



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

BOARD OF DIRECTORS MEETING AGENDA

Thursday, October 14, 2021 - 2:00 PM

Members of the public may participate in the virtual meeting via Zoom info below. Please mute phones/computer audio, until you are called to speak.

HDC JPA Board Virtual Meeting Info:

Join HDC Board of Directors Meeting via Zoom at:

<https://us02web.zoom.us/j/82641275529?pwd=ZkZJeEdVL1pJN2trZmc4QzIhNUU9uQT09&from=addon>

Meeting ID: 826 4127 5529 Passcode: 225936

One tap mobile

+16699009128,,82641275529#,,,,*225936# US (San Jose)

+13462487799,,82641275529#,,,,*225936# US (Houston)

Dial by your location

+1 669 900 9128 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

Meeting ID: 826 4127 5529

Passcode: 225936

BOARD OF DIRECTORS

Kathryn Barger

Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris

Council Member, City of Lancaster

Steven D. Hofbauer

Mayor, City of Palmdale

Dave Perry

Los Angeles County

Col. Paul Cook (Ret.)

Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes

Mayor, City of Adelanto

Scott Nassif

Council Member, Town of Apple Valley

Debra Jones

Mayor, City of Victorville

October 14, 2021, Board of Directors

HDC JPA BOARD OF DIRECTORS MEMBERS

Chair, Supervisor Kathryn Barger, 5th Supervisorial District, Los Angeles County
Vice Chair Colonel Paul Cook (Retired), Supervisor, 1st Supervisorial District, San Bernardino County
Steve Hofbauer, Mayor, City of Palmdale/Los Angeles County
Darrell Dorris, Council Member, City of Lancaster /Los Angeles County
Ara Najarian, Council Member, City of Glendale, Metrolink Chair, Metro First Vice Chair/Los Angeles County
Debra Jones, Mayor, City of Victorville/San Bernardino County
Scott Nassif, Council Member, Town of Apple Valley/San Bernardino County
Gabriel Reyes, Mayor, City of Adelanto/San Bernardino County
Vacant, Joint Appointment, San Bernardino County/Los Angeles County

HDC JPA BOARD MEMBER ALTERNATES

Richard Loa, Council Member, City of Palmdale/Los Angeles County
Dave Perry, 5th Supervisorial District Transportation Deputy, Los Angeles County
Curt Emick, Mayor, Town of Apple Valley/San Bernardino County
Elizabeth Becerra, Council Member, City of Victorville/San Bernardino County

HDC JPA STAFF

Executive Director: Arthur V. Sohikian
Clerk: Lynna Monell, San Bernardino Clerk of the Board
Auditor-Controller: Jessica Trillo, San Bernardino County
Legal Counsel: John Tubbs II, Deputy County Counsel, San Bernardino County

OPEN SESSION

1. **CALL TO ORDER** – Kathryn Barger, Chair
2. **ROLL CALL**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENTS:** HDC JPA is conducting business remotely. HDC is committed to ensuring that our public meetings are accessible to the public and that the public can observe and address the meeting and to participate by providing written and oral comment on HDC matters. Please do not hesitate to reach out to Executive Director Arthur Sohikian at arthur@avsconsultinginc.com.

At this time members of the public can address the HDC Board of Directors regarding any items within the subject matter jurisdiction of the agency that are not separately listed on this agenda. Whenever possible, lengthy testimony should be presented to the Board in writing and only pertinent points presented orally.

5. **HDC CORRESPONDENCE:** *San Bernardino Clerk of the Board, Lynna Monell*
- i. HDC JPA High Desert Corridor JPA Comments to CA High Speed Rail Authority August 18/19, 2021, Board of Directors meeting Agenda Items #2/5/6/7/8 Bakersfield to Palmdale Project Section Final EIR/EIS and Proposed Selection of the Preferred Alternative (Alternative 2 with the Refined César E. Chávez Design Option, Avenue M Maintenance Site and Maintenance of Way Facility, and Palmdale Station). Sent Via email. August 18, 2021.
 - ii. HDC JPA Letter to Federal Railroad Administration requesting the FRA environmental team initiate the Section 106 consultation process, August 23, 2021.
 - iii. HDC JPA letter from outside counsel Venable to Surface Transportation Board transmitting HDC JPA – Construction and Operation Exemption—Passenger Rail Line in Los Angeles and San Bernardino Counties, CA, Surface Transportation Board Docket No. FD35941, including Verified Statement of Arthur Sohikian in Support of Petitioner’s Petition for Exemption September 24, 2021 (36 pages).
6. **MINUTES/RECAP OF PROCEEDINGS:** *San Bernardino Clerk of the Board, Lynna Monell*
Recommended Action: *Approve July 8, 2021, HDC JPA Board Meeting Minutes.*
7. **2022 HDC JPA Board Meeting Calendar**
Recommended Action: Approve HDC JPA Quarterly Board meetings as follows:
- A. January 13, 2022, 3pm
 - B. April 14, 2022, 2pm
 - C. July 14, 2022, 3pm
 - D. October 13, 2022, 2pm
8. **HDC EXECUTIVE DIRECTOR AND SUPPORT SERVICES (AVS CONSULTING, Inc.)**
CONTRACT EXTENSION - Executive Director and Legal Counsel
Recommended Action: *Approve and exercise option to extend AVS Consulting, Inc. contract for an additional one-year period from November 1, 2021, through October 31, 2022, under the same terms and conditions as the existing contract, with funding included in the current FY 2021/2022 budget to June 30, 2022, and subject to funding in the FY 2022/2023 budget to complete the remaining extended contract term from July 1, 2022, through October. 31, 2022.*
9. **METRO HIGH DESERT INTERCITY HIGH-SPEED RAIL SERVICE AND FUNDING PLAN UPDTAE AND METRO/SBCTA SR138/SR18 HIGHWAY UPDATE** – Jeanet Owen/Metro, Vincent Chio/Metro, Isidro Panuco/Metro, Steve Smith/SBCTA
Recommended Action: *Receive and File Report*
- October 14, 2021, Board of Directors
Meeting Agenda page 4 of 4**
10. **HDC EXECUTIVE DIRECTOR UPDATE REPORT** – Executive Director
Recommended Action: *Receive and File Executive Director Update Report*

11. HDC JPA VIRTUAL/REMOTE BOARD MEETING OPT-IN UNDER AB 361 – Legal Counsel

Recommended Action: *Adopt findings and approve October 14, 2021 virtual meeting under AB 361 during Proclaimed State of Emergency with findings as follows:*

- 1. There exists a “proclaimed state of emergency”, pursuant to the Governor’s State of Emergency Declaration, issued on March 4, 2020.*
- 2. State and/or local officials have imposed or recommended measures to promote social distancing.*

Future Meetings – Discussion and potential setting of special meetings.

If HDC JPA wishes to consider invoking AB 361 virtual meetings for subsequent meetings:

- a. The proclaimed state of emergency must remain active; or*
- b. State or local officials have imposed or recommended measures to promote social distancing;*

AND

c. Not later than 30 days after teleconferencing for the first time under the AB 361, and every 30 days thereafter, the board shall again make the following findings by majority vote:

The board has reconsidered the circumstances of emergency, and at least one of the following circumstances exist:

- 1. The state of emergency continues to directly impact the ability of the members to meet safely in person;*
or
- 2. State or local officials continue to impose or recommend measures to promote social distancing.*

12. HDC BOARD MEMBER FUTURE AGENDA ITEMS

**13. ADJOURNMENT. Next Board of Directors meeting January 13, 2022, at 2:00pm.
Interim Special Meetings under AB 361 possibly TBD.**



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

August 18, 2021

HDC October 14 2021 Board Meeting Report 5 Correspondence

Honorable Tom Richards
Chair, California High-Speed Rail Authority
770 L Street, Suite 620-MS-1
Sacramento, CA 95814

RE: High Desert Corridor JPA Comments to CA High Speed Rail Authority August 18/19, 2021, Board of Directors meeting Agenda Items #2/5/6/7/8 Bakersfield to Palmdale Project Section Final EIR/EIS and Proposed Selection of the Preferred Alternative (Alternative 2 with the Refined César E. Chávez Design Option, Avenue M Maintenance Site and Maintenance of Way Facility, and Palmdale Station). Sent Via email to boardmembers@hsr.ca.gov

On behalf of the High Desert Corridor JPA (HDC) members, we are pleased to submit comments to the California High-Speed Rail Authority Bakersfield to Palmdale Project Section.

The High Desert Corridor JPA strongly supports the Bakersfield to Palmdale Section. The HDC JPA Cities of Lancaster and Palmdale have continued their cooperative working relationships with CA HSR Authority staff and consultants on design elements as the CA high-speed rail project environmental documents continue through the process.

When construction funding becomes available beyond the current segments under construction, the HDC JPA strongly urges the CA High-Speed Rail Authority allocate construction funds to the Bakersfield to Palmdale Section.

The High Desert Corridor JPA is currently advancing the Rail Component from the 2016 Locally Preferred Alternative toward a Record of Decision in 2021/2022. The HDC JPA is excited with the interoperability of the high-speed rail systems to serve the high-desert communities in Los Angeles and San Bernardino Counties.

We look forward to working with the CA High-Speed Rail Authority to make high-speed rail a reality for the high-desert communities in Los Angeles and San Bernardino Counties.

Sincerely,

Arthur V. Sohikian
Executive Director

BOARD OF DIRECTORS

Kathryn Barger
Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris
Council Member, City of Lancaster

Steven D. Hofbauer
Mayor, City of Palmdale

Dave Perry
Los Angeles County

Col. Paul Cook (Ret.)
Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes
Mayor, City of Adelanto

Scott Nassif
Council Member, Town of Apple Valley

Debra Jones
Mayor, City of Victorville



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

August 23, 2021

Ms. Marlys Osterhues
Chief, Environment and Project Engineering Division
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590, sent via email to: marlys.osterhues@dot.gov

Dear Ms. Osterhues:

The High Desert Corridor Joint Powers Authority (JPA) has had recent and successful interactions with the San Manuel Band of Mission Indians concerning the High Desert Corridor (HDC) high-speed rail project. Through my direct communications with the San Manuel Band, we have discussed next steps for the HDC environmental and historic/cultural review process, including the goal of executing a revised Section 106 Programmatic Agreement. The JPA and the San Manuel Band have committed to ongoing dialogue and cooperation.

I am writing to request that the FRA environmental team initiate the Section 106 consultation process. Besides the San Manuel Band, we expect this process would involve other key stakeholders, including the California State Historic Preservation Officer (SHPO). As you are aware, the current Programmatic Agreement expires at the end of March 2022, a deadline fast approaching for these types of agreements.

It is our understanding that the JPA will be receiving FRA's comments on the Re-evaluation package. The JPA will address FRA's comments, and would recommend informing the key consulting parties of the updated analysis regarding historic/cultural resources and convening a first Section 106 meeting to review that information. Obtaining input from the San Manuel Band, the California SHPO, and others, on that analysis, as appropriate, would provide an excellent foundation for negotiations over an updated Programmatic Agreement this fall. This would permit FRA to conclude Section 106 work in advance of a project Record of Decision.

Thank you, we greatly appreciate your attention to the HDC project. Please contact me with any questions.

Sincerely,

Arthur V. Sohikian
Executive Director

BOARD OF DIRECTORS

Kathryn Barger
Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris
Council Member, City of Lancaster

Steven D. Hofbauer
Mayor, City of Palmdale

Dave Perry
Los Angeles County

Col. Paul Cook (Ret.)
Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes
Mayor, City of Adelanto

Scott Nassif
Council Member, Town of Apple Valley

Debra Jones
Mayor, City of Victorville

September 24, 2021

303038

Via Electronic Filing

Ms. Cynthia T. Brown
 Chief, Section of Administration
 Office of Proceedings
 Surface Transportation Board
 395 E Street, SW
 Washington, DC 20423-0001

ENTERED
 Office of Proceedings
 September 24, 2021
 Part of
 Public Record

Re: *High Desert Corridor Joint Powers Authority—Construction and Operation Exemption—Passenger Rail Line in Los Angeles and San Bernardino Counties, CA*, STB Docket No. FD 35941

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding the High Desert Corridor Joint Power Authority’s Petition for Exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the proposed High Desert Corridor Rail Project.

The Authority has electronically paid the filing fee of \$96,600 pursuant to 49 C.F.R. § 1002.2(f)(12)(iii). However, the Authority seeks a waiver of the filing fee based on the fact that it is a local government entity and is filing this petition on behalf of the general public, not in its proprietary role. *See* 49 C.F.R. § 1002.2(e)(1)). The Authority was formed in 2006 to support the development of a multipurpose transportation corridor connecting the Palmdale/Lancaster area in California to the cities of Adelanto, Victorville, Hesperia, and Apple Valley. Members of the Authority include the counties of San Bernardino and Los Angeles, the Town of Apple Valley, and the cities of Adelanto, Victorville, Lancaster, and Palmdale.

If the Board determines that a fee waiver should not be granted under 49 C.F.R. § 1002.2(e)(1), the Authority alternatively requests a waiver under 49 C.F.R. § 1002.2(e)(2). Here, the best interest of the public would be served by a waiver since the Authority is not, and will not act as, a privately-owned transportation entity and does not intend to operate over the line. Rather, the Authority is acting on behalf of the general public in the counties of San Bernardino and Los Angeles to provide a safe, reliable, convenient, and environmentally friendly travel option between Palmdale and the Town of Apple Valley.

FEE RECEIVED

September 24, 2021

SURFACE TRANSPORTATION BOARD

1

FILED

September 24, 2021

SURFACE TRANSPORTATION BOARD

Surface Transportation Board
September 24, 2021
Page 2

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kathryn Kusske Floyd". The signature is written in a cursive, flowing style.

Kathryn Kusske Floyd

*Counsel for the High Desert Corridor
Joint Powers Authority*

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35941

**HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY
-CONSTRUCTION AND OPERATION EXEMPTION-
-PASSENGER RAIL LINE IN LOS ANGELES AND
SAN BERNARDINO COUNTIES, CA**

PETITION FOR EXEMPTION

**Kathryn Kusske Floyd
Margaret K. Fawal
Venable LLP
600 Massachusetts Ave. NW
Washington, D.C. 20001
(202) 344-4000
(202) 344-8300 (fax)**

Counsel to High Desert Corridor Joint Powers Authority

Dated: September 24, 2021

Filing Contains Color Images

TABLE OF CONTENTS

BACKGROUND 6

 I. Petitioner 6

 II. The High Desert Corridor Rail Project..... 7

 III. The HDC Rail Project will serve an important public need. 10

 IV. Environmental Review..... 13

DISCUSSION 17

 I. The proposed construction and operation are presumptively in the public interest..... 17

 II. The Board should exempt the construction and operation of the High Desert Corridor Line from the prior approval requirements of 49 U.S.C. § 10901..... 18

 1. An exemption will promote the Rail Transportation Policy..... 19

 2. Regulation of the HDC Rail Project is not needed to protect shippers from the abuse of market power..... 23

 III. The Board should exempt the HDC Rail Project from regulation pursuant to Subtitle IV. 25

 1. Economic regulation of the HDC Rail Project is not necessary to carry out the Rail Transportation Policy. 26

 2. Economic regulation of the HDC Rail Project is not needed to protect shippers from the abuse of market power. 29

CONCLUSION..... 30

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35941

**HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY
–CONSTRUCTION AND OPERATION EXEMPTION–
–PASSENGER RAIL LINE IN LOS ANGELES AND
SAN BERNARDINO COUNTIES, CA**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502, the High Desert Corridor Joint Powers Authority (“Authority” or “Petitioner”) submits this Petition for Exemption from the prior approval requirements of 49 U.S.C. § 10901 for Petitioner to construct and operate an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, CA (the “HDC Rail Project”). Petitioner also requests an exemption from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences. As Petitioner explains below, the HDC Rail Project will benefit the public and promote the national transportation policy by providing a safe, reliable, convenient, and environmentally friendly travel option between Palmdale and the Town of Apple Valley. In addition, the HDC Rail Project will connect existing Metrolink service and future California High-Speed Rail (“California HSR”) service in Palmdale with the DesertXpress Enterprises,

LLC/XpressWest High-Speed Train Project¹ (referred to herein as “BrightlineWest”) in the Town of Apple Valley, enabling high-speed rail transportation for interstate passengers between the Los Angeles metropolitan area and Las Vegas, Nevada.²

This Petition is supported by the Verified Statement of Arthur Sohikian (attached hereto as Exhibit A).

BACKGROUND

I. Petitioner

The Authority was formed in 2006 to support the development of a multipurpose transportation corridor connecting the Palmdale/Lancaster area to the cities of Adelanto, Victorville, Hesperia, and Apple Valley.³ Members of the Authority include the counties of San Bernardino and Los Angeles, the Town of Apple Valley, and the cities of Adelanto, Victorville, Lancaster, and Palmdale.⁴ The Authority will be responsible for constructing the tracks, stations, platforms, and other

¹ See *DesertXpress Enterprises, LLC—Construction & Operation Exemption—In Victorville, CA and Las Vegas, NV* (“*DesertXpress*”), STB Finance Docket No. 35544 (STB served Oct. 25, 2011).

² The Board has previously granted petitions for exemption to construct and operate the segments of the California HSR line and the BrightlineWest rail line. See *California High-Speed Rail Authority—Construction Exemption—In Fresno, Kings, Tulare & Kern Counties, Cal.*, STB Finance Docket No. 35724_1, at 21 (STB served Aug. 12, 2014); *California High-Speed Rail Authority—Construction Exemption—In Merced, Madera & Fresno Counties, Cal.* (“*California High-Speed Rail Authority*”), STB Finance Docket No. 35724, at 28 (STB served Jun. 13, 2013); *DesertXpress* at 8.

³ Verified Statement of Arthur Sohikian in Support of Petition for Exemption (“Sohikian V.S.”) ¶ 5.

⁴ *Id.*

infrastructure along the route.⁵ When completed, it is anticipated that the HDC Rail Project will be operated and maintained by a third-party operator.⁶

II. The High Desert Corridor Rail Project

The Authority is developing an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, California. In Palmdale, the HDC Rail Project will physically connect to the Palmdale Transportation Center, a multi-modal transportation center featuring a Metrolink rail station, a local bus hub, commuter bus, and future California HSR service north to the Central Valley and San Francisco and south to Burbank, Los Angeles, and Anaheim.⁷ In the Town of Apple Valley, the rail line will physically connect to the proposed BrightlineWest system, which will provide service from Victor Valley to Las Vegas, Nevada.⁸ The HDC Rail Project—which will be interoperable with both the California HSR and Brightline West systems⁹—is part of the California State Rail Plan, which envisions stop-limited high-speed rail service between Las Vegas and Los Angeles (see Figure 1).¹⁰

⁵ *Id.* ¶ 12.

⁶ *Id.* At this time, the Authority intends to obtain the common carrier obligation to operate the rail line from the Board. If and when the Authority seeks to transfer its operational rights to a third party, it will comply with all applicable Board requirements and procedures. *Id.* ¶ 13.

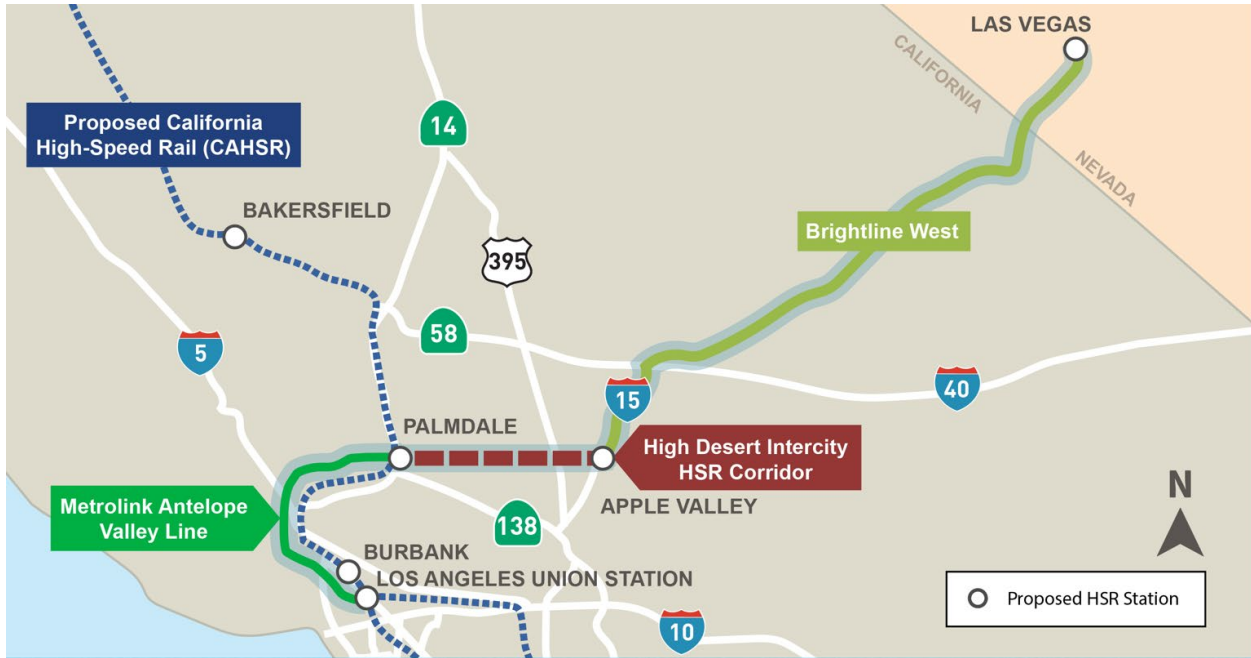
⁷ *Id.* ¶ 8.

⁸ *Id.*

⁹ *Id.*

¹⁰ California State Rail Plan at 150 (Caltrans 2018), available at <https://dot.ca.gov/programs/rail-and-mass-transportation/california-state-rail-plan>.

Figure 1: Map of HDC Rail Project and Planned Connections



Although the HDC Rail Project will be located solely within California, the line will be part of the interstate rail network and is therefore subject to the Board’s jurisdiction. *See* 49 U.S.C. § 10501(a)(2)(A). As discussed herein, the HDC Rail Project will share a station and be interoperable with two interstate carriers: the California HSR line at the Palmdale Transportation Center and the BrightlineWest high speed rail station in the Town of Apple Valley.¹¹ The Authority forecasts that the HDC Rail Project will capture 11% of persons traveling interstate between Southern California and Las Vegas in the first year of operations.¹² The HDC Rail

¹¹ *Sohikian V.S.* ¶ 8.

¹² *See* High Desert Corridor: Investment Grade Ridership & Revenue Forecasts at 15 (March 2017) (“HDC Ridership Study”), available at <https://cms.sbcounty.gov/Portals/50/HSR%20Ridership%20and%20Revenue%20Forecast%20Study.pdf?ver=2020-05-21-135812-543>.

Project thus will enable continuous interstate movement of passengers on the interstate rail system.¹³

The HDC Rail Project will be constructed and operated on a dedicated, grade separated, secure corridor.¹⁴ Based on projections of future market demand, it is anticipated that 10-car electric trains will operate between 6 a.m. and midnight, with headways of 20 minutes to 1 hour depending on the time of day.¹⁵ Trains will operate at speeds of up to 125 miles per hour, resulting in a transit time of under thirty minutes between Palmdale and the Town of Apple Valley.¹⁶

Assuming funding is secured in the next eighteen to twenty-four months, Petitioner anticipates that construction would begin as soon as 2023 and passenger service would begin by 2029.¹⁷ The total cost of project construction is estimated to be \$3.9 billion in year of expenditure dollars.¹⁸ The Authority plans to pursue funding at the appropriate time from FRA grants and/or Build for America Bureau loans.¹⁹

¹³ See *Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Petition for Exemption—Passenger Rail Line Between Dallas and Houston, Tex.*, STB Finance Docket No. 36025, at 6-8 (STB served Jul. 16, 2020); *California High-Speed Rail Authority* at 11-12; *DesertXpress* at 3.

¹⁴ *Sohikian V.S.* ¶ 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ¶ 14.

¹⁸ *Id.* ¶ 15.

¹⁹ *Id.*

III. The HDC Rail Project will serve an important public need.

Antelope Valley and Victor Valley have experienced substantial population growth in recent years.²⁰ This growth—driven by proximity to Los Angeles and the availability of undeveloped land and affordable housing—is expected to continue for at least the next twenty years.²¹ However, the limited options for direct, fast, and safe connections to the major metropolitan areas isolate the High Desert (Antelope and Victor Valleys) economically, limit the area from which these communities draw businesses, customers, and employees, and reduce the accessibility of job markets for residents.²²

There is currently no passenger rail service linking Antelope Valley and Victor Valley.²³ Instead, all travel must occur via existing two- to six-lane highways, which are increasingly unable to accommodate the existing and projected future traffic attributed to residential and commercial growth in the region.²⁴ Without additional infrastructure, it is estimated that travel time across a 70-mile long route during peak periods will increase to more than two hours by 2040.²⁵

The need for a high-capacity transportation corridor between Victor Valley and Antelope Valley has been recognized by State, regional, and local planners for

²⁰ High Desert Corridor Project Final Environmental Impact Report/Environmental Impact Statement (June 2016) (“EIS/R”) at 1-15.

²¹ *Id.* at 1-15.

²² *Id.* at 1-26.

²³ *Id.* at 1-26.

²⁴ *Id.* at 1-12.

²⁵ *Id.* at 1-15.

decades.²⁶ Between 1992 and 2002, the California Department of Transportation (“Caltrans”), in cooperation with the HDC Steering Committee, prepared a Regionally Significant Transportation Investment Study documenting the need for improved transportation infrastructure to accommodate the expected growth in Antelope Valley and Victor Valley.²⁷ And in 2003, as part of its development of a multimodal transportation plan for the northern Los Angeles County area, Los Angeles County Metropolitan Transportation Authority (“Metro”) identified the High Desert Corridor as a recommended strategy for addressing the volume of traffic traveling between Antelope and Victor Valleys.²⁸

The HDC Rail Project will introduce a safe, reliable, convenient, and productive mode of travel between Victor Valley and Antelope Valley. By providing an alternative mode of passenger transportation, the HDC Rail Project will increase capacity of east-west transportation facilities to accommodate existing and future transportation demand, improve travel safety and reliability within the High Desert region, and contribute to California’s state GHG reduction goals.²⁹

The HDC Rail Project will also provide improved access and connectivity to regional transportation facilities by connecting existing Metrolink service and future California HSR service in Palmdale with the BrightlineWest high speed rail line in

²⁶ *Id.* at 1-4.

²⁷ *Id.* at 1-4.

²⁸ *Id.* at 1-5.

²⁹ *See id.* at 1-10.

the Town of Apple Valley.³⁰ By physically connecting to the Palmdale Transportation Center in Palmdale and the BrightlineWest Station in the Town of Apple Valley, the HDC Rail Project will enable seamless, stop-limited interstate passenger rail service between Los Angeles and Las Vegas.³¹

The corridor between Southern California and Las Vegas is heavily traveled. California residents accounted for 29% of all visitors to Las Vegas in 2015.³² 80 to 85% of these visitors reside in Southern California,³³ meaning more than 15 million round trips were made to Las Vegas by residents of Southern California in 2015.³⁴ More than 90% of these Southern California visitors traveled to Las Vegas by road.³⁵

Almost all visitors driving from California to Las Vegas travel on I-15, which they typically join south of the Cajon Pass, or along SR-18 from Palmdale, before passing Victorville in San Bernardino County and then crossing the Mojave Desert.³⁶ Uncongested drive times between Southern California and Las Vegas range from under four hours from San Bernardino to approximately six hours from parts of Santa Barbara and Imperial Counties.³⁷ Highway traffic peaks on Thursdays and Fridays

³⁰ *Id.* at 1-25 – 1-26.

³¹ *Id.*

³² HDC Ridership Study at 6.

³³ *Id.* at 6.

³⁴ *Id.* at 11.

³⁵ *Id.* at 6.

³⁶ *Id.* at 6.

³⁷ *Id.* at 6. The Imperial Counties are defined by the Las Vegas Convention and Visitors Authority (LVCVA) as the eight counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.

northbound to Las Vegas, when many travelers depart, and on Sunday in the southbound direction from Las Vegas for the return leg.³⁸ Nearly one quarter of car trips throughout a typical week are made in one or both directions during these peak times, when journey times can be extended by congestion and unpredictable delays.³⁹

Based on travel demand between California and Las Vegas, a recent study forecasted ridership of 3 million round trips per year during the initial phase of high-speed rail provided between Las Vegas and Palmdale, via the BrightlineWest line and High Desert Corridor Line.⁴⁰ Ridership would increase significantly over the next three years, to approximately 6.5 million round trips in 2024.⁴¹ The addition of California HSR line in 2029 would further increase ridership, rising to approximately 14.0 million round trips by 2050.⁴²

IV. Environmental Review

The HDC Rail Project originated as a piece of a larger multi-modal transportation initiative, called the High Desert Corridor Project (the “HDC Project”).⁴³ The HDC Project began as a proposed highway project connecting the counties of Los Angeles and San Bernardino.⁴⁴ However, it subsequently evolved into

³⁸ *Id.* at 6-7.

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 15.

⁴¹ *Id.* at 15.

⁴² *Id.* at 16.

⁴³ *See* EIS/R at 1-7.

⁴⁴ *See id.* at 1-4.

a 63-mile west-east proposed multipurpose corridor that would connect Antelope Valley with Victor Valley.⁴⁵

Caltrans and Metro were project proponents of the HDC Project, with Caltrans acting as the lead state and federal agency for purposes of the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”).⁴⁶ Numerous state and federal agencies, including the Surface Transportation Board, acted as cooperating agencies.⁴⁷

A Draft Environmental Impact Statement/Report (“EIS/R”) was circulated for public review between September 30 and December 2, 2014.⁴⁸ Several project alternatives were studied in the Draft EIS/R, including two alternatives that incorporated rail feeder/connector service between the cities of Palmdale and Victorville.⁴⁹

Caltrans, in cooperation with Metro, held four public hearings at various locations in November 2014, and the Final EIS/R was released on June 20, 2016.⁵⁰ After studying and considering the various project alternatives, Caltrans identified the Freeway/Expressway Alternative with Rail Feeder/Connector Service as the Preferred Alternative, which consisted of the following elements:

⁴⁵ *See id.* at 1-5.

⁴⁶ *See id.* at 1-1.

⁴⁷ *Id.* at S-20.

⁴⁸ *Id.* at 1-1.

⁴⁹ High Desert Corridor Project Draft Environmental Impact Report/Environmental Impact Statement (Sept. 2014) at 2-1 – 2-2.

⁵⁰ EIS/R at 1-1.

- Construction of a full controlled-access freeway and partial controlled-access at-grade expressway for a total distance of 63 miles linking SR-18 in San Bernardino County and SR-14 in Los Angeles County.
- Construction of a rail feeder/connector service to run between Palmdale and Victorville. This feeder/connector service would connect the XpressWest (now BrightlineWest) System (a planned rail service from Victorville to Las Vegas) with Metrolink at or near the Palmdale Transportation Center. Two stations were proposed—one in Victorville and one in Palmdale.
- Construction of bike paths along segments of the proposed project.
- Green energy production and transmission facilities within the study area footprint.⁵¹

The Final EIS/R listed several factors that supported selection of the Preferred Alternative. With regard to the Rail Feeder/Connector Service element, the Final EIS/R found that rail service between Palmdale and Victorville would contribute to a reduction in the use of fossil fuels and greenhouse gas emissions.⁵² In addition, the proposed rail stations in Palmdale and Victorville⁵³ would help foster high-density and mixed-use developments in these municipalities, which aligned with the smart

⁵¹ *Id.* at 2-62.

⁵² *Id.* at 2-65.

⁵³ Since preparation of the EIS/R, the proposed BrightlineWest high speed rail station has been relocated to the Town of Apple Valley. The HDC Line has therefore been adjusted correspondingly to terminate in the Town of Apple Valley. This minor modification to the project is being considered as part of Federal Railroad Administration and STB's reevaluation of the EIS/R.

growth goals required by California Senate Bill (SB) 375.⁵⁴ The Rail Feeder/Connector Service—which has independent utility and would not necessitate the construction of the highway component of the original project evaluated in the EIS/R—would also help support local economic development in the High Desert and have no effect on the major development plans or expansion projects already underway or on regional development trends in general.⁵⁵

A lawsuit was subsequently brought against Caltrans, alleging that the Agency had failed to comply with CEQA requirements.⁵⁶ The parties ultimately settled the lawsuit on September 12, 2019 and the court dismissed the entire case with prejudice.⁵⁷ The settlement agreement exclusively applies to the Project’s highway element and requires Caltrans to prepare a Supplemental EIS/R prior to acquiring a right-of-way or beginning construction of the highway element.⁵⁸ The Project’s rail element can still proceed under the settlement.

The Authority is now proposing to construct and operate the HDC Rail Project, the rail feeder/connector service element of the HDC Project. The Federal Railroad Administration (“FRA”), in coordination with the Board, is conducting a reevaluation of the current rail project design—which includes some minor changes from the

⁵⁴ EIS/R at 2-65.

⁵⁵ *Id.* at 2-65 – 2-66.

⁵⁶ *Climate Resolve, et al. v. Caltrans*, Los Angeles Superior Court Case No. BS166680.

⁵⁷ *Climate Resolve, et al. v. Caltrans*, No. BS166680 (L.A. Superior Court Sept. 19, 2019) (order granting settlement request and dismissing case with prejudice).

⁵⁸ *Climate Resolve, et al. v. Caltrans*, Stipulation Regarding Settlement and Request for Continuing Jurisdiction, Sept. 12, 2019 at Sec. 1(a).

design evaluated in the HDC Project EIS/R—to determine if the prior findings set forth in the EIS/R remain valid or if new significant or previously unidentified impacts would occur.⁵⁹ A draft reevaluation document was submitted to FRA on April 12, 2021.⁶⁰

DISCUSSION

I. The proposed construction and operation are presumptively in the public interest.

The Interstate Commerce Act incorporates a general presumption that rail construction projects should be approved.⁶¹ As the Board has explained:

[I]n enacting the ICC Termination Act of 1995, Pub. L. No. 104- 88, 109 Stat. 803, Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt.⁶²

⁵⁹ See Finance Docket No. 35941, Environmental Comments, Letter from Kathryn K. Floyd, Venable, LLP, to Danielle Gosselin, Acting Director of STB Office of Environmental Analysis (Feb. 23, 2021).

⁶⁰ *Sohikian V.S.* ¶ 16.

⁶¹ See *Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, 1 S.T.B. 75, 79 (1996). This was not always the case—prior versions of the Act instructed the Interstate Commerce Commission to evaluate new construction proposals with care and not to approve new construction without finding that it was consistent with the public convenience and necessity. See *Alaska Railroad Corp.—Construction and Operation Exemption—Rail Line between North Pole and Delta Junction, AK* (“*Alaska Railroad Construction*”), STB Finance Docket No. 34658, (STB served Jan. 6, 2010) at 5, n.4 (explaining statutory policy shift from pre-Staggers regime where ICC was “directed to scrutinize rail construction projects closely to prevent excess rail capacity”).

⁶² *The Burlington Northern & Santa Fe Ry. Co.—Construction and Operation Exemption—Seadrift and Kamey, TX*, STB Finance Docket No. 34003, at 4 (STB served June 19, 2001) (emphasis added).

In short, “Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.”⁶³

II. The Board should exempt the construction and operation of the High Desert Corridor Line from the prior approval requirements of 49 U.S.C. § 10901.

The construction and operation of a new rail line requires prior Board approval pursuant to 49 U.S.C. § 10901. However, 49 U.S.C. § 10502(a) provides that the Board “shall” exempt a proposed rail line construction from formal regulation under Section 10901 if it finds that (1) such regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.⁶⁴

The legislative history of the exemption provision, as well as ICC, Board, and court precedent demonstrate that the Board should apply the exemption provision broadly, and that the proposed line is the type of transaction for which the exemption

⁶³ *DesertXpress* at 3; see also *N. Plains Resource Council, Inc. v. STB*, 668 F.3d 1067, 1089-92 (9th Cir. 2011) (affirming Board’s interpretation of § 10901 finding a presumption that new construction should be approved); *Mid-West Generation, LLC—Exemption From 49 U.S.C. 10901—for Construction in Will Cty., IL*, STB Finance Docket No. 34060, at 7 (STB served Mar. 21, 2002) (noting that ICCTA “establishes a clear presumption in favor of rail construction proposals”).

⁶⁴ See, e.g., *DesertXpress* at 3; *Alaska Railroad Construction* at 5-6.

provision was designed.⁶⁵ The Board has been charged with removing as many restrictions as possible and reducing regulation wherever possible.⁶⁶

As explained in detail below, the proposed rail line construction and operation meet the Section 10502 exemption criteria and accordingly should be exempted from the requirement of obtaining Board approval under Section 10901.

1. An exemption will promote the Rail Transportation Policy.

Regulation of the construction and operation of the HDC Rail Project is not necessary to carry out the Rail Transportation Policy expressed in Section 10101. Rather, granting an exemption—as opposed to subjecting the Project to burdensome regulation—will promote several provisions of the Rail Transportation Policy and will not run counter to any of those goals.

First, the HDC Rail Project will help to “ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public.”⁶⁷ Construction and operation of the Line clearly will contribute to the development of a sound rail transportation system by introducing a safe, efficient, comfortable, and convenient transportation option for commuters between the rapidly growing Antelope Valley

⁶⁵ *See, e.g., Am. Trucking Assoc. v. ICC*, 656 F.2d 1115, 1119 (5th Cir. 1981) (explaining that the ICC was charged with the responsibility of actively pursuing exemptions for transportation and services that comply with the section’s standards).

⁶⁶ H.R. Rep. No. 96-1430, at 105 (1980) (House Report on Staggers Act explaining that the ICC was charged with removing “as many as possible of the Commission’s restrictions”).

⁶⁷ 49 U.S.C. § 10101(4).

and Victor Valley areas and to travelers between Los Angeles and Las Vegas. The Line also will be an effective competitive alternative to highway travel in the High Desert transportation corridor, as well as to air and highway travel between Los Angeles and Las Vegas.

Second, the HDC Rail Project will “foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes [of transportation].”⁶⁸ It will offer an efficient and cost-competitive option for persons traveling between two of California’s fastest growing areas. A high-speed rail connection between Palmdale and the Town of Apple Valley will improve productivity by creating a more convenient and reliable alternative to travel by automobile or bus. It will also facilitate interstate rail travel by providing a needed link between the Los Angeles metropolitan area and Las Vegas. The HDC Rail Project is part of the California State Rail Plan, which envisions seamless, stop-limited interstate rail service between Las Vegas and Los Angeles and beyond.⁶⁹ Indeed, Metro, in partnership with Caltrans, Brightline West, and San Bernardino County Transportation Authority, is developing an operating plan for the HDC Rail Project to integrate the Line into the broader regional and intercity rail network in Southern California, including the planned California HSR network and the BrightlineWest line running to Las Vegas.⁷⁰

⁶⁸ 49 U.S.C. § 10101(5).

⁶⁹ California State Rail Plan at 150, 130.

⁷⁰ See *Sohikian V.S.* ¶ 9.

Third, the HDC Rail Project will “encourage and promote energy conservation.”⁷¹ Introducing high-speed passenger rail service between Palmdale and the Town of Apple Valley will mitigate traffic congestion in a busy and highly congested transportation corridor.⁷² The HDC Rail Project will contribute to a reduction in carbon emissions by eliminating riders from the congested highways linking Victor Valley and Antelope Valley.⁷³

Fourth, granting Petitioner’s request for an exemption will “minimize the need for Federal regulatory control over the rail transportation system” (49 U.S.C. § 10101(2)) by avoiding an unnecessarily cumbersome application process for the construction of the HDC Rail Project. Petitioner’s proposal to construct the line is manifestly consistent with USDOT’s stated policy objective of developing a robust network of high-speed passenger rail lines linking the nation’s major cities, as well as the California High Speed Rail plan for an integrated, state-of-the-art rail system.⁷⁴ No legitimate policy objective would be served by subjecting the proposed HDC Rail Project to a lengthy application and approval process.

⁷¹ 49 U.S.C. § 10101(14).

⁷² EIS/R at S-1.

⁷³ *Id.* at 2-65.

⁷⁴ See United States Department of Transportation, Federal Railroad Administration, *Vision for High Speed Rail in America* at i (April 2009), available at https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/16536/2009_VISION%20FOR%20HIGH%20-%20SPEED%20RAIL%20IN%20AMERICA.PDF; United States Department of Transportation, Federal Railroad Administration, *Southwest Multi-State Rail Planning Study* at 4 (Sept. 2014), available at https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/14123/FRA%20SW%20Study%20Summary%20Report.pdf; California State Rail Plan at 3.

Finally, granting the requested exemption will both “reduce regulatory barriers to entry into and exit from the industry”⁷⁵ and “provide for the expeditious handling and resolution of . . . proceedings required or permitted to be brought [before the Board].”⁷⁶ An exemption will minimize the time and administrative expense associated with Petitioner’s proposal, and enable it to construct the HDC Rail Project and introduce an exciting new transportation option to millions of travelers sooner than would be possible if a formal application proceeding under Section 10901 were required. Regulatory barriers to the creation of new rail capacity should be minimized whenever possible in order to promote new transportation options.

In short, the Rail Transportation Policy “favors the construction of new rail lines.”⁷⁷ Indeed, the Board (and the ICC before it) have repeatedly found that new rail construction projects promote the Rail Transportation Policy by providing rail service options, allowing for competition, and encouraging the provision of more efficient transportation service.⁷⁸ Granting the requested exemption will promote the

⁷⁵ 49 U.S.C. § 10101(7).

⁷⁶ 49 U.S.C. § 10101(15).

⁷⁷ *Gateway Western Ry. Co.—Construction Exemption—St. Clair County, IL; Gateway Western Ry. Co.—Petition Under 49 U.S.C. 10901(d)*, STB Finance Docket Nos. 32158 and 32158-1, 1993 ICC LEXIS 88, at *10 (ICC served May 11, 1993) (noting the Board has “made findings in a series of construction [exemption] cases that the rail transportation policy favors the construction of new rail lines”).

⁷⁸ *See, e.g., Palmetto Railways—Construction and Operation Exemption—In Berkeley Cty., SC*, STB Finance Docket No. 36095, at 2-3 (STB served July 22, 2019); *California High-Speed Rail Authority* at 22-23; *DesertXpress*, at 3-4; *Alaska Railroad* at 5-6; *Arizona Eastern Ry., Inc.—Construction Exemption—In Graham County, AZ*, STB Finance Docket No. 34836, at 3 (STB served June 15, 2009); *Itasca County Regional Rail Authority—Petition for Exemption—Construction of a Line of Railroad in Itasca County, MN*, STB Finance Docket No. 34992, at 3 (STB served

goals of the Rail Transportation Policy without generating any effects that would be counter to Section 10101's mandates.

2. Regulation of the HDC Rail Project is not needed to protect shippers from the abuse of market power.

The second element of Section 10502's standard for granting an exemption is stated in the alternative: either "the transaction or service is of limited scope" or formal regulation of the transaction or service "is not needed to protect shippers from the abuse of market power."⁷⁹ The proposed construction and operation of the HDC Rail Project clearly satisfies the latter test.

Regulation of the HDC Rail Project is unnecessary to protect freight shippers from an abuse of market power because Petitioner will not offer any freight transportation service. Likewise, construction of the Line does not pose a threat to rail passengers, because there currently exists no passenger rail service between Victor Valley and Antelope Valley.

Nor is regulation of the Line needed to protect persons traveling between Palmdale and the Town of Apple Valley via other modes of transportation from an abuse of market power. To the contrary, the Line will *enhance* the competitive options available to both intrastate and interstate travelers, by introducing a safe, efficient,

Sept. 8, 2008); *Southwest Gulf R.R. Co.—Construction and Operation Exemption—Medina County, TX* ("Southwest Gulf R.R. Co."), STB Finance Docket No. 34284, at 2 (STB served May 19, 2003); *Entergy Arkansas and Entergy Rail—Construction and Operation Exemption—White Bluff to Pine Bluff, AR*, STB Finance Docket No. 33782, at 3 (STB served May 4, 2000); *Missouri Pacific R.R. Co.—Construction and Operation Exemption—Harris and Chambers Counties, TX*, 1995 WL 385792 at *4 (STB served June 30, 1995).

⁷⁹ 49 U.S.C. § 10502(a)(2).

comfortable and convenient new rail service in the High Desert Corridor.⁸⁰ As discussed above, approximately 90 percent of all travel between Southern California and Las Vegas occurs by road. The only currently available alternative to driving is flying.

The HDC Rail Project will offer an attractive competitive alternative to travel by automobile, bus, and, for passengers traveling from Las Vegas to Los Angeles, air. Riding a HDC train will enable travelers to avoid the delays, stress, and inconvenience of driving along the congested highways in the High Desert region. The planned dedicated, grade separated, secure corridor will enable the HDC Rail Project to provide a safe, convenient, and less stressful transportation service with consistent on-time performance.

As these facts demonstrate, the introduction of a high-speed passenger rail option serving the High Desert Corridor will not result in, or enable, any abuse of market power.⁸¹ Because the Project meets the goals of the Rail Transportation Policy and does not threaten any abuse of market power, the Board should grant Petitioner

⁸⁰ See *DesertXpress* at 3 (approving exemption for new passenger line that would “provid[e] additional transportation options”); *Southwest Gulf R.R. Co.*, at 3 (concluding that “the proposed transaction will enhance competition by providing . . . a rail transportation option to go along with existing motor carrier options”).

⁸¹ Because regulation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is of limited scope. See, e.g., *DesertXpress* at 4 n.5 (“Given our finding under 49 U.S.C. § 10502(a)(2)(B) regarding the probable effect of the proposed Line on market power, we need not determine under 49 U.S.C. § 10502(a)(2)(A) whether the transaction is limited in scope.”); *Missouri Pacific R.R. Co.* at *4 (“The transaction appears to be of limited scope . . . but we need not make that finding here because regulation is not necessary to protect shippers from market power abuse.”).

an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the Uinta Basin Railway.

III. The Board should exempt the HDC Rail Project from regulation pursuant to Subtitle IV.

The Board should also grant Petitioner’s request for an exemption from all of 49 U.S.C. Subtitle IV. The Board’s evaluation of this element of the Petition is subject to the same statutory standards as Petitioner’s request for an exemption from Section 10901 to construct and operate the HDC Rail Project.⁸² The Board and its predecessor have granted exemptions from Subtitle IV for a variety of rail services and transactions, including passenger rail operations.⁸³ The HDC Rail Project should likewise be exempted from ongoing Board regulation.

⁸² See 49 U.S.C. § 10502(a). See also, e.g., *Great Canadian Railtour Co. Limited D/B/A Rocky Mountaineer – Petition for Exemption from 49 U.S.C. Subtitle IV* (“*Great Canadian Railtour*”), STB Finance Docket 35851, at 4 (STB served June 3, 2015); *Logansport & Eel River Short-Line Co., Inc. – Exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket 31367, 1989 ICC LEXIS 132 at * 2 (May 1, 1989).

⁸³ See, e.g., *Great Canadian Railtour* (passenger excursion service using Amtrak train and engine crews); *The Pullman Sleeping Car Co. LLC–Petition for Exemption from 49 U.S.C. Subtitle IV* (“*Pullman*”), STB Finance Docket 35738 (STB served Feb. 5, 2015) (passenger service on sleeping, dining, and lounge cars as part of Amtrak train consists); *American Orient Express Ry. Co. LLC – Petition for Declaratory Order*, STB Finance Docket 34502 (STB served Dec. 29, 2005) (excursion service using Amtrak locomotives and Amtrak train and engine crews); *Metro North Commuter R.R. Co. – Acquisition Exemption – The Maybrook Line* (“*Metro North*”), STB Finance Docket 32639, 1995 WL 11215 (Jan. 13, 1995) (commuter rail line); *Cape Cod & Hyannis R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV* (“*Cape Cod & Hyannis*”), STB Finance Docket 31229, 1988 ICC LEXIS 82 (March 21, 1988) (seasonal passenger and tour railroad service); *Alaska R.R. Co. – Exemption – From 49 U.S.C. Subtitle IV* (“*Alaska Railroad Subtitle IV Exemption*”), STB Finance Docket 30740, 1985 ICC LEXIS 2 (Dec. 31, 1985) (Alaska passenger service with a modified winter schedule).

1. Economic regulation of the HDC Rail Project is not necessary to carry out the Rail Transportation Policy.

The Board should exempt the HDC Rail Project from ongoing regulation pursuant to Subtitle IV because such regulation is not necessary to carry out the Rail Transportation Policy set forth at 49 U.S.C. § 10101.⁸⁴ Indeed, the Board has found that exempting passenger operators from Subtitle IV regulation promotes (rather than undermines) the nation’s Rail Transportation Policy objectives.⁸⁵ Formal regulation of operations on the HDC Rail Project is likewise unnecessary “because no vital interests of shippers (here, the traveling public), competition, or communities will be adversely affected.”⁸⁶

Granting the requested exemption will “allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.”⁸⁷ The HDC Rail Project will face robust competition from both air carriers and bus operators for passengers traveling between Las Vegas and Los Angeles. Travelers also have the option to make the journey by car—indeed, the majority of trips between Palmdale and Apple Valley, and between Las Vegas and

⁸⁴ See footnote 78 (and cases cited therein).

⁸⁵ See *Metro North*, at * 3 (“Regulation of [the carrier] is also not necessary to carry out the goals of the RTP. Rather, the exemption will facilitate these goals.”); *Cape Cod & Hyannis* (“[E]xemption would foster the rail transportation policy by expediting regulatory decisions, minimizing the need for Federal regulatory control over the rail transportation system, . . . promoting an efficient and sound transportation system and encouraging efficient management.”).

⁸⁶ See *Alaska Railroad Subtitle IV Exemption* at * 5.

⁸⁷ 49 U.S.C. § 10101(1).

Los Angeles, will continue to be via automobile.⁸⁸ As USDOT's *National Rail Plan* states, the success of high-speed passenger rail service is dependent upon the degree to which they can deliver safe, reliable and convenient service at a price that is competitive with other available transportation options.⁸⁹ The rates, schedules and service offerings of the HDC Rail Project's prospective competitors (airlines and buses) are not subject to federal economic regulation. There is no legitimate policy reason to impose such regulatory burdens on Petitioner.⁹⁰ The HDC Rail Project's operations will, of course, be subject to safety regulation by FRA.

Exempting the HDC Rail Project from Subtitle IV will "minimize the need for Federal regulatory control over the rail transportation system."⁹¹ In several prior decisions, the agency has found that an exemption for passenger rail services would promote this goal of the Rail Transportation Policy.⁹² Subjecting day-to-day operations of the HDC Rail Project to ongoing economic regulation would not produce any public benefits. To the contrary, burdening the HDC Rail Project (and other potential high-speed rail projects) with unnecessary regulatory requirements could

⁸⁸ HDC Ridership Study at 126.

⁸⁹ See United States Department of Transportation, Federal Railroad Administration, *Preliminary National Rail Plan* (October 2009) at 7.

⁹⁰ See, e.g., *Great Canadian Railtour* at 5 ("Requiring Rocky Mountaineer to come to the Board for authority each time it proposes to change its service frequencies would be an unnecessary burden."); *Pullman* at 4 (same).

⁹¹ 49 U.S.C. § 10101(2).

⁹² See, e.g., *Great Canadian Railtour* at 4 (exempting passenger service is consistent with Section 10101(2) because regulatory control is unnecessary); *Pullman* at 4 (same). See also *Metro North* at *3 ("Exemption will expedite regulatory decisions...").

undermine the federal policy of encouraging the development of a network of high-speed passenger rail lines across America.⁹³

The Rail Transportation Policy directs the Board to exercise its authority in a manner that “ensure[s] the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the general public.”⁹⁴ The introduction of a high-speed passenger rail system in the High Desert Corridor—connecting to planned California HSR service and the BrightlineWest high speed rail system—will, by definition, contribute to the development of a sound rail transportation system.⁹⁵ It will also address a critical need for connectivity in the interstate rail network. Granting the requested Subtitle IV exemption will allow the HDC Rail Project to compete more effectively with other (unregulated) modes of transportation. For the same reasons, exempting the HDC Rail Project from Subtitle IV regulation will “foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes [of transportation].”⁹⁶

⁹³ See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 5, Maps 1 and 9.

⁹⁴ 49 U.S.C. § 10101(4).

⁹⁵ See *Metro North* at *3 (transaction at issue “will also help ensure the development and continuation of a sound rail transportation system to meet the needs of the public.”); *BG & CM R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket 34399, at 3 (STB served Oct. 17, 3003) (exemption will “ensure the development and continuation of a sound rail transportation system with effective competition with other modes of transportation to meet the needs of the public.”).

⁹⁶ See, e.g., *Great Canadian Railtour* at 5 (“an exemption would foster sound economic conditions...”); *Pullman* at 4 (same).

As discussed above, the HDC Rail Project also will promote the Rail Transportation Policy goal of energy conservation.⁹⁷ High-speed passenger rail service between Palmdale and the Town of Apple Valley will mitigate traffic congestion in a busy and heavily traveled transportation corridor, and will consume less energy than travel by air or highway. The Board has previously found that exempting passenger rail services promotes energy conservation.⁹⁸

As is often the case in connection with proposed exemptions involving passenger operations, other aspects of the Rail Transportation Policy would not be adversely affected by granting the requested exemption.⁹⁹ Therefore, the Board should find that ongoing regulation of the HDC Rail Project pursuant to Subtitle IV is not necessary to promote the Rail Transportation Policy.

2. Economic regulation of the HDC Rail Project is not needed to protect shippers from the abuse of market power.

In *Pullman*, the Board found that the proposed service would not threaten an abuse of market power because “customers have many other transportation options available to them (*i.e.*, flights, charter bus trips, etc.)”¹⁰⁰ The same conclusion is

⁹⁷ See 49 U.S.C. § 10101(14).

⁹⁸ *Orange County Transportation Authority et al. – Acquisition and Exemption – The Atchison, Topeka & Santa Fe Ry. Co.*, STB Finance Docket 32173, at 4-5 (STB served March 12, 1997).

⁹⁹ See *Great Canadian Railtour* at 5; see also *Pullman* at 4; *Cape Cod & Hyannis* at *4.

¹⁰⁰ *Pullman* at 4; see also *Great Canadian Railtour* at 5 (“[S]ervice would not result in market power abuse as the record indicates that customers have many other transportation options available to them (*i.e.*, other passenger services, travel by air carrier, charter bus trips, etc.)”); *Cape Cod & Hyannis* at * 4 (“[C]arriers compete with other passenger modes”); *Alaska Railroad Subtitle IV Exemption* at * 6 (“Moreover,

warranted here. The HDC Rail Project will not result in any competitive harm—to the contrary, it will enhance competition by introducing a safe, efficient, comfortable, and convenient new transportation alternative in the High Desert region and beyond. The HDC Rail Project will face competition from airlines and buses for those travelers who choose not to drive between Los Angeles and Las Vegas. Economic regulation of the HDC Rail Project’s rates, schedules, station stops and service offerings is not necessary to prevent an abuse of market power, because it will not possess any market power.

In short, the Board should exempt the HDC Rail Project from all regulatory requirements under Subtitle IV of Title 49.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board grant this Petition and issue a decision (1) exempting the construction and operation of the HDC Rail Project from the prior approval requirements of 49 U.S.C. § 10901; and (2) exempting the HDC Rail Project from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences.

Respectfully submitted,



Kathryn Kusske Floyd

Dated: September 24, 2021

since the affected public sector has transportation alternatives in both an all-weather highway and superior air service between Anchorage and Fairbanks, regulation is not necessary to protect train passengers from an abuse of market power”).

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35941

**HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY
-CONSTRUCTION AND OPERATION EXEMPTION-
-PASSENGER RAIL LINE IN LOS ANGELES AND
SAN BERNARDINO COUNTIES, CA**

PETITION FOR EXEMPTION

EXHIBIT A



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 35941

HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY -AUTHORITY TO CONSTRUCT AND OPERATE- -PASSENGER RAIL LINE IN LOS ANGELES AND SAN BERNARDINO COUNTIES, CA

PETITION FOR EXEMPTION

VERIFIED STATEMENT OF ARTHUR SOHIKIAN IN SUPPORT OF PETITIONER'S PETITION FOR EXEMPTION

1. My name is Arthur Sohikian. I am the Executive Director of the High Desert Corridor Joint Powers Authority (the "Authority"). My office is located at 385 N. Arrowhead Avenue, 2nd Floor, San Bernardino, CA 92415-0130.
2. I have been the Executive Director of the Authority since October 29, 2020. I am responsible for the daily operation of the Joint Powers Authority as directed by the Authority Board of Directors from San Bernardino and Los Angeles Counties.
3. As Executive Director, I have been actively involved in and am familiar with the Authority's planned construction and operation of an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, CA (the "HDC Rail Project").

BOARD OF DIRECTORS

Kathryn Barger
Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris
Council Member, City of Lancaster

Steven D. Hofbauer
Mayor, City of Palmdale

Dave Perry
Los Angeles County

Col. Paul Cook (Ret.)
Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes
Mayor, City of Adelanto

Scott Nassif
Council Member, Town of Apple Valley

Debra Jones
Mayor, City of Victorville

4. I am submitting this Verified Statement in support of the Petition for Exemption filed by the Authority seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the HDC Rail Project and from regulation pursuant to 49 U.S.C. Subtitle IV. This Verified Statement is based on firsthand knowledge from my involvement, as the Executive Director of the Authority, in the planning of the Project.

5. The Authority was formed in 2006 to support the development of a multipurpose transportation corridor connecting the Palmdale/Lancaster area to the cities of Adelanto, Victorville, Hesperia, and Apple Valley. Members of the Authority include the counties of San Bernardino and Los Angeles, the Town of Apple Valley, and the cities of Adelanto, Victorville, Lancaster, and Palmdale.

6. The HDC Rail Project originated as a piece of a larger multi-modal transportation initiative proposed by the California Department of Transportation (“Caltrans”) and LA Metro, called the High Desert Corridor Project (the “HDC Project”). This project consisted of a 63-mile west-east proposed multipurpose corridor that would connect Antelope Valley with Victor Valley and included, among other things, both a rail and highway component. A final environmental impact statement/report (“EIS/R”) for the HDR Project was issued in 2016 for purposes of meeting the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

7. After a legal challenge to the HDC Project was brought against the Caltrans, Caltrans entered into a settlement agreement that requires it to prepare a Supplemental EIS/R prior to acquiring a right-of-way or beginning construction of the highway element of the HDC Project. The settlement does not apply to the rail element of the HDC Project, and the Authority is continuing to pursue development of the HDC Rail Project.

8. The HDC Rail Project consists of an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, California. In Palmdale, the HDC Rail Project will physically connect to the Palmdale Transportation Center, a multi-modal transportation center featuring a Metrolink rail station, a local bus hub, commuter bus, and future California HSR service north to the Central Valley and San Francisco and south to Burbank, Los Angeles, and Anaheim. In the Town of Apple Valley, the rail line will physically connect to the proposed BrightlineWest system, which will provide

service from Victor Valley to Las Vegas, Nevada. The HDC Rail Project will be interoperable with both the California HSR and Brightline West systems. It thus will enable continuous interstate movement of passengers on the interstate rail system.

9. The HDC Rail Project is part of the California State Rail Plan, and LA Metro, in partnership with Caltrans, Brightline West, and San Bernardino County Transportation Authority, is developing an operating plan for the HDC Rail Project to integrate the Line into the broader regional and intercity rail network in Southern California, including the planned California HSR network and the BrightlineWest line running to Las Vegas.

10. In 2017, the Authority commissioned Steer Davies Gleave (SDG) to produce investment grade ridership and revenue forecasts for high-speed rail services using the proposed HDC Rail Project. That study concluded that that the HDC Rail Project will capture 11% of persons traveling interstate between Southern California and Las Vegas in the first year of operations and that ridership would significantly increase in subsequent years.¹

11. The HDC Rail Project will be constructed and operated on a dedicated, grade separated, secure corridor. Based on projections of future market demand, it is anticipated that 10-car electric trains will between 6 a.m. and midnight, with headways of 20 minutes to 1 hour depending on the time of day. Trains will operate at speeds of up to 125 miles per hour, resulting in a transit time of under thirty minutes between Palmdale and the Town of Apple Valley.

12. The Authority will be responsible for constructing the tracks, stations, platforms, and other infrastructure along the route. When completed, it is anticipated that the HDC Rail Project will be operated and maintained by a third-party operator.

13. At this time, the Authority intends to obtain the common carrier obligation to operate the rail line from the Board. If and when the Authority seeks to transfer its operational rights to a third party, it will comply with all applicable Board requirements and procedures.

¹ See High Desert Corridor: Investment Grade Ridership & Revenue Forecasts at 15-16 (March 2017) (“HDC Ridership Study”), available at <https://cms.sbcounty.gov/Portals/50/HSR%20Ridership%20and%20Revenue%20Forecast%20Study.pdf?ver=2020-05-21-135812-543>.

14. Assuming funding is secured in the next eighteen to twenty-four months, it is anticipated that construction would begin as soon as 2023 and passenger service would begin by 2029.

15. The total cost of project construction is estimated to be \$3.9 billion in year of expenditure dollars. The Authority plans to pursue funding at the appropriate time from FRA grants and/or Build for America Bureau loans.

16. The Federal Railroad Administration (“FRA”), in coordination with the Board, is conducting a reevaluation of the current rail project design—which includes some minor changes from the design evaluated in the HDC Project EIS/R—to determine if the prior findings set forth in the EIS/R remain valid or if new significant or previously unidentified impacts would occur. A draft reevaluation document was submitted to FRA on April 12, 2021.

VERIFICATION

I, Arthur Sohikian, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on this 23rd day of September, 2021.



Arthur Sohikian

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September 2021, I caused a copy of the foregoing Petition for Exemption to be served on all parties of record by email or first-class mail, postage prepaid.



Margaret K. Fawal



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

BOARD AGENDA REPORT 6

The High Desert Corridor Joint Powers Authority

Date: October 14, 2021

To: The High Desert Corridor Joint Powers Authority Board of Directors (HDC)

From: Arthur V Sohikian, Executive Director/Board Secretary

Subject: **JULY 8, 2021 HDC JPA MINUTES/MEETING RECAP OF PROCEEDINGS**

Recommended Action: Approve April 8, 2021, HDC JPA Board Meeting Minutes.

HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY
BOARD OF DIRECTORS MEETING, Thursday, July 8, 2021, 2:00 p.m.

The Board of Directors participated via virtual zoom and teleconference:

Directors Present Directors Alternates Present and voting	Steven Hofbauer, Mayor, City of Palmdale (Director), Acting Chair Darrell Dorris, Council Member, City of Lancaster (Director) Dave Perry, Deputy to Supervisor Kathryn Barger, Los Angeles County Supervisor (Director) Scott Nassif, Council Member, Town of Apple Valley (Director) Elizabeth Becerra, Council Member, City of Victorville (Alternate Director)
Staff Present	HDC Staff Present: Arthur Sohikian, Executive Director Lynna Monell, Clerk of the Board (San Bernardino County) John Tubbs, County Counsel, County of San Bernardino County Jessica Trillo, San Bernardino County Administrative Office, Finance and Administration. Amanda Meere, San Bernardino County, County Administrative Office, Government Affairs.
2. Call to Order and Roll Call	Acting Chair Hofbauer called the meeting to order at 2:02 p.m. Executive Director Arthur Sohikian conducted Roll Call and noted there was a quorum of 5 of 7 Board Members present with two Alternate Member Becerra as a voting member.
3 Pledge of Allegiance	Led by Director Nassif
4. Public Comments	Acting Chair Hofbauer inquired of the Executive Director, if there was any HDC JPA Authority public comment. Executive Director Sohikian indicated that there was no written, virtual or telephone public comment
5. HDC JPA Election of Board Officer for FY2021/22	On a motion by Acting Chair Hofbauer, seconded by Director Nassif to elect Chair Kathryn Barger, Vice Chair Cook, Secretary, Arthur Sohikian

BOARD OF DIRECTORS

Kathryn Barger

Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris

Council Member, City of Lancaster

Steven D. Hofbauer

Mayor, City of Palmdale

Dave Perry

Los Angeles County

Col. Paul Cook (Ret.)

Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes

Mayor, City of Adelanto

Scott Nassif

Council Member, Town of Apple Valley

Debra Jones

Mayor, City of Victorville

6.	Correspondence	<p>Acting Chair Hofbauer inquired of the Clerk to the Board, Lynna Monell, if there was any HDC JPA Authority correspondence.</p> <p>Clerk Monell indicated that there was no correspondence received and that HDC Correspondence sent was included in the Board Report.</p> <ol style="list-style-type: none"> i. HDC JPA letter transmitting the HDC High Speed Rail Project Resource Impact Analysis Report to Federal Railroad Administration, April 9, 2021 ii. HDC JPA Executive Director Remarks to San Bernardino County Transportation Authority Desert/Mountain Committee, June 18, 2021. iii. HDC JPA support letter for CA High Speed Rail Authority/City of Palmdale Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant for Palmdale Integrated Station Implementation Master Plan, June 30, 2021 iv. HDC JPA support letter for City of Palmdale Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant for Rancho Vista Boulevard Grade Separation, June 30, 2021.
7.	<p>Recommended Action: Approve Minutes of July 8, 2021 HDC JPA Board Meeting Minutes</p>	<p>On motion by Director Becerra, seconded by Director Dorris, the Board approved the minutes of April 8, 2021 HDC JPA Board meeting.</p> <p>AYES: Steven Hofbauer, Darrell Dorris, Dave Perry, Scott Nassif and Elizabeth Becerra</p>
8.	<p>HDC FY2021-22 BUDGET – Executive Director Recommended Action: <i>A. Adopt the High Desert Corridor JPA Fiscal Year 2021-22 Recommended Budget</i> <i>B. Approve HDC Metro Funding Agreement for Surface Transportation Board Filing Fee</i></p>	<p><u>FY2021/22 Recommended Budget Highlights:</u> It is estimated that \$410,985 will be expended on the agreement with Transportation Solutions in FY2021-22.</p> <p>It is anticipated that the agreement with AVS Consulting, Inc. will be renewed in October 2021 for an amount not-to-exceed \$11,500 per month.</p> <p>Los Angeles County 5th District contribution of \$85,000. San Bernardino County provides in-kind staff time from the Clerk of the Board, County Administrative Office, and County Counsel, \$20,215.</p> <p>Website start-up costs and annual hosting fee are budgeted at \$2,720 and \$250, respectively. Internal staff time will be utilized for website maintenance. The Surface Transportation Board (STB) filing fee of \$96,600 is not included in the FY2021-22 Recommended Budget.</p> <p>The STB filing fee will be paid directly by LA Metro, as proposed in Recommended Action B of this Board Agenda Report.</p> <p>Fund Balance of \$8,083 equals retained (set aside) funding for future possible legal, audit and insurance only.</p> <p><u>HDC STB Filing Fee Background:</u></p>

		<p>At the January 14 and April 8, 2021, HDC JPA Board meetings, the Board approved the allocation of \$400,000 in Metro funds to complete the Record of Decision consultant work, which includes, among other things, preparation of a petition to the Surface Transportation Board to obtain authority to construct and operate the HDC Rail Project.</p> <p>A petition to the Surface Transportation Board has been prepared that includes a \$96,600 filing fee. The Authority staff did not anticipate the STB filing fee to include in the April 2021 Metro HDC Funding agreement for environmental work, therefore, we are including the reimbursable filing fee in this report.</p> <p>Construction and operation of new rail lines require prior authorization by the Board. 49 U.S.C. § 10901. The JPA intends to file a petition for exemption with the Board to request this authorization. The Board has established a fee of \$96,600 for this type of filing. 49 C.F.R. § 1002.2(f). However, as a government entity, the JPA is eligible to request a waiver of the filing fee. State and local entities that are not before the Board in a proprietary role are entitled to a waiver of the filing fee. <i>Id.</i> § 1002.2(e). In addition, the Board may grant discretionary waivers or fee reductions if in the public interest. <i>Id.</i></p> <p>For the STB Board to consider the petition for exemption, the filing fee must be paid upfront. <i>Id.</i> § 1002.2(b). Therefore, when filing its petition for exemption, the JPA will pay the fee and simultaneously request a waiver. The JPA will explain that it is a local agency not acting in a proprietary role and is therefore entitled to the waiver. In addition, the JPA will also argue that a discretionary waiver of the fee is in the public interest. If the waiver is granted, the Board will refund the filing fee. There is no specific timeframe by which the Board must issue a decision on the request or refund the fee.</p> <p>Approve Recommended Staff Action motion by Director Perry with a second from Director Nassif</p>
9.	<p>Brightline West Project Update <u>Recommended Action:</u> Receive and File Report</p>	<p>Brightline West presented an update.</p> <p>Presentation can be found at the link below pages to 24-29 https://cms.sbcounty.gov/Portals/50/HDC%20July%208%2021%20Board%20Meeting%20Agenda%20and%20Reports.pdf?ver=2021-07-01-143349-000</p>
10.	<p><u>Recommended Action:</u> Receive and File Executive Director Report</p>	<p>Executive Director Arthur Sohikian provided the report with the following highlights:</p> <p>SR138/SR18 Highway update Metro, SBCTA, Caltrans Districts 7/8 focused on widening SR18/SR138 as a continuous 4-lane highway between the Antelope and Victory Valleys (Victorville/Palmdale)</p>

connecting high desert communities in San Bernardino and Los Angeles Counties. SBCTA allocated Measure I funds and Metro allocated Measure M HDC funds for the focused PSR-PDS project development documents with Metro as the lead agency. Study kick-off meetings occurred in June 2021.

President Biden and Congressional Leaders announce substantial federal investment in Transportation Infrastructure. In March/April 2021, HDC submits Highway Alternative SR138/SR18 Project to Senator Alex Padilla, Congressman Mike Garcia (CD25) and Congressman Jay Obernolte (CD8) for federal legislative opportunities. Numerous positive briefings have been held.

HDC Rail Update

April 2021, HDC submits Reevaluation petition to Federal Railroad Administration (FRA) and Surface Transportation Board (STB) with positive meetings. HDC objective is to receive the Rail Project Record of Decision (ROD/NOD), Notice of Determination approval in late 2021/early 2022. This will **complete** clearance for the high-speed rail project component and put the HDC Rail Project in position to advance to the next phase, Preliminary Engineering. HDC must submit STB filing fee before the Board staff will review the application. A Metro/HDC Funding Agreement to pay the STB filing fee is on the July 8 Board Agenda, Item Report 8 to pay the filing fee in mid-July. After STB evaluation, HDC/Metro will request a fee waiver to return the filing funds to Metro.

The HDC Rail Project includes changes from the design evaluated in the HDC EIR/EIS document. These changes are necessary to connect to the currently planned California HSR station in the City of Palmdale and to the redesigned Brightline West station in the Town of Apple Valley. The April 2021 Reevaluation will be used by FRA to determine if the prior results set forth in the 2016 HDC EIR/EIS remain valid. HDC staff and consultant team met with FRA on June 2, 2021, to discuss the draft Reevaluation.

President Biden and Congressional Leaders announce substantial federal investment in Transportation Infrastructure and highlight high-speed rail projects for funding. March/April 2021, HDC submits Rail Project to Senator Alex Padilla, Congressman Mike Garcia (CD25) and Congressman Jay Obernolte (CD8) for federal legislative opportunities. Numerous positive briefings have been held.

HDC staff and consultant team briefs federal Build America Bureau leadership to discuss a variety of funding possibilities leveraging LA County Measure M funds and CA State Rail Program funds

May 2021, LA Metro CEO Phil Washington testifies before the House Transportation and Infrastructure, Subcommittee on Railroads, Pipelines and Hazardous Materials specifically supporting the High Desert Corridor High-Speed Rail project.

- Excerpt of LA Metro CEO Washington’s testimony: “...Today, in Los Angeles, our economic growth is compromised because access to jobs is sharply constrained – not because individuals do not have the skill sets needed for a job – not because they lack the education. No, in many instances individuals simply cannot get to a job location within a reasonable amount of time.... What this tells me is that if we have a high-speed rail system - for example the High Desert Corridor intercity rail project in northern Los Angeles County that can connect Apple Valley, unincorporated Los Angeles County and Palmdale with our urban core and beyond – it would offer a chance for the American Dream to be in reached - again - for a new generation of Americans. A high-speed rail project along the High Desert Rail Corridor would dramatically reduce commute times by connecting some of the fastest growing residential, commercial and industrial areas in Southern California, such as the cities of Palmdale, Lancaster, Adelanto, Victorville and the Town of Apple Valley and offer a potential future linkage to Las Vegas via the planned Brightline West high-speed rail project. In addition, the High Desert Rail Corridor would also connect with the California High-Speed Rail system – connecting Los Angeles to the Central Valley and the San Francisco/Bay Area.”

California Governor Newsom and Legislative Leaders announced revised CA budget in final approval that includes millions in investment for transportation infrastructure. Additional funds are included for the next SB1 grant cycle in Summer 2022 with funding allocations in Spring 2023 paving the way for an HDC Rail TIRCP grant application submittal in Fall, 2022.

HDC has productive meetings with CalSTA agency officials on how the HDC Rail Project complements and is an essential part of the State Rail Program objectives.

CA HSR Business Plan continues with environmental clearance for Southern California segments from Bakersfield to Palmdale and Palmdale to Burbank. Approvals are scheduled for Summer 2021 for the Palmdale Segment and Summer 2022 for the Burbank Segment.

July 2021, CA HSR pursuing a Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant jointly with City of Palmdale for Integrated Station Area Master Planning investing CA HSR and City of Palmdale funds as match to the grant request.

Metro Board approved \$5 million budget for HDC Intercity Rail Service Development Plan & Funding Plan including \$3 million of HDC Measure M funds, \$1.375 million in CalSTA 2018 Transit Intercity Rail Capital Plan State grant under the Network Integration category, and \$625K from Brightline West (\$250K in cash and \$375K of in-kind contributions) for Metro to develop with HDC, Brightline West. Kick-off occurred in April 2021 with an 18-month implementation schedule.



11	HDC Member Future Items	Metro Service and Funding Plan Update
----	-------------------------	---------------------------------------

12	Adjourn	There being no further business, the meeting adjourned at 2:55 p.m. Next Meeting: October 14, 2021, 2pm
----	---------	--



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

BOARD AGENDA REPORT 7 **The High Desert Corridor Joint Powers Authority**

Date: October `14, 2021

To: The High Desert Corridor Joint Powers Authority Board of Directors (HDC)

From: Arthur V Sohikian, Executive Director/Board Secretary

Subject: **2022 HDC JPA Board Meeting Calendar**

Recommended Action: Approve HDC JPA Quarterly Board meetings as follows:

- A. January 13, 2022, 3pm
- B. April 14, 2022, 2pm
- C. July 14, 2022, 3pm
- D. October 13, 2022, 2pm

BOARD OF DIRECTORS

Kathryn Barger

Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris

Council Member, City of Lancaster

Steven D. Hofbauer

Mayor, City of Palmdale

Dave Perry

Los Angeles County

Col. Paul Cook (Ret.)

Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes

Mayor, City of Adelanto

Scott Nassif

Council Member, Town of Apple Valley

Debra Jones

Mayor, City of Victorville



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

BOARD AGENDA REPORT 8 The High Desert Corridor Joint Powers Authority

Date: October 14, 2021
To: The High Desert Corridor Joint Powers Authority Board of Directors (HDC)
From: Arthur V. Sohikian, Executive Director

Subject: **HDC EXECUTIVE DIRECTOR AND SUPPORT SERVICES (AVS CONSULTING, Inc.) CONTRACT EXTENSION**

Recommended Action: *Approve and exercise option to extend AVS Consulting, Inc. contract for an additional one-year period from November 1, 2021, through October 31, 2022, under the same terms and conditions as the existing contract, with funding included in the current FY 2021/2022 budget to June 30, 2022, and subject to funding in the FY 2022/2023 budget to complete the remaining extended contract term from July 1, 2022, through October 31, 2022.*

Fiscal Impact:

The HDC FY 2021/2022 budget includes Executive Director and Support Services through June 30, 2022. The remaining extended contract term from July 1, 2022, through October 31, 2022 would be subject to available funding in the HDC FY 2022/2023 budget. The AVS Consulting, Inc. monthly invoice for Executive Director and Support Services may not exceed \$11,500 per month.

BOARD OF DIRECTORS

Kathryn Barger

Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris

Council Member, City of Lancaster

Steven D. Hofbauer

Mayor, City of Palmdale

Dave Perry

Los Angeles County

Col. Paul Cook (Ret.)

Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes

Mayor, City of Adelanto

Scott Nassif

Council Member, Town of Apple Valley

Debra Jones

Mayor, City of Victorville

AGREEMENT BETWEEN HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY AND AVS
CONSULTING, INC.

HDC EXECUTIVE DIRECTOR AND SUPPORT SERVICES
(AVS CONSULTING, Inc.) CONTRACT AMENDMENT NO. 1

IT IS HEREBY AGREED AS FOLLOWS:

Amendment No. 1

IN THAT CERTAIN Agreement by and between HIGH DESERT CORRIDOR (HDC) JPA and AVS CONSULTING, INC., to provide services for the general purpose of planning, operation, and maintenance of transportation and utility corridors throughout the Counties' high deserts, as more specifically stated in the HDC Joint Powers Agreement, which contract first became effective October 29, 2020, the following changes are hereby made and agreed to effective October 14, 2021.

Section 3. is amended to read:

3. Term

Subject to compliance with all terms and conditions, this Agreement is effective as of October 29, 2020, through October 31, 2022, with the option to extend, if agreed to by both parties, for an additional one year term.

Section 17. is added to read:

17. Electronic Signatures

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

All other terms, conditions and covenants remain in full force and effect.

Signatures on next page.

Authority

Each Party signing below represents that it has the authority to enter into this AGREEMENT and consents to its terms.

In Witness Whereof, the Parties have caused this AGREEMENT to be executed by their respective officers, duly authorized by the HDCJPA on October 14, 2021, and by AVS Consulting, Inc. on October 14, 2021.

High Desert Corridor Joint Powers Authority

By: _____

Kathryn Barger, Chair

Approved as to Form

JOHN TUBBS II
Deputy County Counsel
Attorney for HDCJPA

By: _____

AVS Consulting, Inc.

By: _____

Arthur V. Sohikian, President

AGREEMENT BETWEEN HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY AND AVS CONSULTING

This Agreement is entered into this 29th day of October, 2020, between the High Desert Corridor Joint Powers Authority, hereinafter called "HDC," and AVS Consulting, hereinafter called "Contractor."

* * *

Whereas, HDC is a Joint Powers Authority by and among the County of Los Angeles and the County of San Bernardino created pursuant to California's Joint Exercise of Powers Act (Gov't Code sections 6500 et seq.) for the general purpose of planning, operation, and maintenance of transportation and utility corridors throughout the Counties' high deserts, as more specifically stated in the HDC Joint Powers Agreement ("JPA").

Whereas, under the JPA HDC possesses the power to contract with independent contractors for various services; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of consulting and administrative services relating to the purpose of the HDC JPA, and as stated in HDC's Request for Proposals.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for the HDC in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

2. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, the HDC shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. The HDC reserves the right to withhold payment if the organization determines that the quantity or quality of the work performed is unacceptable. In no event shall the HDC total fiscal obligation under this Agreement exceed \$11,500 per

month. In the event that the HDC makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the HDC at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

3. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 29, 2020 through October 31, 2021, with the option to extend, if agreed to by both parties, for additional one year term.

4. Termination

This Agreement may be terminated by the HDC at any time without a requirement of good cause upon thirty (30) days' advance written notice to the Contractor. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

The HDC may terminate this Agreement for cause. In order to terminate for cause, HDC must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, HDC may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that HDC provides notice of an alleged breach pursuant to this section, HDC may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. The HDC has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and HDC shall use reasonable judgment in making that determination.

5. Contract Materials

At the expiration of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of the HDC and shall be promptly delivered to the HDC. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the HDC and that neither

Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of HDC employees.

7. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of HDC. Any subcontracting shall be subject to the same terms and conditions as the Contractor. The Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Any such assignment or subcontract without the HDC's prior written consent shall give the HDC the right to automatically and immediately terminate this Agreement without penalty or advance notice.

8. Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by HDC and hold harmless HDC and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by HDC on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of

indemnities. The proposer indemnification obligation applies to HDC's "active" as well as "passive" negligence but does not apply to HDC's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

9. Insurance

a. General Requirements

(1) Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions, and Professional Liability policies shall contain additional endorsements naming HDC JPA and its officers, employees, agents, and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for HDC JPA to vicarious liability but shall allow coverage for HDC JPA to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(2) Waiver of Subrogation Rights

The Contractor shall require the carriers of the required coverages to waive all rights of subrogation against the HDC JPA, its officers, employees, agents, volunteers, Contractors, and Subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the HDC JPA.

(3) Severability of Interests

The proposer agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and HDC JPA or between HDC JPA and any other insured or additional insured under the policy.

(4) Proof of Coverage

The proposer shall furnish Certificates of Insurance to HDC JPA administering the contract evidencing the insurance coverage at the time the contract is executed. Additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to HDC JPA, and the proposer shall maintain such insurance from the time the proposer commences performance of services hereunder until the completion of such services.

(5) Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII."

(6) Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

(7) Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, HDC JPA has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by HDC will be promptly reimbursed by the proposer or HDC JPA payments to the proposer(s) will be reduced to pay for HDC JPA purchased insurance.

b. Insurance Specifications

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend,

supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the proposer and all risks to such persons under this Contract.

If the proposer has no employees, it may certify or warrant to HDC that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by HDC.

With respect to proposers that are non-profit corporations organized under California or federal law,

volunteers for such entities are required to be covered by Workers' Compensation insurance.

(2) Commercial/General Liability Insurance

The proposer shall carry General Liability Insurance covering all operations performed by or on behalf of the proposer providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal Injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

(3) Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and nonowned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the proposer is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the proposer owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(4) Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

(5) Professional Services Requirements

Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits.

Or

(6) Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after agreement completion.

10. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, HDC, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or HDC financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, HDC, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to HDC upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

e. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide UCC with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the UCC.

f. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the HDC the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the UCC Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a HDC contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by HDC.

To effectuate the provisions of this Section, HDC shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and HDC.

12. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after HDC makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by the HDC, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by the HDC.

(c) Contractor agrees upon reasonable notice to provide to the HDC, to any Federal or State department having monitoring or review authority, to HDC's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

13. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

14. Controlling Law; Venue; Attorney Fees and Costs

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued in the Superior Court of the State of California, San Bernardino County. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under section 7. Indemnification.

15. Conflict of Interest

HDC recognizes that the Contractor currently represents other clients. In the event that issues arise with the Contractor where specific interests from existing clients might conflict with each other, the Contractor will notify both clients of such conflict for the purpose of full disclosure.

In the event a conflict is determined to exist by the HDC, the Contract shall forfeit funds for the specific conflicted issue and a sub-contractor determined by the HDC shall be retained.

16. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of HDC, to:

Name/Title: Jessica Trillo, Administrative Analyst III
Address: 385 N. Arrowhead Ave, San Bernardino, CA 92415
Telephone: 909-387-4222
Email: Jessica.Trillo@cao.sbcounty.gov

In the case of Contractor, to:

Name/Title: Arthur Sohikian, Owner
AVS Consulting
Address: 1055 W. 7th Street, Suite 3300, Los Angeles, CA 90017
Telephone: 213-640-7272
Email: arthur@avsconsultinginc.com

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

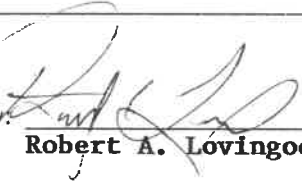
For Contractor: AVS Consulting


Contractor Signature

11/9/2020
Date

Arthur V. Sohikian
Contractor Name (Please Print)

For High Desert Corridor Joint Powers Authority:


Robert A. Lovingood

Date: 11/17/2020

Title: Chairman, High Desert Corridor JPA

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following consulting and administrative services:

1. Schedule and administer HDC Board Meetings to consider policy positions and participate in discussions with Project Development Team and/or the Policy and Technical Advisory Committee on items to move the Project forward.
2. Provide professional analysis, governmental relations and/or other services for the HDC as directed by the HDC Board Members.
3. Educate and build political, business and stakeholder coalitions in support of the Project; identify and coordinate meetings with key federal elected officials and agency officials to develop and advance the Project.
4. Identify funding opportunities, form coalitions of support and work with funding agencies to secure financing for the HDC project.
5. Oversee and provide direction to contracted consultants hired by the HDC in such areas as specialized legal, financial and environmental services to ensure work is performed in accordance with contract requirements.
6. Act as spokesperson; provide input to determine press strategy and content; prepare presentations, speeches, and authorship of articles on the Project.
7. Maintain routine communication with HDHDC's governing board and key staff regarding issues of importance to the HDC.
8. Actively participate, coordinate and monitor appropriate coalitions and working groups of other agencies/entities as well as their respective activities to help further the interests and objectives of HDC (i.e. Metro, Metrolink, CHSRA, SBCTA, Caltrans, Nevada Rail Authority, etc.).
9. Respond expeditiously to HDC inquiries and/or requests.
10. Monitor Regional, State, and Federal activities related to transportation programs and funding, and report these activities to the HDC member agencies.
11. Prepare position papers on proposed activities representing the HDC's position.
12. Provide technical information and planning assistance to the HDC regarding transportation matters.
13. Prepare meeting agendas and minutes.
14. Other duties as assigned and/or deemed necessary by the HDC.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, the HDC shall pay Contractor based on the following fee schedule and terms:

The contractor will be paid in an amount not to exceed \$11,500 per month, based on the billed hourly rates below, beginning October 29, 2020 through October 31, 2021. The hourly billing rate for the executive/staffing coordinator shall be \$165.00, and the hourly billing rate for administrative services is \$80.00. Payments will be issued upon receipt of a monthly invoice and submission of a monthly report of activities/services.

All invoices and monthly reports are to be submitted to the HDC.

Regional Rail Update

High Desert Corridor Joint Powers Authority Board Meeting
October 14, 2021

High Desert Corridor Intercity Rail Service Development Plan

Objective:

Develop a Service Development Plan (SDP) and up to 30% Preliminary Engineering Design for a new high-speed intercity rail service along the High Desert Corridor (HDC) between Palmdale and Apple Valley

Proposed California High-Speed Rail (CAHSR)

Brightline West

Metrolink Antelope Valley Line

High Desert Corridor

○ Proposed HSR Station



High Desert Corridor Intercity Rail Service Development Plan Progress Status Update

1. **Support the HDCJPA in the STB petition filing process**, including execution of a funding agreement for the \$96K filing fee and providing a support letter to STB.
2. **HDR will prepare a Service Development Plan (SDP)** that comprises of the following:
 1. Service and operating plans and operating cost estimates
 2. Rail operations modeling and infrastructure needs analysis
 3. Up to 30% Preliminary engineering
 4. Preliminary capital cost estimates
 5. Station and access analysis

Scheduled for completion by November
3. **Other components of the SDP** will be prepared by **Ernst & Young** including:
 1. Ridership and Revenue Study → **Preliminary results by November**
 2. EIFD Study and development master planning
 3. Economic impact analysis
 4. Financial Analysis and Funding Plan

Scheduled for completion by March 2022

Overview of High Desert Corridor Service Development Plan



1. Proposed 54-mile corridor (Palmdale to Apple Valley)
2. Two stations: Proposed Palmdale HSR Station and Brightline West's Apple Valley Station (by Brightline)
3. Proposed maximum allowable speed of 220 mph where feasible, less than a 30-minute trip
4. 36 miles of single-track (67% of the corridor) and 18 miles of double-track (33% of the corridor)
5. Track on embankment section on average 10 feet above existing grade to address drainage requirements for 90% of the corridor.

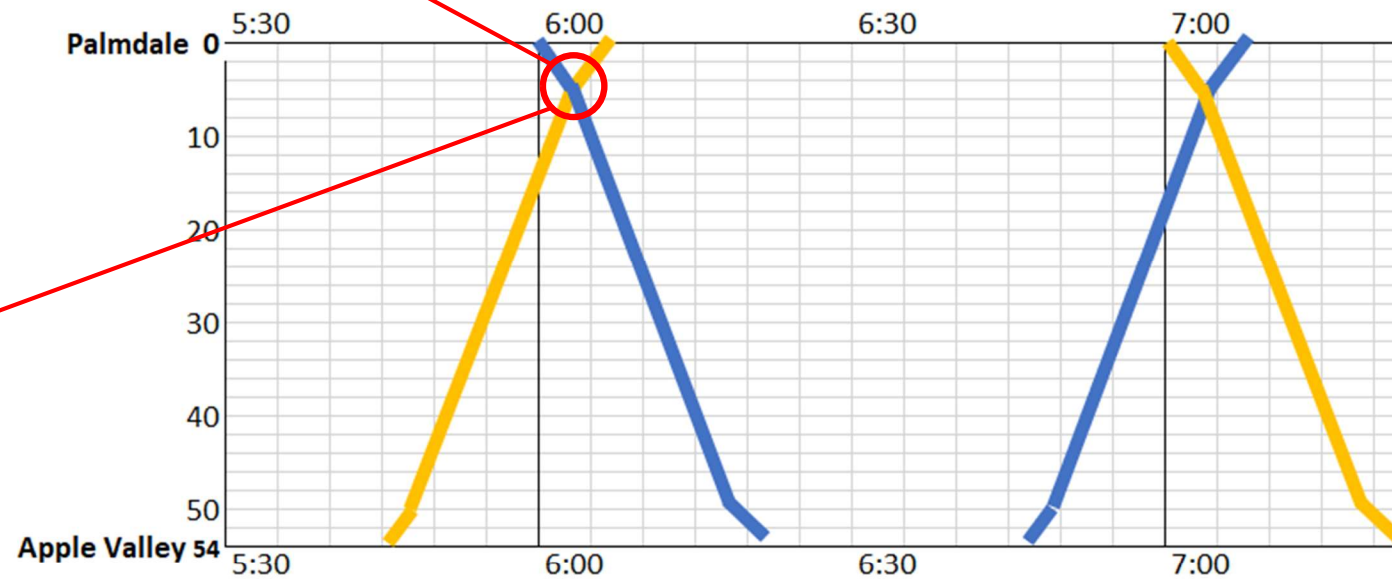
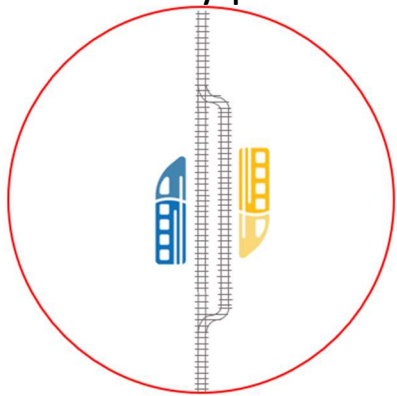
Rail Operations Modeling: Travel Time



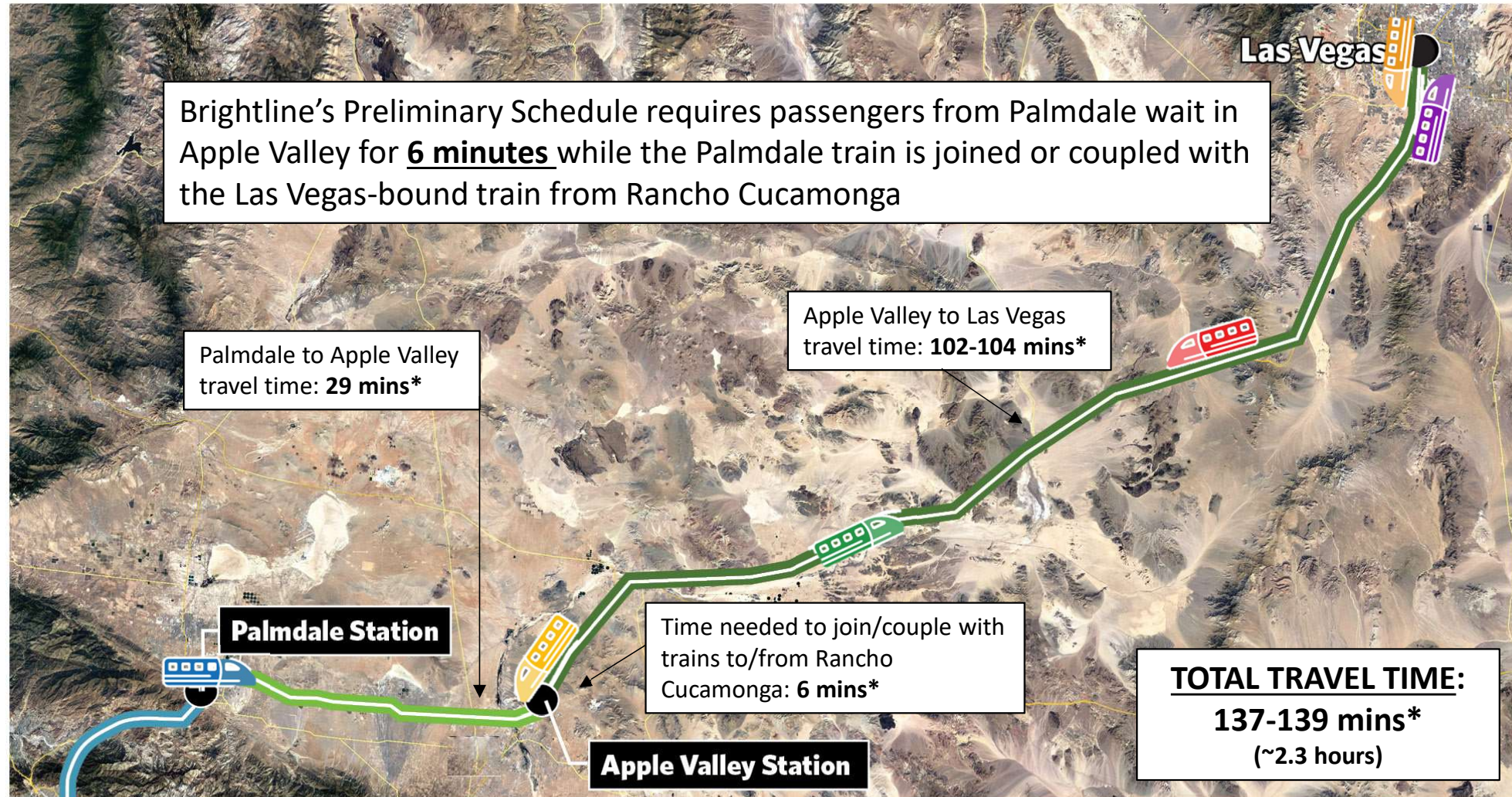
Proposed HDC Train Passing Area for 60-minute Bi-Directional Service



If modeling shows two trains in the same place at the same time, two tracks are needed in that location for the trains to safely pass each other



Brightline's Preliminary Modeling and Schedule: Palmdale to Las Vegas with Trains Coupled in Apple Valley



*Per Brightline's Preliminary Schedule

Next Steps

- 1. Continue to support the HDCJPA in the STB petition filing process.**
- 2. Develop a preliminary train schedule for HDC that coordinates with the proposed 60-minute headways on the Metrolink Antelope Valley Line to Los Angeles Union Station.**
- 3. Continue to coordinate with Brightline on rail operations modeling and train schedule:**
 - A. Since 6-minute is sufficient time for passengers to transfer from one train to another, Metro indicated to Brightline that the preliminary schedule represent a two-seat ride scenario, not a true one-seat ride to Las Vegas. In addition, the HDC Rail Project should not be required to financially contribute to the additional double-tracks between Apple Valley and Las Vegas.
 - B. Since HDC stakeholders prefer an express one-seat ride between Palmdale and Las Vegas, Metro requests that Brightline develop two new train schedules as follows:
 - 1) One-seat ride with an express service to Las Vegas that does not stop at Apple Valley;
 - 2) One-seat ride with a station stop at Apple Valley that is no more than 2 minutes.
- 4. Continue to coordinate with City of Palmdale on the Palmdale HSR Station design concept**
- 5. Develop the base case ridership modeling results by November.**
- 6. Develop the preliminary capital cost estimates for the HDC Project by November.**

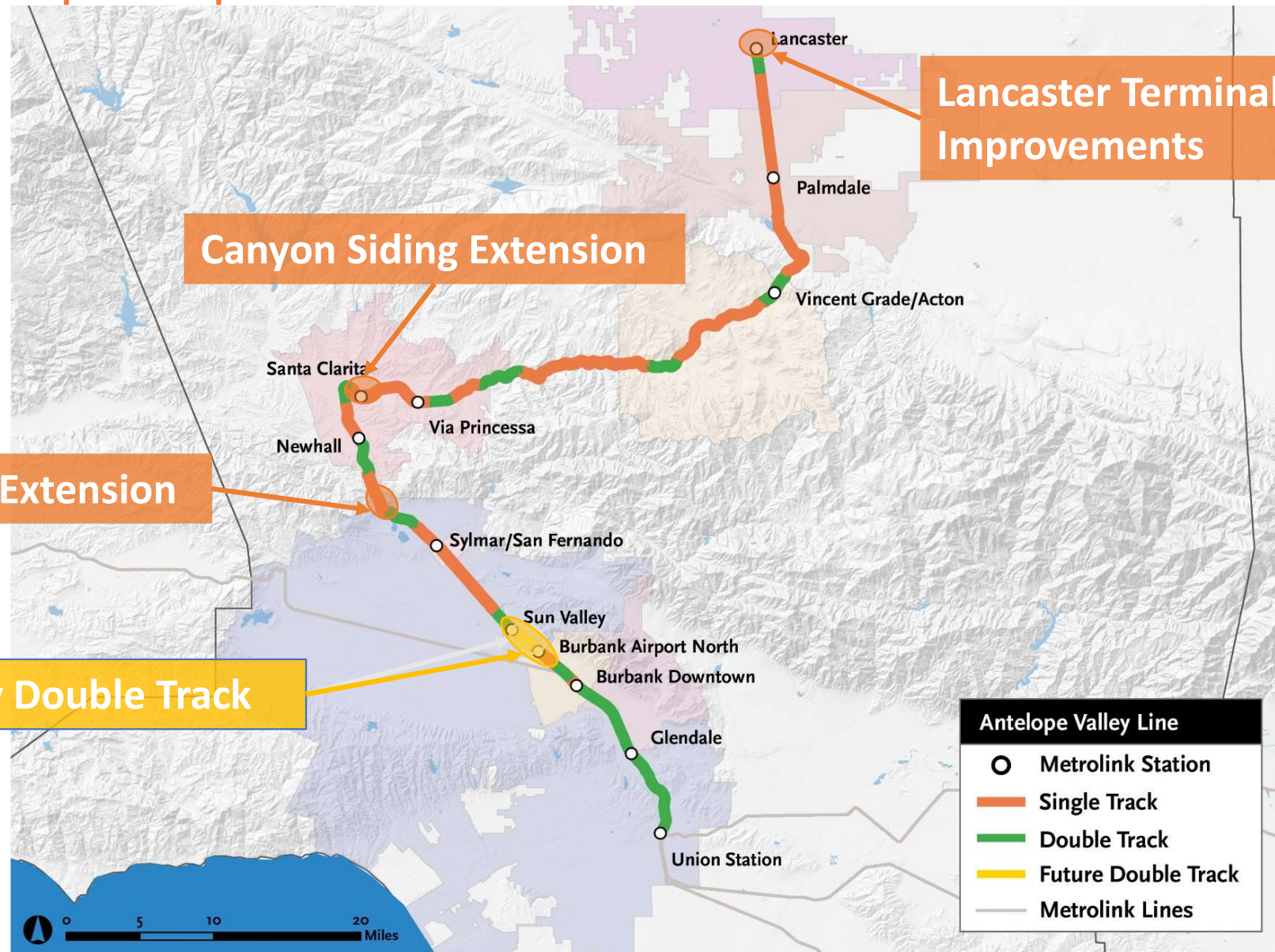


We're increasing Regional Rail Service on the Antelope Valley Line.

ANTELOPE VALLEY LINE CAPACITY AND SERVICE IMPROVEMENTS PROGRAM

Proposed Project

Existing Conditions and Proposed Improvements



Program Schedule

**Environmental Study and Conceptual
Engineering**
2020-2021

Feasibility studies
Completed
2019



Engineering
2022-2024



Right-of-Way
2022-2025



Construction
2024-2027

Next Steps

Antelope Valley Line Service and Capacity Improvements Project

1. Public Review Period closed in September 2021 and technical team is addressing received comments
2. Metro December Board Report to request EIR certification
3. Metrolink to start Final Design Projects for Balboa, Canyon and Lancaster in 2022



HDC October 14, 2021 Board Meeting Report 9 Regional Rail & Highways Update

NCTC Meeting

Metro Highway Program Project Status Update
October 18, 2021

Project	Phase	Activities	Project Manager
North County			
I-5 North HOV Project between SR-14 in Santa Clarita and Parker Road in Castaic	Construction	Metro is administering the construction of the 14-mile carpool/truck lane project. Bids from prospective contractors were received in February 2021. Metro awarded the contract to OHLA and issued the construction Notice-to-Proceed (NTP) in August 2021 with construction work to begin by November 2021.	Paul Sullivan sullivanpa@metro.net
SR-138 Widening, E/O SR-14, Segments 4, 6, and 9	Construction	Metro coordinates with Caltrans to complete the remaining Segments 4,6,9,13 and 14. Segment 4 between .3 mile west of Little Rock Wash and 77th Street: design completion in February 2023. Segment 6 between 87th Street and 96th Street: Completion of construction in November 2021. Segment 9 between .7 mile west of 121st Street and Longview Road: Construction completed.	Robert Machuca machucaR@metro.net
SR-138 Widening, E/O SR-14, Segment 13	Final Design	Segment 13 is between 185th Street and 0.3 mile west of 213th Street East. Design completion in August 2022. Caltrans ROW continues to work on the remaining 13 parcels and right-of-entry permits for hazardous waste investigations.	Robert Machuca machucaR@metro.net
SR-138/SR-14 Overlap - Freeway Interchange Improvements	Various Phases	9 of the planned 10 Projects (5 in Palmdale and 5 in Lancaster) are advancing in various phases. Palmdale: Four of the five projects in Palmdale are in design. The Rancho Vista Project construction is completed. Soil/slope stabilization is in progress. Lancaster: Three projects in design and two in environmental. Avenue J Project Phase 1 started construction in March 2021. Phase 2 final design scheduled for completion in September 2021 and will be ready to list by the end of calendar year 2021.	Robert Machuca machucaR@metro.net
High Desert Corridor	Various Phases	After the completion of the HDC environmental phase, the project was split into two projects: passenger rail and highway improvements. Metro's Regional Rail department is leading the advancement of the rail component in collaboration with private party. SR-138/SR-18 highway alignment is considered as an alternative highway connection between Palmdale and Victorville and is in planning phase.	Isidro Panuco panucol@metro.net (HWY) Brian Balderama balderramab@metro.net (Rail)
SR-138/SR-18 Widening	Planning	SR-138/18 alignment is currently considered as an alternative to the HDC highway component alignment and will provide an improved highway connection between Palmdale and Victorville. Development of a PSR-PDS of the potential highway project is in progress by Metro, SBCTA and Caltrans Districts 7 and 8 to explore the possibility and feasibility of widening SR-18 for a continuous 4-lane highway between Palmdale and Victorville.	Isidro Panuco panucol@metro.net

High Desert Corridor



Original Project

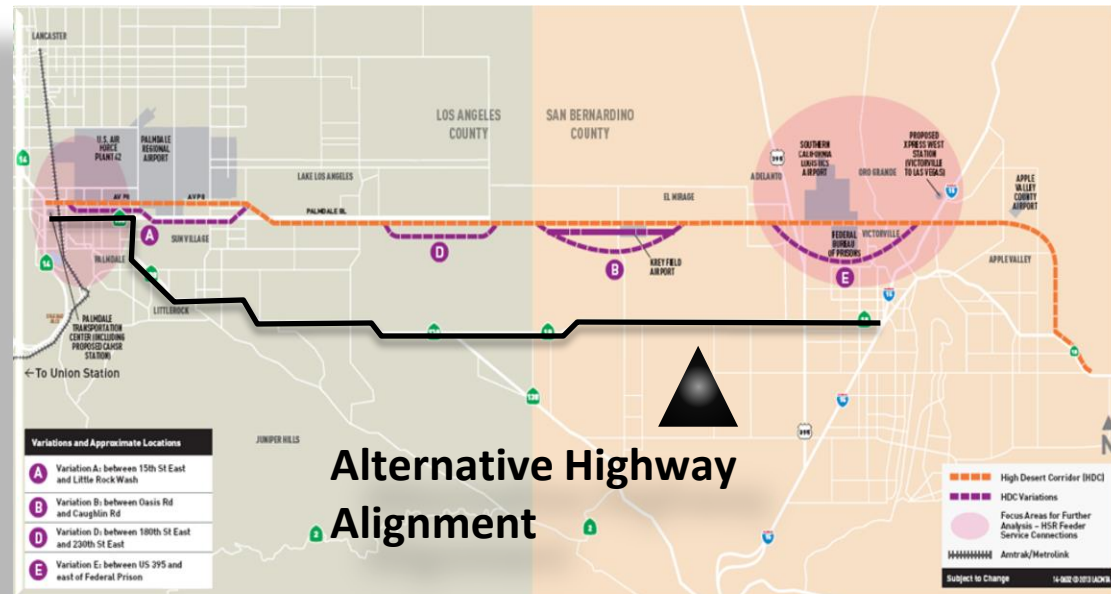
- 63 miles - Highway, Expressway, Tollway, High Speed Rail, Bikeway, and energy production/transmission corridor concepts
- Connecting North Los Angeles County and San Bernardino County (Victorville)
- Transit connection between the CHSR and the XpressWest
- In Measure M for ROW and related services in 2019
- Final EIR/EIS completed in 2016
- No Funding

Alternatives being Considered

- Alternative highway alignment being studied on SR-138 and SR-18 to accommodate continuous 4 lane connection
- PSR started in 2021
- PSR completion Fall 2022



Metro





High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

BOARD AGENDA REPORT 10

The High Desert Corridor Joint Powers Authority

Date: October 14, 2021

To: The High Desert Corridor Joint Powers Authority Board of Directors (HDC)

From: Arthur V. Sohikian, Executive Director

Subject: **HDC Executive Director Update Report**


Recommended Action: Receive and File Executive Director Update Report

Fiscal Impact: There is no Fiscal Impact. Items discussed in this report have future Fiscal Impact.

HDC Executive Director Report: The HDC should continue to educate and advocate for transportation infrastructure investments from all government and private sector sources to deliver critical mobility options to reverse the decades long transportation equity gap created in the high desert communities of Los Angeles and San Bernardino Counties. Toward that end, the Authority has taken major steps advancing the SR18/SR138 Highway Alternative and Rail Component projects.

HDC Highway Alternative (SR18/SR138) Update

High Desert Corridor







Original Project

- 63 miles - Highway, Expressway, Tollway, High Speed Rail, Bikeway, and energy production/transmission corridor concepts
- Connecting North Los Angeles County and San Bernardino County (Victorville)
- Transit connection between the CHSR and the XpressWest
- In Measure M for ROW and related services in 2019
- Final EIR/EIS completed in 2016
- No Funding

Alternatives being Considered

- Alternative highway alignment being studied on SR-138 and SR-18 to accommodate continuous 4 lane connection
- PSR started in 2021
- PSR completion Fall 2022



- Metro, SBCTA, Caltrans Districts 7/8 focused on widening SR18/SR138 as a continuous 4-lane highway between the Antelope and Victory Valleys (Victorville/Palmdale) connecting high desert communities in San Bernardino and Los Angeles Counties. SBCTA allocated Measure I funds and Metro allocated Measure M HDC funds for the focused PSR-PDS project development documents with Metro as the lead agency. Study started in June 2021 and is scheduled to conclude Fall 2022.

BOARD OF DIRECTORS

Kathryn Barger
Supervisor, Los Angeles County Fifth District (Chair)

Darrell Dorris
Council Member, City of Lancaster

Steven D. Hofbauer
Mayor, City of Palmdale

Dave Perry
Los Angeles County

Col. Paul Cook (Ret.)
Supervisor, San Bernardino County First District (Vice Chair)

Gabriel Reyes
Mayor, City of Adelanto

Scott Nassif
Council Member, Town of Apple Valley

Debra Jones
Mayor, City of Victorville

HDC Rail Component Status Update

- April 2021, HDC submits Reevaluation petition to Federal Railroad Administration (FRA) and Surface Transportation Board (STB) with positive meetings. HDC objective is to receive the Rail Project Record of Decision (ROD/NOD), Notice of Determination approval in late 2021/early 2022. This will **complete** clearance for the high-speed rail project component and put the HDC Rail Project in position to advance to the next phase, Preliminary Engineering.
- The HDC Rail Project includes changes from the design evaluated in the HDC EIR/EIS document. These changes are necessary to connect to the currently planned California HSR station in the City of Palmdale and to the redesigned Brightline West station in the Town of Apple Valley. The April 2021 Reevaluation will be used by FRA to determine if the prior results set forth in the 2016 HDC EIR/EIS remain valid. HDC staff and consultant team met with FRA in June, August, and September and the HDC Consultant Team has had numerous meetings with the various FRA staff to discuss the Reevaluation.
- In September 2021, FRA, agrees to be Lead NEPA Agency beginning the process to send appropriate notification to agencies to continue the environmental review process. An initial meeting with FRA, the San Manuel Band of Mission Indians, and HDC Staff and Consultant Team occurs on October 12, 2021.
- September 24, 2021, Metro pays the Surface Transportation Board HDC Petition fee to allow the JPA to formally submit the petition with Verified Statement submitted by Executive Director Arthur Sohikian. The Submitted petition is included as Item 5 Correspondence on the October 14, 2021 Agenda
- Metro Board HDC Intercity Rail Service Development Plan & Funding Plan including \$3 million of HDC Measure M funds, \$1.375 million in CalSTA 2018 Transit Intercity Rail Capital Plan State grant under the Network Integration category, and \$625K from Brightline West (\$250K in cash and \$375K of in-kind contributions) continues. The 2nd Stakeholder Meeting occurred on August 19, 2021, with a turnout of over 55 participants from Los Angeles and San Bernardino Counties, Metro, SBCTA, Caltrans, CalSTA, Metrolink, CA High Speed Rail Authority, AVTA, CPUC, UPRR, Victorville Airport, Cities of Palmdale, Lancaster, Adelanto, Victorville, Town of Apple Valley and Brightline West.
- Metro Regional Rail Department has an Update Item 9 on the October 14, 2021 HDC Agenda.

