

**ASSIGNMENT AND ASSUMPTION AGREEMENT 22-1002741
BY AND BETWEEN
THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
AND
SAN BERNARDINO COUNTY
FOR
CEDAR AVENUE OVERPASS AGREEMENT**

This Assignment and Assumption Agreement ("Assumption Agreement") is by and between the San Bernardino County Transportation Authority (hereinafter the "Authority") and San Bernardino County (hereinafter the "County").

RECITALS

A. Union Pacific Railroad Company, a Delaware corporation, ("Railroad") and San Bernardino County, a municipal corporation or political subdivision of the State of California, have entered into a Public Highway Overpass Agreement ("Overpass Agreement"). By instrument dated July 26, 1965, Central Pacific Railway Company, the Southern Pacific Company and the County entered into an agreement (the "Original Agreement") covering the construction, use, maintenance and repair of a grade separated overpass structure that carries vehicular traffic traversing on Cedar Ave., over Railroad's track(s) at Railroad's Milepost 534.736 at DOT Number 746980Y on Railroad's Alhambra Subdivision at or near Bloomington, San Bernardino County, California. The Railroad named herein is successor in interest to the Southern Pacific Company.

B. The County now desires to undertake as its project (the "Project") the reconstruction and improvement of the structure that was constructed under the Original Agreement. In furtherance of the Project, County entered into the Overpass Agreement attached hereto as Exhibit A. The reconstructed structure, as improved, is hereinafter the "Structure". The County's plans showing the type, size and location of the Structure are attached as Exhibit A-1 to the Overpass Agreement.

C. The right of way granted by Railroad to the County under the terms of the Original Agreement is insufficient to allow for the reconstruction and maintenance of the Structure. Therefore, pursuant to the terms of the Overpass Agreement, Railroad grants to the County the additional permanent and temporary rights necessary to construct, maintain the Structure and the slope area in support of the Structure, for and in consideration in the amounts of \$287,000 and \$133,000, respectively, as well as an estimated \$555,000 in work to be preformed by the Railroad, for an estimated total of \$975,000, the costs of which shall be borne exclusively by the Authority.

D. Railroad consented to the assignment to and assumption by the Authority of a portion of the County's rights and obligations under the Overpass Agreement, Section 14.

E. It is the intent of the Parties to assign the County's obligations to perform construction work under the Overpass Agreement during the Structure's construction phase and costs for the permanent, construction, and maintenance easement rights to construct and maintain the Structure to the Authority. It is further the intent of the parties that upon completion of the

Structure, the County will be responsible for the ownership and maintenance of the Structure and shall retain all obligations related thereto as set forth in the Overpass Agreement.
NOW THEREFORE, THE PARTIES HEREBY AGREE:

1. County hereby assigns to the Authority and the Authority hereby assumes all of the County's rights and obligations under the Overpass Agreement that are necessary to construct the Structure.

2. County retains all of County's rights and obligations under the Agreement that:

- a) are applicable after completion of the construction of the Structure;
- b) arise out of occupation and use of the Railroad's property or right-of-way, and ownership or maintenance of the Structure; and
- c) are not necessary for construction of the Structure.

3. The Authority shall be solely responsible for the costs necessary for the additional permanent and temporary property rights, and construction and maintenance rights to construct and maintain the structure in the amounts of \$287,000 and \$133,000, respectively, as well as work to be performed by Railroad associated with the Project in the estimated amount of \$555,000, for an estimated total of \$975,000 and as set forth in the Overpass Agreement.

4. The Authority agrees to incorporate into the Special Provisions for Construction of the Interstate 10 (I-10) Cedar Avenue Interchange Improvement Project and all conditions of the Overpass Agreement, attached to this Assumption Agreement as Exhibit A, that are required by the Overpass Agreement to be so incorporated.

5. The Recitals set forth above are incorporated into and made a part of this Assumption Agreement.

6. This Assumption Agreement is not intended to amend, supersede or modify any obligations set forth in Cooperative Agreement No. 18-1001962 between County and Authority.

7. This Assignment Agreement has been entered into, is to be performed entirely within, and shall be governed by and construed in accordance with the laws of the State of California.

8. If any provision of the Assignment Agreement is determined by a court to be invalid or unenforceable it shall be deemed severed here from, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.

9. With the exception of Cooperative Agreement No. 18-1001962, noted above, this Assignment Agreement embodies the entire understanding of the parties hereto and there are no other agreements or understandings written or oral in effect between the parties relating to the subject matter hereof unless expressly referred to by reference herein. This Assignment

Agreement may be amended or modified only by a written instrument signed by the parties or their duly authorized agents.

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Raymond W. Wolfe, Executive Director

Dated _____

APPROVED AS TO FORM:

By: _____
Juanda Daniel
Assistant General Counsel

[Signatures Continued on Following Page]
SAN BERNARDINO COUNTY

By: _____

Name/Title: Curt Hagman, Chairman of the Board

Date: _____

APPROVED AS TO FORM:

By: _____
Aaron D. Gest
Deputy County Counsel