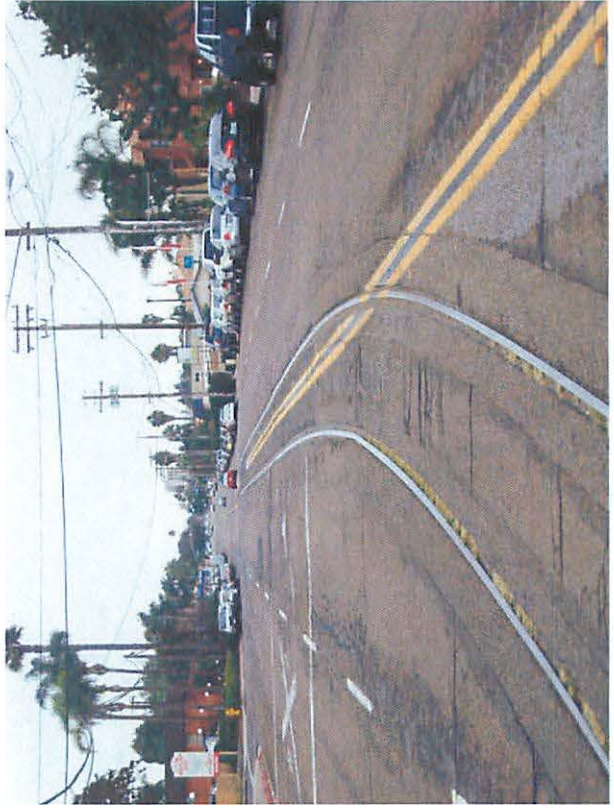


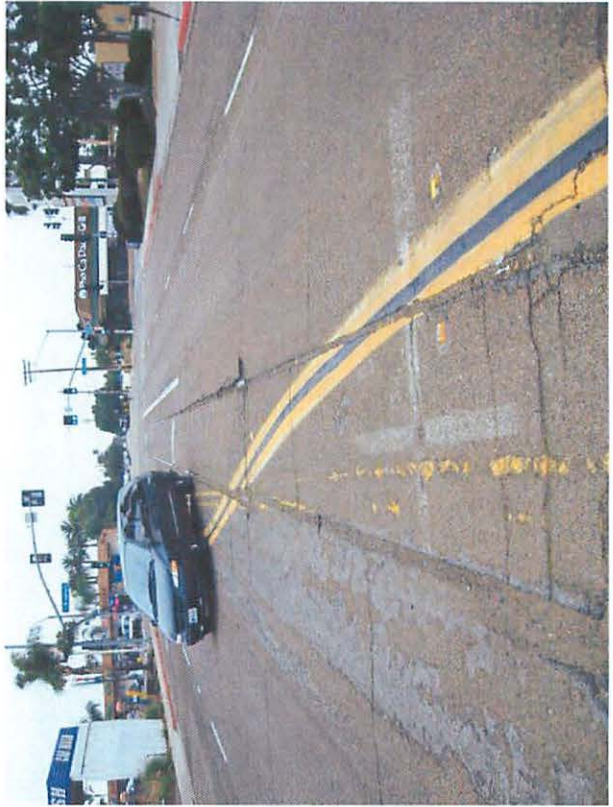
F Street

between I-5 and Broadway

Chula Vista









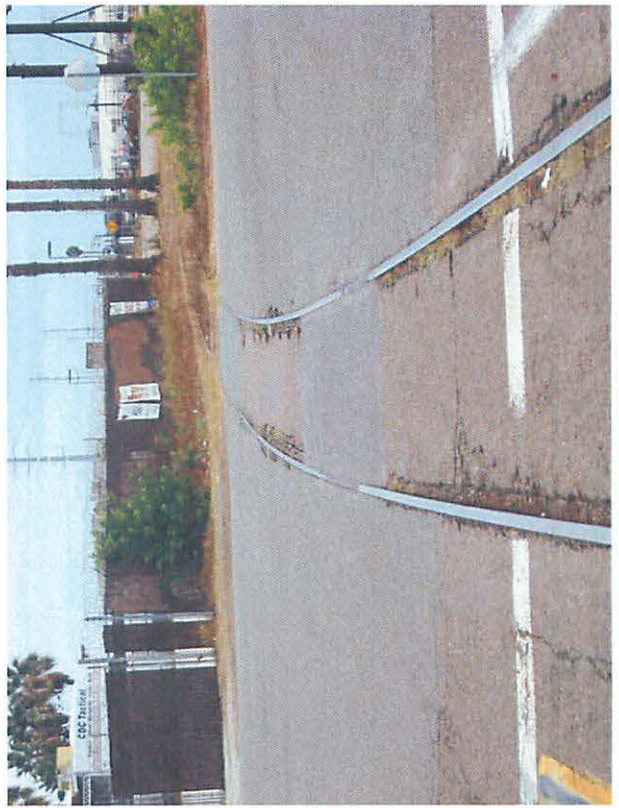
Cleveland
Street
between Civic
Center Dr. and Bay
Marina Drive

National City











Agenda Item No.

REQUEST TO SPEAK

Order Request Received

PLEASE SUBMIT THIS COMPLETED FORM (AND ANY WRITTEN STATEMENTS) TO THE CLERK OF THE COMMITTEE PRIOR TO DISCUSSION OF YOUR ITEM¹.

1. INSTRUCTIONS

This Request to Speak form must be filled out and submitted in advance of the discussion of your item to the Clerk of the Committee (please attach any written statement to this form). Communications on hearings and agenda items are generally limited to three (3) minutes per person unless the Committee authorizes additional time. However, the Chairperson may limit comment to one or two minutes each if there are multiple requests to speak on a particular item. General public comments on items not on the agenda are limited to three (3) minutes. Please be brief and to the point. No yielding of time is allowed. Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.

Please Print

NAME	<i>R. Mitchell Beauchamp</i>
Address	<i>1434 East 24th St</i>
Telephone	<i>619 477 5337</i>
Organization represented (if any)	<i>San Diego Electric Railway Club</i>
Subject of your remarks	<i>Retention of route a Cowdell Bait Line</i>
Regarding Agenda Item No.	<i>7</i>
Your comments are presenting a position of:	<input type="checkbox"/> SUPPORT <input checked="" type="checkbox"/> OPPOSITION

2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At public hearings of the Committee, persons wishing to speak shall be permitted to address the Committee on any issue relevant to the subject of the hearing.

3. DISCUSSION OF AGENDA ITEMS

The Chairman may permit any member of the public to address the Committee on any issue relevant to a particular agenda item.

4. GENERAL PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

Public comment on matters not on the agenda will be limited to five (5) speakers with three (3) minutes each under the Public Comment agenda item. Additional speakers will be heard at the end of the Committee's agenda.

¹ REMEMBER: Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.

Agenda Item No. 8

San Diego and Arizona Eastern (SD&AE) Railway Company
Board of Directors Meeting

October 9, 2018

SUBJECT:

APPROVAL OF THE 2019 SD&AE BOARD OF DIRECTORS MEETING SCHEDULE

RECOMMENDATION:

That the SD&AE Board of Directors approve the 2019 SD&AE Board of Directors meeting schedule.

Budget Impact

None.

DISCUSSION:

The SD&AE Board of Directors customarily meets once each quarter to discuss business and receive reports from its contract operators.

The following meeting schedule is recommended for 2019:

Tuesday, January 15, 2019	9:00 a.m.	(Fourth Quarter 2018 Reports)
Tuesday, April 9, 2019	9:00 a.m.	(First Quarter 2019 Reports)
Tuesday, July 9, 2019	9:00 a.m.	(Second Quarter 2019 Reports)
Tuesday, October 8, 2019	9:00 a.m.	(Third Quarter 2019 Reports)

Upon approval of the above meeting dates, additional information regarding materials due dates and mail-outs is as follows:

Materials Due to Clerk:

Wednesday, January 9, 2019
Wednesday, April 3, 2019
*Tuesday, July 2, 2019
Wednesday, October 2, 2019

Materials Posted:

Friday, January 11, 2019
Friday, April 5, 2019
Friday, July 6, 2019
Friday, October 4, 2019

*Materials due early due to July 4 holiday.