

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY  
AND RECORD OF ACTION**

November 18, 2025

**FROM**

**NOEL CASTILLO, Director, Department of Public Works – Surveyor**

**SUBJECT**

Easement Agreement with BNSF Railway Company for Road Right-of-Way Easements Along Agua Mansa Road in the Colton Area

**RECOMMENDATION(S)**

1. Approve Easement **Agreement 25-899**, which include an Acceptance Certificate and non-standard terms, with BNSF Railway Company, for roadway construction, maintenance and use easements along Agua Mansa Road, for the purposes of roadway widening, for a perpetual term unless sooner terminated under the provisions of the Easement Agreement.
2. Approve two Memorandum of Easements, which include Acceptance Certificates, with BNSF Railway Company for the roadway construction, maintenance and use easements along Agua Mansa Road for the purposes of roadway widening.
3. Authorize the Chair of the Board of Supervisors to sign the Acceptance Certificates, executing the Easement Agreement and certifying acceptance of road right-of-way easements and consenting to its recordation by the County's authorized representative.
4. Direct the County Surveyor to record the Memorandum of Easements upon execution.  
(Presenter: Noel Castillo, Director, 387-7906)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Promote the Countywide Vision.**

**Improve County Government Operations.**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). There is no direct financial impact associated with the approval of this Easement Agreement (Agreement). The compensation for the easement, amounting to \$132,400, was paid by IDI Logistics on March 13, 2025, and will also pay the administrative fee of \$2,500. The Agreement will facilitate the necessary easements for the road widening project along Agua Mansa Road, which is expected to enhance infrastructure and support economic development in the area.

**BACKGROUND INFORMATION**

IDI Logistics is progressing with entitlements and enhancing Agua Mansa Road under a City of Colton Development Agreement that was approved by the Colton City Council on June 20, 2023, and signed on August 1, 2023. As part of the approval conditions, IDI Logistics committed to widening and improving Agua Mansa Road. The northern side of the road falls

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within County maintained right-of-way, while the southern half is within the City of Colton's jurisdiction.

On April 6, 2023, IDI Logistics submitted Street Improvement Plans to the County, which have since been reviewed and approved by the Department of Public Works, Transportation Permits Division (Permit No. TRCON-2023-00015). These plans necessitate additional public road right-of-way from the northern property owner, BNSF Railway Company (BNSF). The Department of Public Works (Department) has been collaborating with BNSF and IDI Logistics to secure this additional right-of-way. The location of the right-of-way agreement is situated on the north side of Agua Mansa Road, approximately 0.4 miles west of the intersection of Agua Mansa Road and South Rancho Avenue.

Pending acceptance of the road right-of-way, a construction permit is awaiting issuance. The Agreement follows the BNSF standard Easement Agreement for road widening for non-exclusive public road purposes and includes several non-standard and missing terms, detailed below:

1. The governing law for the Agreement is the state of Texas.
  - The County standard contract requires California law.
  - Potential Impact: The Agreement will be interpreted under Texas state law. Any questions, issues or claims arising under the Agreement will require the County to hire outside counsel competent to advise on Texas state law, which may result in fees that exceed the total Agreement amount.
2. The Agreement disclaims all warranties of any kind, that the premises is accepted "AS-IS," and that BNSF gives no warranty, express or implied, title to the premises, quiet enjoyment, merchantability, habitability, or fitness for any particular purpose, or any other matter, of or for the work performed pursuant to the Agreement.
  - The County standard contract provides that a contracting party fully warrants its deliverables provided to the County.
  - Potential Impact: The County's use of the easements under the Agreement is solely at its own risk. Under California law, a party is not required to provide any warranty. County Counsel cannot advise on, whether and to what extent, Texas law may limit or expand this warranty term.
3. The County is required to indemnify, defend, and hold BNSF harmless from all liabilities, including environmental claims, arising from the Agreement, the use of the Premises, described as portions of Assessor Parcel Numbers (APNs) 0275-031-28-0000 and 0275-031-27-0000 as shown on the map and a part of the attached legal descriptions and plats in the Memorandum of Easements, or actions of the County and its affiliates, except in cases of BNSF's gross negligence or willful misconduct. County also waives any claims that BNSF is an "owner" or "operator" under environmental laws and assumes responsibility for liabilities under the Federal Employers' Liability Act related to its employees or affiliates.
  - The County standard contract does not include any indemnification or defense by the County of another party.
  - Potential Impact: By agreeing to indemnify BNSF, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against BNSF without such limitations and the County would be

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responsible to defend and reimburse BNSF for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Texas law may limit or expand this Agreement term.

4. The Agreement does not require BNSF to indemnify the County.
  - The County standard contract general indemnity provision requires the other party to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
  - Potential Impact: BNSF is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from BNSF's negligent or intentional acts. If the County is sued for any claim, in connection with BNSF and the Agreement, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount. County Counsel cannot advise on whether and to what extent Texas law may allow the County to require BNSF to defend or indemnify it absent an express provision in the Agreement.
  
5. The Agreement requires County to release and hold harmless BNSF from, and against, any and all liabilities of any nature, directly or indirectly arising from in whole or in part from, or related to, the Agreement.
  - The County standard contract does not include a waiver, release, hold harmless, or limitation of liability.
  - Potential Impact: The Agreement requires the County to waive, release, hold harmless, and limit liability to the County for all claims arising from or which may arise from the Agreement. Claims could exceed the waiver, release, and liability cap and the contract amount leaving the County financially liable for the excess. In addition, the County's liability under the Agreement are not similarly limited. County Counsel cannot advise on, whether and to what extent, Texas law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
  
6. The Agreement does not require BNSF to meet the County's insurance standards as required pursuant to County Policy 11-07. Instead, the Agreement requires the County to agree to certain insurance coverages, terms and conditions.
  - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
  - Potential Impact: The Agreement does not include County standard insurance requirements. This means that the County has no assurance that BNSF will be financially responsible for claims that may arise from the Agreement, which could result in expenses to the County that exceed the total Agreement amount. Additionally, the Agreement requires the County to agree to certain insurance coverages, terms and conditions.
  
7. The Agreement provides that in any action at law or in equity the prevailing party is entitled to recover attorneys' fees and costs.
  - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.

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- Potential Impact: If either party institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total Agreement amount.
8. There is no termination for convenience in the Agreement.
- The County standard contract gives the County the right to terminate a contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
  - Potential Impact: County can only terminate the Agreement during the term of an uncured breach. Any attempted termination by County without cause would result in potential liability that could exceed the total contract amount.

The Department recommends approving the Easement Agreement and the Memorandum of Easements, including the non-standard terms, to facilitate the provision of public road right-of-way. The three approved Acceptance Certificates will accept two easements for portions of BNSF properties (APN 0275-031-28 and 0275-031-27) and expand the right-of-way limits which will enable IDI Logistics to proceed with the necessary road improvements per approved street improvement plans. The Easement Agreement and the third Acceptance Certificate, as approved, will execute the requested agreement, a condition from BNSF (Grantor) to grant the required right-of-way and enable IDI Logistics to complete said improvements.

**PROCUREMENT**

BNSF can grant the easements to the County in accordance with Government Code Sections 25526.6 and 23004(d).

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on November 7, 2025; Risk Management (Stephanie Mead, Staff Analyst, 386-9039) and County Finance and Administration (Amanda Trussell, Administrative Analyst, 387-4222) on November 5, 2025.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

Moved: Curt Hagman   Seconded: Joe Baca, Jr.  
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.  
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD

BY  \_\_\_\_\_  
DATED: November 18, 2025



cc:   PW/Surveyor - Hunsicker w/agree  
      Contractor - c/o PW/Surveyor w/agree  
      File - w/agree  
MBA  11/20/2025