



ORIGINAL

Contract Number

10-465

SAP Number

Department Contract Representative	Terry W. Thompson, Director Real Estate Services Department
Telephone Number	(909) 387-5252
Contractor	SBCTA
Contractor Representative	Victor Lopez
Telephone Number	909-884-8276
Contract Term	N/A
Original Contract Amount	\$0
Amendment Amount	N/A
Total Contract Amount	\$0
Cost Center	6520002702

Briefly describe the general nature of the contract: Cooperative Agreement No. 17-101646 between the San Bernardino County Transportation Authority and the County of San Bernardino for the Redlands Passenger Rail Project design and construction of a certain portion of the Santa Ana River Trail.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ **SEE SIGNATURE PAGE**

Agnes Cheng, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶

Jennifer Goodall, Real Property Manager, RESD

Date 6-15-20

COOPERATIVE AGREEMENT NO. 17-1001646

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION

AUTHORITY AND THE COUNTY

OF SAN BERNARDINO FOR

REDLANDS PASSENGER RAIL PROJECT

DESIGN AND CONSTRUCTION OF A

CERTAIN PORTION OF THE

SANTA ANA RIVER TRAIL

This Cooperative Agreement ("Agreement") is made and entered into on the date of the last signature, by and between the San Bernardino County Transportation Authority, hereinafter referred to as "SBCTA," and the County of San Bernardino, hereinafter referred to as "COUNTY", and may hereinafter be individually or collectively referred to as "PARTY" or "PARTIES".

RECITALS

WHEREAS, COUNTY is responsible to develop, operate, and maintain that certain portion of the Santa Ana River Trail system that is intended to traverse the County of San Bernardino (the entire Santa Ana Trail system hereinafter referred to as "TRAIL"), for public enjoyment within the County of San Bernardino; and

WHEREAS, a License Agreement was executed between SBCTA's predecessor-in-interest, San Bernardino Associated Governments ("SANBAG"), and the County of San Bernardino on November 30, 2004 ("License"), wherein SANBAG granted permission for the COUNTY to construct, install, operate, alter, maintain, reconstruct, and/or remove a certain portion of the TRAIL located on SANBAG-owned land as more specifically described in the License ("Licensed Property"); said portion of the TRAIL to be constructed on the Licensed Property is hereinafter referred to as the "Redlands Subdivision Trail Section"; and

WHEREAS, SBCTA is responsible for implementation of the Redlands Passenger Rail Project, hereinafter referred to as "RPRP"; and

WHEREAS, SBCTA intends to construct the RPRP, an approximately nine-mile passenger rail transit system, on an existing SBCTA right-of-way (which includes the Licensed Property) between the western terminus at the San Bernardino Transit Center located at Rialto Avenue and E Street in the City of San Bernardino to the eastern terminus located south of the University of Redlands campus between University Street and Cook Street in the City of Redlands adjacent to the University of Redlands campus, which nine-mile route crosses the existing Redlands Subdivision Bridge (identified as bridge 60.19 on Exhibit "A" attached hereto and incorporated herein by reference) that is located above the surface of the Licensed Property; and

WHEREAS, SBCTA represents that it has received environmental approval for the RPRP through a single document in a manner that addresses the requirements of both the California Environmental Quality Act (CEQA) and the Federal National Environmental Protection Act (NEPA) in March 2015, and has obtained or intends to obtain the necessary clearances, permits, authorizations and funding to perform the engineering, design and construction work necessary to complete the RPRP; and

WHEREAS, SBCTA intends, as part of its construction of the RPRP, to replace the existing Redlands Subdivision Bridge with a new bridge and install new abutments beneath each side of the replacement bridge, along with erosion prevention measures (collectively, the "Replacement Redlands Subdivision Bridge");

WHEREAS, the PARTIES desire to cooperate to design the Redlands Subdivision Trail Section, which is yet to be constructed, to accommodate the construction of the RPRP, which includes the Redlands Subdivision Trail Section crossing under the Replacement Redlands Subdivision Bridge, as the preliminary design is depicted in Exhibit "A";

NOW, THEREFORE, it is mutually understood and agreed by SBCTA and COUNTY as follows:

ARTICLE 1: TERMS & CONDITIONS

- A. SBCTA will, at SBCTA's sole expense, design and construct the rough grading of the Redlands Subdivision Trail Section in accordance with this Agreement.
- B. Intentionally Omitted.

- C. SBCTA will submit design plans for the rough grading of the Redlands Subdivision Trail Section with sufficient details, including specifications for (but not limited to) the depth and width of the rough grading to be performed, to COUNTY for review and approval in accordance with Article 5B and 6B, with approval of the 100% rough grading design plan to be received from COUNTY prior to SBCTA commencing any rough grading work on the Redlands Subdivision Trail Section.
- D. The design plan for the Redlands Subdivision Trail Section shall provide rough grading for a trail that is three hundred fifty feet (350') in length and fourteen feet (14') in width, from the starting point indicated on Exhibit "A" and continuing until the ending point indicated on Exhibit "A".
- E. Upon COUNTY's approval of the 100% rough grading design plan for the Redlands Subdivision Trail Section, which approval shall not be unreasonably delayed, SBCTA shall timely complete the rough grading of the Redlands Subdivision Trail Section in accordance with said plan. If the PARTIES are unable to reach an agreement regarding any of the 60%, 90% or 100% design plans for the construction of rough grading for the Redlands Subdivision Trail Section within fifteen (15) business days after SBCTA's initial submission of each design plan to COUNTY for COUNTY's approval, SBCTA shall deliver a written notice to COUNTY stating that if agreement is not reached on the subject design plan within an additional ten (10) business days after COUNTY's receipt of such notice from SBCTA, the RPRP design plan will be modified to remove the Redlands Subdivision Trail Section and SBCTA will not complete the rough grading; in which case, this Agreement shall terminate and COUNTY shall be responsible, at its sole cost, to perform any desired rough grading for the Redlands Subdivision Trail Section.
- F. Intentionally Omitted.
- G. Upon SBCTA's completion of the rough grading for the Redlands Subdivision Trail Section:
- (i) SBCTA shall, at its cost, remove all construction materials, trash, and debris from the Redlands Subdivision Trail Section; and
 - (ii) COUNTY shall be responsible, at its sole cost, for performing any other improvements for the Redlands Subdivision Trail Section, including but not limited to any desired paving.

H. This Agreement shall apply to the design and rough grading of the Redlands Subdivision Trail Section only, and not any other portion of the TRAIL intended to traverse the County of San Bernardino.

ARTICLE 2: FUNDING

SBCTA will fund any and all costs for the design plans and construction of the rough grading for the Redlands Subdivision Trail Section as described in Articles 1 and 5.

ARTICLE 3: COMPLETE COOPERATIVE AGREEMENT

- A. Except as stated herein, this Agreement, including any exhibits incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between SBCTA and COUNTY concerning the design and construction of the rough grading for the Redlands Subdivision Trail Section.
- B. The Recitals of this document are true and correct and are incorporated into this Agreement by reference.
- C. This Cooperative Agreement defines the specific terms, conditions, and funding responsibilities of the PARTIES as they pertain to the subjects addressed herein.

ARTICLE 4: DELEGATED AUTHORITY

The actions taken by SBCTA in the implementation of this Agreement after its execution are delegated to its Executive Director or its authorized designee; the actions required to be taken by COUNTY in the implementation of this Agreement are delegated to its Director of Regional Parks or its authorized designee.

ARTICLE 5: RESPONSIBILITIES OF SBCTA

SBCTA agrees to the following responsibilities:

- A. Act as the lead agency for the RPRP and manage, administer, coordinate, and oversee all design, construction, completion and other work related to the RPRP at SBCTA's sole expense.
- B. Prepare design plans for the rough grading of the Redlands Subdivision Trail Section, at SBCTA's sole expense, and submit design plans for the Redlands Subdivision Trail Section to COUNTY for review and comment, which shall be at COUNTY's sole

expense, at each of the 60%, 90%, and 100% rough grading design completion phases. The PARTIES acknowledge and agree that design plans for the rough grading of the Redlands Subdivision Trail Section will be shown on the RPRP design plans and that COUNTY's sole approval obligation is with respect to each design plan as it relates to the Redlands Subdivision Trail Section and not the design plans for the RPRP.

- C. Prepare, solicit, award, and administer contract(s) to construct rough grading of the Redlands Subdivision Trail Section in accordance with the 100% rough grading design plan approved by COUNTY, at SBCTA's sole expense, which shall be constructed in accordance with all applicable laws, including but not limited to the California Public Contract Code Sections 22000 through 22045, regarding bidding procedures, and Labor Code Sections 1720.2 and 1770 *et seq.*, regarding general prevailing wages.
- D. Provide COUNTY with a Notice of Completion issued by the relevant authority upon completion of rough grading of the Redlands Subdivision Trail Section in accordance with the approved 100% rough grading design plan.
- E. Provide as built plans of the Redlands Subdivision Trail Section promptly upon completion of the RPRP.
- F. Designate a project manager to be the administrative point of contact between the PARTIES and for routine coordination with COUNTY on the design planning relative to the rough grading of the Redlands Subdivision Trail Section.

ARTICLE 6: RESPONSIBILITIES OF COUNTY

COUNTY agrees to the following responsibilities:

- A. Designate a project manager to be the point of contact between the PARTIES and to coordinate with SBCTA on the routine design planning relative to rough grading Redlands Subdivision Trail Section, provided that administration of this Agreement and any approvals required pursuant to this Agreement shall be provided by the COUNTY's Director of Regional Parks or its authorized designee.
- B. Provide comments on each rough grading design plan in writing within fifteen (15) business days after written receipt from SBCTA of each design plan phase pursuant to Article 5B.

C. COUNTY shall coordinate with and submit to the California Public Utility Commission (CPUC) a formal crossing application for the Redlands Subdivision Trail Section where it crosses under the Replacement Redlands Subdivision Bridge, in accordance with CPUC General Orders and Rules of Practice and Procedure, of the California Public Utilities Code, the California Manual on Uniform Traffic Control Devices, and the improvements identified at the crossing diagnostic meeting held on February 10, 2017. SBCTA's rough grading shall commence only when COUNTY has approved 100% rough grading designs. The COUNTY's separate work for the construction of the Redlands Subdivision Trail Section in designated portions of the railroad corridor shall only commence when the CPUC has approved the formal crossing application, and COUNTY has received a fully-executed Temporary Right-of-Entry Agreement from the Southern California Regional Rail Authority.

ARTICLE 7: INDEMNIFICATION

The indemnification and defense obligations set forth in this Article 7 of this Agreement shall survive the expiration or termination of this Agreement. SBCTA agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liabilities resulting or arising from SBCTA's negligent acts or omissions which arise from SBCTA's performance of its obligations under this Agreement. COUNTY agrees to indemnify, defend (with counsel reasonably approved by SBCTA), and hold harmless SBCTA and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liabilities resulting or arising from COUNTY's negligent acts or omissions which arise from COUNTY's performance of its obligations under this Agreement. In the event COUNTY and/or SBCTA is found to be comparatively at fault for any claim, action, loss, damage and/or liability resulting or arising from its respective obligations under this Agreement, COUNTY and/or SBCTA shall indemnify the other PARTY to the extent of its comparative fault.

ARTICLE 8: NO THIRD PARTY BENEFICIARIES

This Agreement will not confer any rights or remedies upon any person or entity other than

the PARTIES to this Agreement and the PARTIES' respective successors and assigns.

ARTICLE 9: ADDITIONAL PROVISIONS

A. This Agreement shall continue until terminated on the earliest to occur of the following:

1. Voluntary or involuntary transfer or assignment by either PARTY hereto without the consent of the other PARTY of any of the rights, titles, or obligations set forth in this Agreement;
2. Mutual agreement of the PARTIES to terminate this Agreement;
3. Any default or breach of the Agreement by either PARTY hereto which has not been cured within thirty (30) days after receipt of notice of such default by the other PARTY, or such later time as is reasonably necessary if the default cannot feasibly be cured within such thirty (30) day period, provided that the defaulting PARTY shall not be deemed to be in default so long as the defaulting PARTY has commenced its cure within said thirty (30) days and diligently pursue such cure to completion;
4. SBCTA'S delivery of a Notice of Completion to COUNTY pursuant to Article 5D;
5. Termination pursuant to Article 1E of this Agreement.

B. Notwithstanding paragraph A above, this Agreement shall be terminated upon thirty (30) days prior written notice by SBCTA to COUNTY, without liability of any kind on the part of SBCTA, in the event that the RPRP is terminated for any of the following reasons, each of which is a "Termination Event": a) the RPRP project either is not funded or is defunded by any funding source upon which SBCTA relies for funding for the RPRP project; b) any necessary third-party governmental approval, permit or authorization for the RPRP is denied, withheld or revoked; or c) construction of the RPRP is permanently judicially enjoined or otherwise permanently prevented by order of any court or third-party government agency having jurisdiction. SBCTA's right to exercise its termination rights in this Article 9B is conditioned on: (i) SBCTA has not caused a Termination Event; (ii) SBCTA shall submit written documentation from the funding source, the court, or third-

party government agency, as applicable, to verify the occurrence of a Termination Event; and (iii) SBCTA must exercise its termination rights in this Article 9B as soon as reasonably practicable.

- C. The undersigned warrant that they are duly authorized to execute this Agreement on behalf of said PARTIES and that by so executing this Agreement, the PARTIES hereto are formally bound to this Agreement.
- D. Except on subjects preempted by Federal law, this Agreement shall be governed and construed in accordance with the laws of the State of California. All PARTIES agree to follow all local, state, county and federal laws and ordinances with respect to performance under this Agreement.
- E. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the PARTIES that the remainder of this Agreement shall not be affected but shall remain in full force and effect.
- F. This Agreement may be amended with a written amendment when agreed upon and duly authorized to be executed by both PARTIES.
- G. In the event of litigation arising from allegation of breach of this Agreement, each PARTY to this Agreement shall bear its own costs, including attorney(s) fees.
- H. This Agreement may be signed in counterparts, each of which shall constitute an original document.
- I. Any notice required or authorized to be given hereunder or any other communications between the PARTIES provided for under the terms of this Agreement shall be in writing, unless otherwise provided for herein, and shall be served personally, by postage pre-paid first class United States mail, registered or certified (return receipt requested) or by reputable overnight courier.
- J. Notice given under or regarding this Agreement shall be deemed given (a) upon actual receipt, if delivery is personally made, or (b) upon actual receipt or refusal to accept delivery, if delivery is made by postage pre-paid first class United States Mail registered or certified mail (return receipt requested) or reputable overnight courier.

Notice shall be sent to the respective PARTY at the address indicated below or to any other address as a PARTY may designate from time to time in writing by a notice given in accordance with this paragraph.

If to SBCTA:

San Bernardino County Transportation
SBCTA 1170 West 3rd Street, 2nd Floor
San Bernardino, CA 92410
Attention: Carrie Schindler, PE, Director of Transit & Rail Programs

If to COUNTY:

San Bernardino County Regional Parks
Department 777 East Rialto Avenue
San Bernardino, CA 92415-0763
Attention: Director

and

San Bernardino County Regional Parks
Department 777 East Rialto Avenue
San Bernardino, CA 92415-0763
Attention: Department Planner

-----SIGNATURES ON THE FOLLOWING PAGE-----

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be entered into as of the date set forth above.

County of San Bernardino:

By: 
Curt Hagman, Chairman, Board of Supervisors
JUN 23 2020
Date: _____

San Bernardino County Transportation Authority:

By: _____
Raymond W. Wolfe
Executive Director
Date: _____

Approved as to form:

By: _____
Julianna K. Tillquist
General Counsel

Date: _____

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE CHAIRMAN
OF THE BOARD

Lynna Monell, Clerk of the Board of Supervisors of the County of San Bernardino

By: 
Deputy
Date: **JUN 23 2020**

Approved as to form:

By: 
Agnes Cheng
Deputy County Counsel

Date: 06/15/2020

**EXHIBIT
A**

REV	DATE	DESCRIPTION	BY	CHKD
0	02-26-19	CONFORMED	AS	AS
1	09-26-20	SANTA ANA ALIGNMENT	AS	AS

DESIGNED BY: A. SHAH
 CHECKED BY: J. K. ANDRES
 DRAWN BY: M. SHAFER
 APPROVED BY: R. KLONSKY
 DATE: 5-18-2018

San Bernardino County Transportation Authority

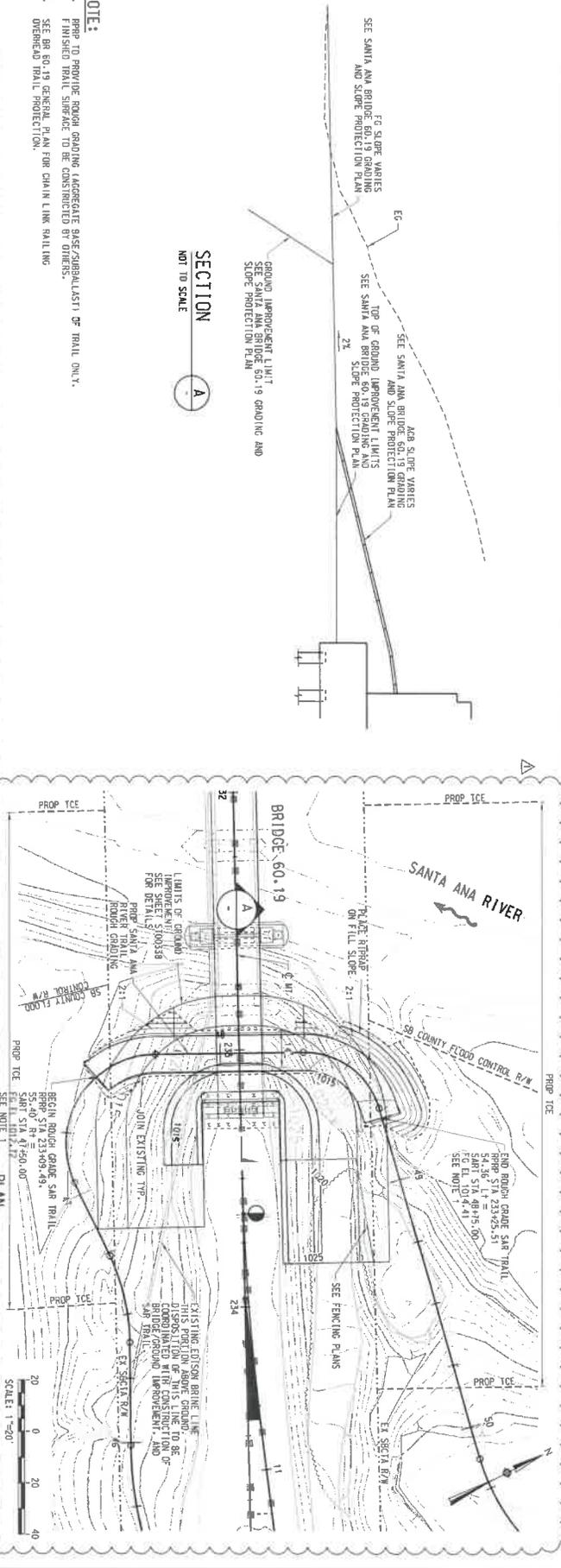
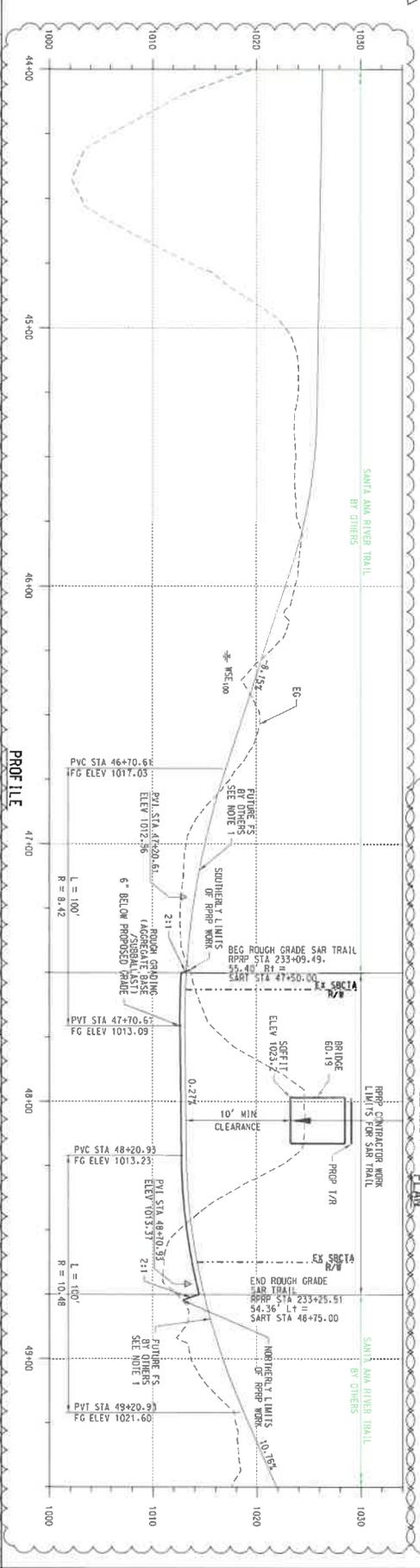


1600
 2700 Main Street, Suite 300
 Riverside, CA 92501-2110
 (951) 529-9200

REDLANDS PASSENGER RAIL PROJECT

SANTA ANA RIVER TRAIL
 LAYOUT AND PROFILE

SCALE: 1"=20'



- NOTE:**
1. BRIDGE TO PROVIDE ROUGH GRADING APPROPRIATE AND CONFORM TO TRAIL OWN.'S FINISHED TRAIL SURFACE TO BE CONSTRUCTED BY OTHERS.
 2. SEE BR 60.19 GENERAL PLAN FOR CHAIN LINK RAILING OVERHEAD TRAIL PROTECTION.

SECTION A
 NOT TO SCALE

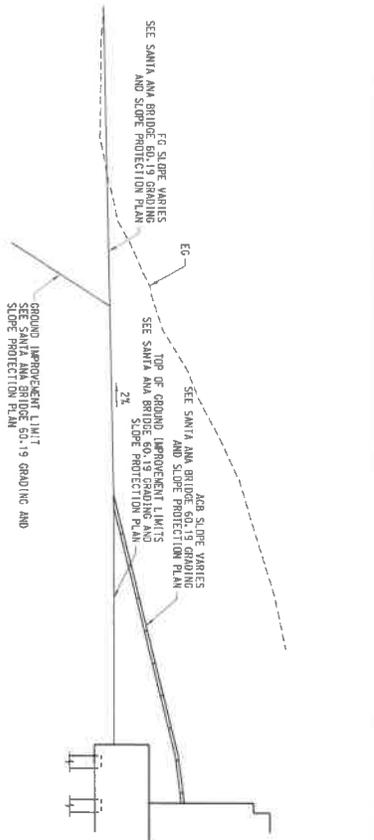


EXHIBIT A