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# **EXHIBIT E**

## **MEMORANDUM OF UNDERSTANDING**

SANBAG Contract No. C10201  
 by and between  
San Bernardino County Transportation Authority  
 and  
City of Colton  
 and  
Union Pacific Railroad (UPRR)  
 and  
Burlington Northern Santa Fe Railroad (BNSF)  
 for  
Colton Crossing Rail Grade Separation Project

**FOR ACCOUNTING PURPOSES ONLY**

<input type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input checked="" type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No	<input type="checkbox"/> Amendment

Notes:

<b>Original Contract:</b>	<b>\$ 0</b>	<b>Previous Amendments</b>	<b>\$ _____</b>
		<b>Previous Amendments</b>	
		<b>Contingency / Allowance Total:</b>	<b>\$ _____</b>
<b>Contingency / Allowance Amount</b>	<b>\$ 0</b>	<b>Current Amendment:</b>	<b>\$ _____</b>
		<b>Current Amendment Contingency / Allowance:</b>	<b>\$ _____</b>

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL ► \$ 0**

\* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.

▼ Include funding allocation for the original contract or the amendment

Main Task/ Project	Level 1	Level 2	Cost Code/ Object	Grant ID/ Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amendment Amt

Original Board Approved Contract Date:	5/12/10	Contract Start: 5/12/10	Contract End: 1/01/14
New Amend. Approval (Board) Date:		Amend. Start: _____	Amend. End: _____

Allocate the **Total Contract Amount** or **Current Amendment** amount between **Approved Budget Authority** in the current year and **Future Fiscal Year(s) Unbudgeted Obligation**.

<b>Approved Budget Authority ►</b>	Fiscal Year: 09/10	<b>Future Fiscal Year(s) – Unbudgeted Obligation ►</b>	<b>\$ 0</b>
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Budget authority for this contract currently exists in Task No. 8791 (C-Task may be used here.).

A budget amendment is required. A Budget Amendment Request is attached.

**CONTRACT MANAGEMENT**

**Check all applicable boxes:**

Intergovernmental     Private     Federal Funds     State/Local Funds

Disadvantaged Business Enterprise (DBE)     Underutilized DBE (UDBE)

<b>Task Manager:</b> Garry Cohoe	<b>Contract Manager:</b> Khalil Saba
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<i>Garry Cohoe</i> Task Manager Signature	4-9-10 Date	<i>Khalil Saba</i> Contract Manager Signature	4-9-2010 Date
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<i>Della Stewart</i> Chief Financial Officer Signature	4/23/11 Date	
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## MEMORANDUM OF UNDERSTANDING

### RELATED TO THE COLTON CROSSING RAILGRADE SEPARATION PROJECT

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") dated as of May 4, 2010 is entered into by and among UNION PACIFIC RAILROAD CORPORATION, a Delaware corporation ("UPRR"), BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), CITY OF COLTON, a public body, corporate and politic ("CITY") and SAN BERNARDINO ASSOCIATED GOVERNMENTS, a California joint powers agency ("SANBAG"). UPRR, BNSF, CITY and SANBAG are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

#### RECITALS:

A. The intersection of the 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 evaluating 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").

B. 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.

C. CITY's local traffic circulation is affected by the numerous trains passing through at-grade crossings within the CITY's limits.

D. In relation to but separate from the Colton Crossing Project, the improvements that are the subject of this MOU consist of the following (collectively referred to herein as the "Improvements"):

- 1) A new railroad/street grade separation (Undercrossing) at Laurel Avenue (the "Laurel Avenue Grade Separation Project"). SANBAG has included the Laurel Avenue Grade Separation Project in the Measure I County sales tax funded transportation capital improvement program. Conceptual design has shown that depressing the street below the existing rail lines (Undercrossing) appears to be feasible by reducing the number of rail lines crossing Laurel Street from six to four during the construction of the Undercrossing. The rough order of magnitude cost estimate is \$54.8 million.
- 2) Establishment of a Quiet Zone in the City, including quiet zone improvements at Valley Boulevard and Olive Street, the removal of the existing grade crossings at "H" Street and "E" Street, and installation of a cul-de-sac, including street improvements such as sidewalk, curb and

gutter within the existing right-of-way, adjacent to the rail line at "H" Street and "E" Street (the "BNSF Quiet Zone Improvement Project") and the installation of quiet zone improvements on "M" Street at the realigned rail line for the 9<sup>th</sup> Street Improvement Project (the "'M" Street Quiet Zone Improvement Project");

- 3) Realignment of the UPRR Riverside Industrial Lead rail line out of the center of 9<sup>th</sup> Street, as described in UPRR's Ninth Street Track Relocation Project Conceptual Design Report, dated March 2009 (the "9<sup>th</sup> Street Improvement Project"); and
- 4) In connection with UPRR's consideration to abandon the segment of the Riverside Industrial Lead rail line that crosses the I-215 freeway, a new connection from the BNSF San Jacinto line and the southern portion of the Riverside Industrial Lead line would be needed to serve UPRR's freight customers located along the portion of the Riverside Industrial Lead located south of the San Jacinto Line (the "New Connection Project").

E. CITY believes that the Improvements are needed to address the noise and circulation issues described in Paragraphs B and C above.

F. SANBAG is considering widening the I-215 freeway from the Riverside County Line to the Interstate-10 freeway, in order to accommodate an additional lane in each direction (the "I-215 Widening Project"). The I-215 Widening Project requires modifications to structures that accommodate the crossing of the rail lines and the freeway, including the segment of the Riverside Industrial Lead rail line that crosses the I-215 freeway discussed above as part of the New Connection Project.

G. Since 1996, the Parties have at various times undertaken formal and informal discussions relating to the various alternative proposals to resolve the need for improving rail network operations and efficiency at the location of the Colton Crossing. The Parties have analyzed numerous engineering solutions to resolve these operational and efficiency issues. Six conceptual alternatives have been developed, including: (i) BNSF Flyover crossing existing UPRR tracks; (ii) UPRR Flyover crossing existing BNSF tracks; (iii) depress BNSF tracks under existing UPRR tracks; (iv) depress UPRR tracks under existing BNSF tracks; (v) combine elevated and depressed UPRR and BNSF tracks; and (vi) a no build alternative with the Colton Crossing remaining the same.

H. The Parties are in general agreement that the UPRR rail line grade crossing flyover of the BNSF rail line appears to be the most viable alternative. Therefore, the Parties also concur that only this alternative and the no build alternative will be evaluated during any required environmental and other legal review, including under the California Environmental Quality Act ("CEQA") and (if applicable) the National Environmental Policy Act ("NEPA") processes, to the extent appropriate under applicable laws ("CEQA/NEPA Review"). The Parties also understand and agree that any CEQA/NEPA Review for the Colton Crossing

Project will address public safety and graffiti abatement issues on the bridge structure, as well as study the preservation of the historic Wells Fargo Express Building and the Southern Pacific Depot (all located at or near 125 North 9<sup>th</sup> Street).

I. CITY will be the lead agency for CEQA purposes in connection with the Laurel Avenue Grade Separation Project, the Quiet Zone Improvement Project, and 9<sup>th</sup> Street Improvement Project.

J. Before construction of the Colton Crossing Project commences, the Parties will enter into a funding agreement relating to the Improvements, which will describe how all of the Total Project Costs (defined below) for all of the individual Improvements will be funded contingent upon applicable CEQA/NEPA Review and permitting of the Improvements (the "Funding Agreement"). The Funding Agreement shall specify in detail the estimated Total Project Costs for each Improvement, based on the then-current level of design.

K. Separate Construction and Maintenance Agreements will be entered into between the relevant parties for each individual Improvement prior to the construction of such project ("Construction and Maintenance Agreements"); provided, however, that the Funding Agreement shall generally describe how the construction and maintenance obligations will be assigned to the relevant parties for each Improvement.

L. Pending completion of the Funding Agreement, as well as CEQA/NEPA Review and permitting of the Improvements, through this MOU the Parties desire to set out general terms for the design, environmental review, permitting, installation, construction, and funding of the Improvements concurrent with the construction of the Colton Crossing Project.

M. Although the Parties enter into this MOU, California law requires CEQA Review prior to any discretionary approval by the CITY or SANBAG of any of the Improvements subject to CEQA Review. To the extent applicable, NEPA review may also be required for one or more of the Improvements. Therefore, the terms of this MOU are subject to: (i) completion of CEQA/NEPA review for the proposed Improvements and the Colton Crossing Project; (ii) the public review process, including any public hearing(s) required by law, for the proposed Improvements and the Colton Crossing Project; (iii) approval of the governing authority of each Party of the various agreements; and (iv) receipt of all required governmental approvals and permits for the proposed Improvements and the Colton Crossing Project.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Purpose of this MOU. This MOU is intended to describe the general terms of the roles and responsibilities of the Parties for the project management, design, environmental review, permitting, installation, construction, and funding of the Improvements, and the cooperation of the Parties to expedite the railroad structures required for the I-215 Widening Project. The Parties expressly acknowledge and agree that: (i) the Parties intend to instruct

their respective staff personnel to engage in negotiations on the terms of the Funding Agreement, which will include the terms generally set forth in this MOU (as such terms may be modified or augmented pursuant to agreement of the Parties); and (ii) staff negotiations on the terms of the Funding Agreement will not bind the Parties, and no Funding Agreement will be effective with respect to Improvements except upon completion of CEQA/NEPA Review relating to such Improvements and subsequent approval by the governing authority of each Party.

3. No Obligation to Proceed.

a. Each Party expressly acknowledges and agrees that this MOU creates no obligation on the part of any Party to proceed to construct the Colton Crossing Project, construct any of the Improvements, enter into the Funding Agreement, or enter into any Construction and Maintenance Agreements.

b. Each Party further acknowledges and expressly agrees that the installation and construction of the Colton Crossing Project shall not proceed until the Funding Agreement that includes the general terms of this MOU with regard to the Improvements is executed by all Parties.

c. Each Party will act in good faith in negotiations and execution of the Funding Agreement and separate Construction and Maintenance Agreements for each of the Improvements. No Party shall use the negotiations or execution of these agreements to cause delay or otherwise interfere with the construction of the Colton Crossing Project and/or the Improvements.

d. Although the CITY will not be a party to the agreement for constructing the Colton Crossing Project, both SANBAG and the City agree to continue to support and advance construction of the Colton Crossing Project during all phases of development, subject to the terms of this MOU and pending execution of the Funding Agreement.

e. Each Party will participate in good faith in obtaining necessary environmental clearance and permits for the Improvements. If such clearances and/or permits cannot be obtained for one or more of the Improvements, each Party acknowledges that the Colton Crossing Project can proceed without the construction of the particular Improvements for which environmental clearance and/or permits cannot be obtained. If the Laurel Avenue Grade Separation Project cannot proceed because of circumstances beyond the control of the Parties hereto, the Parties agree to identify and make a priority an alternative vehicular traffic circulation / railroad improvement with equal or lesser monetary costs and with a substantially equal ratio of contribution by each of the Parties.

4. Preliminary Terms. All of the terms set forth in this MOU are general in nature and subject to: (i) completion of CEQA/NEPA Review and approval by each Party's governing authority; and (ii) memorialization in the Funding Agreement.

5. Proposed Terms of Improvements. The Parties concur on the following as the basis for negotiating the terms relating to the Improvements, subject to the requirements of Section 3 above:

a. Laurel Avenue Grade Separation Project. SANBAG will commence construction of the Laurel Avenue Grade Separation Project within 18 months of the commencement of construction of the Colton Crossing Project.

b. Quiet Zone Improvement Project. CITY shall be the lead agency in the application to the California Public Utilities Commission and the Federal Railroad Administration for the BNSF Quiet Zone Improvement Project and the "M" Street Quiet Zone Improvement Project. Construction of the BNSF Quiet Zone Improvement Project is to commence concurrently with the commencement of construction of the Colton Crossing Project and the "M" Street Quiet Zone Improvement Project is to be constructed in conjunction with the 9<sup>th</sup> Street Improvement Project as described in Sub-section "c" below.

c. 9<sup>th</sup> Street Improvement Project. UPRR will commence construction of the 9<sup>th</sup> Street Improvement Project within 18 months of the commencement of construction of the Colton Crossing Project, or when the CITY has acquired the right-of-way required for the improvements, which ever comes later. CITY will be responsible for acquiring all necessary rights-of-way in connection with the 9<sup>th</sup> Street Improvement Project and conveying them to UPRR with clear title, at no cost to UPRR, by a form agreeable to the railroad, free of any obstructions and structures except those identified in Recital "H" above, and in a condition ready for rough grading to begin. Upon completion of the 9<sup>th</sup> Street Improvement Project, for the segment of rail line in accordance with CITY street standards in the center of 9<sup>th</sup> Street from approximately East "K" Street to approximately East "O" Street, UPRR will remove the existing rail lines from the center of 9<sup>th</sup> Street, pave the street in the areas from which the rail lines have been removed, remove the existing railroad signage, and relinquish to the CITY at no cost to the CITY any rights that UPRR may have to operate in the currently paved portions of 9<sup>th</sup> Street. The right-of-way is generally described in the Ninth Street Relocation Project Conceptual Design Report.

d. New Connection Project. Subject to the Section 6.(e)(4), UPRR concurs with and will diligently pursue the Surface Transportation Board's approval for the abandonment of the segment of the Riverside Industrial Lead rail line that crosses the I-215, to allow for the removal of the railroad bridge over the I-215 as part of the I-215 Widening Project (which is currently scheduled to begin construction in 2012). SANBAG and the CITY will support UPRR's application for abandonment of this segment of this line.

6. Proposed Funding. The Parties concur on the following as the basis for negotiating the funding of the Total Project Costs for the Improvements. For purposes of this MOU, unless otherwise stated, the phrase "Total Project Costs" shall mean all project management, environmental, design, right-of-way, permitting, installation, and construction costs.

a. **Laurel Avenue Grade Separation Project.**

1. **SANBAG.** SANBAG shall contribute eighty-point-three-eight percent (80.38%) of the Total Project Costs.

2. **CITY.** CITY shall contribute nineteen-point-six-two percent (19.62%) of the Total Project Costs, with the CITY's contribution reduced by the UPRR's contribution as described by Sub-section 3 below. Following such reduction, the City's out-of-pocket contribution is estimated at five million four hundred and eighty thousand dollars (\$5,480,000).

3. **UPRR.** UPRR shall contribute seven and seven-tenth percent (7.7%) of the Total Project Costs, which shall count towards the CITY's share as described in Sub-section 2 above, estimated at four million two-hundred thousand dollars (\$4,200,000) and irrespective of whether additional federal, state, local or other funds become available.

4. **BNSF.** BNSF shall contribute ten percent (10%) of the Total Project Costs if federal funds are not utilized on the project, or five percent (5%) of the Total Project Costs if federal funds are utilized on the project. As described by SANBAG Policy 40001, BNSF's contribution shall count towards the SANBAG's and the City's contribution as described in Sub-section 1 and 2 above.

b. **BNSF Quiet Zone Improvement Project.**

1. **SANBAG.** SANBAG shall contribute one-hundred percent (100%) of the Total Project Costs after BNSF's contribution as described in Sub-section 4 below.

2. **CITY.** CITY's contribution towards the Total Project Costs shall be to vacate its property rights on BNSF's right-of-way as part of the removal of the "H" Street and "E" Street grade crossings. CITY has no monetary obligation for this project.

3. **UPRR.** UPRR has no monetary obligation for this project.

4. **BNSF.** BNSF shall contribute one-hundred thousand dollars (\$100,000) towards the removal of the "H" Street and "E" Street grade crossings.

c. **"M" Street Quiet Zone Improvement Project.**

1. **SANBAG.** SANBAG shall contribute one-hundred percent (100%) of the Total Project Costs.

2. **CITY.** CITY has no monetary obligation for this project.

3. **UPRR.** UPRR has no monetary obligation for this project.

4. BNSF. BNSF has no monetary obligation for this project.

d. **9th Street Improvement Project**. For purposes of the 9th Street Improvement Project, Total Project Costs shall not include right-of-way acquisition costs which exceed any government grant funding obtained for this project. Any right-of-way acquisition costs above the grant funding shall be the sole obligation of the CITY.

1. SANBAG. In conjunction with CITY and UPRR, SANBAG shall assist in obtaining government grant funding to apply towards the Total Project Costs. For Total Project Costs above any grant funding but less than seven million dollars (\$7,000,000), SANBAG shall contribute fifty-nine percent (59%) up to a maximum of four million one-hundred and thirty thousand dollars (\$4,130,000). For Total Project Costs that exceed the sum of any grant funding plus seven million dollars (\$7,000,000), SANBAG shall have no obligation.

2. CITY. In conjunction with SANBAG and UPRR, CITY shall assist in obtaining government grant funding to apply towards the Total Project Costs. CITY shall pursue acquiring all required rights-of-way by donation. If the rights-of-way cannot be obtained by donation, the first priority of any government grants obtained for the project will be utilized for the purchase of rights-of-way. Any right-of-way acquisition costs above the grant funding shall be the sole obligation of the CITY. For Total Project Costs other than right-of-way acquisition, CITY shall have no obligation.

3. UPRR. In conjunction with CITY and SANBAG, UPRR shall assist in obtaining government grant funding to apply towards the Total Project Costs. For Total Project Costs above any grant funding but less than seven million dollars (\$7,000,000), UPRR shall contribute forty-one percent (41%). For Total Project Costs that exceed the sum of any grant funding plus seven million dollars (\$7,000,000), UPRR shall contribute one-hundred percent (100%). Notwithstanding anything to the contrary in this Sub-section (d), if as described in Sub-section (e) below, the bridge which serves the Riverside Industrial Lead rail line over the I-215 freeway is not permanently removed as part of the I-215 Widening Project, UPRR shall contribute one hundred percent (100%) of the Total Project Costs above any grant funding for this project (other than CITY's right-of-way obligation).

4. BNSF. BNSF has no monetary obligation for this project.

e. **New Connection Project**.

1. SANBAG. SANBAG has no monetary obligation for this project. SANBAG will cooperate with the Other Parties in obtaining any funding to apply towards the Total Project Costs.

2. CITY. CITY has no monetary obligation for this project. City will cooperate with the other Parties in obtaining any funding to apply towards the Total Project Costs.

3. UPRR. UPRR shall concur with the permanent removal of the bridge which serves the Riverside Industrial Lead rail line over the I-215 freeway. If for any reason this bridge is not permanently removed as part of the I-215 Widening Project, UPRR shall do both of the following: (a) contribute one million five-hundred thousand dollars (\$1,500,000) towards the replacement of the current bridge as part of the I-215 Widening Project; and (b) be responsible for one hundred percent (100%) of the Total Project Costs of the 9<sup>th</sup> Street Improvement Project above any grant funding received. UPRR will cooperate with the other Parties in obtaining any funding to apply towards the Total Project Costs.

4. BNSF. BNSF has no monetary obligation for this project. BNSF will cooperate in obtaining any funding to apply towards the Total Project Costs. In addition, upon the abandonment of the intermediate section of UPRR's Riverside Industrial Lead rail line between approximately Milepost 540.5 and Milepost 543.7 and provided BNSF and UPRR reach agreement on terms, BNSF will assume responsibility to switch UPRR's customers located south of the New Connection pursuant to a separate switching agreement that BNSF and UPRR will enter into as part of the definitive agreements contemplated in this MOU. The switch charge UPRR will pay BNSF and other terms and conditions for BNSF to assume such responsibility are to be determined through negotiations to be completed on or before May 15, 2010.

7. Cooperation for I-215 Widening Project. BNSF and UPRR will review and provide written responses for all submittals for their respective railroad bridges required for the I-215 Widening Project, including preliminary and final design plans, specifications and agreements, within thirty (30) working days. If the document is not approved within two submittals, a "round-table" meeting will be held to reach concurrence on the outstanding issues.

8. Amendment or Waiver. This MOU shall only be amended in writing after approval of the Parties to this MOU.

9. Counterparts. This MOU may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same agreement, with one counterpart being delivered to each Party.

10. Term of MOU. This MOU shall become effective upon its execution by all of the Parties and upon the adoption of the Baseline Agreement by the California Transportation Commission for Trade Corridor Improvement Fund (TCIF) funding incorporating that certain Memorandum of Understanding among BNSF, UPRR, and SANBAG concerning TCIF funding for the Colton Crossing Project, and shall, unless terminated for cause, remain in effect until the earliest of:

- a. execution of a Funding Agreement; or
- b. January 1, 2014.

11. Entire Agreement. This MOU is the full and complete agreement between the Parties with respect to the subject matter herein.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their duly authorized representatives all as of the date and year first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY'S SIGNATURE PAGE

CITY OF COLTON

By: Kelly Chastain  
KELLY CHASTAIN, Mayor  
City of Colton

Attest:

By: Eileen Gomez  
City Clerk

Approved as to Form:

By: [Signature]  
City Attorney

SANBAG'S SIGNATURE PAGE

SAN BERNARDINO ASSOCIATED GOVERNMENTS

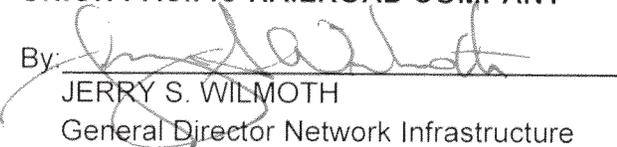
By: Paul M. Eaton  
PAUL M. EATON, President  
SANBAG Board of Directors

Attest:  
By: Vicki Watson  
VICKI WATSON  
Clerk of the Board

Approved as to Form:  
Jean-Rene Basle  
JEAN-RENE BASLE  
Authority's County Counsel

UNION PACIFIC RAILROAD'S SIGNATURE PAGE

UNION PACIFIC RAILROAD COMPANY

By: 

JERRY S. WILMOTH  
General Director Network Infrastructure  
Union Pacific Railroad

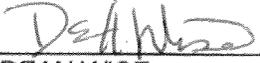
Approved as to Form:

By: 

DAVID M. PICKETT  
General Attorney  
Union Pacific Railroad

BNSF'S SIGNATURE PAGE

**BNSF RAILWAY**  
a Delaware Corporation

By:   
DEAN WISE  
Vice President Network Strategy  
BNSF Railway Company

Approved as to Form:

By:   
DAVID RANKIN  
Senior General Attorney  
BNSF Railway Company