AGREEMENT FOR SALE AND DONATION OF SD&AE TO MTDB

THIS AGREEMENT, made this 12th day of February, 197_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY (SP), SAN DIEGO AND ARIZONA EASTERN RAILWAY (SD&AE) and SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD (MTDB);

RECITALS:

The parties hereto entered into a Memorandum of Intent ("Memorandum"), dated October 30, 1978, for the bargain sale of San Diego & Arizona Eastern Railway to MTDB. It is the intent of SP to make a contribution, in view of the public interest to be served by MTDB, of the difference between the estimated cost of $80,000,000 to the MTDB if it had to acquire by condemnation or commercial purchase on the market facilities comparable to the SD&AE properties, control of which is being acquired through bargain sale of the SD&AE, after agreed restoration of said properties and the stated consideration actually being paid. The parties hereby set forth their formal agreement to implement the Memorandum.

AGREEMENT:

1. Sale of SD&AE:

1.1. Except as herein otherwise provided, the Memorandum is incorporated herein by reference and made a part hereof.

1.2. In consideration of $18.1 million to be paid to SP, SP agrees to sell and MTDB agrees to buy SD&AE. Except as provided

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in paragraph 1 of Section 2, Section 3, Section 4, Section 5, Section 7 and Section 9 hereof, the physical condition of SD&AE at the time of transfer is "as is." It is understood that included in the liabilities to be provided for or assumed by SP should be, but are not limited to, deferred taxes and pension liabilities up to the date of sale including unfunded prior service costs, if any. It is further understood that any receivables not collectible within ninety (90) days will become the responsibility of SP and SD&AE will be reimbursed for such amounts. Material and supplies will be inventoried, and the accounts adjusted to reflect the actual count. The financial condition of SD&AE at the time of transfer is as described in Section 12 of the Memorandum.

2. <u>Rights to be Granted to SD&AE Over Track Between Plaster City and Calexico</u>.

2.1. SP, as soon as possible after execution of this agreement, shall cause SD&AE to apply to the Interstate Commerce Commission (ICC) for authority (a) to transfer to SP its assets shown by the brown outline on Sheets 30 through 32 of Exhibit "A" of the Memorandum, (b) to enter into an agreement with SP in the form attached as Exhibit "B" and made a part hereof granting SD&AE bridging, interchange, and pooling rights as stated therein, and (c) to install Kyle Railways, Inc. as operator of the SD&AE. Exhibit "A" of the Memorandum is hereby made Exhibit "A" of this agreement and is amended as follows:

Sheets 3, 7, 9, 10, 21, 22, 54, 55 and 56 of C. E. Drawing 40495 are revised.

Sheets 60, 61 and 62 are added to C. E.

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Drawing 40495.

2.2. If authority is granted by the ICC, said assets shall be so transferred and SP and SD&AE will enter into an agreement as set forth in Exhibit "B."

2.3. SP will then also enter into an agreement with SD&AE to terminate those certain agreements between SD&AE and SP's predecessor dated December 12, 1919 (SP's Document Audit No. 10991) relating to SP's lease to SD&AE of land and track between Seeley and El Centro, and August 26, 1963 (SP's Document Audit No. 119930) relating to the joint use of SP-owned facilities at El Centro.

3. <u>Transfers of Real Property from SD&AE to SP</u>:

3.1. SD&AE has sufficient retained earnings to pay SP a dividend which shall be declared before SP deposits the SD&AE stock into escrow pursuant to Section 8 hereof. Said dividend shall be paid by the transfer to SP of the properties described in the second, third, fourth and sixth paragraphs of this Section 3.

3.2. That property of SD&AE shown by brown outline on Exhibit "A" (other than that property shown by brown outline on Sheets 30 through 32 of Exhibit "A") is not needed for its operations under MTDB auspices and is to be transferred by grant deed to SP, subject to the following:

A. SD&AE will reserve an easement for railroad purpurposes of approximately 4 acres, as shown by yellow and orange tint on Exhibit "A."

B. It is intended that said transfers be completed before escrow closes. It is understood, however,

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that if said transfer is not completed by close of escrow, SD&AE will not have any right in said property and will convey said property to SP as expeditiously as possible.

3.3. On the portion of the line between Division and Plaster City, specifically between Mile Post 96 and Mile Post 106, SD&AE presently owns substantial acreage in excess of its actual operating needs under MTDB auspices; however, at this time, it cannot be determined precisely what is required for operating purposes, although it is agreed that generally a basic 200-foot-wide right of way is needed and in addition extra width may be required for cuts and fills. It is therefore agreed that, after close of escrow, SD&AE shall determine its minimum property needs between these mileposts and the excess property will be conveyed to SP by quitclaim deed.

3.4. After escrow closes, SD&AE shall quitclaim to SP all its right, title, and interest in those tracks, improvements, and facilities located on 0.693 acres, shown on Sheet 2 of Exhibit "A."

3.5. SD&AE may still have properties not contiguous to its operating properties under MTDB auspices and not intended to be part of SD&AE's assets at the time of SD&AE's transfer to MTDB. Any property so identified will be transferred to SP in fee simple after close of escrow if not accomplished prior thereto.

3.6. SD&AE shall transfer to SP all oil, gas, hydrocarbon, geothermal and mineral rights below a depth of 500 feet below the surface, without, however, the right of surface entry, in all property to be retained by SD&AE under this agreement.

3.7. SD&AE shall grant SP an easement for roadway purposes

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across that portion of track as shown on Sheet 28 of Exhibit "A."

3.8. SD&AE and SP shall grant to Southern Pacific Communications Company (SPCC) an easement for wire line and communication purposes over, upon and under property illustrated by the blush tint on Sheet 2 of Exhibit "A." A portion of the roadway access to the site upon which SPCC has constructed a tower and building is across land leased to SD&AE by others. It is agreed that should said lease not be renewed, SD&AE will provide alternate access, satisfactory to SPCC, to the SPCC site.

3.9. Some transfers of properties mentioned in this Section 3 are subject to the requirements of the Subdivision Map Act California Government Code Section 66410 et seq. MTDB will use its efforts to obtain the waiver of said requirements by the applicable public entities. The contingency listed in Section 14(d) of the Memorandum shall include without limitation the waiver of said requirements.

3.10. All properties mentioned in this Section 3 shall be transferred to SP or its nominee as promptly as is feasible, whether before or after close of escrow, without compensation to MTDB or SD&AE.

4. Real Property Transfers from SP to SD&AE:

4.1. SP shall grant SD&AE an easement for railroad purposes (subject to existing leases with utility companies and other encumbrances) over approximately 18 acres of land owned by SP adjacent and contiguous to the land and rights of way owned by SD&AE as shown by the brown tint on Exhibit "A."

4.2. As a contribution to capital to SD&AE, SP will quitclaim

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all its right, title and interest in approximately 43 acres, as designated by green tint on Exhibit "A," excepting therefrom all oil, gas, hydrocarbon, geothermal and mineral rights below a depth of 500 feet from the surface, without, however, the right of surface entry.

4.3. SP shall grant SD&AE an option to acquire at no cost for a period of five (5) years after the close of escrow an easement for railroad purposes as shown by blue tint on Sheet 2 of Exhibit "A" across certain property owned by SP in San Diego, with the understanding that SP may install appropriate road crossing access over any tracks which may be constructed on such easement by SD&AE. It is further understood that, should crossing protection be required at such road crossing, SD&AE shall provide and maintain it.

5. Property Descriptions:

When the exact descriptions of properties mentioned in Sections 3 and 4 hereof are prepared, this agreement will be amended to include them.

6. Taxes and Other Expenses:

6.1. The party transferring property in Sections 3 and 4 herein shall pay all real property taxes levied or assessed against the property being transferred applicable to said property up to 12:00 midnight Pacific Standard Time on the date of the close of escrow. After that time, the party to whom said property is being transferred shall be responsible for said taxes.

6.2. SP shall bear the cost of preparing, executing and acknowledging any deed or other instruments required for the conveyances in Sections 3 and 4 herein. SP shall also pay any

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tax imposed on the conveyances in Sections 3 and 4 under the Documentary Transfer Tax Act. The party to whom real property is transferred under Sections 3 and 4 shall pay the cost of recording all documents in connection therewith.

7. Real Property Transfers from SD&AE to Third Parties:

As of the date of this agreement SD&AE is in the process of selling those properties listed on attached Exhibit "C" to third parties. In the event any such sales have not been completed prior to close of escrow, it is understood and agreed that SD&AE will instruct the escrowholder for each such sale to transfer the consideration for same directly to SP or will transfer such properties to SP.

8. Escrow:

8.1. Promptly after the ICC makes an order granting authority as set forth in Section 2, SD&AE shall

(1) Hold a shareholder's meeting at which the shareholder's consent shall be obtained to the amendment of SD&AE's Articles of Incorporation to make it a non-stock corporation and to other such changes in SD&AE's Articles as may be necessary to implement SD&AE's change to a non-stock corporation;

(2) Hold a directors' meeting at which a resolution shall be obtained authorizing said amendment and said other changes in SD&AE's Articles; and

(3) Cause said consent, resolution and amendment to be delivered to the law firm of Echeverria and Osborne, 555 South Center Street, Reno,

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Nevada 89501 to be held for filing as set forth below.

8.2. Promptly after said ICC order becomes final and effective, an escrow shall be opened to consummate the sale of SD&AE, at the office of Union Land Title Company, 2351 Fifth Avenue, San Diego, California 92103. As soon as possible after the opening thereof, MTDB shall deposit $18.1 million in said escrow; provided, however, that in the event MTDB does not then have $18.1 million of State Constitutional Amendment gas tax funds on hand due to its inability to obtain an advance of such funds prior to July 1, 1979, then MTDB shall deposit $14,250,000 in said escrow and its promissory note in standard form secured by a deed of trust for the amount of $3,850,000. Said promissory note shall be due and payable on July 1, 1979 and shall bear interest at the rate obtained by the State of California upon deposits made by it of the State gas tax fund. SP shall then deposit in escrow all issued and outstanding SD&AE stock. Immediately prior to close of escrow, the following shall occur: (1) the present officers and directors of SD&AE shall resign, one by one, and their successors shall be elected by the remaining and newly elected directors from nominees of Kyle Railways, Inc. so that upon conclusion of the resignation process, nominees of Kyle Railways, Inc. will be the officers and directors of SD&AE; (2) said law firm shall file said consent, resolution and amendment, as necessary, with the Nevada Secretary of State. Upon acceptance by the Secretary of State, ownership of SD&AE shall then immediately be transferred to MTDB and $18.1 million (or $14,250,000 and said note) shall be released from escrow to SP.

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8.3. SP and MTDB shall pay equal shares of any escrow fee charged by the escrowholder.

9. Restoration of Track:

9.1. After the release of $18.1 million to SP and subject to the conditions set forth in this Section 9, SP will immediately undertake to cause restoration to an operable condition under Federal Railroad Administration Class I Standards those portions of SD&AE's Coronado Branch which are presently out of service because of track and/or trestle conditions and for restoration, sufficiently to permit resumption and operation of services provided by SD&AE prior to September 1976, of SD&AE's storm-damage line which has been out of service since that date, as set forth in Exhibit "D" attached hereto and made a part hereof.

9.2. It is understood and agreed that SD&AE will grant SP permission, at no cost to SP, to operate SP work trains and equipment on the storm-damaged line that is out of service between Plaster City and Division when necessary for restoration of said line. If, in connection with said operation, it becomes necessary to use SD&AE employees as a result of SD&AE's labor agreements, SD&AE shall bill SP (or, at SP's request, the contractor performing the restoration work for SP) only for the actual cost of wages, other moneys paid to employees and applicable additives.

9.3. SP shall not be responsible for repair of any damage to SD&AE occurring after October 20, 1978 unless such damage is caused by SP's negligent or willful acts after that date.

10. Transfers of SD&AE Property After Close of Escrow:

10.1. MTDB represents to SP that it will cause SD&AE to hold

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and operate, or cause to be operated, the transferred SD&AE properties for railroad and transportation purposes to be provided as a public service, and that it is not the intention of MTDB that resales, exchanges, leases, easements or grants of licenses to others, be made by SD&AE of the SD&AE properties. While SP will impose no restrictions against alienation on former SD&AE properties, MTDB agrees that, if such (1) resales, (2) exchanges, (3) easements, or (4) leases or grants of licenses other than to a short-line rail carrier or transit operator, are made by SD&AE, MTDB, or their successors or assigns, within twenty (20) years, one-half (1/2) of the compensation (including cash and full market value of all other consideration) received from such transactions, over and above a value of Fifteen Million Dollars ($15,000,000), up to a maximum total of Thirty Million Dollars ($30,000,000), will be paid to SP as additional compensation for the value of the property rights to be transferred. (Exclusion of leases or licenses to short-line rail carrier or transit operator from said requirement shall not apply as to rights granted by short-line rail carrier or transit operator to others.) Compensation from the sale, lease or license by SD&AE, short-line rail carrier, or transit operator of air rights, and miscellaneous station income produced by concessionaires and vendors at SD&AE, MTDB, or other transit stations, shall be excluded from the foregoing requirement.

10.2. SD&AE shall furnish SP annually a summary of all resales, easements, exchanges, leases or grants of licenses made to others during the preceding year, and the total compensation therefor. SD&AE shall make all its books, accounts and record

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related to content of said summary open to inspection by SP representatives at all reasonable times.

11. Notices:

All notices to be served on either party hereto by the other party or by the escrowholder shall be in writing and shall be deemed duly served when personally delivered to the party to be served or when deposited in the United States mail, first class postage prepaid, addressed to MTDB at

or to SP at

Either party may change its address for purposes of this section by giving notice of said change to the other party as provided in this section.

12. Entire Agreement:

This instrument and the Memorandum as modified herein and by SP's letter to MTDB's attorney dated December 15, 1978, contain the entire agreement between SP and MTDB respecting SD&AE; any agreement or representation respecting SD&AE or the duties of either party in relation thereto not expressly set forth in this instrument and the Memorandum as modified herein is null and void.

13. Successors and Assigns:

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns, whether voluntary or involuntary.

14. Attorneys' Fees:

In the event any party to this Agreement brings legal

action to enforce its rights hereunder, the court shall have discretion to award the prevailing party reasonable attorneys' fees.

15. SP shall have reasonable access to all SD&AE books and records maintained to close of escrow.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first herein written

APPROVED AS TO FORM:

PETERSON, GAMER, MUNS & PRICE, A Professional Corporation
General Counsel for MTDB

By _____
Paul A. Peterson

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By _____
(Title) EXECUTIVE VICE PRESIDENT

ATTEST: _____
Senior Assistant Secretary

METROPOLITAN TRANSIT DEVELOPMENT BOARD

By _____
(Title)

SAN DIEGO & ARIZONA EASTERN RAILWAY

By _____
(Title) VICE PRESIDENT

ATTEST: _____
Assistant Secretary

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Summary of
EXHIBIT "A"

Maps which constitute Exhibit "A" to the Memorandum, as amended herein, are on file with MTDB and SP. These maps consist of the following sheets of SD&AE's C.E. Drawing 40495:

Sheet No.	Date
1,2	9/14/78
3	9/14/78, Rev. 1/15/79
4 - 6	9/14/78
7	9/14/78, Rev. 1/15/79
8	9/14/78
9	9/14/78, Rev. 1/15/79
10	9/14/78, Rev. 12/15/78
11 - 20	9/14/78
21, 22	9/14/78, Rev. 12/15/78
23 - 53	9/14/78
54 - 56	9/14/78, Rev. 12/4/78
57 - 59	9/14/78
60	11/17/78, Rev. 12/4/78
61,62	11/17/78

Summary of
EXHIBIT "A"

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THIS AGREEMENT, made this _____ day of _____, 19__, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SP"), a corporation and SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY ("SD&AE"), a corporation;

RECITALS:

By Memorandum of Intent ("Memorandum") dated October 30, 1978 and Agreement dated _____, SP sold its interest in SD&AE to San Diego Metropolitan Transit Development Board ("MTDB") and promised to grant SD&AE bridging and interchange rights over SP's tracks between Plaster City, California, and Calexico, California for freight service, subject to ICC approval and the terms and conditions set forth herein. This agreement is to implement said promise.

AGREEMENT:

1. Definitions:

A. The term "track" or plural thereof and the term "trackage" shall mean track structure and all appurtenances thereof, including, but not necessarily limited to rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankment, signals, bridges, trestles, culverts or any other structure or things necessary for support of and entering into construction thereof. If any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing protection facilities, and any and all work required

EXHIBIT "B"

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by lawful authority in connection with construction, renewal, maintenance and operation of said track structures and all appurtenances thereof.

B. The term "Joint Track" shall mean trackage, including underlying property, between Mile Post 129.61, Plaster City, and Mile Post 708.88, Calexico, as shown on Exhibit "A," and related facilities. "Joint Track" shall include interchange tracks at El Centro and Calexico and facilities at El Centro for turning, servicing and storing SD&AE's locomotives and cabooses, as may be designated from time to time by SP's representative.

C. The term "Cars Handled Proportion" shall mean the percentage that bears the same ratio to 100% as the total number of cars and locomotive units handled by or for SD&AE shall bear to the total number of cars and locomotive units handled by or for both parties over the Joint Track.

D. The terms "Cost" or "Costs" shall mean all SP's costs and expenses incurred in the maintenance and operation of, or the making of additions and betterments or retirements to the Joint Track, and the provision of services under this agreement. Costs shall be determined based on the following:

(1) The "Rules Covering Preparation of Joint Facility and Other Bills Between Carriers" of the General Managers' Association of Chicago (or any successor organization) currently in effect and as subsequently amended or supplemented (hereinafter referred to as "GMA").

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(2) The formula and guidelines contained in the "Schedule of Equipment Rental and other Rental Rates For Use Between Carriers" of the GMA currently in effect and as subsequently amended or supplemented, with respect to the rental of automotive equipment, rolling stock, work equipment and roadway machines. Said rental shall be based on SP's average (a) ledger values, (b) cost of repairs, (c) cost of supplies, and (d) days used.

(3) The rentals for equipment leased by SP shall be the percentage of the rentals (plus the cost of maintenance of the equipment incurred by SP) that the use of the equipment for Joint Track purposes bears to the total use made by SP of such equipment. In the event SP shall not maintain actual records of maintenance costs, SP's average system repair cost percentage shall be used.

(4) Secondhand rail and other secondhand track material and ties either placed or recovered shall be charged or credited at 50% of the market prices of like new material, in accordance with GMA rules. All released scrap rail and other scrap track material, including track spikes, shall be credited on the basis of current scrap value in accordance with GMA Rules, except that in no case shall such scrap

value exceed the secondhand value. All track spikes released shall be considered as scrap. Said prices and values shall be based on the average of such prices and values for such items during the preceding calendar year.

(5) Anything herein to the contrary notwithstanding, the term "Cost or Costs" shall not include "Loss and Damage," as that term is hereinafter defined, except for purpose of determining Cost of repairing damage to the Joint Track.

E. The term "Property Accounts," as herein used, shall mean the portion of Cost which is chargeable to property accounts under applicable Interstate Commerce Commission (or other Federal regulatory agency) Uniform System of Accounts for Railroad Companies currently in effect from time to time during the life of this agreement.

2. <u>Grant of Rights to SD&AE</u>:

A. SP hereby grants SD&AE the right to operate its freight trains, engines, and freight and official cars over the Joint Track for the purpose of interchanging with SP at El Centro and with the Sonora-Baja California Railway at Calexico.

B. SP will, upon request of SD&AE, furnish motive power and crews and perform all train services for or incident to the handling, in both directions, of cars, loaded or empty, in SD&AE's account between El Centro and Calexico for interchange with the Sonora-Baja California Railway at Calexico. Said SD&AE cars shall be handled in regularly scheduled SP trains in common with cars in the account of SP or run as separate

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trains at the discretion of SP. SD&AE cars covered by this Section 2(b) shall at all times remain in the account of SD&AE, and SD&AE shall collect and retain revenues due thereon and make or settle all per diem and mileage rental payments or claims on said cars. SD&AE shall arrange and pay for all customs handling.

C. The rights granted herein are limited solely to the bridging of SD&AE freight traffic over the Joint Track. SD&AE shall have no right whatsoever to construct, maintain or operate a track connecting with the Joint Track or to operate over any track now or hereafter constructed connecting with the Joint Track or to serve any industry from the Joint Track or track diverging therefrom. SP reserves the right for itself, its successors and assigns to use the Joint Track in any way that will not materially interfere with SD&AE's rights granted herein, including without limitation, the right to admit other carriers to the use of the Joint Track on terms and conditions generally customary among railroads at the time of such use. SD&AE shall not permit or admit any third party to the use of all or any portion of the Joint Track, nor, under the guise of doing its own business, contract or make any agreement to handle as its own freight trains, locomotives, cabooses and freight and official cars over or upon the Joint Track, or any portion thereof, the trains, locomotives, cabooses and cars of any such third party which in the normal course of business would not be considered as the trains, locomotives, cabooses of cars of SD&AE. The rights granted in this Section 2 are subject to the terms and conditions of this agreement.

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3. Grant of Rights to SP:

A. SD&AE hereby grants SP the right to operate its trains, engines and cars in common and equally with SD&AE on trackage between Mile Post 129.61 and Mile Post 129.00 near Plaster City shown by the _____ line on Exhibit "A" and to use in common and equally with SD&AE any industry track, spur, siding or branch lines hereafter constructed therefrom or adjacent thereto. Such additional spurs, sidings or branch lines shall be constructed by SD&AE at its option or upon request of SP and the cost thereof shall be borne equally by SD&AE and SP unless one party does not wish to participate. If one party does not wish to participate, such tracks shall be constructed at the entire cost of and shall be exclusively owned and used by the other party. The non-participating party may at any time obtain use of such exclusive tracks upon thirty (30) days' notice to the other party and upon purchasing a one-half (1/2) interest therein by payment to the other party of one-half (1/2) of the expense of constructing said tracks plus ten percent (10%) interest per annum on said one-half (1/2) of the expense from date of completion to date of purchase.

B. The track between Mile Post 129.61 and Mile Post 129.00 and any track diverging therefrom and owned by both parties and underlying property shall be termed "SD&AE Joint Track." All provisions of this agreement except for Sections 1B, 2, 7A and 8 shall apply to the SD&AE Joint Track; provided, however, that for purposes of this Section 3

(1) When SP is referred to, it shall be understood to mean SD&AE.

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(2) When SD&AE is referred to, it shall be understood to mean SP; and

(3) When Joint Track is referred to, it shall be understood to mean SD&AE Joint Track.

C. SP shall make payments to SD&AE as follows:

(1) On the 1st day of each month, interest rental at the rate of four percent (4%) per year on the value of the SD&AE Joint Track which value is agreed to be $19,800;

(2) Annually, one-half (1/2) of all taxes and assessments applicable to the SD&AE Joint Track; and

(3) Monthly, its Cars-Handled Proportion of Cost for previous month for operation (other than train and engine operation in road and/or switching service), maintenance, repair and renewal of, and in making changes in or additions and betterments to the "SD&AE Joint Track" except so much of such cost as is charged to Property Accounts of SD&AE.

4. <u>Management and Control</u>:

A. SP shall have exclusive control and shall perform the management, maintenance, dispatching and operation of the Joint Track and shall maintain and keep same in reasonable repair and reasonably suitable for the combined requirements of parties hereto but it is expressly understood and agreed that SD&AE shall not by reason of any defect in the Joint Track or in any Track, structure or appliance appurtenant thereto,

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or by reason of failure of SP to repair any such defect, have or make against SP any claim or demand for any loss, damage or injury whatsoever arising from such defect or failure.

B. SP shall order and direct the movement of trains over the Joint Track under such reasonable rules and regulations customary among railroads as SP may adopt. All interpretations and application of the rules shall be by SP. All rules, regulations and orders, and interpretations and applications thereof, shall be reasonably fair and just as between the parties and shall not discriminate against either of them. The trains of both parties shall be given equal dispatch according to their class.

C. All officers, agents and employees of SP engaged in the management, operation and maintenance of the Joint Track shall perform their duties in a fair, impartial and just manner.

5. <u>SD&AE's Operation on Joint Track</u>:

A. SD&AE's Employees.

1. SD&AE shall not permit any of its employees to operate trains or engines on the Joint Track until they shall have passed, to the satisfaction of SP, examinations to be made by a supervisory officer or officers of SP on its operating rules and regulations.

2. SP shall furnish to SD&AE from time to time sufficient copies of current timetables and timetable bulletins relating to the Joint Track and of current operating rules and regulations, to permit SD&AE to supply each of its employees

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who is to work in train or yard service on the Joint Track with one copy of each thereof, which SD&AE shall do. SD&AE shall reimburse SP for the cost of such copies.

3. SD&AE shall, at the request of SP, remove from service upon the Joint Track any SD&AE employees who shall be found by SP to be responsible for violation of SP rules and regulations. SD&AE shall bear and assume all expenses which it and SP may incur as a result of any such barring from service.

4. If such disciplinary action is appealed by a SD&AE employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Track by reason of such occurrence.

B. Devices on Equipment:

SD&AE, at its expense, shall install and maintain upon its engines and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of SP, for operation of trains upon the Joint Track.

C. Picking up Wrecks:

If any engine, car or other equipment shall be wrecked or derailed upon the Joint Track, it shall without unnecessary delay be picked up or rerailed by SP, unless otherwise agreed

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by SP and SD&AE. Expenses of rerailing equipment, clearing wrecks and restoring the Joint Track shall be borne in accordance with Section 12 hereof.

D. Train Supplies:

SP shall not be required to furnish any fuel or other supplies for operation of SD&AE locomotives or trains over the Joint Track. In the event SP should, nevertheless furnish such supplies to SD&AE, SD&AE shall promptly upon receipt of billing therefor reimburse SP for its Cost thereof.

6. Additions and Betterments:

SP at its expense shall make any changes, additions and betterments to the Joint Track which may be required by law, or which it deems necessary or desirable; progressively during construction and upon their completion these shall become part of the Joint Track.

7. Retirements:

A. Whenever any change in, elimination, disposal or retirement of any part of the Joint Track is made, which, under the current Interstate Commerce Commission regulations, reduces the ledger value and agreed valuation, or either thereof, as the case may be, of the Joint Track, then the agreed valuation of the Joint Track referred to in Section 7A hereof shall be reduced by the valuation, including additives applicable thereto, of the facility so changed, eliminated, disposed of or retired.

B. No withdrawal, change in, elimination, disposal or retirement of any part of the Joint Track which will permanently or materially impair the usefulness to SD&AE of the Joint Track while this agreement is in effect, shall be made

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without SD&AE's consent.

8. Payments:

SD&AE shall make payments to SP in accordance with this Section 8:

A. Upon commencement of revenue operations, on the 1st day of each month, one-twelfth (1/12) of the interest rental at the rate of two percent (2%) per year for the first three years, then four percent (4%) per year on the current value of the Joint Track which is agreed to be $1,474,086 as of the date of this agreement, which value shall be increased by the Cost of additions and betterments and decreased by the value of retirements made thereto.

B. Upon commencement of revenue operations, annually, one-half (1/2) of all taxes and assessments applicable to the Joint Track.

C. Monthly, its Cars-Handled Proportion of Cost for previous month for operation (other than train and engine operation in road and/or switching service, maintenance, repair and renewal of, in making changes in or additions and betterments to the "SD&AE Joint Track" except so much of such Cost as is charged to Property Accounts of SP.

D. Monthly, the actual Cost of servicing and repairing SD&AE locomotives and cabooses at El Centro, including without limitation the applicable portion of supervision, utilities and other overhead expenses, and the Cost of any supplies furnished to or for SD&AE.

E. If SD&AE elects to have SP handle its cars between El Centro and Calexico as provided in Section 2B, SD&AE shall also pay SP monthly, the actual Cost of such handling, including but not limited to applicable wages, equipment, rentals, fuels, supplies and supervision and applicable additives. Said Cost

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is agreed initially to be $29.73 per car moved, loaded or empty, in either direction and shall be adjusted annually, beginning July 1, 1979, by the percentage of change in the Association of American Railroads' Indexes of Railroad Material Prices and Wage Rates, Railroads of Class I, Western District, Material Prices, Wage Rates and Supplements Combined (including fuel), from the year 1977, which shall be used as the base year, to the calendar year immediately preceeding the year in which the change is to be made. Said Cost may be redetermined by mutual agreement after a study on request of either party.

9. Fixed Percentages, Flat Rages of Arbitrary Amounts:

A. In lieu of determining any or all Costs as provided in this agreement, the General Managers of the parties may, from time to time, agree upon fixed percentages of Costs, flat rates per car, per car mile or per train mile, or arbitrary amounts to be paid and accepted in full satisfaction of such obligations. Any such fixed percentage, flat rate or arbitrary amount shall be for such period or periods of time as may be agreed at the time of establishment.

B. In the event the parties fail to agree within six (6) months after the effective date of the expiration of any such period or periods on a new fixed percentage, flat rate or arbitrary amount, then SD&AE shall, from and after the effective date of such expiration, make such payments in accordance with Section 8 hereof.

10. Rendition and Payment of Bills:

A. SP shall keep complete and accurate records of Costs and data which are the basis of charges against SD&AE hereunder.

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B. All bills by SP against SD&AE, except those payable in advance, shall be rendered as soon as practicable after the first day of the month next succeeding the month during which the expense is incurred by SP and shall be paid within sixty (60) days after receipt thereof.

C. Errors or disputed items of a minor nature in any bills shall not be deemed a valid excuse for delaying payment, but shall be subject to subsequent adjustment; provided, however, no exception to any bill shall be considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered, and no bill shall be rendered more than three (3) years, (i) after the last day of a calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims of third parties disputed as to amount or liability, after the amount is liquidated or the liability established, whichever is later. This provision shall not limit the retroactive adjustment of billing made pursuant to exceptions taken to original accounting by or under the authority of the ICC or retroactive adjustment of wage rates and settlement of wage claims and shall not apply to any failure to adjust the valuation upon which SD&AE pays interest rental.

11. Inspection of Books and Records:

So much of the books, accounts and records of each party hereto as are related to the subject matter of this agreement shall at all reasonable times be open to inspection by representatives of the other party.

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12. Liability and Indemnification:

A. Definitions. For the purpose of this section, the following definitions shall apply:

A.1. "Loss and/or Damage": Includes all claims, liability, and expense of every character incident to the loss or destruction of or damage to property and injury to or death of persons, arising upon or adjacent to the Joint Trackage. Loss and/or Damage apportioned under agreement shall be reduced by any amount applicable thereto recovered from third parties.

A.2. The value of a destroyed freight car shall be its depreciated value pursuant to the then current rules for the Association of American Railroads or successor organization for the type, or most similar type, or car covered by such rules.

A.3. The value of a destroyed locomotive shall be its reproduction cost new less depreciation computed on the basis of reproduction costs but no more than sixty percent (60%) of such reproduction costs.

A.4. "Joint Property": The Joint Track and all appurtenances thereto and underlying land which, by reason of this agreement may be used by both parties, and all motive power, cars and equipment engaged in the maintenance, renewal, removal, inspection or operation thereof for the benefit of the parties. Any locomotive or equipment shall be deemed Joint Property while engaged in or incident to the performances of service, the cost of which is included in Loss or Damage for

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which the parties are jointly liable.

A.5. "Joint Employee": An officer, agent, employee, or contractor while engaged in maintaining, repairing, renewing, removing, inspecting or operating Joint Property or in making additions or betterments thereto, or in dispatching, giving orders for or directing the movement of trains or performing other service, for the common benefit of both parties hereto.

A.6. "Sole Employees" and "Sole Property": Employees, motive power or equipment while engaged or about to engage in switching and handling cars of only one party or in performing other services for the exclusive benef of one party shall, for the purpose of this Section 12 be considered the Sole Employees or the Sole Property of that party.

A.7. For the purpose of this Section 12, equipment of foreign lines being detoured over the Joint Property by authority of SP and all persons other than Joint Employees arranged in moving such equipment, shall be considered the Sole Property and Sole Employees of SP.

A.8. Motive power, cars, equipment, and other property handled or used by any party hereto shall, unless Join Property, be considered the Sole Property of that part for purposes of this Section 12.

B. Allocation:

The provisions of this Section 12 apply only as between the parties hereto. Except as herein otherwise provided, each

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party shall bear all Loss and/or Damage to its Sole Property, its Sole Employees, patrons and others on its engines, cars or trains, or on or about the Joint Property in transaction of business for or with such party. Loss and Damage to third parties or Joint Property or Joint Employees shall be apportioned among the parties in the same ratio as the expense for maintaining the Joint Track is apportioned for the month in which the incident occurred (or if payment for use of Joint Track is based on flat rate, in the same ratio as the use of the Joint Track is apportioned for the month in which the incident occurred). If, however, one, and not the other, of the parties contributed (by reason of the act or omission of its Sole Employees or a defect in its Sole Property) to the Loss or Damage, the party so contributing shall bear all Loss and Damage to all persons and property. Notwithstanding the foregoing, if the engines, trains or cars of only one party are involved in the incident, that party shall bear all Loss and Damage to third parties, Joint Employees and Joint Property. SD&AE agrees to accept all vehicular crossings, now or hereafter existing, of the Joint Track in whatever condition they may be during the term of this agreement and will not assert any claim, demand or cause of action against SP and will indemnify SP against any claim, demand or cause of action arising out of any crossing accident on the Joint Track in which the engines, cars or train of SD&AE only are involved.

C. General:

C.1. Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance,

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repair, renewal, removal, improvement, operation or similar function of or for the Joint Property shall be deemed proper and adequate, and no claim shall be asserted against such party by reason of such function or lack thereof.

C.2. Each party hereto shall pay promptly damages for which such party shall be liable under the provisions of this section, and shall indemnify the other party against such damages including attorneys' fees and costs.

C.3. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 12, and to defend or cause to be defended all suits for the recovery of any such damage.

C.4. In the event both parties hereto may be liable under the provisions of this section for any damages and the same is settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, a release from liability shall be obtained in the names of both parties so liable; however no such settlement in excess of Five Thousand Dollars ($5,000) shall be made by or for either party without the authority of the other party, but any settlement made by either party in consideration of said sum or lesser sum shall be binding upon the other party.

C.5. In case a suit shall be commenced against either party for or on account of damages for which the other party

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is solely or jointly liable under the provisions of this Section 12, the party so sued shall give notice in writing to the other party of the pendency of said suit, and thereupon the other party shall assume or join in the defense of such suit.

C.6. No party shall be bound by any judgment against the other party, unless such party shall have had reasonab notice requiring it to defend and reasonable opportuni to make such defense. When such notice and opportunit shall have been given, the party so notified shall be bound by the judgment as to all matters which could have been or were litigated in such suits.

13. Arbitration:

Any dispute over the terms of this agreement shall be settled by a board of three (3) arbitrators experienced in railroad operations, one to be named by each party and the third by the two so named. If one party fails to name an arbitrator (or the two chosen do not name the third) within sixty (60) days after notice to do so, such arbitrator shall be named upon application by either party hereto to any judge of the U. S. District Court whose jurisdiction includes the Joint Track. The decision of the arbitrators shall be final and binding upon the parties. The expense of arbitration shall be apportioned by the arbitrators. The parties may agree upon a single arbitrator.

14. Default:

If either party is in default on any provision under this agreement and fails to remedy said default within sixty (60)

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days of written notice from the other party to do so, said other party may terminate this agreement forthwith; provided, however, that neither party shall be released from any liability incurred before such termination.

15. Compliance with Law:

Each party using the Joint Track shall comply with all applicable laws and orders of public bodies having jurisdiction. If any party fails to so comply and is fined or penalized as a result thereof, that party shall pay said fine or penalty promptly. If as a result of such violation liability is asserted to the other party of this agreement, the first party shall indemnify the other party against all Costs and expenses, including attorneys' fees incurred in defending any action resulting from such violation.

16. Notices:

Notices under this agreement shall be writing and shall be deemed to be properly given if delivered or mailed to

SD&AE at

Attention:

and SP at

Attention:

17. Successors and Assigns:

This agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successor

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and assigns, and is not intended nor shall it be construed to be for the benefit of any other party; provided, however, that this agreement shall not be assigned without the written consent of both parties, which consent shall not be unreasonably withheld.

18. Attorneys' Fees:

In the event any party to this agreement brings legal action to enforce its rights hereunder, the court shall have discretion to award the prevailing party reasonable attorneys' fees.

19. Effective Date and Term:

This agreement shall not take effect unless it is approved by the Interstate Commerce Commission ("ICC"). Upon such approval this agreement shall become effective on the date SD&AE commences operations on the Joint Track, and shall remain in effect for fifty (50) years and from year to year thereafter subject to termination by either party upon written notice to the other ninety (90) days before the expiration of the applicable yearly term.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By J. E. Kriebel
(Title) EXECUTIVE VICE PRESIDENT

ATTEST: [signature]
Senior Assistant Secretary

SAN DIEGO & ARIZONA
EASTERN RAILWAY COMPANY

By [signature]
(Title) VICE PRESIDENT

ATTEST: [signature]
Assistant Secretary

EXHIBIT "C"

Buyer	Location	Area	Consideration
City of San Diego	Baird Roll	1.37 ac.	$18,925
Olson Salvage Co.	Otay	.50 ac.	$22,000

EXHIBIT "D"

Southern Pacific Transportation Company will employ an experienced general contractor to restore SD&AE storm damaged segments of track and structures to their pre-storm (September 1976) operating condition and to repair three trestles and 2.6 miles of track structure between Mile Posts 4.9 and 7.5 on the Coronado Branch line to FRA Class I standards of maintenance. Any storm damage occurring after October 20, 1978 will be repaired by others.

Before the September 1976 storm, the maximum train speeds permitted were:

30 MPH	between	Mile	Post	92.90	and	Mile	Post	96.61
20 MPH	"	"	"	96.61	"	"	"	98.67
10 MPH	"	"	"	98.67	"	"	"	99.10
20 MPH	"	"	"	99.10	"	"	"	106.56
25 MPH	"	"	"	106.56	"	"	"	122.50
30 MPH	"	"	"	122.50	"	"	"	130.00

Out of service between Mile Post 4.9 and Mile Post 7.5 on the Coronado Branch.

The restoration of the SD&AE will be accomplished by first removing all the damaged track. The subgrade will then be reconstructed using the nearby earth as fill, compacting the new subgrade by powered compactors or the heavy construction equipment. The trackage will then be rebuilt using new ties to replace missing ties and second-hand rail of similar weight and condition. The new tracks will be surfaced to true alignment and grade by placing suitable ballast, at least 4 inches below the bottom of the ties, between the ties and level with the top of the ties. Ballast will slope on the angle of repose from end of tie to subgrade. Ballast will be imported from commercial suppliers in railroad ballast cars.

The damaged structures will be restored so that an equal or greate runoff of storm water can be passed through without damage to the subgrade or interruption of traffic on the line. Steel piling may be used in some structures where timber pilings were originally and bridge decks may be concrete instead of wood. All structures will be rates at Coopers E 60 or greater. This means structures will support axle loadings of approximately 60,000 lbs. on a spacing of 5 feet or greater.

Drainage of the track area will be re-established so that normal water runoff will not foul ballast.

When repairs are completed, maximum train speeds will be:

30 MPH	between	Mile	Post	92.90	and	Mile	Post	96.61
20 MPH	"	"	"	96.61	"	"	"	98.67
10 MPH	"	"	"	98.67	"	"	"	99.10
20 MPH	"	"	"	99.10	"	"	"	106.56
25 MPH	"	"	"	106.56	"	"	"	122.50

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30 MPH between Mile Post 122.50 and Mile Post 130.00
10 MPH " " " 4.9 " " " 7.5 on the Coronado Branch.

These maximum speed limits for the storm damaged sections are the same as prestorm limits.

The telephone system between El Centro and Division was also damag by the storm. It consisted of a pole and wire party line telephone system with crank-type telephones located at various places, and was difficult to keep in service because of obsolescence, theft, and vandalism.

Prior to the storm, the Communications Department made a radio coverage check between Plaster City and Division from Monument Peak, with the objective of replacing the wire line with radio. It was concluded that radio coverage from Monument Peak was practical for the area, with the exception of approximately 10 miles of track into the canyon area and in the vicinity of the tunnels. It was proposed that the area that could not be covered from Monument Peak be covered for the most part by a radio station at Jacumba.

The radio system planned by the Communications Department as above will be installed in lieu of the wire line.

The restoration will require about 20 weeks to complete.

SD&AE's storm damaged tracks will be restored to the followin FRA Classes, as defined in the FRA's Track Safety Standards:

SD&AE Maximum Allowed Operating Speed for Freight Trains	FRA Class
10 MPH	Class 1
20 MPH	Class 2
25 MPH	Class 2
30 MPH	Class 3

AGREEMENT FOR OPERATION OF FREIGHT SERVICE

THIS AGREEMENT is entered into on February 12, 1979, to be effective in accordance with the provisions hereof, between SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY, a corporation, and KYLE RAILWAYS, INC. and WILLIS B. KYLE, INC. (collectively referred to as "Operating Company").

1. METROPOLITAN TRANSIT DEVELOPMENT BOARD ("MTDB") is in the process of purchasing and acquiring by donation from Southern Pacific Transportation Company ("SP") a corporate entity known as San Diego and Arizona Eastern Railway Company ("SD&AE") which owns certain rights of way, physical assets, and operating rights, agreements and licenses. Said acquisition is subject to approval by a number of governmental agencies, including the Interstate Commerce Commission of the United States. MTDB is not acquiring SD&AE with the intent or purpose of engaging in either operation of freight service or passenger transit service. At the time MTDB acquires SD&AE Operating Company will be under contract to SD&AE to provide freight service. MTDB intends, at a later date, to make a contract with a passenger transit company for the provision of passenger transit service on SD&AE right of way.

2. SD&AE is presently obligated to and is providing rail service in the metropolitan area of San Diego and in Baja California;

Mexico and is under a continuing obligation to provide rail service between Division and Seely. However, portions of the line between Division and Seely have been damaged by storm and will require restoration before freight service can be resumed on that portion. When MTDB acquires SD&AE, SD&AE will relinquish to SP the portions of the right of way from approximately one mile west of Plaster City to Seely. MTDB and Operating Company agree that the Memorandum of Intent executed by SP on October 20, 1978 between MTDB and SP is incorporated herein by reference, and agree that MTDB, Operating Company and SD&AE are bound by the applicable terms thereof. Provided that MTDB shall review, and consult with Operating Company regarding, the definitive agreement contemplated in such Memorandu of Intent, before execution of such definitive agreement. Provided further, that if such definitive agreement contains terms and conditions which differ materially from those of the Memorandum of Intent, which materially affect the rights or obligations of Operating Company hereunder, that Operating Company shall have the right to cancel this Agreement on thirty (30) days notice to SD&AE and MTDB.

3. Operating Company is composed of two California corporations. These will perform the obligations of Operating Company through a subsidiary ("Subsidiary") which will be formed for the

purpose of operating SD&AE and providing the freight service which SD&AE is obligated to provide. Operating Company shall operate freight service as provided herein by (1) assuming control, through its wholly-owned subsidiary, of SD&AE immediately prior to the completion of the acquisition of SD&AE by MTDB, and (2) then providing freight service as set forth in this Agreement. This Agreement is an agreement for the provision of freight service only. By entering into and performing this Agreement, Operating Company does not intend to, and shall not be deemed to have, assumed any pre-existing obligations of SD&AE, whether by contract or otherwise.

4. ~~This Agreement is contingent upon purchase by MTDB of SD&AE,~~ This Agreement shall not take effect unless and until MTDB purchases SD&AE, which purchase, by the terms of the agreement for ~~which purchase, by the terms of this Agreement between MTDB and SP,~~ Sale and Donation of SD&AE to MTDB between MTDB and SP, will be effective ~~will be effective on the day on which the ICC approval of the transfer of SD&AE to MTDB is final~~ at the close of the escrow as set forth in Section 8 of said agreement. By a separate agreement of even date, MTDB has agreed with Operating Company to become a signatory to this Agreement and to be bound by all of its terms and conditions immediately upon the purchase by MTDB of SD&AE.

5. Right of Way

The right of way owned by SD&AE over which Operating Company will provide freight service is described in Exhibit A hereto, but in general terms consists of the exclusive use by Operating Company of the line (in a restored condition) from Division to approximately one mile west of Plaster City; the

so-called Coranado Branch line; the so-called Baja California line; joint use of the main line between the City of San Diego and the International Border at San Ysidro; and the joint use of the line from the City of San Diego to the Parkway Plaza area in El Cajon. The exclusive use right of way is designated in blue on said Exhibit, and the joint use right of way is designated in red on said Exhibit A.

6. Term.

The initial term of this Agreement shall be ten (10) years from ~~the date on which Operating Company assumes control of the Properties or from June 30, 1979, whichever first occurs~~ its effective date. Operating Company shall assume control of SD&AE and its Properties immediately upon the closing of escrow for acquisition of SD&AE by MTDB pursuant to the terms of ~~the~~ said Agreement ~~referred to in Paragraph 2 above~~ for the Sale and Donation of SD&AE to MTDB. In the event that ~~ICC approval has not been obtained, and the acquisition of SD&AE by MTDB consummated~~ said escrow has not closed by December 31, 1979, then either party shall have the option to cancel this Agreement by delivering written notice of cancellation to the other party at any time thereafter and Operating Company's security deposit, together with interest, will be returned to it forthwith, unless the parties have mutually agreed in writing to an extension.

7. Option to Renew.

Provided Operating Company is not in default at the time of any right to exercise its option to renew, Operating Company

shall have the right to renew this Agreement for four (4) additional 10-year periods as follows: The first option to renew shall be for a period of ten (10) years and shall be exercised during the ninth year of the initial term of this Agreement; the second option period shall be for ten (10) years and shall be exercised during the ninth year of the first renewal term of this Agreement; the third option shall be for ten (10) years and shall be exercised during the ninth year of the second renewal period of the term of this Agreement; and the fourth option shall be for ten (10) years and shall be exercised during the ninth year of the third renewal period of the term of this Agreement. All terms and conditions of this Agreement shall apply to the renewal period.

8. Fees.

Operating Company shall pay fees to SD&AE upon the terms and conditions set forth in Exhibit B hereto. SD&AE shall pay the same fees to MTDB. As a matter of convenience, the parties agree that Operating Company shall remit such fees directly to MTDB.

9. Restoration, Reconstruction and Maintenance.

Operating Company shall have no obligation to reconstruct or restore any portion of the right of way which constitutes the right of way prior to its assuming control of SD&AE. The portion of the right of way between Division and Plaster City and the Coronado Branch line shall be restored by SP pursuant to the terms of the Agreement referred to in Paragraph 2 above. Upon assuming

control of SD&AE, Operating Company shall have full responsibility for maintenance of the right of way, including those portions of the right of way to be jointly used for passenger transit. Once restoration of a portion of the right of way for joint use commences, the entity which will be operating the passenger transit shall thereafter have the full responsibility to maintain that joint use right of way, with Operating Company paying its fair and equitable portion (said portion shall be the freight operator's average cost of maintaining the balance of the railroad exclusive of yards, bridges and tunnels) of such maintenance costs, including damage caused by the acts or omissions of Operating Company. Operating Company shall be given the right to bid competitively for the right to provide such maintenance service. All such reconstruction of joint use right of way shall be conducted in such a manner that it does not unreasonably interfere with normal rail freight operations. If, after passenger train use commences on the so-called joint track right of way, passenger service later terminates, then during such period of termination Operating Company shall have the responsibility to maintain said joint use right of way at freight standards.

10. Security Deposit and Liquidated Damages.

Upon the filing by SP with the Interstate Commerce Commission of an application seeking approval of the transfer of the SD&AE corporate entity to MTDB and the provision of service by

Operating Company as provided herein, Operating Company shall deliver to a mutually acceptable title insurance company or to MTDB's attorney, Paul A. Peterson, as escrow holder, an irrevocable letter of credit, or cash or its equivalent, in marketable securities, with the right to substitute from time to time, in the sum of fifty thousand dollars ($50,000) to be held as security for the performance of Operating Company's obligations hereunder. On the thirtieth day following Operating Company's obligation to assume control of SD&AE and to commence freight operations pursuant to the terms of this Agreement, the security deposit, together with interest earned thereon, shall be returned to Operating Company, provided it is not then in default under the terms of this Agreement. The parties agree that should Operating Company default in its obligation to commence freight service and continue to provide freight service during the first 30 days after it is obligated to assume control and commence freight operation, the $50,000 shall be retained by MTDB as liquidated damages, since the actual amount of damage would be impracticable or extremely difficult, if not impossible, to ascertain. Similarly, should MTDB, upon receiving all necessary governmental approvals and obtaining its funding at a time when Operating Company is not in default, default in its obligation to allow Operating Company to assume control of SD&AE, the parties agree that MTDB shall pay Operating Company the sum of $50,000 as damage, since the actual amount

of damage would be difficult, if not impossible, to ascertain. Failure to obtain required state or federal approvals after having used due diligence and good faith shall not constitute default.

11. Option to Purchase.

Operating COmpany shall have that right of first refusal and an option to purchase as set forth in Exhibit C hereto.

12. Tariffs, Rates, Routes and Divisions.

So long as it is not in default, Operating Company shall have the exclusive right in the name of, and on behalf of SD&AE, to file with appropriate governmental agencies and to adopt new or modify existing tariffs, rates, routes and divisions, and shall have exclusive control in the management and operation of the rail freight service, including but not limited to labor, dispatching of trains, assignment of cars, assignment of crews, and Operating Company shall have exclusive operating control of the rail facilities, except for the joint use facilities. As to the joint use facilities, MTDB or the entity providing passenger transit service shall have exclusive dispatching control, provided that reasonable provisions shall be made for orderly, scheduled freight service so as not to unreasonably interfere with Operating Company's obligation to maintain effective freight service. Operating Company shall have no obligation to bid for or provide passenger transit.

13. Obligations of MTDB and SD&AE.

MTDB and SD&AE each agrees to:

(a) Cooperate with and assist Operating Company to maintain and obtain all necessary permits, clearances, agreements and other requirements for operations and maintenance;

(b) Cooperate with Operating Company to obtain federal, state or local grants which may be available from time to time for upgrading or insuring the continued operation of the railroad;

(c) Cooperate with and assist Operating Company with regard to negotiations with Santa Fe, SP, the Mexican Government, Port of San Diego and other federal, state and local governmental agencies as may be appropriate to insure continued and expanded freight service;

(d) Assist Operating Company to the maximum extent feasible in the solicitation of additional shipments by rail; and

(e) Work with Operating Company to insure that track design and construction for transit operations are planned and implemented to insure minimum disruption of either freight service or passenger service.

14. Obligations of Operating Company.

Operating Company agrees to:

(a) Commence and thereafter use its best efforts on a continuing basis to maintain adequate freight service throughout.

SD&AE's area of operations, including the providing of adequate engines and cars (subject to the regional engine and car supply);

(b) Cooperate to the fullest extent possible with Santa Fe, SP, the Mexican Government and Port of San Diego to insure an uninterrupted and efficient flow of freight shipments to and from the north, the south and the east;

(c) Be subject to the direction of the passenger transit dispatcher with regard to all joint use facilities which directions shall not unduly interfere with provision of adequate freight service;

(d) Maintain all the right of way and physical properties operated under the terms of this Agreement in at least the same general condition in effect at the time of takeover by Operating Company, having due regard of the necessity to maintain such right of way and physical properties in such manner as will assure continued freight service on a competitive basis;

(e) Maintain an inventory of parts and equipment necessary and appropriate to carry out Operating Company's obligations of maintenance hereunder, and at least at the same dollar level as was such inventory at the time Operating Company assumed control of SD&AE;

(f) Continuously comply in all material respects with all lawfully enacted federal, state and local laws, ordinances, rules and directives applicable to Operating Company's operations,

including use of minority businesses and small business concerns and compliance with all applicable fair employment practices;

(g) Make timely and accurate reports to all Mexican, federal, state and local regulatory and safety agencies having jurisdiction over Operating Company's activities;

(h) Actively promote and solicit additional shipments by rail;

(i) File with MTDB one copy of every report filed with a Mexican, federal, state or local regulatory or safety agency at the same time such report is filed with any such agency; and

(j) Use its best efforts to see that qualified minority business enterprises shall have the maximum practicable opportunity to participate in the performance of this Agreement. Operating Company may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation;

(k) Under the Agreement referred to in Paragraph 2 above, there will be certain receivables and payables of SD&AE to be accounted for after MTDB acquires SD&AE. The parties agree that a special impound account will be created to account for such matters, and that neither the payables nor the receivables are the obligation or property of Operating Company. SP will be permitted to establish such reasonable procedures at its own expense as may be deemed appropriate by SP to satisfactorily resolve such matters;

(1) To assume full responsibility for all liabilities of SD&AE and/or Operating Company causes of action arising after Operating Company assumes control of SD&AE, and to hold MTDB harmless from, indemnify it against, and defend it against all such claims and liabilities. Operating Company shall have no liability for any claim, the cause of action for which arose prior to its assumption of control, and MTDB will indemnify and hold it harmless from and against all such claims and liabilities.

15. Force Majeure.

(a) The parties hereto will be excused from performance of any of their respective obligations hereunder, occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include without limitation, actions of Mexican, federal, state or local agencies; imposition of governmental requirements creating burdens which causes performance of this Agreement to be commercially impracticable (such as compliance with environmental quality, energy conservation or occupational safety requirements); by acts of God; by strikes or other labor troubles beyond the reasonable anticipation or control of the parties; by interruption of service caused by explosions, fires, vandalism, malicious mischief, or unavoidable interruption or cessation of service by a connecting railroad; and

(b) Operating Company will not incur liability for any failure to perform the rail freight service if such failure is the result of any condition attributable to maintenance or track conditions which existed on the effective date of the commencement of operations.

16. Insurance and Hold Harmless.

(a) Except as provided herein, MTDB or its agents, directors, officers and employees, shall not be held liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of Operating Company, its agents, employees, independent contractors, joint ventures, partners (including but not limited to failure to comply with any obligation under Paragraph 14), or representatives; Operating Company further agrees to indemnify and save free and harmless MTDB and its authorized agents, officers and employees against any of the foregoing liabilities and any cost and expense, including reasonable attorney's fees incurred by MTDB on account of any claim therefor, including claims by reason of alleged defects in service, changes in services, or any other work or services done or provided by Operating Company pursuant to this Agreement.

(b) Operating Company, its agents, directors, officers and employees shall not be held liable for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of MTDB, SD&AE or their respective agents, employees, independent contractors, joint ventures, partners (including but not limited to failure to comply with any obligation under Paragraph 14), or representatives or conditions of right of way and physical properties of SD&AE existing prior to the time Operating COmpany assumes control of SD&AE, or transit services; MTDB further agrees to indemnify and save free and harmless Operating Company and its authorized agents, directors, officers and employees against any of the foregoing liabilities and any cost and expense, including reasonable attorney's fees incurred by Operating Company on account of any claim therefor, including claims by reason of alleged defects in services, changes in services, or any other work or services done or provided pursuant to this Agreement.

(c) Operating Company further agrees to provide at least $2 million in bodily injury and property damage liability insurance and to name MTDB and SD&AE as additional named insureds. The deductible or self-insured portion of these insurance limits shall be no greater than fifty thousand dollars ($50,000) without written amendment to this Agreement.

(d) MTDB agrees that subsequent increases in Operating Company insurance costs due to the joint operation of rail freight and light rail transit services on common facilities shall be borne by MTDB. In the event the parties cannot agree on an appropriate allocation of these additional costs, the issue shall be submitted to arbitration.

17. Choice of Law.

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of California.

18. Termination of Agreement.

(a) Upon default of Operating Company hereunder, MTDB may terminate this Agreement at any time during its initial or subsequent term, upon furnishing 30 days written notice to Operating Company of its default, except that such notice with regard to payment of monies shall be 10 days, provided that if such default is cured within the applicable notice period, this Agreement shall continue in full force and effect, and such notice of default shall be deemed rescinded.

(b) Causes for termination of Operating Company for default shall be as follows:

(1) Failure to provide freight services as required under this Agreement or by the Interstate Commerce Commission.

(2) A filing of bankruptcy by Operating Company, or an assignment for the benefit of creditors, or actual insolvency.

(3) Failure to maintain the right of way and physical properties in accordance with the terms hereof.

(4) A course of conduct of operation by Operating Company in a manner which, upon proper administrative hearings, is found to jeopardize the health or safety of the general public.

(5) Failure of Operating Company to make required fee payments.

(6) Any other material violation of the terms of this Agreement, including the payment of monies.

(c) If the default (other than the payment of money) of Operating Company cannot be cured within 30 days, then provided Operating Company commences such cure within the 30-day period, and diligently in good faith proceeds to complete such cure, then the time within which such default must be cured shall be extended for a time which is reasonable under all the circumstances.

(d) In addition, the parties agree that in the event of termination, a final accounting shall be rendered by an independent certified public accountant experienced in railroad accounting, mutually agreeable to the parties, the cost of which shall be equally shared between the parties, and that the indicated final settlements shall be paid by the appropriate party within 30 days notice, or may be withheld from funds which would otherwise be payable, as such accountant shall deem appropriate.

(e) Operating Company may, at any time after the initial term of this Agreement, terminate this Agreement by providing six months advance notice. In the event of such termination, the parties agree that a final accounting shall be rendered by an independent certified public accountant under the same terms and conditions outlined above.

(f) Both parties recognize that the termination and replacement of Operating Company may require prior PUC and ICC approval before such termination or replacement can be effective, and agree to cooperate in effecting an orderly transfer of responsibilities and to abide by related final PUC and final ICC findings, subject to the right of such party to appeal such findings to a court of competent jurisdiction.

19. Notice.

Any notice required or permitted under this Agreement shall be in writing and may be personally served on the other

party, by the party giving notice, or may be served by certified mail, receipt requested, to the following address; or such other addresses/persons as the parties may direct:

MTDB	General Manager Metropolitan Transit Development Board 620 "C" Street, Suite 400 San Diego, CA 92101
Operating Company	Willis B. Kyle, President Kyle Railways, Inc. World Trade Center, Room 205 San Francisco, CA 94111

20. Attorneys' Fees.

In the event any party to this Agreement brings legal action or requests arbitration to enforce its rights hereunder, the court or arbitrator shall have discretion to award the prevailing party reasonable attorneys' fees.

21. Arbitration.

(a) General - In the event of any unresolved disagreements between the parties concerning the construction of the Agreement or performance by each of the parties hereunder, the parties shall submit such disagreement to arbitration.

(b) Procedure - The party desiring arbitration shall give notice in writing to the other party and identify the matters in issue and designate an individual as their arbitrator. Within ten (10) days thereafter, the other party shall, by written notice

to the original party, agree to said arbitrator or appoint a second arbitrator. The two arbitrators so appointed shall, within ten (10) days thereafter, appoint a third arbitrator as mutually agreed, and the three arbitrators shall hold the hearing and commence to determine the matter within thirty (30) days of the appointment of the third arbitrator. If the second arbitrator shall not have been appointed, the first arbitrator shall proceed to commence to determine the matter within thirty (30) days of the failure to so appoint a second arbitrator. If the two arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be appointed by the American Arbitration Association.

(c) Except as otherwise provided herein, the arbitrators shall arbitrate the issues in accordance with the rules and procedures of the American Arbitration Association, and a determination of the majority of the arbitrators, or of the sole arbitrator as the case may be, shall be final and conclusive between and upon the parties, and judgment upon same may be entered in any court having jurisdiction thereof. The arbitrator(s) shall give written notice of their findings to each party.

(d) The expenses of arbitration, except for payment of each respective party's counsel fees and fees of experts, shall be borne by the party against whom the arbitrators' determination is rendered in such proportion by each party as may be determined by the arbitrators; provided, however, that it is the intent

of the parties that, to the extent determinable, the expenses be paid by the losing party.

22. Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

23. Entire Agreement.

This Agreement shall contain the entire agreement of the parties and shall supersede any and all prior or contemporaneous representations (oral or written), agreements, or oral or written understandings between the parties. No term or provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the endorsement of the change, waiver, discharge or termination is sought.

24. Warranties and Representations.

(a) MTDB and SD&AE each warrants and represents to Operating Company as follows:

(1) That it is duly organized, validly existing and in good standing under the laws of, as to MTDB, the State of California and as to SD&AE, the State of Nevada.

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

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

(4) That MTDB is proceeding to use its best efforts to acquire SD&AE; that MTDB is seeking the necessary governmental approval to acquire SD&AE and to have Operating Company provide freight service as contemplated herein; and that it has the authority to enter into this Agreement.

(b) Operating Company warrants and represents as follows:

(1) That they are corporations duly organized, validly existing and in good standing under the laws of the State in which incorporated.

(2) That they have the full power and authority to enter into this Agreement and to carry out the functions undertaken in this Agreement, subject to all applicable governmental approvals.

(3) That all corporate or other proceedings required to be taken by or on the part of Operating Company, to authorize Operating Company to enter into this Agreement, and to perform the rail service set forth herein, shall have been duly taken as of the date of commencement of the operations under this Agreement.

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

25. Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Operating Company's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without MTDB's prior written consent, except that an assignment to a wholly-owned subsidiary may be accomplished upon notice to MTDB, and provided that such assignment shall not relieve Operating Company of any of its obligations hereunder. This Agreement is not intended, nor shall it be construed to be for the beneift of any person or entity not a party to this Agreement.

26. Conflict of Interest.

No employee, officer or Board member of MTDB shall have a financial or other personal interest in this Agreement, or any contract or sub-contract, or with Operating Company, in any way directly or indirectly.

27. Utilization of Small Business Concerns.

Operating Company agrees to accomplish the maximum amount of sub-contracting to small business concerns that Operating Company finds to be consistent with the efficient and economical performance of this Agreement.

28. Status of Operating Company.

Operating Company is an independent contractor, and in no way shall it be deemed to be an affiliate, partner, joint venturer, or associated in any manner whatsoever with MTDB.

29. Capital.

Operating Company shall have an initial combined net worth of not less than $3.5 million.

30. Taxes.

Operating Company shall be responsible for and pay when due all taxes actually due and payable by it as a result of its performance of its obligations hereunder. MTDB shall be held harmless from, indemnified against and defended against all claims and liabilities with regard thereto.

31. Personnel.

Willis B. Kyle and Lynn T. Cecil shall use their best efforts to promote SD&AE and Operating Company. Operating Company will provide such personnel as shall be necessary to perform its obligations hereunder, and will maintain a corporate office in San Diego County, California.

32. Collateral Revenue

Subject to the Agreement referred to in Paragraph 2 above, all collateral revenue, such as from billboards or concessions on joint use property shall belong to MTDB; all such revenue including, but not limited to rental income on exclusive freight use property shall belong to Operating Company.

33. Monitoring of Restoration and Reconstruction

MTDB and Operating Company shall have the right and cooperate with one another to monitor the restoration and reconstruction required of SP under the provisions of Paragraph 2 above.

34. Joint Use Provisions

Operating Company and SD&AE shall sign and enter into such agreements and contracts with MTDB (and/or the company contracted with by MTDB to conduct transit service on the joint use portions of the right of way) and sign such applications as may be necessary to effectuate the intent and terms of this Agreement as to use of the joint track right of way for transit purposes. In that regard, such contracts, applications and permits include but are not limited to licenses, leases, easements, construction, maintenance, dispatch control and crossings. It is agreed that the transit purposes of MTDB shall have the highest priority in terms of use of the joint track right of way, and in case of dispute, its decision shall be final, but that the freight service on said lines shall not be unreasonably impaired or interfered with. The parties acknowledge that reconstruction and maintenance of this joint use right of way to make it suitable

for transit use will involve temporary disruptions of freight service, and that the freight service scheduling will have to be designed to accommodate and interfere with, to the least possible extent, the transit use.

35. Non-liability of SP

SP shall have no liability in connection with this Agreement for Operation of Freight Service, and the parties to this Agreement agree to hold SP harmless from, indemnify it and defend it against any and all such liability, provided that SP agrees to defend, indemnify and hold Operating Company, SD&AE and MTDB harmless from and against any and all demands, claims, damage, loss and liability based upon or arising out of the operations of SD&AE prior to Operating Company assuming control over SD&AE.

IN WITNESS WHEREOF, the parties have executed this Agreement this 12th day of February, 1979.

OPERATING COMPANY:

KYLE RAILWAYS, INC.

By _____
Willis B. Kyle, President

WILLIS B. KYLE, INC.

By _____
Willis B. Kyle, President

Approved as to form:

PETERSON, GAMER, MUNS & PRICE
A Professional Corporation

By _____
Paul A. Peterson
Legal Counsel for MTDB

Approved as to form:

By _____
Legal Counsel for
OPERATING COMPANY

SAN DIEGO METROPOLITAN TRANSIT
DEVELOPMENT BOARD

By _____
Judith Bauer, Chairperson

And _____
~~Robert W. Nelson~~ Thomas F. Larwin
General Manager

SAN DIEGO AND ARIZONA EASTERN
RAILWAY COMPANY

By _____
Vice President

By _____
ASSISTANT Secretary

EXHIBIT B - FEES

A) OPERATING COMPANY shall pay to MTDB minimum fees as follows:

1. For the first calendar year after OPERATING COMPANY assumes control of SD&AE, one thousand dollars ($1,000.) per month.
2. For the second year, two thousand dollars ($2,000.) per month.
3. For the third year, three thousand dollars ($3,000.) per month.
4. For the fourth and all succeeding years, three thousand dollars ($3,000.) per month.

B) In the event OPERATING COMPANY does not have profits for the first, second or third year of operation of SD&AE, as set forth in the ICC form R-2 to be filed by OPERATING COMPANY, then the fees otherwise payable for such period shall be deferred until such time as OPERATING COMPANY's profits are sufficient to pay all current and deferred fees.

C) After the third year of operation, the minimum fees specified above shall be increased to $80,000 per year in any year in which OPERATING COMPANY has freight operating revenues from operation of SD&AE of between $4 and $5 million, to $125,000 if freight operating revenues are between $5 and $6 million, to $180,000 if freight operating revenues are between $6 and $7 million, to $245,000 if freight operating revenues are between $7 and $8 million, to $320,000 if freight operating revenues are between

$8 and $9 million, and to $405,000 if freight operating revenues are $9 million or more.

D) All fees are payable upon the due date of filing of the ICC form R-2 by OPERATING COMPANY. All fees are subject to final acceptance or adjustments by the ICC.

E) This fees schedule is subject to review and renegotiation every five (5) years after the commencement of the term hereof, subject to the arbitration provisions hereof, if the parties are unable to agree on a reasonable upward or downward adjustment.

F) For purposes of determining freight operating revenues hereunder, all freight revenues attributable to this Agreement and/o to the operation of SD&AE, whether by OPERATING COMPANY, by a subsidiary company or otherwise, shall be included.

EXHIBIT - C

OPTION TO PURCHASE AND RIGHT OR FIRST REFUSAL

1. OPERATING COMPANY shall have the right to exercise an option to purchase SD&AE at any time after the third anniversary of the effective date of this Agreement. This right shall not include the so-called joint trackage right of way between San Diego and San Ysidro and between San Diego and El Cajon, which joint trackage shall be retained by MTDB. This right shall continue during the original term of this Agreement or any renewals thereof, so long as OPERATING COMPANY is not in default at the time of exercise of said option, or at the time of closing of such purchase.

2. The purchase price for SD&AE shall be its fair market value, as defined herein, less any credits as provided herein.

3. OPERATING COMPANY shall send written notice to MTDB of its exercise of option at least six (6) months in advance of its intended effective date of purchase.

4. With the notice of exercise, OPERATING COMPANY shall specify its choice as appraiser, pursuant to the appraisal procedure specified below.

5. The terms of payment shall be as follows:

a) At the time of exercise of option, OPERATING COMPANY shall forward to MTDB a cashier's check for twenty-five thousand dollars ($25,000), which shall be a non-refundable security deposit to insure OPERATING COMPANY's performance. The parties agree that in the event OPERATING COMPANY defaul

in its purchase, the said $25,000 shall be retained as liquidated damages by MTDB, since it would be impracticable and extremely difficult, if not impossible, to ascertain the actual damages.

b) At the close of the purchase, MTDB shall be paid cash, or its equivalent, equal to ten percent (10%) of the purchase price (including the $25,000 deposit), and the balance of the price shall be evidenced by a promissory note payable in equal monthly installments or more, including interest and principal over a 30-year period commencing at the close of the purchase. The note shall be a standard form Title Insurance and Trust Company secured installment note, shall bear interest at the same rate from time to time charged by the State Highway Fund (or its equivalent) on loans or advances, and shall be secured by a security agreement covering all ownership rights in the corporate entity known as SD&AE, a security agreement covering all personal tangible property of SD&AE, and a deed of trust covering all real property interests of SD&AE, including for such purpose easements, licenses, operating rights and other rights which are inherently a part of the bundle of rights which compose an operating railroad. The interest rate shall never exceed the maximum permissible rate that can be charged by MTDB under California law.

c) The parties agree that no title policy will be provided at close of purchase.

d) The purchase shall close after the appraisal process has been completed and the value established, and on the day

on which any required ICC or other governmental approval is final.

e) The appraisers shall appraise the property at fair market value by using then accepted appraisal techniques and approaches, except that this Agreement For Operation of Freight Service shall not be considered for the purposes of capitalizing rent or determining value in any way.

f) To the extent that OPERATING COMPANY can establish to the appraisers' satisfaction that it has made capital improvements with its own capital funds (as opposed to standard maintenance) on the right of way owned by SD&AE, OPERATING COMPANY shall receive full credit against any portion of the purchase price in excess of $5 million for all such improvements. Should the purchase price be less than $5 million, OPERATING COMPANY shall receive no credit for such capital improvements. For purposes of determining capital improvements, the appraisers may consider all relevant factors, including ICC and PUC forms filed by OPERATING COMPANY. Funds obtained directly or indirectly or traceable to public grants, whether from federal, state or local sources, shall not be considered for purposes of this subparagraph.

6. a) After receiving written notice of the selection of OPERATING COMPANY's appraiser, MTDB shall, within thirty (30) days thereafter, select a second appraiser and notify OPERATING COMPANY of such selection in writing. The two appraisers so selected shall select a third appraiser. Within forty-five

(45) days after selection of the third appraiser, the three appraisers shall, by majority vote, determine the fair market value of SD&AE, including in their appraisal due consideration for all factors, including the operating status of SD&AE, its gross and net revenues, its gross and net profit, its assets and liabilities, including right of way, operating agreements, licenses, easements, grants and all other data considered pertinent to a thorough appraisal.

b) If for some reason the appraisers are unable to decide upon the fair market value, either party may request the Presiding Judge of the San Diego Superior Court to appoint an active or retired Superior Court Judge to review the appraisal proceedings and make a final determination of value.

c) The final determination of value by the appraisers or by the judge shall be binding and enforceable in accordance with California law then in effect relating to arbitration proceedings.

7. Should OPERATING COMPANY default in its obligation to purchase after exercising its option, or should the ICC or PUC, or any other governmental agency with jurisdiction, fail to approve OPERATING COMPANY's purchase, then this Option to Purchase and Right of First Refusal shall thereafter be null and void.

8. Should MTDB propose to sell SD&AE to any other person or entity (other than to another governmental entity or agency having substantially the same purpose as MTDB, provided that any such entity or agency shall agree to be bound by the

terms of this Option to Purchase and Right of First Refusal, then OPERATING COMPANY shall have a right of first refusal for a period of thirty (30) days after written notification of such proposed sale to substitute itself in place of such proposed purchaser, subject to all of the terms and conditions of such sale. Written notice of election to exercise this right of first refusal shall be delivered to MTDB within such 30-day period. This right shall not apply to the so-called joint trackage right of way between downtown San Diego and El Cajon and between downtown San Diego and San Ysidro.

9. The parties agree to use their best efforts and diligently pursue in good faith all rights and obligations hereunder. Any dispute not otherwise covered in this Exhibit C shall be resolved in accordance with arbitration provisions of the Agreement of which this Exhibit is a part.

MTDB DOCUMENT NO.

SUPPLEMENTAL AGREEMENT
Between
SD&AE Ry, KYLE RAILWAYS, INC., WILLIS B. KYLE, INC.,
KYLE-SANTA ROSA, INC., WILLIS B. KYLE, and
SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD

THIS SUPPLEMENTAL AGREEMENT is hereby made and entered into this 1st day of October, 1979, by and between SD&AE Ry (hereinafter referred to as "SD&AE"), KYLE RAILWAYS, INC., WILLIS B. KYLE, INC., and KYLE-SANTA ROSA, INC. (hereinafter collectively referred to as "Operating Company"), and SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD (hereinafter referred to as "MTDB").

WHEREAS, Kyle Railways, Inc., Willis B. Kyle, Inc., and SD&AE have an Agreement dated February 12, 1979, for assuming control of and operation of freight service on the SD&AE; and

WHEREAS, MTDB will become a signatory to said Agreement; and

WHEREAS, Paragraph 35 of the Agreement for Operation of Freight Service between SD&AE Ry and Kyle Railways, Inc. and Willis B. Kyle, Inc., dated February 12, 1979, shall be equally applicable to this Supplemental Agreement; and

WHEREAS, Kyle-Santa Rosa, Inc. is a wholly-owned subsidiary of Kyle Railways, Inc. and Willis B. Kyle, Inc., and under date of August 29, 1979, Kyle-Santa Rosa, Inc. made application to the ICC to join with Kyle Railways, Inc., Willis B. Kyle, Inc., and Willis B. Kyle to obtain authority to control through management the property of SD&AE; and

WHEREAS, MTDB and SD&AE have no objection to this application, provided: (1) Kyle-Santa Rosa, Inc. becomes a signatory to the February 12, 1979 Agreement and to this Supplemental Agreement, and

(2) the liability of Kyle Railways, Inc. and Willis B. Kyle, Inc. to MTDB and SD&AE will not thereby be affected; and

WHEREAS, said Agreement between SD&AE and Operating Company specifies in general terms certain rights and responsibilities of each party; and

WHEREAS, the parties desire to execute a Supplemental Agreement which will be effective when and only after MTDB acquires ownership of SD&AE; and

WHEREAS, the parties will cause SD&AE to become a signatory to this Agreement immediately following MTDB's purchase of SD&AE.

NOW, THEREFORE, in consideration of the foregoing, the parties do mutually agree as follows:

1. Pursuant to the requirements of the ICC Decision in Finance Docket No. 28917 (Sub 1-F) and (Sub 2-F) decided August 20, 1979, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, Willis B. Kyle and Kyle-Santa Rosa, Inc. have filed an application with the ICC under date of August 29, 1979 whereby Willis B. Kyle and Kyle-Santa Rosa, Inc. become co-applicants with Kyle Railways, Inc. and Kyle-Santa Rosa, Inc. for authority to control through management the property of SD&AE. MTDB and SD&AE consent to this application, provided: (1) Kyle-Santa Rosa, Inc. becomes a signatory to the February 12, 1979 Agreement and to this Supplemental Agreement, and (2) the liability of Kyle Railways, Inc. and Willis B. Kyle, Inc. to MTDB and SD&AE will not thereby be affected. Kyle Railways, Inc., Willis B. Kyle, and Kyle-Santa Rosa, Inc. hereby agree to the above conditions (1) and (2).

2. So long as Operating Company is not in default of its obligations to SD&AE or MTDB, the Board of Directors of SD&AE shall be elected by its member, to wit: MTDB. The Board of SD&AE shall consist of three (3) persons, one of which shall be a member of the MTDB Board or one of its Officers, and the two other Directors shall be Directors or Officers of Operating Company. In the event of a default of Operating Company which has not been cured within the time required by its Agreements, MTDB may at its option call a meeting of the member of SD&AE for the purpose of electing new Directors, and/or removing from directorship the Operating Company's representatives. At such meeting, the member of SD&AE may remove one or more of the existing SD&AE Directors and replace them with new Board Directors as selected by MTDB. The said Directors shall thereupon have the right, without further notice, to remove and replace all the Officers of SD&AE and replace them with Officers selected by MTDB. In the event that MTDB exercises its option to remove and replace Directors as set forth above, then either party shall have the option to declare the Agreement dated February 12, 1979, as amended, terminated; provided however, that any such termination shall be subject to obtaining all necessary governmental approvals, and such termination shall in no way relieve Operating Company of liability for any default. SD&AE shall hold quarterly Board of Directors meetings. SD&AE will notify MTDB in writing at least forty-eight (48) hours before every meeting, as well as the Board of Directors.

3. MTDB, its representative, or members of SD&AE shall have the unrestricted right at all reasonable times to inspect and audit the physical properties, books, and records of SD&AE which will be maintained by the Operating Company, and the physical

properties, books and records of the Operator and its Parent Organization(s), which are pertinent to SD&AE freight operations.

4. The parties agree that they shall jointly hire an inspector of the construction, repair and rehabilitation work to be done by Southern Pacific pursuant to its Agreement with MTDB dated February 12, 1979. All costs of such inspector shall be paid for and be the responsibility of MTDB, including but not limited to wages, insurance, travel expenses, and living expenses.

5. Immediately upon closing of the sale of SD&AE to MTDB, Operating Company and MTDB shall take a physical inventory of all tangible assets of SD&AE to validate the SP inventory so that within thirty (30) days of the Operating Company taking over control of SD&AE, the amount, location and value of the tangible assets (other than land) can be mutually agreed upon. Operating Company will also allow an independent auditor at MTDB's expense to conduct a sample verification of the SP inventory.

6. Operating Company and SD&AE/SP will jointly determine the payables and receivables of SD&AE on the day before the closing date and work out suitable procedures to handle processing of those items after closing.

7. Operating Company will furnish MTDB with a complete file of all SD&AE labor agreements once final settlements have been negotiated as soon as possible after the date of closing and proceed as expeditiously as possible to have all such labor agreements transferred to Operating Company. All renewals or extensions of such contracts shall be with Operating Company. It is the intent

of this paragraph that as soon as possible all labor agreements shall be with Operating Company.

8. MTDB and Operating Company will by mutual agreement resolve the manner in which ongoing accounting transactions involving SD&AE will be handled, including, but not limited to, depreciation, receipts and expenditures, receivables and payables, leases, etc. It is recognized that while SD&AE may be used as a conduit through which transactions will flow, this does not affect the basic full legal responsibility or liability and benefit of and to Operating Company with regard to all such matters.

9. An essential aspect of the ownership of SD&AE by MTDB is the joint use of the right of way in the San Diego metropolitan area by MTDB and Operating Company. Operating Company will cause SD&AE to execute leases, license or other agreements deemed appropriate by MTDB for such joint use, provided they are in basic conformity with the "Agreement between Kyle Railways, Inc., Willis B. Kyle, Inc., and San Diego Metropolitan Transit Development Board dated February 12, 1979", and with this Supplemental Agreement. Furthermore, Operating Company will cause SD&AE to cooperate with and enter into appropriate agreements with various local, state and federal agencies, and with private property owners, relating to such matters as improvements to grade crossings, removal or addition of spur tracks, and relocation and/or improvement of joint track

facilities, provided that freight operations shall not be unreasonably interfered with.

10. Operating Company shall report to the first meeting of the Board of Directors of MTDB following each quarter-year, both orally and in writing, on the operations of SD&AE. Included in the report will be a discussion of those items listed in Section 14 of the February 12, 1979 Agreement and the status of matters in the areas of labor, shippers, or with railroad maintenance. A summary of freight services lost and gained during the quarter will be included. The report should be concluded with a summary of the expectations of Operating Company on continued operations. After the first three (3) years, at the discretion of Operating Company, the report may be submitted semiannually.

11. In the February 12, 1979 Agreement, Operating Company agrees to maintain the joint use track (San Diego to San Ysidro) until restoration work begins on any portion. MTDB also wishes to employ Operating Company to maintain each portion of restored track until passenger transit operator is fully prepared to take over maintenance as referred to in the February 12, 1979 Agreement. Operating Company will study maintenance costs on the joint track so that an appropriate agreement can be negotiated for MTDB's funding of maintenance after restoration and before transit operator assumption.

Even though there is no freight service on the portion of the Coronado branch of the SD&AE between the Salt Works and Imperial Beach, Operating Company will study and advise MTDB of

recommended maintenance of the SD&AE facilities suitable for freight operations. Should Operating Company desire to abandon service, a suitable report will be prepared for action by the Board of Directors of MTDB.

12. MTDB shall cooperate with SD&AE and Operating Company in attempting to obtain federal and/or state funds for purposes of improving freight operations such as, but not limited to, the proposed freight yard at the International Border Area. As to the proposed freight yard at the International Border Area, Operating Company's obligation to match funds shall not exceed $250,000.00. To the extent that obtaining future funds (other than the said proposed freight yard), any local share of such matching funds shall be the sole obligation of Operating Company, if it desires to participate. To the extent legally permissible, such Operating Company funds shall be allocated to specific buildings and structures and Operating Company shall be considered to be the owner of such buildings and structures, provided that upon termination of its contract with SD&AE, for whatever reason, SD&AE shall become the sole owner of all such improvements. For example, if 80% of the funds for the freight facility at the International Border comes from state or federal funds and 20% comes from funds of Operating Company, then any such building and structure improvements shall be deemed to be owned by Operating Company to the extent of its dollar contribution (not to exceed $250,000.00), until termination of Operating Company's contract. For purposes of amortizing Operating Company's investment in said buildings and structures, the assets shall be deemed to have a life of ten (10) years,

coinciding with the initial term of Operating Company's lease. The assets shall for purposes of this Supplemental Agreement be amortized at the rate of ten percent (10%) per annum. If, for any reason, Operating Company's lease is terminated prior to the tenth year of the term of the lease, Operating Company shall be entitled to a credit to the extent of the unamortized portion of its investment, which shall be payable from future rents or fees received by MTDB from a successor operator over a period of ten years. For example, if Operating Company's lease is terminated at the end of seven years, then Operating Company would be entitled to a credit of thirty percent (30%) of its investment. This would be payable in equal annual installments at the end of each of the next ten years from rents or fees received by MTDB from the successor freight operator. On the other hand, if the lease terminates for any reason after the tenth year of the term of the lease, Operating Company would be entitled to no credits.

13. MTDB intends to obtain insurance covering itself from liability to third parties and possibly covering damage to assets of SD&AE. The fact that MTDB obtains such insurance shall in no way relieve Operating Company of its liability under the terms of the Agreement dated February 12, 1979 and this Supplemental Agreement, nor shall the fact of obtaining such insurance be deemed

an admission of liability or non-liability of MTDB for any act or event.

14. In the event any party is required to bring legal action to enforce the provisions of this Supplemental Agreement, a court shall have the discretion to award the prevailing party reasonable attorneys' fees.

15. This Supplemental Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors, and assigns. No party may assign any rights created hereunder without consent of all parties subject to this Supplemental Agreement.

EXECUTED as of the day and year first above written.

SD&AE Ry

By: _____
President

"SD&AE"

KYLE RAILWAYS, INC.

By: _____
President

WILLIS B. KYLE, INC.

By: _____
President

KYLE-SANTA ROSA, INC.

By: _____
President

"Operating Company"

APPROVED AS TO FORM
PETERSON, GAMER, MUNS & PRICE
A Professional Corporation

By: _____
Paul A. Peterson
Legal Counsel for MTDB

_____
WILLIS B. KYLE

SAN DIEGO METROPOLITAN TRANSIT
DEVELOPMENT BOARD

By: _____
Chairperson

By: _____