



**SAN DIEGO & ARIZONA
EASTERN RAILWAY
COMPANY**

A NEVADA NONPROFIT
CORPORATION

1255 IMPERIAL AVENUE,
SUITE 1000
SAN DIEGO, CA
92101-7490
(619) 231-1466

BOARD OF DIRECTORS
PAUL JABLONSKI, CHAIRPERSON
MATT DOMEN
BLAKE JONES

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

July 19, 2016

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 April 12, 2016
Action would approve the SD&AE Railway Company Minutes of April 12, 2016. Approve
2. Statement of Railway Finances (Erin Dunn)
Action would receive a report for information. Receive
3. Report on San Diego and Imperial Valley (SD&IV) Railroad Operations (Matt Domen)
Action would receive a report for information. Receive
4. Report on Pacific Southwest Railway Museum (Diana Hyatt)
Action would receive a report for information. Receive
5. Report on the Desert Line (Arturo Alemany)
Action would receive a report for information. Receive
6. Real Property Matters (Tim Allison)
Receive
 - a. Summary of SD&AE Documents Issued April 12, 2016
 - S200-16-636: Right of Entry Permit to the City of La Mesa for the La Mesa Flag Day Parade.
 - S200-16-637: Right of Entry Permit to Navy Region Southwest for the Navy Bay Bridge Run.
 - S200-16-639: Right of Entry Permit to Palm Engineering Construction Co. for a City of La Mesa sewer rehab project east of the Grossmont Trolley Station.

- | | |
|--|--------------------|
| 7. <u>Election to Fill Vacant Board Member Position (Karen Landers)</u>
Action would: (1) elect Jared Gooch from Genesee and Wyoming as an SD&AE Board member to replace Blake Jones; and (2) forward a recommendation for approval to the MTS Board of Directors. | Elect |
| 8. <u>Ratification of Corrections to July 14, 2015, Meeting Minutes (Karen Landers)</u>
Action would: (1) approve corrections to the final meeting minutes of the July 14, 2015, SD&AE meeting for two prior actions taken on Agenda Items 6b and 6c; and (2) forward a recommendation to the MTS Board of Directors to ratify the corrected actions. | Approve/
Ratify |
| 9. Board Member Communications | |
| 10. Public Comments | |
| 11. Next Meeting Date: October 11, 2016, at 9:00 a.m. at MTS | |
| 12. Adjournment | |

DRAFT

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

April 12, 2016

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 April 12, 2016, at 9:00 a.m.

The following persons, constituting the Board of Directors, were present: Wayne Terry (for Paul C. Jablonski) and Matt Domen. Blake Jones was absent. Also in attendance were:

MTS staff:	Karen Landers, Tim Allison, Erin Dunn
SD&IV staff:	Jared Gooch
Pacific Southwest Railroad Museum:	Diana Hyatt
Pacific Imperial Railroad (PIR):	Tim Doolittle
Ferrocarriles Peninsulares del Noroeste:	R. Mitchel Beauchamp
Public:	Lorraine Leighton

1. Approval of Minutes

Mr. Domen moved to approve the Minutes of the January 19, 2016, SD&AE Railway Board of Directors meeting. Mr. Terry seconded the motion, and it was unanimously approved.

2. Statement of Railway Finances

Erin Dunn reviewed the Statement of Railway Finances for the period ending February 29, 2016 (see the attachment to the agenda item).

Action Taken

The Board received a report for information.

3. Report on SD&IV Operations

Mr. Domen reviewed the SD&IV Periodic Report for activities for the first quarter of 2016 (see the attachment to the agenda item). Mr. Terry added that the FRA recently finished a review of MTS's request for a five-year waiver for temporal separation and a decision is pending.

Action Taken

The Board received a report for information.

4. Report on Pacific Southwest Railway Museum Operations

Diana Hyatt reviewed the First Quarter 2016 Pacific Southwest Railway Museum (PSRM) report. Ms. Hyatt requested that the Board consider entering into a lease agreement with PSRM for tenant rights (similar to the Campo Depot lease) to restore the Jacumba Depot. Karen Landers responded that PSRM will also need to work with PIR. Ms. Hyatt stated that PSRM would like to renovate the office at Jacumba Depot. Ms. Landers responded that PIR

has been tasked with addressing the abandoned property at Jacumba. Ms. Hyatt stated that a lot of that property has historical significance. Tim Allison clarified that there is a lease for operating rights and a lease for Jacumba Depot. Ms. Landers added that since PIR is not currently operating, that lease should be terminated. She asked Mr. Allison to follow up and give a status report at the next meeting. Discussion continued regarding asset ownership on the Desert Line, inaccessibility of some of the cars on the line, ongoing issues with vandalism, and bridge inspections. Ms. Landers stated that MTS will work on creating a formal notice with a deadline to submit any claims to accessible assets at Jacumba. A status update will be given at the next meeting.

Ms. Hyatt reported that the electricity is still on at Jacumba. Ms. Landers asked PIR staff to look into who is paying the bill.

Action Taken

The Board received a report for information.

5. Report on Desert Line

Tim Doolittle reviewed the PIR Periodic Report dated April 1, 2016. Ms. Landers added that collaboration continues with PIR and Baja Rail to negotiate a joint venture.

Action Taken

The Board received a report for information.

6. Real Property Matters

a. Summary of SD&AE Documents Issued Since January 19, 2016

Tim Allison stated that since the January 19, 2016, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-16-627: Right of Entry Permit to Emmerson Construction to construct a residential building near Euclid Avenue in the City of San Diego.
- S200-16-633: Right of Entry Permit to Caster Properties for construction of a storage facility near Elm Street in the City of San Diego.

Action Taken

The Board received a report for information.

b. Use Agreement with the Unified Port of San Diego

Karen Landers reported that two written comments were received (attached) and distributed to Board members. She added that she spoke with Mr. Jablonski (prior to the meeting), and it was decided to defer this action. Ms. Landers stated that no formal proposal has been received, and Tim Allison has contacted the Port requesting more information regarding its proposal.

Tim Allison gave a brief presentation of the proposed Use Agreement with the Port for a portion of the Coronado Branch Line south of H Street in Chula Vista. Karen Landers noted that the aerial map on page 6b-4 incorrectly highlighted the bike path as MTS right-of-way. A corrected version will be added to the final materials package and is attached for reference.

Mr. Allison described the property's ownership and layout. He has requested that the Port provide the specifics of its proposed developments on the property, and Mr. Allison reiterated to the Port that MTS must preserve its rights to operate on that line if needed.

Public Comment

- *R. Mitchel Beauchamp:* Mr. Beauchamp referred to the attached letter from Ed Kravitz with San Diego & Midwestern Railway Partners LLC dated April 11, 2016. Mr. Beauchamp summarized issues outlined in the letter and reminded the Board of the value and importance of preserving operating rights on the Coronado Belt Line.

Action Taken

Action was deferred pending more specific information and receipt of a formal proposal from the Unified Port of San Diego.

7. Board Member Communications

Mr. Domen introduced Jared Gooch with SD&IV. Mr. Domen requested that the Board consider nominating Mr. Gooch as Blake Jones' replacement.

Ms. Landers responded that this request will be added to the next agenda item. She added that this request wasn't on the agenda but reminded members of a previous discussion about potentially working with Genesee & Wyoming to alter the makeup of the SD&AE Board. Ms. Landers noted that the 1984 Operating Agreement with RailTex (now with Genesee and Wyoming) states that the operating company will have 2 Board members and MTS will have 1 Board member. However, the distance to MTS and the briefness of the meetings may make it more feasible to have 2 MTS members and 1 SD&IV member. In the long term, if and when the Desert Line becomes operational, it may be feasible to add 1 representative from each operator and MTS. Ms. Landers stated that it was previously questioned as to whether an interim change is necessary if the plan is ultimately to change the Board makeup from PIR or Baja Rail. She suggested discussing these possibilities at the next SD&AE meeting and having an agenda item to nominate Mr. Gooch as an SD&AE Board member until the Desert Line is operating freight and then alter the makeup of the Board at that time.

8. Public Comments

There were no public comments.

9. Next Meeting Date

The next meeting of the SD&AE Board of Directors is on July 19, 2016, at 9:00 a.m.

10. Adjournment

The meeting was adjourned at 9:30 a.m.

President

Legal Counsel

2016-4-12 DRAFT SDAE Minutes

Attachments: AI 6b – Comments Submitted (2)
AI 6b-4 Revised Aerial Map

San Diego & Midwestern Railway Partners LLC

Ed Kravitz, Manager, Member
Bea Klain, Manager, Member
Telephone: 619.890.8894
e-mail: sdm@sdm-rail.com
sdm-rail.com

SDA&E Railway Board Of Directors / M.T.S.

10th Floor , 1255 Imperial Avenue.

San Diego, CA 92101-4902

April 11, 2016

RE: Agenda Item 6 b

It is with some dismay that I have to write to you about the proposed lease of portions of the Coronado Belt Line of the SDAE Railway for: *other than the promotion of freight or rapid transit purposes.*

When I last spoke by phone with Staff Council Karen Landers, she was going to speak with Mr. Jablonski and ;" Get back to me; but it won't be real soon." That was about 3 months ago when I requested to know; if and when MTS would agendize ratification of the bylaws The SDA&E Board voted on and approved last January.

According the Agenda and Minutes of your January Meeting, The Board Voted to Approve Bylaws Changes in order to be recognized as Tax Exempt. Those new bylaws changes state that: the purpose of the parent agency is to promote the use of freight and rapid transit uses of the SDA&E and ease the burden on local government. Public records going back at least as far as 1998 indicate *efforts to do otherwise with the portion of the SDA&E known as the Coronado Belt Line.*

I have come before this Board going back to 1999 begging you to keep the linear resource in tact for future use. My vision was to save the economy of then ailing Imperial Beach by providing a similar quality of transit service that most other San Diego Cities have. With Beaches, Pier, Wildlife Refuges and new attractions, Imperial Beach has also become an magnet for folks who live in the newly build Eastlake and Otay Mesa areas. Expansion by the Navy at Ft. Emory and proposed Chula Vista Bay Front Developments will put un-due stress on existing transportation infrastructure. **Unfortunately , Imperial Beach is and will be painted in a corner with GRID LOCK.** The quality of life will suffer and so will the air quality. Our argument is this. If Santee can have a trolley: Why Can't Imperial Beach? Our proposals for

repurposing the CB-ROW and extending it from 7th Street in Imperial Beach to the Camp Surf vicinity makes more sense than ever now .

SANDAG has most of the information. So do we ! Use of the Coronado Belt Line for light rail link to the new Navy Base and the Beach would make sense if it were not for vested political interests that want to use that real estate for the benefit of favored real estate developers and not for Public Transit or Industrial Freight movements.

Instead; various powerful political figures have tried to plot and execute the demise of the contiguous rail corridor for real estate development purposes that would benefit favored developers and not the public transit issues facing the south bay cities.

As stated in the MTDB original charter and legislation passed by then Senator Mills when the SDA&E was acquired from Southern Pacific to facilitate the San Diego Trolley system, the purpose was for light rail mass transit development without interference with common carrier freight. When the light rail use precludes or interferes with Common Carrier Freight movements, the light rail variance with the Federal Railroad Administration is void!

Over 20 separate acts against the linear integrity of the CB-ROW have occurred since the late 1990's. Suspicious Trestle Fires, Signals and Gates Disabled. Rails buried and paved over, loading docks and construction roads built over rails ;removal of rails at key crossings and interconnects, land leases and surrendering critical infrastructure and adjacent SP land parcels to political figures and other pet projects !

In a cache of public records posted at <*Bayshore.sweet-haven.com*> in the 1998 B.F. Goodrich Relocation Agreement documents and contract it states among other things that the City Of Chula Vista Community Development Department (Chris Salamone) and the Port Real Estate Division under Thomas Morgan and then Chula Vista Port Commissioner David Malcolm; **sold this same portion of the CB-ROW in today's agenda item 6b to Goodrich in 1998 and took the money!** They did not own the property but, they took the money! In the contract they promised to use the Port's best efforts to acquire the MTDB/ MTS parcel and surrender it to consummate the bay front land swap with Goodrich. (See attachments)

In 1999 appointed Imperial Beach City Councilman Dan Malcolm (now Port Chairman) voted as Imperial Beach's MTS representative to vote for an abandonment of the CB-ROW without considering Federal Railroad Abandonment Laws. When Abandonment failed, the now defunct MFRC or Metropolitan Freight Rail Committee was established to decide the fate of the line.

No less than 4 members of the committee with financial ties within 500 feet of the CB-ROW voted to lease the CB-ROW to the Unified Port District for \$1.00 per year for 66 years to conceal the prior sale for 66 years!

Then there was the effort to preserve the line by actively moving freight on it. I am the last shipper of record and moved a railcar with pure sand to Salt Works station as a freight movement with SDIV when it was RailAmerica's contract.

I cut all the weeds and brush on the line with a handful of volunteers to facilitate taking the State Historical Commission on a tour of the line on rail speeders and went to multiple meetings of many historical groups in an effort to save the resource from burial and insure that the CB-ROW would maintain it's linear integrity and not befall the same fate as many other urban rail corridors as illustrated in DePaul University's Professor. Joe Schwieterman's two volume series; "When the Railroad Leaves Town." It is clear that every action to sever the linear integrity of the CB-ROW will increase the difficulty and cost of recovering it when it is needed again. It's needed again now!

In the time frame from 2004 - 2006 our LLC San Diego & Midwestern Railway Partners negotiated a freight movement and railcar storage agreement with the contracted Common Carrier and the item was approved by the SDAE Board. The consummation of the contract was thwarted by the head consultant for the Agency Chip Willet. Our freight movement was thwarted by an agency who's bylaws state their purpose is otherwise.

It's clear that the SDAE and it's parent agency MTS as well as SANDAG and the Unified Port District seem to be working together to insure that this rail corridor will be unavailable for transit use by severing the contiguity of the line in as many places as possible. This is just one more attempt to slice and dice it's integrity. It's clear that this particular Agenda item 6 b is for the purposes of consummating the illegal transaction of 1998 where money was taken for this same parcel when it was not owned by the Port or Chula Vista. This demonstrates that the recently adopted bylaws are meaningless, fraudulent and this action illustrates a continued conspiracy to abscond with taxpayer property for private developer's and political benefit.

Where is the benefit to Imperial Beach? Where is the benefit to mitigate over 4000 additional vehicles per day that will drive through Imperial Beach? The proposed traffic impacts of the proposed Chula Vista Bayfront Development will overload the existing interstate highway capacity and surface street capacity in the vicinity. Chula Vista and the Port may not realize it yet; but they are going to need it also someday.

It's time for Imperial Beach to be treated as an asset in the region instead of the red-headed stepchild. Please do not vote to support 6b and please insist that staff from SDAE, MTS, SANDAG and the Port re-examine the potentials as we have proposed for light rail transit on a re-purposed CB-ROW to the beach.



Ed Kravitz

San Diego & Midwestern Railway Partners, LLC



Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 120488, San Diego, California 92112-0488
www.portofsandiego.org

October 27, 2000

Mr. Leon Williams, Chairman of the Board
Mr. Tom Larwin, General Manager
METROPOLITAN TRANSIT DEVELOPMENT BOARD
1255 Imperial Avenue, Suite 1000
San Diego, California 92101-7490

Dear Messrs. Williams and Larwin:

At its August 12, 1999 MTDB Board meeting, there was discussion of the possibility of abandoning the MTDB/San Diego and Arizona Eastern Railway Company (SD&AE) rail line south from "F" Street in Chula Vista. At that meeting Mr. Rindone proposed an action item to "recommend to the SD&AE Railway Board the concept of abandonment of the Coronado branch line". The majority vote on this point was in favor of the recommendation (see attached Exhibit "A").

Please be advised that in its recently completed transaction involving the Community Development Commission of the city of Chula Vista, Rohr/BFGoodrich, and the District, the parties agreed to a number of actions, including the consolidation of real estate parcels north and south of the projected extension of "H" Street. The properties north of "H" Street were consolidated under Rohr/BFGoodrich ownership, and those south of "H" Street were consolidated under Port District ownership. The purpose of this transaction is to provide for more developable properties for both parties and for redevelopment of the area.

The existing railway south of "F" Street separates each of these holdings into parcels adjacent to the freeway and a separate parcel west of the railroad right of way. It would be extremely beneficial to abandon this barrier in order to effectively redevelop the properties. As part of the contract between the District and Rohr/BFGoodrich, the District agreed to "use its best efforts to either acquire title to the MTDB property or cause SD&AE to convey the MTDB property directly to Rohr/BFGoodrich" that MTDB property between "F" and "H" Streets in Chula Vista (see attached Exhibit "B"). The District also has strong interest in acquiring title of the balance of this right of way to fully consolidate its ownership and enhance the viability of redevelopment for the area.

→ 3.1.4 MTDB Property.

(a) **Property to be Transferred to BFG.** The Port shall use its best efforts to acquire and convey to BFG, or cause to be conveyed to BFG, the land currently owned by SD&AERC between H Street and Lagoon Drive, as shown on Exhibit C (the "MTDB Parcel"). City/Agency shall reasonably cooperate with Port's MTDB Parcel acquisition efforts.

(b) **Condition of MTDB Parcel.** The parties acknowledge that the MTDB Parcel currently contains an active rail line and related equipment (collectively, the "MTDB Railway"), and the MTDB Railway must be legally vacated and abandoned by MTDB and all users of the MTDB Railway prior to transfer to BFG. The Port shall use its best efforts to cause the vacation and abandonment of the MTDB Railway by MTDB and all users of the MTDB Railway. City/Agency shall reasonably cooperate with Port's MTDB Railway vacation and abandonment efforts.

(c) **Purchase of the MTDB Property.** Promptly after Port acquires or secures the right to acquire the MTDB Parcel, Port shall provide BFG written notice (the "Transfer Notice") evidencing BFG's opportunity to acquire the MTDB Parcel from, or through, Port. The parties acknowledge that the sum of \$212,573 (equal to \$2.00 per square foot for the 2.44 acre/106,286.4 square foot parcel), has been prepaid by BFG for the MTDB Parcel as a good faith estimate of its "fair market value." Within thirty (30) days after delivery of the Transfer Notice, BFG or Port may elect by written notice to the other to seek an adjustment (up or down) of the \$212,573 prepayment for the MTDB Parcel, based upon the "fair market value" of the MTDB Parcel in its then "as is" condition at the time of delivery of the Transfer Notice. Promptly thereafter, Port and BFG shall negotiate in good faith for a period of thirty (30) days to attempt to mutually agree upon the "fair market value" of the MTDB Parcel. If the parties are unable to agree upon a determination of "fair market value," then prior to the expiration of the 30-day negotiation period, Port and BFG shall mutually appoint one (1) MAI appraiser to determine the "fair market value" of the MTDB Parcel which shall be binding upon both parties. Upon determination of the "fair market value" of the MTDB Parcel (\$212,573, or otherwise), or promptly thereafter, BFG shall acquire the MTDB Parcel from or through Port, and an appropriate cash adjustment shall be made in the event the "fair

Exhibit D
(referenced in Section 5.1)

Transfer Payments

	Acres ¹	Price/SF	Amount Payable by Port to BFG ²
Port Acquisition of of BFG's South Campus:	n/a	n/a	\$16,467,814 ³
BFG Property Acquisitions:			Amounts Payable by BFG to Port, City
<u>From City:</u>			
Agency Parcel	3.65	\$ 8.00	\$1,271,932
Rados Parcel	3.02	\$ 8.00	\$1,052,409
<u>From Port:</u>			
Port Parcel 1	9.99	\$ 8.00	\$3,481,315
Port Parcel 2 (5.0 gross acres)	3.30 ⁴	\$ 8.00	\$1,149,984
SDO&E Parcel	7.41	\$ 2.00	\$645,439
MTDB Parcel	2.44	\$ 2.00	\$212,573
Total			\$7,813,292
Cash Balance to BFG at Closing			\$8,633,721

¹ Acreage and resulting purchase prices subject to post Closing adjustment based upon verified parcel sizes, in accordance with Section 5.2.

² Port is also depositing into escrow \$819,639 to be applied toward Transfer Activities pursuant to Section 3.6.1 and/or disbursed pursuant to Section 3.6.3.

³ This figure is based upon a valuation of \$1.00 per square foot for the BFG Property based upon an estimated



Agenda Item No. 2

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

July 19, 2016

SUBJECT: STATEMENT OF RAILWAY FINANCES

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a financial report for the period ending May 31, 2016.

Budget Impact

None.

DISCUSSION:

Attached are SD&AE's financial results for the period ending May 31, 2016, as well as the financial results for the fiscal year-to-date actuals as of May 31, 2016.

The current fiscal year-to-date revenues are \$903,000 favorable to budget primarily due to the Desert Line Lease revenue not included in the budget.

Expenses are \$69,000 favorable to budget primarily due to favorable variances in Personnel Costs and Outside Services.

The Net Income for the period ending May 31, 2016 was \$956,000.

Attachment: SD&AE Operating Statement for the Period Ending May 31, 2016

SD&AE Operating Statement FY2016-15

	FY 2016							FY 2015	
	Q1 Actual	Q2 Actual	Q3 Actual	Apr - May Actual	YTD - Actual (Jul - May)	YTD Budget (Jul - May)	Variance	Q1 - Q4 Actual	Variance
Revenues									
Right of Entry Permits	\$ 750	\$ 4,150	\$ 1,750	\$ 750	\$ 7,400	\$ 27,500	\$ (20,100)	\$ 18,206	\$ (10,806)
Lease Income	16,529	19,904	24,973	12,378	73,784	64,167	9,617	85,334	(11,550)
Desert Line Lease Revenue	250,000	250,000	250,000	166,667	916,667	-	916,667	1,000,000	(83,333)
Operator Income - SD&IV 1% Freight Fee	8,500	8,500	6,203	5,700	28,903	32,083	(3,180)	28,725	178
Other Income - Easement	-	-	-	-	-	-	-	25,500	(25,500)
Total Revenue	275,779	282,554	282,926	185,495	1,026,754	123,750	903,004	1,157,765	(131,011)
Expenses									
Personnel Costs	16,642	9,975	2,061	2,062	30,740	65,066	34,326	102,593	71,853
Outside Services	422	17,010	3,642	4,675	25,749	59,583	33,834	68,067	42,318
Risk Management	3,347	3,762	3,762	2,646	13,517	14,667	1,150	15,401	1,884
Misc. Operating Expenses	250	156	287	-	693	458	(235)	309	(384)
Total Expense	20,661	30,903	9,752	9,383	70,699	139,774	69,075	186,370	115,671
Net Income/(Loss)	\$ 255,118	\$ 251,651	\$ 273,174	\$ 176,112	\$ 956,055	\$ (16,024)	\$ 972,079	\$ 971,395	\$ (15,340)

Reserve Balance 2015	\$ 1,553,150
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Allocated Interest Earnings - Estimated	4,583
Operating Profit/(Loss) - YTD	956,055

Reserve Balance as of May 31, 2016	\$ 2,513,789
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Agenda Item No. 3

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

July 19, 2016

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 (2nd Quarter of 2016)



a Genesee & Wyoming Company

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

June 30, 2016

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 2nd Quarter of 2016 are listed as follows:

1. Labor

At the end of June 30, 2016 the San Diego & Imperial Railroad had 9 employees:

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

2. Marketing

Volume in the 2nd Quarter increased 55% as compared to Q2 of 2015. Bridge traffic into Mexico had an 84% increase, primarily driven by increases in LPG. Traffic terminating or originating on the SDIV was essentially flat.

3. Reportable Injuries/Environmental

Days through year to date, June 30, 2016, there were no FRA Reportable injuries or Environmental incidents on the SDIV Railroad.

Days FRA Reportable Injury Free: 7027

4. Summary of Freight

	2016	2015	2014
Total rail carloads that moved by SDIY Rail Service in the quarter.	1601	1030	922
Total railroad carloads Terminating/Originating Mexico in the quarter.	1263	687	777
Total railroad carloads Terminating/Originating El Cajon, San Diego, National City, San Ysidro, California in the quarter.	338	343	145
Total customers directly served by SDIY in the quarter	11	12	9
Regional Truck trips that SDIY Railroad Service replaced in the quarter	4803	3090	2766

Respectfully,
Matt Domen
General Manager

Agenda Item No. 4

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

July 19, 2016

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

July 10, 2016

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

Re: Second Quarter 2016

Dear SD&AE Board:

During the second quarter of 2016, utilizing all volunteer crews, the Pacific Southwest Railway Museum ran ___ passenger trains carrying _____ passengers with no FRA reportable accidents or injuries. Total income from SD&AE property for second quarter, 2016 was \$38,969.22. Our check for \$779.38 will follow under separate cover. By comparison, PSRM carried 2,197 passengers during the second quarter of 2015 and total income from SD&AE property was \$51,277.

Passenger ridership by comparison to the same quarter in previous years:

- 2,197 passengers during the second quarter of 2015
- 2,794 passengers during the second quarter of 2014
- 1,901 passengers during the second quarter of 2013
- 2,882 passengers during the second quarter of 2012
- 2,434 passengers during the second quarter of 2011
- 1,977 passengers during the second quarter of 2010

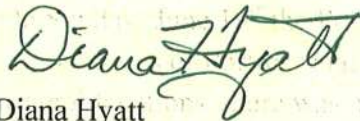
Passenger ridership remains steady. PSRM moved into its summer schedule following the Father's Day weekend and will operate Valley Flyer trains within the Campo Valley yard limits on an as-needed basis every Sunday through September.

PSRM continues to maintain both signalized railroad crossings within our right of way limits performing the monthly and quarterly inspections. PSRM also performs routine track inspections between MP 59.9 and 66.77. Our volunteer track crew continues to perform track maintenance tasks, particularly tie replacement on the mainline.

On Sunday, June 19th the Portrero/Border Fire began and burned through the end of the week in various areas of Portrero and Campo. Even though the fire entered the railroad right of way at several locations, there was no damage to the roadbed, ties, trestles or structures. The railroad and our Campo facility were fortunate and some thanks is to be given to our local firefighters for performing an exemplary job at saving structures during this crisis.

As always, I would like to invite the members of this board and staff to visit our museum at Campo on a weekday or an operational weekend and I would be pleased to provide a personal guided tour.

Sincerely,

A handwritten signature in cursive script that reads "Diana Hyatt". The signature is written in dark 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**

July 19, 2016

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: Periodic Report ("Confidential" unredacted version for SD&AE Board members only)

REDACTED

(NO CONFIDENTIAL MATERIALS INCLUDED)



PERIODIC REPORT

July 1, 2016

The periodic report to the SD&AE Railway Company is produced quarterly by the Pacific Imperial Railroad, Inc. for the SD&AE Board, in fulfillment of contractual requirements and to document activity in the restoration of the line to regional service along with its ongoing improvement for future generations.

Pacific Imperial Railroad, Inc.

Second Quarter 2016

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I. CALI-BAJA JOINT VENTURE SUBLEASE AND OPERATING AGREEMENT

After negotiations that have been ongoing since 2013, on May 31st, 2016 Pacific Imperial Railroad, Inc. (“PIR”) and Baja California Railroad, Inc. (“BJRR”) executed the Cali-Baja Joint Venture Sublease and Operating Agreement, (“Cali-Baja Sublease”)¹. The agreement grants BJRR exclusive operating rights over approximately 60 miles of the Desert Line between Milepost 59.6 at Division, California to Milepost 119 near Coyote Wells, California (the “BJRR Segment”), and non-exclusive operating rights between Milepost 119 and Milepost 129.61 at Plaster City, California (the “Intermodal Segment”).



Under the Cali-Baja Sublease, BJRR is responsible for financing the reconstruction of the BJRR Segment, and is subject to compliance with the Amended and Restated Desert Line Lease and Operating Agreement (“Desert Line Lease”). Additionally, BJRR shall make rent payments to PIR semiannually in the sum of \$425,000, and upon commencement of commercial operations shall pay to PIR, on a quarterly basis, ten percent (10%) of BJRR gross freight revenues, seven percent (7%) of which is reserved for payment to SD&AE/MTS. Initial consideration for the sublease is \$3,000,000, which is due to PIR in three monthly installments of \$1,000,000.

Under the Cali-Baja Sublease, PIR has retained non-exclusive operating rights over the Intermodal Segment and reserves the exclusive right to develop, construct, and operate an intermodal facility along the Intermodal Segment.

The Cali-Baja Sublease required the written consent of SD&AE/MTS due Section 8.1 of the agreement given that it allows BJRR to succeed to the interest of PIR in the event

¹ See Exhibit A, attached hereafter

of a default by PIR leading to a termination under the terms of the Desert Line Lease. In the event of such a scenario, BJRR and SD&AE/MTS will recognize each other respectively as tenant and landlord. Additionally, SD&AE/MTS approved Amendment 2 to the Desert Line Lease, which extended the Performance Milestone deadlines by one year and reduced the gross freight revenue obligations owed to SD&AE/MTS to seven percent (7%).²

On June 9th, 2016, MTS issued a press release³ and a press conference was held at the San Diego Regional Chamber of Commerce to announce the agreement between the railroads and provided an opportunity for San Diego community leaders Jerry Sanders and Ron Roberts, to show their support and publically advocate for the project.

II. RECONSTRUCTION PLANS

Under the Cali-Baja Sublease, BJRR has 150 days from the effective date of the agreement (October 28, 2016) to submit to PIR a Reconstruction Plan for the BJRR Segment, which must be submitted to SD&AE/MTS for approval. In December 2015, PIR shared engineering and field reports made by J.L. Patterson & Associates in 2013 with BJRR engineering and design staff to help facilitate development of the reconstruction plan. Additionally, subsequent to execution of the Cali-Baja Sublease, BJRR engineering and design staff have visited the Desert Line and had meetings with SD&AE Consultant Dan Davis of RailPros, who will be responsible for approving the reconstruction plans. Although PIR has not formally received a reconstruction plan, it is PIR's understanding that BJRR is developing a plan that will be implemented in six phases and has suggested a piecemeal approach to reconstruction may be a more efficient and logical way to approach the reconstruction efforts.

On February 19, 2016 PIR received preliminary approval of the Desert Line Reconstruction Plan- Amendment 1 ("DLRP-A/1") by SD&AE/MTS, which included a comprehensive proposal from Railworks, Inc., a railroad engineering, design, and construction firm, for the rehabilitation of the Intermodal Segment. In light of the Cali-Baja Sublease, PIR will be able to concentrate efforts on the reconstruction of the track structure of the Intermodal Segment and the development of plans for the build out of an intermodal terminal at Coyote Wells, California which will be accommodate the switching, block, storage, and sorting of railcars brought to the facility by BJRR and the Union Pacific.

² See Exhibit B, attached hereafter

³ See Exhibit C, attached hereafter

III. ROLLING STOCK ON THE DESERT LINE

As BJRR begins planning for the rehabilitation work on the Desert Line, it has become necessary to establish a strategy to address the existence of rolling stock that is stored on the BJRR Segment, including a derailment at Dubbers. Diana Hyatt of the Pacific Southwest Railway Museum, has furnished PIR with an inventory of all rolling stock along the Desert Line right of way. The ownership of certain cars is as of yet unclear and PIR wishes to determine the proper course of action, in compliance with all applicable laws and regulations, for notifying owners of said cars that reconstruction will soon begin and that if they wish to move their railcars, they must do so at their own expense and subject to compliance with all applicable regulations. Ms. Hyatt expressed an interest in acquiring for the museum collection any unclaimed freight equipment, or SD&AE equipment, specifically for its historic nature and significance.

Mr. Mitchel Beauchamp has notified PIR of his desire to relocate a caboose he owns at the Jacumba station, due to repeated instances of vandalism, but is currently unable to do so due to the derailment blocking the mainline at Dubbers. Additionally, he indicated in his correspondence that an individual, Philip Sheridan, owns several of the railcars at various locations on the Desert Line. Once a course of action has been selected to notify the general public of PIR and SD&AE/MTS's desire to discern ownership of the various rolling stock on the Desert Line, and no one claims the derailed car at Dubbers, PIR feels that PIR, BJRR, and SD&AE/MTS should coordinate to determine how to appropriately remove the derailment so that reconstruction can commence.

Below is an inventory of the rolling stock as reported by Diana Hyatt:

AT CAMPO

House Track

<u>CAR NUMBER</u>	<u>DESCRIPTION</u>	
CZRY 8758	bi-level gallery passenger car, ex-Chicago Metra	
SP tank car IN DISPUTE	formerly at Ocotillo for decades, owned by SDAE	NOT
SDAE box cars (2) IN DISPUTE	acquired from SDTI, owned by PSRM	NOT

AT JACUMBA

<u>CAR NUMBER</u>	<u>DESCRIPTION</u>
WCRC 100	EMD F7A locomotive

WCRC 101	EMD F7B locomotive
WCRC 102	EMD F7A locomotive
UP 669	EMD GP 40M-2 locomotive
ex-SP 1465	ALCO S-2 locomotive
TMRX1	steel, wide-vision cupola caboose
CZRY 1195	baggage car, ex-NYC
Amtrak 4462	chair car, ex-ATSF 2960
CZRY MOW01	heavy duty utility flat car (sitting in dirt)
GW 39500	Ford hirail boom truck

SP tank car	fire suppression car located at tunnel 16 for decades, owned by SDAE NOT IN DISPUTE
SP 1335	circa late 1870's-early 1880's wooden passenger coach, no trucks, owned by SDAE NOT IN DISPUTE
SP 1390	circa late 1870's-early 1880's wooden passenger coach, no trucks, owned by SDAE NOT IN DISPUTE
SP 8169?/1693?	circa late 1870's-early 1880's wooden passenger coach, no trucks, owned by SDAE NOT IN DISPUTE

AT TITUS SIDING

<u>CAR NUMBER</u>	<u>DESCRIPTION</u>
UP 6992/SWPC65	steel hopper car
UP 17649	steel hopper car
CZRY 2098	86' steel flat car
SP ?	steel flat car, built 1948-friction bearings, believed to be owned by SDAE NOT IN DISPUTE

AT DUBBERS SPUR

<u>CAR NUMBER</u>	<u>DESCRIPTION</u>
CZRY 7773	bi-level gallery passenger car, ex-Chicago Metra
CZRY 7779	bi-level gallery passenger car, ex-Chicago Metra
CZRY 8728	bi-level gallery passenger car, ex-Chicago Metra
CZRY 7774	bi-level gallery passenger car, ex-Chicago Metra
CZRY 7784	bi-level gallery passenger car, ex-Chicago Metra
SP 43969	flat car with tunnel inspection platform, owned by SDAE NOT IN DISPUTE

"TEMPORARY" SPUR AT W/E TUNNEL 8

<u>CAR NUMBER</u>	<u>DESCRIPTION</u>
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TPHX 801	passenger car, former Canadian commuter car
TPHX 817	passenger car, former Canadian commuter car
TPHX 835	passenger car, former Canadian commuter car

TUNNEL 16 SPUR (E/E Goat Canyon Trestle)

<u>CAR NUMBER</u>	<u>DESCRIPTION</u>
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ATSF 77041	ballast car
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IV. CARRIZO GORGE RAILROAD POLICE

On June 22, 2016 PIR and BJRR staff met with Marc Langlais, of the Carrizo Gorge Railroad Police ("CGRP"), a police force sanctioned by the State of California. The purpose of the meeting was to establish a protocol for oversight of any activity on the Desert Line and cross-border movement that may result from BJRR's rehabilitation efforts on the BJRR Segment. CGRP has been appointed and commissioned by PIR to manage such matters on an ad hoc basis until it becomes appropriate to establish a full-time security force to oversee the safety and regulatory compliance associated with the reconstruction, and cross-border movement of freight.

V. REPORTABLE INJURIES / ACCIDENTS / ENVIRONMENTAL INCIDENTS

- i. There have not been any reportable injuries.
- ii. On or around March 6, 2016, there was a minor collision involving PIR's locomotives on the Desert Line near Plaster City and a center beam railcar used in United States Gypsum Coportation's ("USG") operations at their plant in Plaster City. During the weekend of March 19-20, PIR's three locomotives and the damaged center beam were moved to the Coyote Wells siding. The locomotives were skated, as required by GCOR, and all handbrakes were set. USG has been notified and PIR did not impact their operation based on locomotives on their tracks. USG may have had some issues getting a new center beam railcar to ship outbound loads.
- iii. On June 6, 2016 PIR received a report produced by CGRP regarding the incident⁴.

REDACTED

⁴ See Exhibit D, REDACTED

REDACTED

VI. FREIGHT ACTIVITY

- a.** There has been no freight activity.

VII. LEASE PAYMENT

- a.** On July 1, 2016, the semi-annual lease payment was due to MTS, which PIR paid. To date, PIR has made 7 lease payments totaling \$3,500,000.

EXHIBIT A:

The Cali-Baja Joint Venture Sublease and Operating Agreement

CALI-BAJA JOINT VENTURE
SUBLEASE AND OPERATING AGREEMENT

THIS SUBLEASE AND OPERATING AGREEMENT ("Sublease" or "Agreement"), dated as of this 31st day of May, 2016 (the "Effective Date"), by and among Pacific Imperial Railroad, Inc. ("PIR"), a Delaware corporation, and Baja California Railroad, Inc., ("BJRR"), a California corporation. PIR and BJRR may hereinafter be referred to collectively as the "parties", or individually as a "party" hereto.

RECITALS

WHEREAS, San Diego and Arizona Eastern Railway Company ("SD&AE") owns the Desert Line railroad right-of-way stretching approximately seventy (70) miles from Milepost 59.6 at or near the U.S. Border in Division, California to Milepost 129.61 at Plaster City, California ("Desert Line");

WHEREAS, San Diego Metropolitan Transit System ("MTS"), a California public agency, is the sole member of SD&AE.

WHEREAS, PIR, on December 20th, 2012, entered into the Desert Line Lease and Operating Agreement as amended and restated on July 16, 2015 ("Desert Line Lease" attached hereto as Exhibit A), with SD&AE and MTS (collectively "SDAE/MTS"), which granted PIR the exclusive operating rights over the Desert Line for a 50-year term with an option to renew for an additional 49-years ("Desert Line Exclusive Operating Rights").

WHEREAS, pursuant to Section 4.1 of the Desert Line Lease, SD&AE granted, and PIR acquired, the right to lease and sublease, the operating rights over the Desert Line. This Sublease requires the written consent of SD&AE pursuant to Section 4.5.1.6 of the Desert Line Lease, which is contained on the signature page hereunder.

WHEREAS, on June 22, 2015, PIR and BJRR entered into a Memorandum of Understanding in order to express their intentions to enter into a definitive agreement in pursuit of an efficient binational railroad operation focused on optimizing the movement of freight in the region

WHEREAS, PIR is desirous of granting a sublease to BJRR for exclusive operating rights between Milepost 59.6 and Milepost 119 ("BJRR Segment"), and non-exclusive operating rights between Milepost 119 to Milepost 129.61 ("Intermodal Segment"), subject to the terms and conditions as stated herein.

WHEREAS, PIR, or its assignee, reserves non-exclusive operating rights on the Intermodal Segment from Milepost 119 to Milepost 129.61 with exclusive right to develop, construct and operate an intermodal facility along the Intermodal Segment.

WHEREAS, BJRR is the exclusive contractor to operate the 44.38 mile rail line from milepost 15.22 near San Ysidro, California at the U.S. – Mexican border in the west to milepost 59.60 at Division, California at the U.S. – Mexican border in the east (the "T&T Shortline") for a period of 38 years between

PIR:



1

BJRR:



May 15, 2012 and terminating May 15, 2050, as a result of an operating rights agreement with Administradora de la Via Corta Tijuana-Tecate ("ADMICARGA"), a Mexican State Government Agency formed by the Government of Baja California, Mexico, entered into on February 20, 2012, as amended on May 25, 2015 (the "BJRR Operating Rights Agreement"), attached herewith as Annex B. The Government of Baja California, Mexico, obtained the Concession to operate the T&T Shortline from the Mexican Federal Government through Secretaría de Comunicaciones y Transportes, a Mexican federal agency ("SCT") on April 1, 2000; and

WHEREAS, the parties each believe that allowing BJRR to sublease and operate the Desert Line between Milepost 59.6 and Milepost 129.61, effectively establishing a unified bi-national railroad, will result in efficiencies in cost-effective freight transportation services in the Cali-Baja region.

WHEREAS, the parties have negotiated this Sublease to allow for the reconstruction and operation by BJRR under the specific terms and conditions set forth herein of both the Desert Line and T&T Shortline consisting of approximately 114 miles of railroad referred to collectively as the Cali-Baja Railroad ("CBR").

AGREEMENT

NOW THEREFORE, for good and valuable consideration, including the mutual covenants and promises herein contained, and for other consideration, the receipt and sufficiency of which are hereby acknowledged to be adequate, intending to be legally bound hereby, the parties hereby agree as follows:

1. TERM

- 1.1. Base Term. Subject to the Performance Milestone Requirements set forth in Section 1.4 below, BJRR shall have a forty-seven (47) year term to provide rail freight service on the Desert Line, beginning upon the Effective Date hereof and ending on December 20, 2062. Notwithstanding this base term of forty-seven (47) years, BJRR and PIR expressly acknowledge that the purpose of this Sublease is to provide for the operation of CBR in order to commence freight service along the Desert Line for the benefit of local, state, national and international commerce. Therefore, an express prerequisite for BJRR receiving the full forty-seven (47) year term, and any extension thereof, is that BJRR meet the Performance Milestones established herein and otherwise remain in full compliance with the Desert Line Lease.
- 1.2. Option to Renew. Provided BJRR is not in default in any material respect under this Sublease or the Desert Line Lease on the effective date of such renewal, BJRR shall have the right to renew this Sublease for an additional forty-nine (49) years by delivery of written notice to PIR not later than December 15, 2062.
- 1.3. Performance Milestone Requirements.
 - 1.3.1. BJRR Reconstruction Plan. The BJRR Reconstruction Plan ("BRP") shall be submitted to PIR for review and approval by PIR and SD&AE, no later than one

PIR: 

BJRR: 

hundred fifty (150) days from the Effective Date of this Agreement. The BRP shall include, but not be limited to, a detailed schedule and description of the work to be completed prior to and in conjunction with each stage of reconstruction.

- 1.3.2. Reconstruction and Repair of BJRR Segment. BJRR shall finance or cause to be financed the reconstruction and repair of the BJRR Segment of the Desert Line between Milepost 59.6 and Milepost 119 to an Federal Railroad Administration ("FRA") Class II Track Standard and must begin the reconstruction within twelve (12) months of the Effective Date. BJRR shall perform all reconstruction work on the BJRR Segment in conformity with and on the timeline set forth in the Desert Line Lease, as may be amended from time to time. BJRR shall be solely responsible for financing the entire reconstruction and repair of the BJRR Segment, as described herein.
- 1.3.3. Completion of Reconstruction. BJRR must complete the reconstruction sufficient to permit commencement of Commercial Operations as defined in Section 1.3.4. The reconstruction of the BJRR Segment must be completed within forty-eight (48) months of the Effective Date, all subject to the approval of SD&AE, in order to allow for Commercial Operations as defined in section 1.3.4.
- 1.3.4. Commercial Operations. Commercial Operations shall consist of BJRR, or its designated operator, operating the Desert Line at a time in which construction meets all applicable FRA safety standards in order to allow BJRR to commence freight services sufficient to insure an uninterrupted and efficient flow of freight shipments, subject to normal closures due to renovation, repairs and maintenance.
 - 1.3.4.1. Operating Plan. BJRR shall not commence Commercial Operations until PIR and SD&AE has reviewed and approved the Operating Plan prepared by BJRR, which shall include:
 - 1.3.4.1.1. Personnel & Staffing Plan. BJRR will provide such personnel as shall be necessary to perform its obligations hereunder, and will maintain a business office in San Diego County, California. BJRR shall identify the principal persons to manage this operation.
 - 1.3.4.1.2. Revenue/Budget Estimates. BJRR shall prepare operating revenue, expense and capital investment budget estimates in a form reasonably acceptable to PIR, with a year-by-year analysis for the first five (5) years of this Agreement, and update such estimates every year for the subsequent five (5) years.
 - 1.3.4.1.3. Operating Rules. BJRR shall develop and maintain a General Code of Operating Rules ("GCOR"), similar to the GCORs adopted by other U.S. short line operators and reasonably satisfactory to PIR. The GCOR shall cover such

PIR: 

BJRR: 

topics as employee responsibilities, signaling equipment, procedures for safe train movement, dealing with accidents and other topics that directly and indirectly affect railroad and industrial safety.

1.3.4.1.4. Safety & Security Plans. BJRR shall establish Safety & Security Plans reasonably acceptable to PIR. The Safety Plan shall include Roadway Worker Safety and all other FRA mandatory training based on applicable FRA and Surface Transportation Board ("STB") regulations, ordinances, standards and guidelines, which will identify, eliminate, minimize, and control safety hazards and their attendant risks. The Security Plan shall provide for, without limitation, e-RailSafe employee verification, an identification badge system for BJRR employees; a vehicle control system for BJRR employee vehicles on the Desert Line right of way; and a plan for restricting access to facilities. Such plans shall meet all applicable federal and other legal requirements and regulation.

1.3.4.1.5. The Operating Plan shall ensure that BJRR's rail freight operations on the Desert Line comply with 49 C.F.R. Part 200 through 299 and applicable STB and Association of American Railroads ("AAR") rules

1.3.5. FRA Track Safety Standards. BJRR will comply with all applicable FRA Standards for a Class II Track, with regard to the BJRR Segment. When required, qualification for the Class of Track to a particular FRA Track Safety Standard shall be independently verified by a nationally recognized construction or engineering firm capable of rendering such a report which must be approved by SDAE/MTS and PIR

2. CONSIDERATION

2.1. Initial Consideration. As initial consideration for PIR granting BJRR the operating rights over the Desert Line as defined in Section 3, BJRR agrees to make the following initial payments:

2.1.1. Effective Date	\$1,000,000
2.1.2. August 1, 2016.	\$1,000,000
2.1.3. September 1, 2016.	\$1,000,000

2.2. Rent/Lease Revenue. By June 21, 2016 and until commencement of Commercial Operations, BJRR shall pay rent to PIR in a lump sum payment of four hundred and twenty-five thousand dollars (\$425,000) and until BJRR commences Commercial

PIR: 

BJRR: 

Operations on the Desert Line pursuant to Section 1.3.4, shall make additional payments of \$425,000 semiannually thereafter or, if applicable, a pro-rata portion thereof. All payments required by this section shall be made ten (10) days in advance of the requirements set forth in Section 2.1.1 of the Desert Line Lease.

- 2.3. Operational Revenue. Upon Commencement of Commercial Operations as defined in Section 1.3.4 above, BJRR shall pay PIR, on a quarterly basis, ten percent (10%) of BJRR Gross Freight Revenue attributable to operations over the Desert Line as defined in Section 2.3.1. PIR agrees to pay seven percent (7%) to SDAE/MTS in compliance with its obligations under the Desert Line Lease. Under no circumstances shall each quarterly payment to PIR be less than two hundred twelve thousand five hundred dollars (\$212,500).

2.3.1. For the purpose of determining BJRR Gross Freight Revenue in Section 2.3 above, all BJRR freight revenues attributed to the movement of freight over the Desert Line shall constitute freight operating revenue. BJRR shall not manipulate freight revenues, contracts, or tariffs so as to assign additional revenue to the T&T Shortline portion of the railroad and unreasonably diminish freight revenue attributed to Desert Line. Unless SD&AE, PIR, and BJRR mutually agree to a different calculation method, the combined Gross Freight Revenues attributed to a movement of freight that travels over both the Desert Line and T&T Shortline shall be assigned on a pro-rata mileage basis. Under no circumstance shall PIR be entitled to revenue solely attributed to the movement of freight over the T&T Shortline.

2.3.2. In the event that SDAE/MTS agrees to reduce PIR's revenue obligations under the Desert Line Lease, PIR agrees to lower BJRR's obligation contained in Section 2.3 in equal amount. Under no circumstance shall PIR's portion of BJRR's payment of Gross Freight Revenue be less than three percent (3%).

3. BJRR OPERATING RIGHTS

3.1. Exclusive Operating Rights. PIR hereby grants BJRR the exclusive operating right to provide freight transportation service over the BJRR Segment between Milepost 59.6 at Division, California and Milepost 119 near Coyote Wells, California subject to Section 4.5.5. This exclusive operating right to provide freight transportation service includes hauling, blocking, switching, and storage services on the BJRR Segment.

3.2. Non-exclusive Operating Right. PIR hereby grants BJRR the non-exclusive operating right to provide freight transportation service over the Intermodal Segment from Milepost 119 near Coyote Wells, California to Milepost 129.61 at Plaster City, California. This non-exclusive right to operate freight transportation service shall not interfere with PIR's, or its assignee's, operations or rights on the Intermodal Segment and is subject to PIR's, or its assignee's, exclusive right to develop, construct, and operate an intermodal facility along the Intermodal Segment, which includes but is not limited to all intermodal, switching, blocking, sorting, storage and logistics services on the Intermodal Segment. PIR, or its

PIR: 

BJRR: 

assignee, agrees to cooperate with BJRR to reasonably negotiate any rates related to intermodal, blocking, switching, sorting and storage services provided by PIR, or its assignee, on the Intermodal Segment.

3.2.1. Blocking and Switching. PIR, or its assignee, agrees to contract with BJRR, as the sole freight service provider, to provide blocking and switching services, (as defined below), on the Intermodal Segment for PIR, or its assignee, if BJRR can provide such services at commercially reasonable rates as a qualified freight service provider in accordance with all applicable industry standards at the time in which such services are required.

3.2.1.1. Switching is hereby defined as the process of putting cars in a specific order (as in a classification yard), placing cars for loading or retrieving empties (industrial switching), or the process of adding or removing cars from a train at an intermediate point, or the movement of cars from one point to another within the limits of an individual plant, industrial area, or a rail yard.

3.2.1.2. Blocking of cars is hereby defined as the assembling of cars in proper groups.

3.2.1.3. Blocking of trains is hereby defined as the assembling of groups of "blocked" cars in proper sequence.

3.3. BJRR Segment Enhancements and Improvements. PIR hereby grants BJRR the right to enhance and improve the BJRR Segment in order to allow for increased capacity and improved/expanded services on the BJRR Segment subject to the approval of SD&AE and PIR. Such enhancements include but are not limited to: additional sidings, spurs, facilities or structures which may be required.

4. RIGHTS & OBLIGATIONS OF BJRR

4.1. Right to Provide Freight Service. Beginning on the Effective Date and throughout the term and renewal term of this Sublease, subject to compliance with the terms and conditions of this Agreement and the Desert Line Lease, PIR hereby grants and BJRR hereby acquires and assumes the exclusive right to provide freight transportation service over the BJRR Segment and non-exclusive right to provide freight transportation service over the Intermodal Segment.

4.2. Rights to Operate over the Mainline. Upon STB approval of BJRR as an STB-sanctioned railroad as well as BJRR's compliance with the terms and conditions contained herein, BJRR shall have the right to provide freight transportation service over the Desert Line as a common carrier with the power to establish through routes, interchange with Union Pacific, make and collect rates, and enter into contracts with customers subject to any and all agreements with connecting carriers.

PIR: 

BJRR: 

- 4.3. Pacific Southwest Railway Museum ("PSRM"). BJRR acknowledges certain limited operating rights of PSRM and will endeavor to reach an agreement that will not interfere with the movement of freight over the Desert Line.
- 4.4. BJRR Management and Maintenance. BJRR shall have exclusive control and responsibility in the management, maintenance, and operation of BJRR's rail services on the Desert Line at BJRR's sole expense.
- 4.4.1. Management. BJRR agrees to provide the following services as reasonably necessary for BJRR's efficient operation of the Desert Line for the transportation of freight:
- 4.4.1.1. Employees and Labor Relations. BJRR shall ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the leased premises have received all necessary training, certification, and licensure required to operate in accordance with applicable FRA rules and regulations and with all generally accepted industry standards, including those standards promulgated by the AAR. BJRR shall be responsible for all labor relations matters, including any costs, related to its employees and/or its operations.
- 4.4.1.2. Operating Assignment of Cars and Crews. BJRR shall be responsible for the operating assignment of all cars and crews as relates to BJRR's operation of the Desert Line.
- 4.4.1.3. Equipment. BJRR shall provide all equipment, (locomotives, cars and other equipment), maintenance, repair, car and locomotive supply, car repair and maintenance, and sufficient motive power, including fuel and supplies, and establishing a routine system in order to facilitate operations and compliance with industry rules, regulations and practices.
- 4.4.1.4. Sub-agreements. BJRR may not, absent the written approval of PIR and SD&AE and only as consistent with this Sublease and the Desert Line Lease, allow the use of the Desert Line by other railroads for rail freight operations, or enter into agreements with other railroads for such use.
- 4.4.2. Regional Cooperation. BJRR shall cooperate in all reasonable respects with the Mexican Government, Port of San Diego, SD&AE, MTS, and all other similar parties to insure uninterrupted and efficient operations and freight shipments over the Desert Line.
- 4.4.3. Maintenance. Once operational, BJRR shall undertake, finance or cause to be financed the continued maintenance of the BJRR Segment to safely operate adequate freight service on the Desert Line as provided herein. At minimum, BJRR shall maintain the BJRR Segment according to the following standards:

PIR:

BJRR:

4.4.3.1. General Maintenance, Inspection and Repair. BJRR shall maintain the BJRR Segment in compliance with the Desert Line Lease as well as all state and federal statutes, rules and regulations as defined by the FRA track safety standards for a Class II Track, and to a standard that is sufficient to continue rail freight service commensurate with the needs of the rail users located thereon.

4.4.3.1.1. BJRR shall cooperate and not interfere with PIR's obligations with respect to the Desert Line, which include, but shall not be limited to, routine inspection and maintenance of highway grade crossings, grade crossing signal protection devices, railroad bridges and trestles, culverts and other structures, signs, road crossing signals, crossings, lighting, sub-roadbed and all other improvements between Milepost 59.6 and Milepost 119.

4.4.3.1.2. BJRR agrees that all grade crossings and grade crossing protection devices will be given a high priority in BJRR's maintenance program.

4.4.3.1.3. BJRR is expressly prohibited from adding, removing, or modifying any grade crossings (either public or private) or grade crossing protection devices on the BJRR Segment without prior written consent from PIR and SD&AE.

4.4.3.2. Encroachments. BJRR shall protect the BJRR Segment against unauthorized encroachments or uses. Any unauthorized encroachments, uses or third-party damage to the BJRR Segment shall be reported to PIR and SD&AE as soon as reasonably practicable, but no later than ten (10) days after BJRR is notified of the unauthorized act or encroachment. BJRR is responsible for removing the encroachment or unauthorized use on the BJRR Segment. SD&AE retains the right to approve encroachments or crossings of the Desert Line right of way that do not interfere with BJRR's rights hereunder. PIR and SD&AE agree to consult with BJRR concerning all crossing or related requests. No crossing will be granted if it materially impairs BJRR's operations. Any crossings granted will include protections for BJRR in the form of third party insurance and indemnification obligations.

4.5. Cooperation with PIR. BJRR agrees to use commercially reasonable efforts to:

4.5.1. Cooperate with PIR to maintain and obtain all necessary permits, clearances, agreements and other requirements for operations and maintenance of the Desert Line;

4.5.2. Cooperate with PIR in the solicitation of additional shipments by rail;

PIR: 

BJRR: 

- 4.5.3. Cooperate with PIR with regards to joint negotiations with Union Pacific;
 - 4.5.4. Work with PIR to insure that track design, construction and operating schedules for BJRR's operations are planned and implemented to insure minimum disruption of either PIR's, or its assignee's, freight service or intermodal service;
 - 4.5.5. Cooperate with PIR to reasonably negotiate any rates related to freight transportation over the Desert Line; and
 - 4.5.6. Cooperate with PIR to coordinate all dispatching and scheduling for the movement of freight on the Intermodal Segment.
- 4.6. Recordkeeping and Audit Requirements. BJRR shall maintain books and records of all operations it conducts on the Desert Line and T&T Shortline, including revenue, expenses, shipper information, and any other records required by law. BJRR shall abide by all AAR rules and regulations. SDAE/MTS and/or an appointed certified public accountant shall have the right to inspect and audit the books and records of BJRR pertaining to its operations over the Desert Line including revenue earned by BJRR and its affiliates related to the T&T Shortline and the allocation of revenue between the T&T Shortline and the Desert Line at all reasonable times.

5. BJRR COMPLIANCE WITH LAWS

- 5.1. Local, State and Federal Laws. BJRR shall comply in all material respects with all local, state, and federal laws and regulations applicable to its operations and capital projects, inclusive of but not limited to rules as promulgated by the FRA and STB, but subject in every case to application of the preemption doctrine applicable to the jurisdiction of the STB under federal law.
- 5.2. FELA, Railway Labor Act, Federal Locomotive Inspection Act. Subject in every case to the STB pre-emption doctrine, BJRR shall comply with the provisions of the Federal Railroad Safety Act (as amended), Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal, state, and local laws, regulations or rules, applicable to the operation, condition, inspection, or safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars and equipment are being operated over the Desert Line. BJRR shall further indemnify, protect, defend, and hold harmless PIR from and against all fines, penalties, and liabilities imposed upon any party or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in or over the Desert Line, to the extent attributable to any failure of BJRR to comply with its obligations in this regard.
- 5.3. Taxes & Fees. BJRR shall be responsible for and pay all taxes and fees due and payable by it as a result of its performance of its obligations hereunder, including, without

PIR: 

BJRR: 

limitation, all federal, state, and local taxes or fees. BJRR shall indemnify, protect, defend and hold harmless PIR from and against all claims and liabilities with regard thereto.

- 5.4. Regulatory STB Approval. Except in the case of a termination of this Sublease, an emergency, or a lawful embargo, BJRR agrees not to suspend or discontinue any operations provided in this Sublease, and, if such operations are subject to STB jurisdiction, such operations shall not be discontinued, over all or any part of the Desert Line without first applying for and obtaining from the STB and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Desert Line. BJRR shall obtain all necessary regulatory approvals required to operate the Desert Line as a common carrier and shall solely be responsible for compliance with all federal, state, and local regulations, including, without limitation, those of the FRA, STB, and, as applicable, the State of California (subject in every case to the STB pre-emption doctrine).

- 5.4.1. Six Months' Notice Prior to Suspension or Discontinuance. Except in the case of a termination of this Sublease or force majeure, or a lawful embargo, BJRR shall not suspend, discontinue or otherwise terminate operations on the Desert Line or take any action to obtain regulatory authority to discontinue operations on the Desert Line, without first giving PIR six (6) months advance written notice of BJRR's intent to do so. Notwithstanding BJRR's failure to obtain such approvals or provide such advance notice, BJRR will remove itself from the premises and will discontinue operations under this Agreement immediately upon termination of this Agreement by PIR or its expiration in accordance with the terms hereof.

- 5.5. Environmental Laws. Subject in every case to the preemption doctrine regarding the jurisdiction of the STB under federal law, BJRR shall comply with all applicable ordinances, regulations, statutes, rules, decisions and orders relating to safety, air and water quality, noise, hazardous substances and hazardous wastes issued by any court or federal, state or local governmental entity, including without limitation, the Federal Department of Transportation, the FRA, the Federal Environmental Protection Agency, Occupational Safety and Health Administration, including but not limited to, the National Environmental Policy Act and the California Environmental Quality Act. BJRR shall not provide any railcar cleaning, or transload or remove any hazardous materials any railcars on the Desert Line, including but not limited to, cleaning or removal of residue material in any tank, hopper or other material-handling cars, without PIR's prior written consent.

6. RIGHTS & OBLIGATIONS OF PIR

- 6.1. The Desert Line Lease. PIR shall stay in compliance with all its obligations under the Desert Line Lease including, but not limited to: reconstruction, repairs, maintenance and payments. In the event of a default by PIR of the Desert Line Lease, this Sublease and all rights and obligations contained herein shall survive and remain unaffected pursuant to Section 8.

PIR: 

10

BJRR: 

- 6.2. Financing Rights. Without subsidy to BJRR, PIR agrees to assist and cooperate with BJRR in its fulfillment of BJRR's financing obligation contained in Section 1.3.2. In the event BJRR has the inability or lacks the financial wherewithal to secure adequate financing independently, and, as a result, elects to use PIR's debt financing to complete and comply with the Performance Milestone Requirements in full, as set forth in section 1.3 herein, PIR reserves the right, but not the obligation, to pursue the financing at its own expense and, accordingly, would then have the right to renegotiate with BJRR the terms set forth in sections 2.3 and 3.1 herein.
- 6.3. Reversion of Operating Rights. Upon a decision by BJRR to discontinue providing freight service, a failure by BJRR to exercise a renewal option, or termination of this Agreement in accordance with Section 7 hereof, BJRR shall no longer be granted any operating rights or other rights over the Desert Line provided herein.
- 6.4. PIR Non-Exclusive Operating Rights. BJRR and PIR acknowledge and agree that PIR, or its assignee, shall continue to have, during the term of this Agreement, non-exclusive operating rights over the Intermodal Segment to provide freight transportation services as a common carrier with the power to establish through routes, interchange with Union Pacific, make and collect rates, and enter into contracts with customers subject to any and all agreements with connecting carriers.
- 6.5. Exclusive Intermodal Rights. PIR, or its assignee, reserves non-exclusive operating rights over the Intermodal Segment between Milepost 119 and Milepost 129.61 and reserves the exclusive right to develop, construct, and operate an intermodal facility along the Intermodal Segment which includes all intermodal, switching, blocking, sorting, storage and logistics services on the Intermodal Segment subject to Section 6.6.6 hereunder. This exclusive right to operate the intermodal facility and provide the related services shall not interfere with BJRR's non-exclusive rights to operate on the Intermodal Segment mainline or its ability to interchange with Union Pacific.
- 6.6. Cooperation with BJRR. PIR agrees to use commercially reasonable efforts to:
- 6.6.1. Cooperate with BJRR to maintain and obtain all necessary permits, clearances, agreements and other requirements for operations and maintenance of the Desert Line;
 - 6.6.2. Cooperate with BJRR with regard to joint negotiations with Union Pacific;
 - 6.6.3. Cooperate with BJRR in all reasonable respects with the Mexican Government, Port of San Diego and other federal, state and local governmental agencies as may be appropriate to insure continued and expanded freight service;
 - 6.6.4. Cooperate with BJRR in the solicitation of additional shipments by rail;

PIR: 

BJRR: 

- 6.6.5. Work with BJRR to insure that track design, construction and operating schedules for PIR's operations are planned and implemented to insure minimum disruption of BJRR's freight service;
- 6.6.6. Cooperate with BJRR in obtaining approval from STB, as a result of the rights granted herein, to become an STB-authorized rail carrier;
- 6.6.7. Cooperate with BJRR to reasonably negotiate any rates related to intermodal, blocking, switching, sorting and storage services provided by PIR, or its assignee, on the Intermodal Segment; and
- 6.6.8. Cooperate with BJRR to coordinate all dispatching and scheduling for the movement of freight on the Intermodal Segment.

7. TERMINATION

- 7.1. Upon material default of BJRR hereunder, but subject to Section 7.3, in addition to all other remedies available to it, PIR may terminate this Agreement at any time, upon furnishing thirty (30) days prior written notice to BJRR of its default, except that such notice period with regard to payment of monies shall be ten (10) days, provided that if such default is cured within the applicable notice period, this Agreement shall continue in full force and effect, and such notice of default shall be deemed rescinded.
- 7.2. Causes for termination of this Sublease for a material default caused by BJRR (subject in each case to the cure rights set forth herein) shall be as follows:
 - 7.2.1. Material failure to meet the Performance Milestone Requirements set forth in Section 1.
 - 7.2.2. Material failure to perform the required maintenance of the BJRR Segment as set forth in Section 4.
 - 7.2.3. Material failure to provide freight services as required under this Agreement or by the STB.
 - 7.2.4. A filing of bankruptcy by BJRR, or assignment for the benefit of creditors, or involuntary bankruptcy filed against BJRR and not dismissed within ninety (90) days.
 - 7.2.5. A course of conduct of operation by BJRR in a manner which, upon proper administrative hearings, is found by any regulatory agency to jeopardize the health or safety of the general public.
 - 7.2.6. Failure of BJRR to make required payments to PIR contained in Section 2.

PIR: 

BJRR: 

- 7.2.7. Material failure of BJRR to comply with the Bookkeeping and audit requirements of Section 6.5.
- 7.2.8. Any other material violation of the terms of this Agreement or the Desert Line Lease.
- 7.3. If the default (other than the payment of money) of BJRR cannot be cured within thirty (30) days, then provided BJRR commences such cure within the 30-day period, and diligently in good faith proceeds to complete such cure, then the time within which such default must be cured shall be extended for a time which is reasonable under all the circumstances.
- 7.4. In addition, the parties agree that in the event of termination, a final accounting shall be rendered by an independent certified public accountant experienced in railroad accounting, mutually agreeable to the parties, the cost of which shall be equally shared between the parties, and that the indicated final settlements shall be paid by the appropriate party within thirty (30) days' notice, or may be withheld from funds, which would otherwise be payable, as such accountant shall deem appropriate.
- 7.5. BJRR may, at any time after the initial term of this Agreement, terminate this Agreement by providing six (6) months advance notice. In the event of such termination, the parties agree that a final accounting shall be rendered by an independent certified public accountant under the same terms and conditions outlined above.

8. NON-DISTURBANCE

- 8.1. Non-Disturbance. SDAE/MTS and PIR each agree to give BJRR prompt written notice of any asserted default by PIR in the performance of its obligations under the Desert Line lease, and no such default shall be effective to terminate the Desert Line Lease without prior notice to BJRR and an opportunity (but not an obligation) for BJRR to cure such default. In the event the Desert Line Lease is terminated for any reason, other than any action or inaction of BJRR or any of its agents or employees, SDAE/MTS agrees that BJRR will succeed to the interest of PIR under the Desert Line Lease as it relates to the BJRR Segment in that BJRR will become a direct lessee of SDAE/MTS with respect to the BJRR Segment on the terms and conditions of this Sublease, and BJRR shall be entitled to remain in possession of its rights hereunder and SDAE/MTS shall be immediately and automatically and without further notice be substituted for PIR as lessee hereunder, and thereafter SD&AE and BJRR shall recognize one another as landlord and tenant respectively, under this Sublease and shall be bound to one another under all of the terms, covenants and conditions of this Sublease, whereupon BJRR shall pay SD&AE the Rent/Lease Revenue that would otherwise have been payable to PIR under Section 2 of this Sublease.

PIR: 

BJRR: 

9. INSURANCE AND INDEMNIFICATION

- 9.1. Except as provided herein, PIR and the respective agents, directors, officers and employees of each shall not be held liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of BJRR, its agents, employees, independent contractors, joint ventures, partners or representatives (including, but not limited to failure to comply with any obligation under Section 4); BJRR further agrees to indemnify and save free and harmless PIR and the respective authorized agents, directors, officers and employees of each against any of the foregoing liabilities and any cost and expense, including reasonable attorney's fees incurred by PIR on account of any claim therefore, including claims by reason of alleged defects in service, changes in services, or any other work or services done or provided by BJRR over the Desert Line pursuant to this Agreement.
- 9.2. BJRR, its agents, directors, officers and employees shall not be held liable for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of PIR or their respective agents, employees, independent contractors, joint ventures, partners or representatives (including but not limited to failure to comply with any obligation under Section 3). PIR further agrees to indemnify and save free and harmless BJRR and the respective authorized agents, directors, officers and employees of each against any of the foregoing liabilities and any cost and expense, including reasonable attorney's fees incurred by BJRR on account of any claim therefore, including claims by reason of alleged defects in service, changes in services, or any other work or services done or provided by PIR over the Intermodal Segment pursuant to this Agreement.
- 9.3. Insurance Required. During the performance of services hereunder, BJRR shall maintain policies of insurance as described below. Prior to beginning work all insurance amounts must be agreed upon between PIR and BJRR as well as approved by SDAE/MTS ("Approved Amount"). Upon approval, BJRR shall furnish evidence of insurance satisfactory to the Chief Executive Officer of PIR as to contents and insurance carriers which will contain a provision for thirty (30) days prior written notice to the Chief Executive Officer of any cancellation, reduction, or any material change in coverage. The insurance required shall be to the extent available on commercially reasonable terms as follows:
- 9.3.1. Comprehensive Railroad Liability insurance for bodily injury (including death) to persons, and property damage including damage to the environment, which provides total limits or of not less than the Approved Amount per occurrence, subject to a self-insured retention of a dollar amount acceptable to PIR. Coverage included shall be:
- 9.3.1.1. Premises and operations;
- 9.3.1.2. Products/completed operations;

PIR: 

BJRR: 

- 9.3.1.3. Contractual liability expressly including liability assumed under this Agreement, with deletion of the exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass and crossway;
- 9.3.1.4. Explosion, collapse, and underground hazards;
- 9.3.1.5. Personal injury liability with standard exclusions a) liability assumed under contract and b) suits brought by employees deleted;
- 9.3.1.6. Independent contractors;
- 9.3.1.7. Deletion of any exclusion applicable to PIR property in Contractor's care, custody, and control.
- 9.3.1.8. Cross liability clause providing that the insurance applies separately to each insured except with respect to the limits of liability. Such insurance shall include the following endorsements, copies of which shall be provided:
- 9.3.1.9. Inclusion of PIR, their directors, officers, agents and employees as additional insureds as respects services or operations under this Agreement performed by or on behalf of PIR.
- 9.3.1.10. Stipulation that the insurance is primary insurance and that no insurance of PIR will be called upon to contribute to a loss.
- 9.3.1.11. Claims made under the Federal Employers Liability Act.
- 9.3.1.12. Coverage for the release of pollutants and Hazardous Materials.
- 9.3.2. Comprehensive Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less the Approved Amount.
- 9.3.3. The Approved Amount for a combined single limit per occurrence applicable to all owned, non-owned, and hired vehicles.
- 9.3.4. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than the Approved Amount per accident for bodily injury or disease, with an insurer's waiver of subrogation in favor of PIR, their directors, officers, representatives, agents and employees.

PIR: 

BJRR: 

- 9.3.5. Contractors equipment insurance on all "all-risk" basis covering equipment owned, leased or used by Contractor. Such insurance shall include an insurer's waiver of subrogation in favor of PIR. Contractor hereby releases and holds harmless PIR for any loss or damage to its equipment.
- 9.3.6. "All Risk" Property insurance for all PIR railroad assets utilized within the Scope of this Agreement, and in the care, custody and control of contractor, for the full replacement cost of such property. Coverage for the perils of earthquake and flood should be included at a limit of not less than the Approved Amount per occurrence. Coverage shall be subject to a deductible of a dollar amount acceptable to PIR.
- 9.3.7. Environmental Legal Liability for bodily injury and property damage arising out of BJRR operations within the scope of this agreement, including clean-up costs resulting from a pollution condition, in the Approved Amount per occurrence. Coverage shall be subject to a deductible of a dollar amount acceptable to PIR. PIR and its officers, officials, employees, and volunteers are to be covered as additional insureds on this policy with respect to liability arising out of work or operations performed by or on behalf of BJRR.
- 9.4. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- 9.4.1. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to PIR.
- 9.4.2. Claims Made Policies: If any of the required policies provide claims-made coverage:
- 9.4.2.1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- 9.4.2.2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- 9.4.2.3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- 9.4.3. Verification of Coverage. BJRR shall furnish PIR with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received by PIR before work commences, and annually thereafter. However, failure to obtain the required documents prior to the work beginning shall not waive the BJRR's obligation to provide them. PIR reserves the right to require complete,

PIR: 

BJRR: 

certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9.4.4. Special Risks or Circumstances. PIR reserves the right to modify these requirements in a commercially reasonable manner, including limits and type of insurance required, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, provided the coverage as modified is available on commercially reasonable terms.

9.4.5. Adjustment for Inflation. To accommodate the duration of this Agreement all the required insurance amounts in this Section 9 shall be adjusted upwards by mutual agreement over time, but in any case no less than every five (5) years and by the cumulative change in the U.S. Consumer Price Index over the applicable period.

10. GENERAL PROVISIONS.

10.1. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. BJRR's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without PIR's prior written approval. This Agreement is not intended, nor shall it be construed to be for the benefit of any person or entity not a party to this Agreement. PIR may assign its rights hereunder to any person or entity capable of performing its obligations hereunder. No assignment of rights hereunder shall relieve the assignor of any of its obligations.

10.2. Warranties and Representations.

10.2.1. PIR warrants and represents to BJRR as follows:

10.2.1.1. That it is duly organized, validly existing and in good standing under the laws of Delaware.

10.2.1.2. That it has the power and authority to enter into this Agreement to carry out its obligations under this Agreement.

10.2.1.3. That entering into and performance of this Agreement on the part of such party does not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or its organic documents applicable to the parties hereto.

10.2.1.4. That the execution of this Agreement and the operation of the rail freight service shall not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency, or governmental body applicable to the parties hereto.

PIR: 

BJRR: 

10.2.1.5. That the only sublease in effect as of the Effective Date is the Coyote Wells Sublease and Intermodal Operating Agreement executed by and between PIR and Inter-zone, Inc., a Nevada Corporation, on March 28th, 2016.

10.2.2. BJRR warrants and represents to PIR as follows:

10.2.2.1. That it is duly organized, validly existing and in good standing under the laws of the State of California.

10.2.2.2. That it has the power and authority to enter into this Agreement to carry out its obligations under this Agreement.

10.2.2.3. That entering into and performance of this Agreement on the part of such party does not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or its organic documents applicable to the parties hereto.

10.2.2.4. That the execution of this Agreement and the operation of the rail freight service shall not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency, or governmental body applicable to the parties hereto.

10.3. Notice.

10.3.1. Any notice required or permitted under this Agreement shall be in writing and may be personally served on the other party, by the party giving notice, or may be served by United States Mail to the following address, or such other addresses/persons as the parties may direct:

10.3.1.1. PIR

Arturo Alemany
President
Pacific Imperial Railroad, Inc.
121 Broadway Cir # 624
San Diego, CA 92101

10.3.1.2. BJRR

Fernando Beltran
Baja California Railroad, Inc.
Av. Ferrocarril #1, Colonia Libertad Parte Baja

PIR:

BJRR:

Tijuana, Baja California

- 10.4. Attorneys' Fees and Costs. In the event any party to this Agreement brings legal action or requests arbitration to enforce its rights hereunder, the court or arbitrator shall have discretion to award the prevailing party reasonable attorney's fees and costs.
- 10.5. Choice of Law. This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of California.
- 10.6. Severability. If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 10.7. Force Majeure. The parties hereto will be excused from performance of any of their respective obligations hereunder, during the existence of and occasioned by any event beyond their respective control (not due to their own fault or actions inconsistent with good faith operations under this Lease), which shall include without limitation, actions of Mexican, United States of America federal, state or local agencies; acts of God; strikes or other labor troubles beyond the reasonable anticipation or control of the parties; temporary interruption of service caused by explosions, fires, vandalism, malicious mischief, and unavoidable interruption or cessation of service by a connecting railroad, and breach by the other party. However, nothing herein shall relieve the parties of their respective obligations to undertake all reasonably available actions necessary and all possible reasonable corrective measures to resume the provision of freight services to customers of the railroad and to satisfy the obligations of BJRR as set forth in Section 4 of this Sublease.
- 10.8. In the event of a material breach by PIR, which permanently prevents BJRR from completing the reconstruction of the BJRR Segment and the Sublease reverts back to PIR as a result, PIR hereby agrees to repay BJRR for all independently verified capital expenditures invested during BJRR's partial reconstruction effort on the BJRR Segment. Only upon PIR's commencement of Commercial Operation on the BJRR segment, shall repayment be made quarterly out of revenue solely attributed to PIR's operation over the BJRR Segment and shall not exceed one percent (1%) of gross freight revenue.
- 10.9. Dispute Resolution. The parties acknowledge and agree that this Agreement and any dispute hereunder shall be subject to and governed by the dispute resolution provisions set forth in this section 10.8.
- 10.9.1. Informal Resolution. PIR and BJRR recognize that disputes as to certain matters may from time to time arise during the effectiveness of this Agreement which relate to either party's rights and/or obligations hereunder or thereunder. It is the objective of the parties to establish procedures to facilitate the resolution of

PIR: 

19

BJRR: 

5-29

disputes arising under any of the Agreements in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the parties agree to follow the procedures set forth in this Article if and when a dispute arises under any of the Agreements. In the event of a dispute between the Parties, any party may, by written notice to the other, have such dispute referred to their respective chief executive officers for attempted resolution by good faith negotiations within fourteen (14) days after such notice is received. In the event the chief executive officers are not able to resolve such dispute, either party may at any time after the fourteen (14) day period seek to resolve the dispute through the other means provided in Section 10.8.2.

10.9.2. Mediation. If the informal efforts outlined in Section 10.8.1 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.

10.9.3. Any dispute not resolved through the mediation required by Section 10.8.2 may proceed to litigation unless the Parties agree in writing to submit the dispute to binding arbitration.

[Signature Page to Follow]

PIR: 

BJRR: 

In Witness Whereof, each of the parties has caused this Sublease and Operating Agreement to be duly executed on its behalf as of the Effective Date above written.

Pacific Imperial Railroad, Inc.
a Delaware corporation

By: _____

Arturo Alemany
President

Baja California Railroad
a California Corporation

By: _____

Fernando Beltran
Chief Executive Officer

Written Consent of, and Agreement as to
Section 8.1 By:

San Diego and Arizona Eastern Railway Company
a Nevada nonprofit corporation

By: _____

Paul C. Jablonski
Chief Executive Officer

San Diego Metropolitan Transit System
A California Public Agency

By: _____

Paul C. Jablonski
Chief Executive Officer

Date: _____

6-9-16

Date: _____

6-9-16

Approved as to Form:

By: _____

Karen F. Landers
General Counsel, MTS and SD&AE

Date: _____

6-9-16

EXHIBIT B:

Amendment 2, Desert Line Lease and Operating Agreement

DESERT LINE LEASE AND OPERATING AGREEMENT
Amendment 2

THIS OPERATING AGREEMENT ("Lease" or "Agreement") is dated as of this 20th day of December, 2012 (the "Effective Date"), by and among Pacific Imperial Railroad, Inc. ("PIR"), a Delaware corporation with principal offices and place of business in San Diego County, California; San Diego and Arizona Eastern Railway Company ("SD&AE"), a Nevada nonprofit corporation; and San Diego Metropolitan Transit Development Board also known as the San Diego Metropolitan Transit System ("MTS"), a California public agency, with principal offices and place of business in San Diego, California. PIR, SD&AE and MTS may hereinafter be referred to collectively as the "parties", or individually as a "party" hereto.

The parties agree that, by this Amendment 2, the Amended and Restated Desert Line Operating Agreement (MTS Doc. No. S200-13-560.1) is revised as follows:

1. Performance Milestones. The milestones set forth in Sections 1.2.3 (Initial Repairs), 1.2.4 (Test Train Operations), 1.2.6 (Limited Operations), 1.2.7 (Full Scale Repairs), and 1.2.8 (Full Scale Operations) are each extended by twelve (12) months.

2. Consideration. Section 2.1.3 is deleted and replaced with the following:

2.1.3 Upon commencement of Limited Operations, as defined in Section 1.2.6 above, PIR's payments to SD&AE pursuant to Section 2.1.1 shall increase as follows, and be paid on a quarterly basis:

- 2.1.3.1. 7% of PIR's gross freight revenue
- 2.1.3.2. Under no circumstances shall each quarterly payment to SD&AE be less than \$250,000. Starting in 2017, this minimum payment shall be increased by 5% every five years.

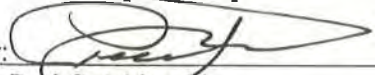
3. Consent to Sublease. The parties acknowledge that on June 9, 2016, MTS consented to the Cali-Baja Joint Venture Sublease and Operating Agreement (MTS Doc. No. G1924.0-16)("Cali-Baja Sublease"). To the extent the Cali-Baja Sublease authorizes Baja California Railroad, Inc. ("BJRR") to perform some of PIR's obligations under this Agreement, PIR acknowledges that this Agreement controls and that a failure of BJRR to perform the obligations assigned to them under the Cali-Baja Sublease may result in the issuance of a default notice and/or a notice to cure to PIR pursuant to Section 7 (Termination) under this Agreement.

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In Witness Whereof, each of the parties has caused this Amendment 2 to be duly executed on its behalf as of the day and year first above written. This Amendment 2 shall be effective as of June 9, 2016.

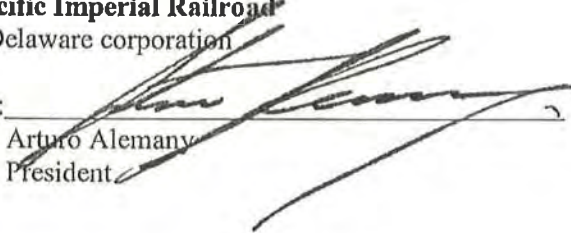
San Diego and Arizona Eastern Railway Company
a Nevada nonprofit corporation

By: _____


Paul C. Jablonski
President

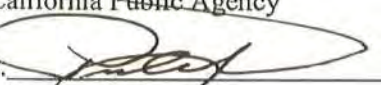
Pacific Imperial Railroad
a Delaware corporation

By: _____


Arturo Alemany
President

San Diego Metropolitan Transit System
a California Public Agency

By: _____


Paul C. Jablonski
Chief Executive Officer

Approved as to Form:

By: _____


Karen F. Landers
General Counsel, MTS and SD&AE

EXHIBIT C:

MTS Press Release



Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

NEWS RELEASE



Date: June 9, 2016

Contact: Rob Schupp
619-557-4511
rob.schupp@sdmts.com

Binational Agreement Reached to Reconstruct the Desert Line Railroad

Cost to repair 57 bridges and 17 tunnels estimated to be \$70 million

FOR IMMEDIATE RELEASE

San Diego – An agreement has been reached to pay for the reconstruction and operation of the 70-mile Desert Line railway in southeastern San Diego County that connects Mexico maquiladoras to rail shipping in the United States. The landmark agreement between Pacific Imperial Railroad (PIR) and Baja California Railroad (Baja Rail) provides a huge economic boost to both sides of the border.

The San Diego Metropolitan Transit System (MTS), San Diego Regional Chamber of Commerce, Pacific Imperial Railroad (PIR) and Baja California Railroad (Baja Rail) announced the contract on Thursday after the MTS Board of Directors approved the contract terms.

The San Diego region and U.S.-Mexico binational economies lose a staggering \$6 billion annually due to long delays in getting trucks carrying freight – such as new automobiles – across the U.S. – Mexico land borders in San Diego, according to the San Diego Association of Governments. An operational Desert Line will ease congestion, reduce air pollution, promote commerce and create jobs.

“This is a historic win for the San Diego region,” said MTS Vice Chair Ron Roberts. “The Desert Line agreement achieves a significant commitment to binational economic improvements and cooperation rarely seen in San Diego. Additionally, 135,000 cars and 6,200 trucks idling at our land ports

of entry each day negatively affect our air quality. An operational Desert Line will help reduce vehicle emissions at the border and help this region meet its emission reduction goal.”

Jerry Sanders, President & CEO of the San Diego Regional Chamber of Commerce, has advocated for this partnership as a means to create jobs and to promote economic activity.

“The loss of productivity due to congestion at our ports of entry translates into more than 2,400 jobs or \$131 million in lost economic activity,” Sanders said. “The Desert Line will provide another vital artery that takes trucks off our freeways, increases shipping capacity and gets goods to market places far more efficiently.”

Work on the 60 miles of track between Tecate and Coyote Wells in Imperial County is expected to begin this summer. It will be overseen by Baja Rail, which is incorporated in the United States and in Mexico. Baja Rail is a well-respected operator of the rail lines in Mexico that connect to the Desert Line.

“This joint project has been anticipated for a long time,” said Fernando Beltran, President of Baja Rail. “It will help our maquiladoras continue to thrive. It will help our economy. And it will stimulate a new cooperative business relationship between our two countries.”

Work on the line will include repaired bridges and tunnels and improvements to track. Once completed, it will allow trains up to 30 cars to travel on the line from Mexico to Coyote Wells. There, cars will be assembled into 100-car trains for delivery to the Union Pacific Railroad in Plaster City. To accommodate this activity, a new intermodal facility is being planned in Coyote Wells by PIR.

“We have worked very hard with our partners in Mexico to realize this dream,” said Arturo Alemany, Executive Board Member for Pacific Imperial Railroad. “This is a joint effort that will create a new cost-effective option for international businesses to ship products, such as automobiles, from Mexico to the eastern United States.”

Details of the new Cali-Baja Joint Venture Sublease and Operating Agreement include:

- Baja Rail and PIR will pay for the cost to reconstruct and operate the Desert Line (estimated at \$60-70 million).
- Construction is set to begin in summer 2016.

- Baja Rail will oversee the railroad repair, maintenance and operational obligations for 60 miles of the Desert Line
- PIR will build an intermodal facility near Coyote Wells in Imperial County to load freight and provide space to build the necessary 100-car trains that can be delivered to the Union Pacific main line network.
- MTS will continue to earn a minimum annual guarantee of \$1 million annually related to the Desert Line lease.
- MTS will receive 7% of gross revenue if greater than \$1 million.
- Extending the deadline by 12 months for all milestones (initial repairs, test train operations, limited operations, full-scale repairs and operations).

MTS has owned the Desert Line since 1979 and approved a lease agreement with PIR in 2012.

On June 22, 2015, PIR and Baja Rail signed a Memorandum of Understanding outlining both parties' intentions to reach a definitive agreement to create a binational railroad operation servicing the freight movement needs of Tijuana's manufacturing sector. This was a major turning point in negotiations that have been ongoing since January 2013. Since that time, the two railroads have been conducting due diligence, financial feasibility analyses and negotiating an agreement to work cooperatively to restart freight railroad operations between Mexico and the Desert Line.

On June 2, 2016, these binational negotiations culminated in a sublease agreement between PIR and Baja Rail. The parties agreed that Baja Rail will oversee and pay for the railroad repair, maintenance and operational obligations for the first 60 miles of the Desert Line.

As the owner of the rail line, MTS retains oversight authority to ensure it complies with all of the construction, safety, maintenance and operational requirements for local, state and federal laws. MTS has hired RailPros to act as its expert consultant on this project.

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Agenda Item No. 6a

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

July 19, 2016

SUBJECT:

SUMMARY OF SD&AE DOCUMENTS ISSUED SINCE APRIL 12, 2016

RECOMMENDATION:

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

Budget Impact

None.

DISCUSSION:

Since the April 12, 2016, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-16-636: Right of Entry Permit to the City of La Mesa for the La Mesa Flag Day Parade.
- S200-16-637: Right of Entry Permit to Navy Region Southwest for the Navy Bay Bridge Run.
- S200-16-639: Right of Entry Permit to Palm Engineering Construction Co. for a City of La Mesa sewer rehab project east of the Grossmont Trolley Station.

Agenda Item No. 7

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

July 19, 2016

SUBJECT:

ELECTION TO FILL VACANT BOARD MEMBER POSITION

RECOMMENDATION:

That the SD&AE Board of Directors: (1) elect Jared Gooch from Genesee and Wyoming as an SD&AE Board member to replace Blake Jones; and (2) forward a recommendation for approval to the MTS Board of Directors.

Budget Impact

None.

DISCUSSION:

Blake Jones has vacated the position of SD&AE Board member; therefore, staff proposes forwarding a recommendation to the MTS Board of Directors to replace Mr. Jones with Jared Gooch, Director of Sales and Marketing with Genesee & Wyoming.

Agenda Item No. 8

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

July 19, 2016

SUBJECT:

RATIFICATION OF CORRECTIONS TO JULY 14, 2015, MEETING MINUTES

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors: (1) approve corrections to the final meeting minutes of the July 14, 2015, SD&AE meeting for two prior actions taken on Agenda Items 6b and 6c; and (2) forward a recommendation to the MTS Board of Directors to ratify the corrected actions.

Budget Impact

None.

DISCUSSION:

This recommendation is more of a "housekeeping" item to correct two previous actions reflected in the final meeting minutes of July 14, 2015.

1. Agenda Item 6b: License for Private Crossings – D and E Streets in Chula Vista on the Coronado Branch.

The recommended action was to approve issuing a license to City of Chula Vista Property, LLC for two proposed private at-grade crossings across SD&AE tracks located between D and E Streets west of Bay Boulevard in Chula Vista, CA. The final meeting minutes reflected that the Board received a report when in fact the Board approved the action.

2. Agenda Item 6c: Easement for Underground Gas Pipeline Crossing.

The recommended action was to approve issuing an easement to San Diego Gas & Electric Co. (SDG&E) for an underground gas pipeline crossing the SD&AE right of way at 65th Street in the City of San Diego. The final meeting minutes reflected that the Board received a report when in fact the Board approved the action.