



Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

JULY 1, 2014

TO: BOARD OF DIRECTORS

THROUGH: ARTHUR T. LEAHY *AL*
CHIEF EXECUTIVE OFFICER

FROM: MARTHA WELBORNE, FAIA *MW*
CHIEF PLANNING OFFICER

**SUBJECT: REGIONAL CONNECTOR PROJECT – MEMORANDUM OF
UNDERSTANDING REGARDING DISNEY HALL SITE**

ISSUE

The Performing Arts Center of Los Angeles County (PACLAC) expressed concern about ground borne vibration from tunnel construction and operation of the Regional Connector Project which may manifest itself as noise impacts to the Walt Disney Concert Hall. In order to alleviate any concerns about ground borne vibration, Metro and PACLAC have entered into a Memorandum of Understanding, attached as Attachment A, where Metro will provide certain assurances as to how Metro intends to design, construct and maintain the Regional Connector Project.

DISCUSSION

PACLAC owns, leases and/or manages certain property commonly known as the Music Center in downtown Los Angeles. The Music Center properties include the Ahmanson Theatre, the Dorothy Chandler Pavilion, the Mark Taper Forum and the Walt Disney Concert Hall. The Regional Connector Project will include tunnels with rail cars that run underground in the area of the Walt Disney Concert Hall located at 111 South Grand Avenue, Los Angeles, CA 90012.

The Regional Connector Project, when in operation, will provide improved transit access to the Music Center from the various locations served by the Metro rail system all over Los Angeles County. The project is a benefit to the Concert Hall, which houses world class performance spaces and recording facilities and attracts visitors from all over Los Angeles County, the region and the world.

PACLAC has expressed concerns about noise impacts from ground borne vibration from tunnel construction and operation of the Regional Connector Project. The Memorandum of Understanding addresses PACLAC's concern by providing the following:

- The parties have measured and identified the range of existing noise levels in the Main Auditorium and the Choral Hall at the Disney Hall site (“Baseline Levels”).
- Metro will require its contractor to design appropriate ground borne noise controls in the areas adjacent to the Disney Hall site. It is expected with these noise controls in place, the operation of the Regional Connector will not exceed the Baseline Levels.
- During construction of the Regional Connector Project, Metro will minimize short term, temporary construction impacts caused by tunneling construction by working closely with PACLAC on the scheduling of activities, notifications of construction activity and compliance with appropriate mitigation activities set forth in the FEIS/EIR dated January 20, 2012.
- Metro will monitor readings of ground borne noise during tunnel construction and during the first year of operation. After that, either party can request a retest of noise conditions at the Main Auditorium and Choral Hall but not more than once a year.
- If the ground borne noise exceeds the Baseline Levels, Metro will, after consulting with PACLAC, take available steps that Metro determines in its sole discretion are reasonable, practical, feasible, and consistent with Metro’s ordinary practices to bring the ground borne noise at or below the Baseline Levels. If appropriate, Metro will obtain Board approval for such remediation actions.
- If PACLAC is not satisfied with Metro’s action, PACLAC may sue Metro for damages it can prove against Metro using then-applicable legal standards. The prevailing party is responsible for the other party’s attorneys’ fees.
- The MOU may be terminated by either party upon thirty (30) days’ notice if any of the following occurs: (i) Metro is unable to secure funding to construct the Regional Connector Project; (ii) if the Regional Connector Project is no longer operating; or (iii) if PACLAC is no longer operating at the Disney Hall Site. Further, PACLAC shall have the right to terminate the MOU upon thirty (30) days’ notice if Metro breaches the MOU.

We are pleased to report that Metro’s Chief Executive Officer and the President and Chief Executive Officer of PACLAC have signed the Memorandum of Understanding.

NEXT STEPS

Once construction of the Regional Connector tunnels commences, Metro will begin to monitor readings of ground borne noise and will coordinate with PACLAC on construction scheduling.

ATTACHMENTS

- A. Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into as of June 30, 2014 by and between the Los Angeles County Metropolitan Transportation Authority ("LACMTA") and the Performing Arts Center of Los Angeles County ("PACLAC"). LACMTA and PACLAC are collectively referred to below as the "Parties".

RECITALS:

A. LACMTA is planning, designing, constructing and operating a regional rail connector project which will provide direct connection from the 7th/Metro Center Station to the existing Metro Gold Line tracks just north and east of 1st Street and Alameda, allowing passengers continuous through service from Azusa to Long Beach and from East Los Angeles to Santa Monica, and providing connectors to Metro's Blue, Expo, Red and Purple Lines via the 7th St/Metro Center Station (the foregoing, or if the above is not constructed, any LACMTA regional rail connector project that is intended to substitute or succeed the foregoing and that runs underground in the area of the Disney Hall Site (as is further described and defined below), shall herein be referred to as the "Regional Connector Project").

B. PACLAC owns, leases and/or manages certain property located between (i) S. Hope St./N. Hope St. and N. Grand Ave./S. Grand Avenue, each running southwest to northeast, and (ii) W. Second St. and W. Temple St., each running southeast to northwest, with such property including, but not limited to, the Ahmanson Theatre, the Dorothy Chandler Pavilion, the Mark Taper Forum and the Walt Disney Concert Hall, in downtown Los Angeles, California ("PACLAC's Site").

C. The Regional Connector Project will include tunnels with rail cars that run underground in the area of the Walt Disney Concert Hall located at 111 South Grand Avenue, Los Angeles, CA 90012, (the "Disney Hall Site"). LACMTA will procure a contractor on a design/build project delivery method to undertake the final design and construction of the Regional Connector Project (the "DB Contractor").

D. The Regional Connector Project, when in operation, will provide improved transit access to PACLAC's Site from various locations served by the Metro rail system in Los Angeles County, such as the City of Santa Monica, City of Long Beach, City of Azusa and the Eastside. This is a benefit to the Disney Hall Site, which houses world class performance spaces and recording facilities and derives its users from all over Los Angeles County.

E. PACLAC is supportive of the Regional Connector Project, but PACLAC has expressed concern about ground borne vibration from tunnel construction and operation of the Regional Connector Project which may manifest itself as noise impacts to the Disney Hall Site (such noise impact is referred to herein as "Groundborne Noise"). The parties desire to enter into this MOU to alleviate PACLAC's concerns.

F. At the time the parties enter into this MOU, the existing noise levels measured in the Main Auditorium at the Disney Hall Site ranged between 36-41 dB at 63 Hz and in the Choral Hall ranged between 48-52 dB at 63 Hz, as more particularly set forth in the chart attached as Exhibit A (the “**Baseline Levels**”). Metro and PACLAC’s respective noise consultants expect the operation of the Regional Connector Project will not generate Groundborne Noise above the Baseline Levels.

G. During construction of the Regional Connector Project, LACMTA desires to minimize short term, temporary construction impacts caused by tunneling construction and will work closely with PACLAC on the scheduling of activities, notifications of construction activity and appropriate mitigation.

H. The Parties desire to enter into this MOU to set forth their general understanding regarding Groundborne Noise associated with the Regional Connector Project in the underground area adjacent to the Disney Hall Site.

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein, the receipt and adequacy of which the Parties hereby acknowledge, LACMTA and PACLAC agree as follows:

AGREEMENT:

1. Design of Tunnel. LACMTA will require the DB Contractor to design appropriate Groundborne Noise control measures for that segment of the tunnel located immediately to the east of S. Olive Street to the 2nd and Hope station in downtown Los Angeles, as identified in the drawing attached as Exhibit B, in such a manner so that Groundborne Noise from the operation of the Regional Connector Project should not exceed the Baseline Levels.
2. Specialist Acoustical Engineers. LACMTA will require the DB Contractor to employ a specialist acoustical engineer to design and oversee the tunnel construction of the Groundborne Noise control measures. In addition, LACMTA will retain its own specialist acoustical engineer to oversee the DB Contractor’s specialist acoustical engineer.
3. Testing the Groundborne Noise Control Measures. LACMTA will require the DB Contractor to test the constructed Groundborne Noise control measures on a weekly basis during pre-revenue operations and systems testing.
4. Maintenance. LACMTA will maintain the Regional Connector Project’s rails and rail car wheels in accordance with then-standard Metro Rail Operations procedures. Prior to any pre-revenue operations and systems testing, LACMTA will provide notice to PACLAC of all such procedures regarding maintenance of rails and rail car wheels then in effect.

5. Monitoring Readings. During tunnel construction and the first year of operation of the Regional Connector Project, LACMTA will report readings of Groundborne Noise on a monthly basis. For the balance of the term of this Agreement after the first year of operations, either party may retest the existing noise levels in the Main Auditorium at the Disney Hall Site and in the Choral Hall by setting up a noise test at the requesting party's expense, but not more frequently than once a year, using the same conditions and monitoring protocol used to determine the Baseline Levels. The results of such noise tests, if any, will be provided to the other party within five (5) business days of the testing party's receipt of such readings, or as otherwise agreed to by the parties.

6. PACLAC Schedule of Events. PACLAC shall provide LACMTA with a schedule of its sound and vibration sensitive activities and events to the extent and as such information becomes available to PACLAC, but at a minimum, PACLAC shall provide such information in advance on an annual basis. PACLAC shall provide LACMTA with such information commencing upon execution of this Agreement and continuing as needed by the Parties. The Parties will in good faith cooperate and coordinate their respective schedules to minimize the effect of the Regional Connector Project Groundborne Noise on PACLAC's activities during tunnel construction.

7. Construction. During construction of the Regional Connector Project, LACMTA shall comply with the noise and vibration mitigation requirements set forth in the FEIS/EIR dated January 20, 2012, Chapter 4.7 (Noise and Vibration) and Chapter 8 (Mitigation Monitoring and Reporting Program) for the Project which are attached as Exhibit C hereto.

8. Groundborne Noise Measures Ineffective. If the results of the monitoring readings indicate that the operation of the Regional Connector Project has caused the Groundborne Noise levels to exceed the Baseline Levels, then LACMTA will, after consulting with PACLAC, take available steps that LACMTA determines in its sole discretion are reasonable, practical, feasible, and consistent with LACMTA's ordinary practices ("**Remediation Actions**") to bring the Groundborne Noise at or below the Baseline Levels. It is recognized by the Parties that any Remediation Actions which LACMTA elects to undertake may be subject to obtaining LACMTA Board approval. If PACLAC supports a different remedial measure, LACMTA staff will include in its staff report to the LACMTA Board an alternative to the LACMTA staff proposed remedy which describes any remedial measure reasonably proposed by PACLAC. If LACMTA does not undertake any Remediation Actions, or if PACLAC, in its sole discretion, is not satisfied with the Remediation Actions, PACLAC may pursue in a court of law claims for liability and damages that are independent of and do not arise from this MOU or any breaches thereof, and which PACLAC is able to establish and prove against LACMTA using then-applicable legal standards ("**Non-MOU Related Legal Actions**"). Should PACLAC institute a Non-MOU Related Legal Action against LACMTA, then subject to Section 11c below, neither the MOU itself, nor any of its provisions or statements contained in the MOU shall be admissible by either party in such Non-MOU Related Legal Action as an admission or for any other purpose.

9. Meetings. LACMTA's and PACLAC's authorized representatives shall meet as necessary on a mutually agreed basis to implement the principles set forth in this Agreement.

10. Enforcement of the MOU. Subject to the provisions of paragraph 11. "Disputes", the parties may seek to enforce the terms of this MOU in a court of law, seeking all available remedies, including but not limited to, specific performance and injunctive relief ("MOU Related Legal Action"), except that in any MOU Related Legal Action, PACLAC shall not seek to stop LACMTA's operation of the Regional Connector Project rail service by specific performance or temporary or permanent injunctive relief. Should PACLAC institute an MOU Related Legal Action against LACMTA, any evidence relating to any Remediation Actions, as defined in paragraph 8, including, without limitation, those Remediation Actions, considered, proposed or identified by LACMTA regardless of whether or not such Remediation Actions are undertaken by LACMTA, may not be used by PACLAC to establish liability or damages. Further, in an MOU Related Legal Action, PACLAC shall not have the right to challenge or contest whether LACMTA's Remediation Actions were reasonable, practical, feasible and consistent with LACMTA's ordinary practices.

11. Disputes.

a. In the event of a dispute under this Agreement, whether or not such dispute would give rise to an MOU Related Legal Action or a Non-MOU Related Legal Action, the parties may elect to resolve the dispute in the following sequential ways:

i. initially, the dispute will be raised to the Chief Executive Officer of the LACMTA and the Chief Operating Officer of PACLAC who will meet and attempt to resolve the dispute;

ii. if the dispute is not resolved by the Chief Executive Officer of the LACMTA and the Chief Operating Officer of PACLAC, then at the request of either Party, the dispute shall be mediated before a mutually acceptable retired judge with JAMS. Should the Parties be unable to agree on a mediator, they shall ask JAMS to propose five potential retired judges to serve as mediator. Each Party shall be entitled to strike one of the five proposed mediators, and JAMS shall then select one mediator from the remaining proposed mediators. The mediator selected by JAMS shall serve as the mediator. The parties agree to share equally in the fees/costs charged by the mediator and/or JAMS; or

iii. if the dispute is not resolved through mediation, it may be handled in a court of law with each party reserving its rights to pursue all available rights and remedies available at law or in equity.

b. Every suit or action with respect to this Agreement will be commenced, and shall take place, in the County of Los Angeles in the State of California.

c. Attorneys' Fees. In the event that there is any legal court (e.g., Superior Court of the State of California, County of Los Angeles, or the U.S. District Court for the Central District of California) proceeding between the parties relating to the Connector Rail Project, the prevailing party shall be entitled to its costs and expenses, including reasonable attorney's fees, whether it is a MOU Related Legal Action or a Non-MOU Related Action. Notwithstanding Section 8 above, this Section 11c of the MOU may be admissible by either Party for the limited purpose of enforcing this Section 11c in a Non-MOU Related Legal Action; provided, however, this exception to Section 8 shall only apply to this Section 11c and to no other provision or statement in this MOU.

12. For Non-MOU Related Legal Actions, nothing in this MOU is or shall be construed as a waiver, relinquishment or impairment of any rights, claims, causes of action, relief or remedies of any nature, in law or equity, that a Party had, has or may have in the future, that are independent of any rights or obligations created by this MOU, including, without limitation, claims based on common law torts and inverse condemnation laws. For Non-MOU Related Legal Actions, each Party specifically reserves the right to assert such rights, claims, causes of action, relief or remedies in an action in a court proceeding.

13. Governing Law. This Agreement shall be construed and the obligations of the Parties hereunder shall be determined in accordance with the internal laws of the State of California (without regard to any conflict of law provisions thereof).

14. Termination. This Agreement may be terminated by either party upon thirty (30) days prior written notice if any of the following occurs: (i) LACMTA is unable to secure funding to construct the Regional Connector Project; (ii) if the Regional Connector Project is no longer operating; or (iii) if PACLAC is no longer operating at the Disney Hall Site. Further, PACLAC shall have the right to terminate this Agreement upon thirty (30) days prior written notice if LACMTA breaches this Agreement.

15. Survival. Sections 8, 10, 11, 12, and 13 shall survive any expiration or termination of this Agreement.

16. Incorporation of Recitals. The recitals contained herein are hereby incorporated by this reference and are binding upon the parties hereto only as it pertains to this MOU and not any other separate action.

17. Entire Agreement; No Assignment. This MOU constitutes the entire agreement between the Parties regarding the subject matter hereof and may be modified only with a written instrument duly executed by both of the Parties. This MOU may not be assigned by any Party and any purported assignment by any Party of this Agreement or such party's rights or obligations hereunder, without the written consent of the other party, shall be null and void.

[Signatures on next page]

IN WITNESS THEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives as of the date first written above.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: Arthur T. Leahy
Arthur T. Leahy
Chief Executive Officer

Approved as to Form:

JOHN F. KRATTLI
County Counsel

By: [Signature]

PERFORMING ARTS CENTER OF LOS ANGELES COUNTY

By: [Signature]
Name: Stephen D. Rountree
Title: President and Chief Executive Officer

Exhibit A

The existing ambient environment in the Main Auditorium and the Choral Hall was measured on September 12, 2013 over a 4-hour period during normal business hours as more particularly described in that certain Noise and Vibration Mitigation for Walt Disney Concert Hall report dated January 7, 2014 and prepared by The Connector Partnership and Wilson, Ihrig & Associates. Recording activities could occur at any time of the day, and in accordance with that condition, these measurements were conducted with noise control protocols that are typically in place during a recording session in 2013.

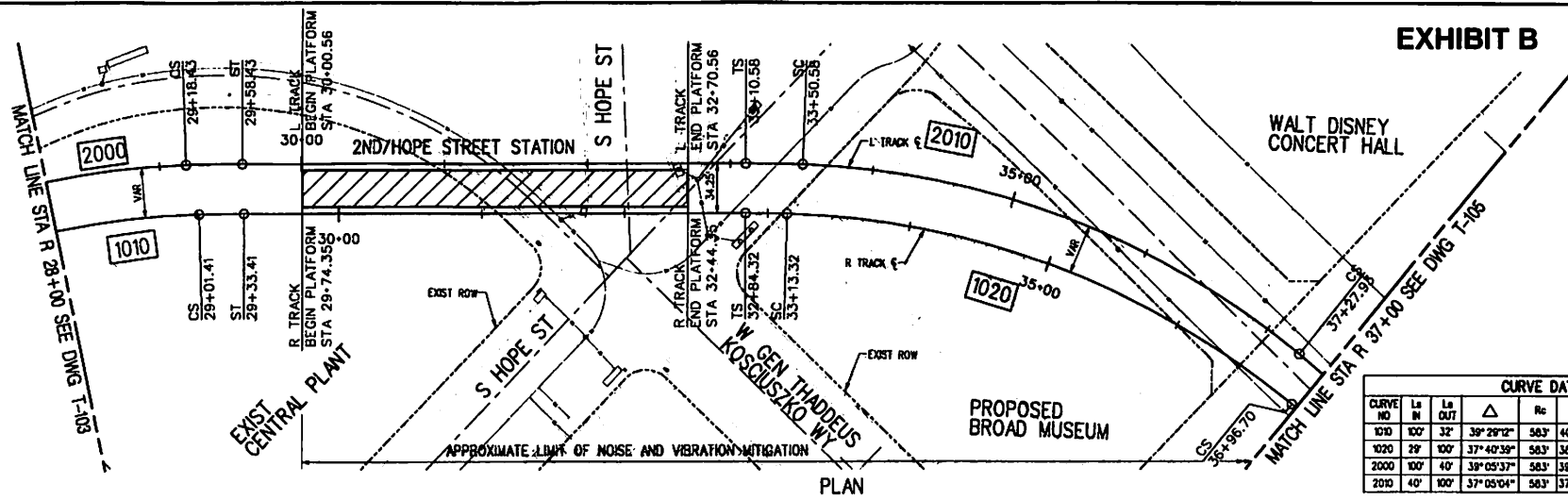
**Table ES-1: Metro Criteria Compared with Measured Ambient,
and Proposed Mitigation (dB)**

Space	Groundborne Noise Octave Band Levels dB								
	31.5 Hz			63 Hz			125 Hz		
	Metro Criteria	Measured Ambient	With Mitigation	Metro Criteria	Measured Ambient	With Mitigation	Metro Criteria	Measured Ambient	With Mitigation
Main Auditorium	46	45 - 48	17	34	36 - 41	20	28	31 - 35	4
Choral Hall	57	50 - 57	36	45	48 - 52	35	37	40 - 47	10

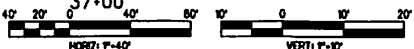
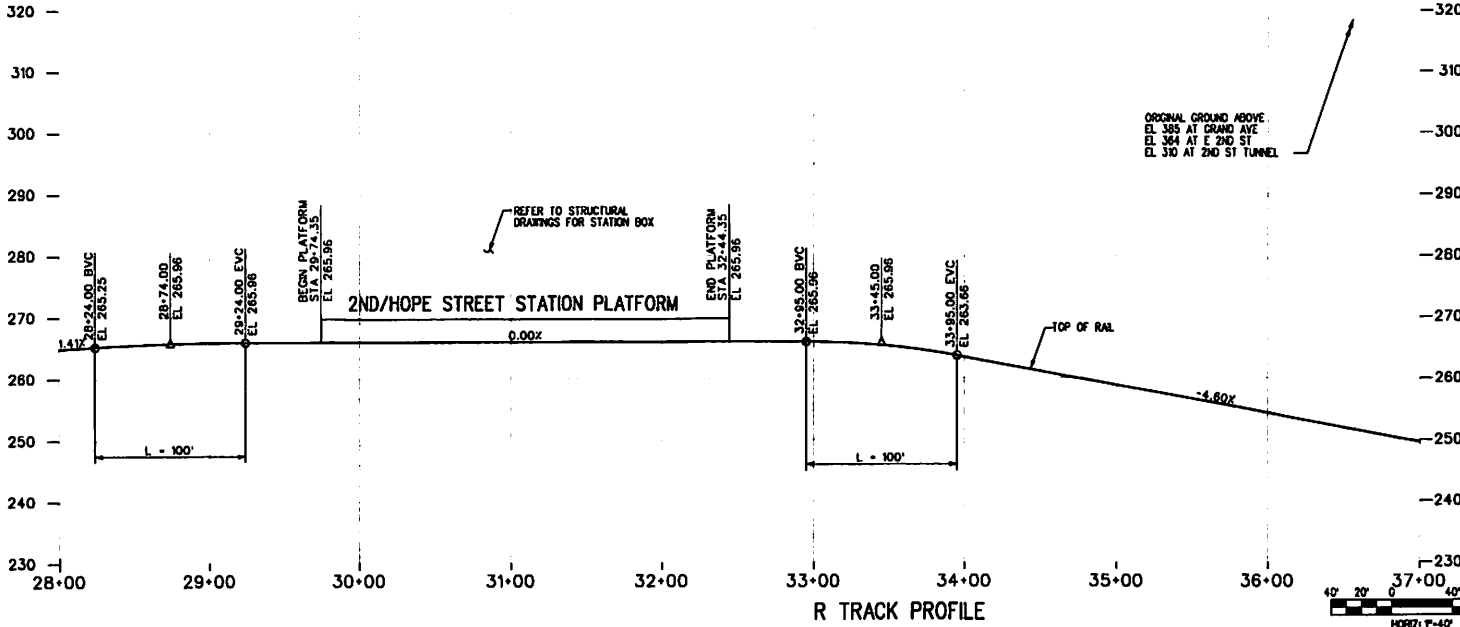
Exhibit B

See Attached Drawings (2 pages)

EXHIBIT B



CURVE DATA									
CURVE NO	La IN	La OUT	Δ	Rc	Lo	E1 (Sta)	E2 (Sta)	E3 (Sta)	V (mph)
1010	100'	32'	39°29'12"	563'	401.79'	1.48	1.00	0.48	15
1020	29'	100'	37°40'39"	563'	380.38'	1.48	1.00	0.48	15
2000	100'	40'	39°05'37"	563'	397.78'	1.48	1.25	0.23	15
2010	40'	100'	37°05'04"	563'	377.34'	1.48	1.25	0.23	15



THE PREPARATION OF THIS DRAWING HAS BEEN FINANCED BY THE TREASURY OF THE CITIES OF LOS ANGELES COUNTY AND OF THE STATE OF CALIFORNIA.									
REV	DATE	BY	APP	REC NO	EXPIRES	SEAL HOLDER	DESCRIPTION		
0	2/15/13						ADDENDUM NO. 1		
0	12/07/12						ISSUED FOR SOLICITATION		

DESIGNED BY J. SUSILLO
DRAWN BY M. AL-MASHAT
CHECKED BY J. VALENCIA
IN CHARGE L. MOHR
DATE 12/07/2012



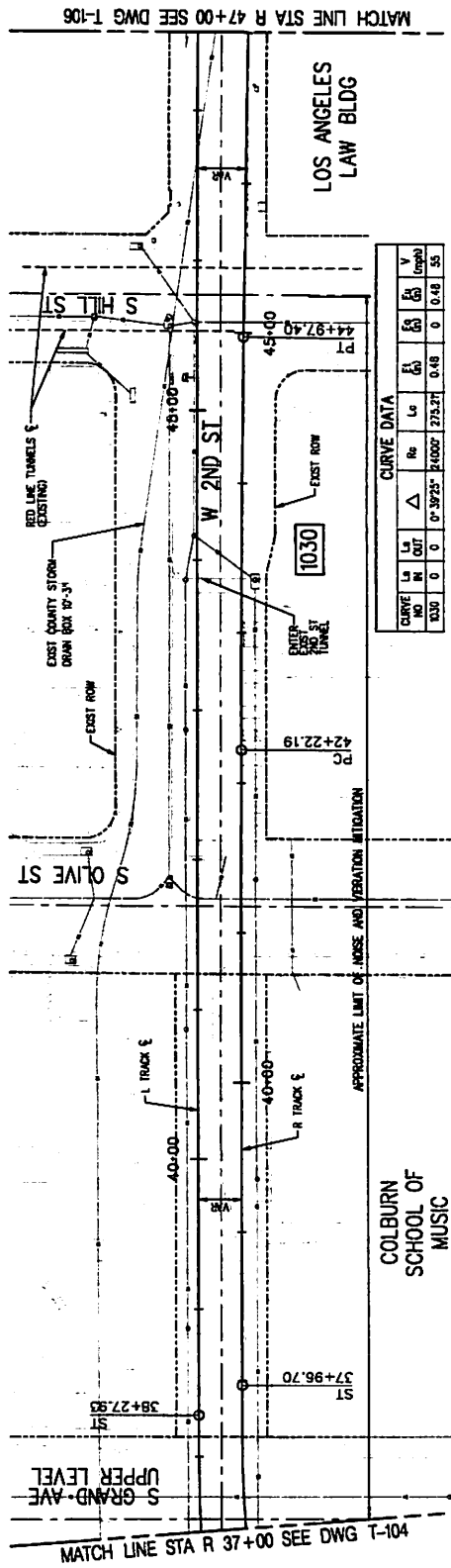
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

377 S. FLORENZA STREET
10TH FLOOR
LOS ANGELES, CA 90007
T 213-343-3200
F 213-343-3264

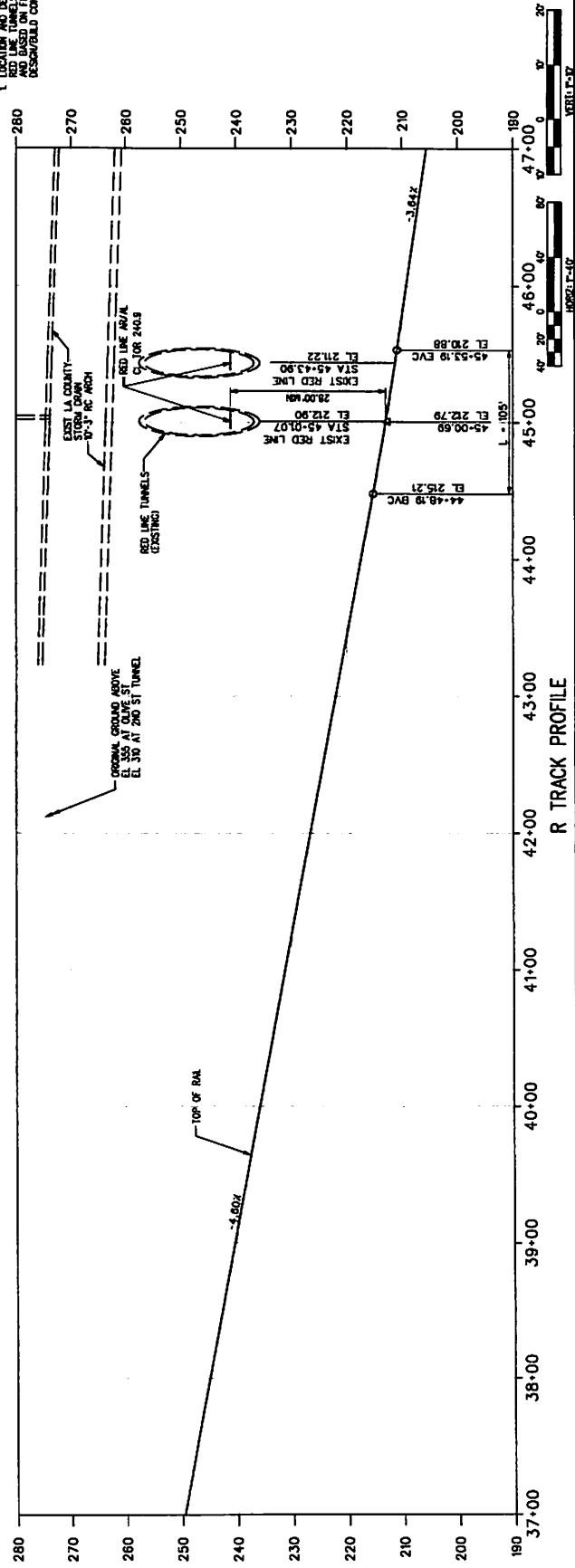
REGIONAL CONNECTOR TRANSIT CORRIDOR
PROJECT DEFINITION DRAWINGS
TRACK ALIGNMENT
PLAN AND PROFILE
STA R 28+00 TO STA R 37+00

CONTRACT NO C0980	REV 1
DRAWING NO T-104	SCALE HORZ: 1" = 40' VERT: 1" = 10'
SHEET NO	

Model Name - DefnA



PLAN



R TRACK PROFILE

NOTES:
 1. LOCATION AND DEPTH OF EXISTING AND PROPOSED TUNNELS ARE APPROXIMATE. CONTRACTOR TO VERIFY.

MATCH LINE STA R 47+00 SEE DWG T-106

MATCH LINE STA R 37+00 SEE DWG T-104

 LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY		REGIONAL CONNECTOR TRANSIT CORRIDOR PROJECT DEFINITION DRAWINGS TRACK ALIGNMENT PLAN AND PROFILE STA R 37+00 TO STA R 47+00	
DESIGNED BY: J. SHELLO CHECKED BY: M. AL-HASHAT DRAWN BY: J. VALENCIA IN CHARGE: J. HARRIS DATE: 12/07/2012		CONTRACT NO: C0980 DRAWING NO: T-105 SCALE: HORIZ: 1" = 40' VERT: 1" = 10' SHEET NO: 1	
THE CONNECTOR PARTNERSHIP 777 S FALCON STREET LOS ANGELES, CA 90007 P: 213-223-2800 F: 213-223-2800		SOCIAL NUMBER: District	
REV	DATE	BY	DESCRIPTION
0	12/07/12		ISSUED FOR SOLICITATION
1	12/15/13		ADDED NO. 1