

Revised Agenda Item No. 7 and Support Material

Commuter Rail and Transit Committee Meeting

March 13, 2014

10:00 a.m.

Location:

San Bernardino Associated Governments
SANBAG Lobby 1st Floor
1170 W. 3rd Street, San Bernardino, CA'

Discussion Calendar

Transit/Commuter Rail

7. Approve Right-of-Entry Permit to access/cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with GMZ Engineering

That the Committee recommend the Board acting as the San Bernardino County Transportation Authority:

1. Approve Right-of-Entry Permit to GMZ Engineering R14146 onto San Gabriel Subdivision, City of San Bernardino, SANBAG mile post 81.54. **Monica Morales**

This agenda item was revised to include updated detailed committee recommendation and attached is a draft of the Right-of-Entry Permit.



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

REVISED AGENDA ITEM: 7

Date: March 13, 2014

Subject: Approve Right-of-Entry Permit to access/cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with GMZ Engineering

Recommendation:* That the Committee recommend the Board acting as the San Bernardino County Transportation Authority:

1. Approve Right-of-Entry **Permit** to GMZ Engineering R14146 onto **San Gabriel Subdivision, City of San Bernardino, SANBAG mile post 81.54.**

Background: Between 1991 and 1993, San Bernardino Associated Governments (SANBAG) acquired the Baldwin Park branchline, the Pasadena Subdivision, and the Redlands branchline, and all railroad rights-of-way, for its commuter rail program. Following the acquisition of these rail assets, SANBAG in 1994 contracted with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to provide property management services. During 2011, SANBAG conducted a procurement to select its own consultant to provide these services followed by the termination of said services with LACMTA. On May 4, 2011, the Board awarded Contract No. C11206 to Epic Land Solutions for management services of SANBAG's rights-of-way.

Historically, the management services provided to SANBAG by the LACMTA have included: environmental due diligence, management of leases, licenses and easements, weed abatement and trash removal, preparing agreements and licenses for utilities and street crossings of the right-of-way, and marketing surplus property. To expedite the provision of these services, SANBAG provided LACMTA

*

Approved
 Commuter Rail and Transit Committee

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	
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Check all that apply.

CRTC1403c-mmm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/ContractsWorkInProgress%20Files%20%202014/R14146.docx>

power-of-attorney to handle these matters on SANBAG's behalf. SANBAG's rail assets portfolio includes approximately one-thousand fifty (1,050) licenses, leases, and agreements that generate roughly \$400,000 in annual revenue. The revenues generated by SANBAG's rail assets are used to fund improvements related to the rail system. Examples of past projects include the restoration of the San Bernardino Depot, San Bernardino Parking Structure, and the restoration of the Upland Lemon Grower's Warehouse.

When SANBAG procured the right-of-way consultant services, SANBAG did not grant Epic Land Solutions, Inc. (Epic) power-of-attorney. Consequently, this Board action is required to authorize SANBAG to enter into or amend any new or existing license, lease, or agreement for the use of SANBAG's property.

The City of San Bernardino currently has a license agreement (RSSB003771) with SANBAG for the Mount Vernon Avenue Bridge which crosses SANBAG rail right-of-way. This right-of-entry grants the City of San Bernardino's contractor, GMZ Engineering, Inc. access to remove existing shoring and installation of replacement temporary shoring for the Mount Vernon Avenue overcrossing at the BNSF Yards. Details include replacing timber shoring footings with concrete. The parts effecting SANBAG rail right-of-way are bents 7 and 8.

It is necessary to refine the boiler-plate license agreements. Staff is currently working with general counsel to develop a policy governing future licenses, leases and agreements for SANBAG's rights-of-way and property. Options would likely include a range of options from continuing to present each new or amended agreement to the Board for action to the Board approving boilerplate documents and delegating authority to the Executive Director or his designee to execute them.

Financial Impact: Approval of this item will result in a one-time \$1,500 administration fee to Epic Land Solutions, Inc. by GMZ Engineering, Inc.

All fees will be collected by Epic on behalf of SANBAG and retained in the SANBAG rail assets trust account until the funds are transmitted to SANBAG's finance department. The revenue may be budgeted in subsequent fiscal years for projects that benefit SANBAG's rail systems/assets.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator are currently reviewing this item and a draft of the right-of-entry/permit.

Responsible Staff: Monica Morales, Transit Specialist
CRTC1403c-mmm

GMSANBAG Contract No.: R14146

Epic File No.: RSSB003773

Subdivision: San Gabriel Subdivision

Milepost(s): 81.54

SANBAG Contract No. R14146

RIGHT-OF-ENTRY PERMIT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

GMZ ENGINEERING, INC.

RIGHT OF ENTRY PERMIT

This PERMIT ("Permit") is made and entered into as of _____ 2014, by and between **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California and acting in its capacity as the San Bernardino County Transportation Commission ("SANBAG") and **GMZ ENGINEERING, INC.**, a corporation in the state of California ("PERMITTEE").

PART I – BASIC PERMIT PROVISIONS

The Basic Permit Provisions provided in this Part I and the Standard Permit Provisions set forth in Part II of this Permit, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this Permit. In the event of conflict between Part I and Part II or of any Exhibits and Attachments, Part I shall control.

Basic Permit Provisions

Part II Section Cross Reference

1. **Parties.**

SANBAG's Address:

SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715

Permittee's Address:

GMZ ENGINEERING, INC.
5739 Kanan Road #134
Agoura Hills, California 91301

Attn: Ghazi Mubarak
Telephone: 909-714-9779
Fax: 818-851-9602
E-mail: gmubarak@gmzeng.com

Contractor License Information and License Number:

License A & B, #967627, Expiration 12/30/2015

This Permit is associated with the following License Agreement and Licensee:

RSSB003772, CITY OF SAN BERNARDINO

Basic Permit Provisions

Part II
Section Cross
Reference

2. Description of the Premises.

§ 1

City/County: San Bernardino, County of San Bernardino
Subdivision: San Gabriel Subdivision

Address or Milepost Location:
SANBAG Mile Post 81.54
SCRRA Mile Post 56.2

Approximate area: 200' x 50'
25,000 square feet; 0.57 acres

See map/diagram in Exhibit "A". In the event of any discrepancies between the descriptions contained in this Part I and Exhibit "A", Part I shall control.)

Description and Dimensions of Premises Area:

A portion of land below the Mount Vernon Bridge northerly of 2nd Street, crossing over rail tracks at San Bernardino station grounds, bridge No. 54C-0066, Bents 7 & 8

3. Allowable Improvements, Facilities and Uses. Permittee shall construct only the following improvements and/or facilities and conduct or permit only the following uses on the premises:

Description of Improvements and/or Facilities ("Improvements"):

Replacement of temporary timber shoring with temporary concrete shoring at bents 7 & 8

Use of the Premises and Permitted Hours of Entry or Work:

Right of Entry for construction and repair purposes to be performed in daylight hours only

4. Term and Hours of Work/Operation.

§ 2

Commencement Date: April 6, 2014

Term End Date: July 8, 2014, with two (2) successive thirty day (30) day extensions, if required, until the work is completed to the satisfaction of SANBAG (Subject to earlier termination pursuant to the terms of this Permit- see especially Standard Permit Provisions §2.2)

Basic Permit Provisions

Part II
Section Cross
Reference
§ 3

5. **Payments. (check all applicable)**

- A. \$ _____ per day, payable in advance.
- B. _____ percent (___%) of the gross revenues from the use of the Premises during the term of this Permit.
- C. \$1,500.00 One -time administrative fee, payable upon issuance of permit.

6. **Security Deposit (if any).** \$ _____ § 4

7. **Insurance Amount.** See Exhibit "B" § 10

8. § 17

IN WITNESS WHEREOF, the Parties identified in Item 1 of this Part I have duly executed this License on the date below, and effective as of the Commencement Date set forth above in Item 4 of this Part I.

LICENSEE: GMZ ENGINEERING, INC.

A California corporation

SAN BERNARDINO ASSOCIATED
GOVERNMENTS, acting in its capacity as
San Bernardino County Transportation
Commission

By:

Ghazi Mubarak
CEO

By:

W.E. Jahn,
President, Board of Directors

Date:

Date:

APPROVED AS TO FORM

By:

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By:

Jeffery Hill
Contract Administrator

PART II – STANDARD PERMIT PROVISIONS

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Exhibits:

- “A” Site Plan of Premises
- “B” Insurance Requirements
- “C” Permitted Hazardous Material
- “D” Additional Provisions

PART II - GENERAL PERMIT PROVISIONS

1. PERMIT TO USE; CONDITION OF PREMISES

- 1.1. Permit. SANBAG hereby permits Permittee to temporarily enter upon and use certain premises (the "Premises") described and consisting of approximately the area described in Item 2 of the Basic Permit Provisions and depicted on the map or site plan attached hereto as Exhibit "A". The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property". This Permit does not create any right to occupy or any tenancy of real property.
- 1.2. Use. The Premises shall be used only for the purposes specified in Item 3 of the Basic Permit Provisions and for such lawful purposes as may be directly incidental thereto and for no other purpose. Permittee shall not permit the Premises to be used for any purpose or in any manner which would render the insurance thereon void or the insurance risk more hazardous than that covered by the terms of this Permit
- 1.3. Condition of Premises. Permittee acknowledges that it has inspected the Premises in its present condition, including, without limitation, all existing environmental conditions. Permittee accepts the Premises "as is" as suitable for the purpose for which the Premises are permitted and assumes all risk with respect to all present conditions of the Premises, including, without limitation, all existing environmental conditions. Entry onto the Premises hereafter by Permittee shall be conclusive to establish that the Premises are in good and satisfactory condition as of that date.
- 1.4. Non-exclusive and Revocable Nature of Permit. The permit granted herein is not exclusive and SANBAG specifically reserves the right to grant other permits within the Premises. Permittee agrees that notwithstanding the Improvements made by Permittee to the Premises or other sums expended by Permittee in furtherance of this Permit, the Permit granted herein is fully revocable by SANBAG in accordance with the terms of this Permit.

2. TERM AND TERMINATION

The term of this Permit shall commence upon the "Commencement Date" specified in Item 4 of the Basic Permit Provisions and shall continue until the "End Date" specified in Item 4 of the Basic Permit Provisions; provided, however, that SANBAG may revoke this Permit and deny further entry onto the Premises in accordance with the provisions hereof, including:

- (a) Without cause and in SANBAG's sole and absolute discretion, by providing Permittee with 24 hours' prior notice; or
- (b) Immediately and without notice upon any breach (Section 8) of this Permit by Permittee.

3. PAYMENTS

3.1. Basic Payments. The sums specified to be paid by Permittee in Item 5 of the Basic Permit Provisions shall constitute "Payments." Upon execution of this Permit, Permittee shall pay to SANBAG such sums as are specified in Item 5.A of the Basic Permit Provisions, if any. If Item 5.B of the Basic Permit Provisions is checked, Permittee shall deliver to SANBAG a business operating statement showing all gross revenues and certified by Permittee as being correct, together with the outstanding amount of the Payment required hereunder, at the address set forth in Item 1 of the Basic Permit Provisions no later than five (5) days after the expiration or earlier termination of this Permit.

[Note: SANBAG may require deposit in advance of preparing the Permit, in which case the amount deposited will be applied to the Payments due at the time of execution or shall be forfeited to SANBAG to pay for SANBAG's administrative costs in negotiating, preparing and/or processing the Permit in the event that the Permit is not consummated, per SANBAG's adopted policies and procedures.]

3.2. Late Charge. Permittee acknowledges that late payment by Permittee of any Payment owed to SANBAG under this Permit will cause SANBAG to incur costs not contemplated by this Permit, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any Payment due from Permittee is not received by SANBAG within five (5) days of when due, Permittee shall pay to SANBAG an additional sum of ten percent (10%) of the overdue Payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that SANBAG will incur by reason of a late payment by Permittee. Acceptance of any late payment charge shall not constitute a waiver of Permittee's default with respect to the overdue payment, nor prevent SANBAG from exercising any of the other rights and remedies available to SANBAG under this Permit, at law or in equity. In addition, any payment not made within 15 days of when due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest legally allowable rate, whichever is lower, until paid in full.

4. SECURITY DEPOSIT

Upon execution of this Permit and in addition to the Payment described in Section 3, SANBAG may require Permittee to pay SANBAG a security deposit in the amount set forth in Item 6 of the Basic Permit Provisions ("Security Deposit"), which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the faithful performance by Permittee of all of the terms, covenants, conditions and obligations of this Permit. If at any time Permittee fails to keep and perform any of the term, covenants, and conditions of this Permit, including making any Payment required hereunder, SANBAG may, at its sole option, apply all or any portion of the Security Deposit to any overdue Payment and/or any loss or damage incurred by SANBAG by reason of Permittee's default or breach. Within a reasonable time after termination of this Permit and after Permittee has vacated the Premises, SANBAG shall return, without interest, said deposit or portion remaining, if any, after deductions for an amount equal to any unpaid Payments and any losses or damage sustained by SANBAG due to any breach or default by Permittee or any damage to the Premises or any failure to restore the Premises to the required condition..

5. TAXES

Permittee shall be liable for and agrees to pay promptly and prior to delinquency any tax or assessment, including but not limited to any possessory interest tax, levied or assessed by any governmental authority: (a) against the Improvements, the Premises and/or any personal property, fixtures, and/or equipment located or placed on the Premises, whether owned by the Permittee, or any person or entity acting for or at the request of Permittee; or (b) as a result of the Permittee's or the Improvements' operations.

6. LIENS

Permittee will fully and promptly pay for all materials joined or affixed to the Premises, and fully and promptly pay all persons who perform labor upon the Premises. Permittee shall not suffer or permit to be filed or enforced against the Premises, or any part thereof, any mechanics', material men's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance, Work, activities, or operations of Permittee, or out of any other claim or demand of any kind. The term "Work" under this Permit means any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal, other than normal maintenance. Permittee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises. Permittee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by SANBAG with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend SANBAG from any and all such obligations and claims, including attorney's fees. Permittee shall furnish evidence of payment upon request of SANBAG. Permittee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to SANBAG in compliance with applicable California law. If Permittee does not discharge any mechanic's lien or stop notice for works performed for Permittee, SANBAG shall have the right to discharge same (including by paying the claimant) and Permittee shall reimburse SANBAG for the cost of such discharge, as well as any associated costs and fees, within ten (10) business days after billing. In such circumstances, SANBAG may, in its reasonable discretion, impose a fee on Permittee of twenty five percent (25%) of the costs of the discharge of the mechanic's lien or stop notice in order to cover administrative costs. SANBAG reserves the right at any time to post and maintain on the Premises such notices as may be necessary to protect SANBAG against liability for all such liens and claims. The provisions of this section shall survive the termination of this Permit.

7. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Permittee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Premises and any other property of, or under the control or custody of, Permittee, which is on or near the Premises. Permittee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Premises, accident or fire or other casualty on the Premises, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the Premises. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other

property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Permittee, on behalf of itself and its officers, directors, affiliates, employees, agents, independent contractors and subcontractors and anyone directly or indirectly employed by or for whose acts Permittee is liable (collectively, "Personnel") as a material part of the consideration for this Permit, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Permittee and/or its Personnel. **In that connection, Permittee waives the benefit of California Civil Code Section 1542, which provides as follows:**

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The provisions of this section shall survive the termination of this Permit.

8. BREACH AND REMEDIES.

8.1 Permittee Default. Permittee shall be deemed to have breached and be in default under this Permit when any of the following occurs:

8.1.1. Permittee shall fail to make any payment herein reserved when due, or any reimbursement to SANBAG required herein when due;

8.1.2. Permittee shall fail to comply with any other term, provision or covenant of this Permit, and shall not cure such failure within three (3) days after written notice thereof to Permittee.

8.1.3. Permittee shall create or maintain, or allow any other person or entity to create or maintain, any public nuisance or any condition that fails to comply with any federal, state, SANBAG or rail operator specifications or safety regulations or that presents a danger to public safety or a safety hazard to any operations, personnel, passengers or property of SANBAG or any rail carrier operating upon the affected rail line(s) on the premises or SANBAG'S adjacent right of way.

8.2. SANBAG'S REMEDIES. should permittee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, sanbag at its option may:

8.2.1. Perform any corrective measures deemed by SANBAG in its sole and absolute discretion to be necessary or appropriate to protect public health or safety, or SANBAG'S legitimate governmental or proprietary interests or the interests of its railroad operators, at Permittee's expense (including fees, costs and interest) which Permittee agrees to pay to SANBAG upon demand; and/or with or without written notice or demand, immediately revoke and terminate this Permit and at any time

8.2.2. Thereafter, deny access to the premises or any part thereof, and expel and remove therefrom by lawful means Permittee and any other person occupying the premises, and again repossess and enjoy the premises, without prejudice to any other remedies

that SANBAG may have under this Permit, at law or equity by reason of Permittee's default or of such revocation and termination.

8.2.3. If SANBAG incurs any cost or expense occasioned by the default of Permittee (including but not limited to attorneys' fees and costs), then SANBAG shall be entitled to receive such costs together with interest on all funds SANBAG expends at the lesser of Eighteen Percent (18%) per annum or the maximum rate allowed by law, whichever is lower, including without limitation, brokers' fees incurred by SANBAG in connection with relicensing the whole or any part of the premises; the costs of removing and storing Permittee's or other's property; the costs of repairing, altering, and/or otherwise restoring the premises to a safe and suitable condition, useable and acceptable to SANBAG and rail operators; and all reasonable expenses incurred by SANBAG in enforcing or defending SANBAG'S right and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

8.2.4. All rights, privileges and remedies of SANBAG are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein.

9. INDEMNIFICATION

9.1. Permittee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all its capacities, and its commissioners, officers, directors, employees, members, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Permittee, or its Personnel (as defined in Section 7, Assumption of Risk and Waiver) or invitees of Permittee in connection with the SANBAG Property or arising from the presence upon or performance of activities by Permittee or its Personnel with respect to the SANBAG Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Permittee or its Personnel, or (iii) non-performance or breach by Permittee or its Personnel of any term or condition of this Permit, in each case whether occurring during the Term of this Permit or thereafter.

9.2. The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Permit. Upon request of SANBAG, Permittee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Permit.

- 9.3. Claims against the Indemnites by Permittee or its Personnel shall not limit the Permittee's indemnification obligations hereunder in any way, whether or not such claims against Indemnites may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for Permittee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.
- 9.4. The indemnification and defense obligations of Permittee set forth in this section shall survive the termination of this Permit.

10. INSURANCE

- 10.1. SANBAG's Insurance. SANBAG may maintain insurance covering the Premises and SANBAG's ownership and operation thereof in such types and amounts as it deems necessary in its sole discretion. Such insurance shall be for the sole benefit of SANBAG and under its sole control. Permittee's insurance policies shall provide primary coverage to SANBAG; when any such policy issued to SANBAG provides duplicate coverage or is similar in coverage, SANBAG's policy will be excess over Permittee's policies.
- 10.2. Permittee's Insurance. Permittee, at its sole cost and expense, shall obtain and maintain in full force and effect during the term of this Permit insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". SANBAG reserves the right, throughout the term of this Permit, to review and change the amount and type of insurance coverage it requires in connection with this Permit or Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, Permittee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Permittee under this Permit. Self-insurance is not permitted. However, SANBAG may, in its sole and absolute discretion, permit self-insurance on a case by case, coverage by coverage, basis where the Permittee has documented, to SANBAG's sole satisfaction, sufficient available assets and/or available funds and sufficient legal security in those assets to assure SANBAG that its risk is not greater than it would have been with acceptable insurance coverage, and otherwise meeting SANBAG's self-insurance requirements. The privilege to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by SANBAG at its sole and absolute discretion at any time. Upon revocation of self-insurance privilege, Permittee shall immediately provide all required insurances.
- 10.3. Increases to Insurance. If any increase in the fire and extended coverage insurance premiums paid by SANBAG is caused by Permittee's use and occupancy of the Premises, or if Permittee vacates the Premises and causes any increase in such premiums, then Permittee shall pay as an additional fee the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at Permittee's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

11. MAINTENANCE AND REPAIR

Permittee, at Permittee's sole expense, shall during the Term of this Permit maintain any improvements on the Premises in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisances, and shall perform all maintenance and clean-up of the Premises as necessary to keep the Premises in good order and condition, to SANBAG's satisfaction. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the Premises by Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees, consultants, and contractors (collectively, "Permittee's Parties"), including but not limited to damage arising from any tests or investigations conducted upon the Premises, Permittee shall, at its own cost and expense, immediately repair all such damage and restore the SANBAG Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Permittee or Permittee's Parties. Permittee shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SANBAG or the railroads with valid operating authority over SANBAG's lines.

12. ALTERATIONS AND CONSTRUCTION

Except as otherwise provided herein, Permittee shall make no alterations, additions or improvements to the Premises without obtaining the prior written consent of SANBAG in each instance. Any Work performed or caused to be performed by Permittee on the Improvements or the Premises shall be performed (a) at Permittee's sole cost and expense; (b) in accordance with any and all applicable permit requirements, laws, rules, regulations and safety requirements (including SANBAG's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such Work, and (ii) satisfactory to SANBAG. Prior to commencement of any Work on the Premises, Permittee shall submit Work plans to SANBAG for review and approval. Permittee shall notify SANBAG in writing at least 14 (14) calendar days prior to the commencement of any Work in or about the Premises. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility. If SANBAG consents to the construction of improvements by Permittee, all such Work shall be carried out in compliance with any and all SANBAG rules, regulations and requirements.

13. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Permittee performing Work on the Improvements or the Premises shall first be approved in writing by SANBAG and acquire all required right of entry permits and authorizations from SANBAG and any rail operator utilizing affected or adjacent railroad tracks. With respect to such Work, Permittee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by SANBAG, in the amounts and coverage specified on and issued by insurance companies as described on Exhibit "B". Additionally, Permittee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) may, for any reason, need to enter onto the Premises, to obtain and maintain in full force and effect during the Term of this Permit, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the

amounts and coverage specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves the right, throughout the Term of this Permit, to review and change the amount and type of insurance coverage it requires in connection with this Permit or the Work to be performed on the Premises.

14. REIMBURSEMENT

Permittee agrees to reimburse SANBAG for all reasonable costs and expenses that SANBAG incurs in connection with Work on or maintenance of the Premises or the Improvements, including, but not limited to, costs incurred by SANBAG in furnishing any materials or performing any labor, reviewing Permittee's Work plans and/or inspecting any Work, installing or removing protection beneath or along SANBAG's tracks, furnishing of watchmen, flagmen and inspectors as SANBAG deems necessary and such other items or acts as SANBAG in its sole discretion deems necessary to monitor or aid in compliance with this Permit, protect the safety of, and railway operations upon, its tracks and right-of-way, and to otherwise protect its interests. The costs and expenses addressed in this Section 14 shall include all costs that SANBAG incurs in complying with the Work or maintenance requirements of the railroads with valid operating authority over SANBAG's lines.

15. LANDSCAPING

If required by SANBAG, then Permittee, at its sole cost and expense, shall install barrier landscaping to shield the Improvements from public view. SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping activities shall be done in accordance with the provisions of Section 12 above (Alterations and Construction).

16. MARKERS

Except as modified by any additional provisions attached at Exhibit "D", project markers in form and size satisfactory to SANBAG, identifying the Improvements and their owner(s), shall be installed and constantly maintained by and at the expense of Permittee at such locations as SANBAG shall designate. Such markers shall be relocated or removed upon request of SANBAG without expense to SANBAG. Absence of markers in or about SANBAG Property does not constitute a warranty by SANBAG of the absence of subsurface installations.

17. COMPLIANCE WITH LAWS

Permittee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its Work on, or maintenance, inspection, testing or use of, the SANBAG Property, and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. Permittee shall obtain all required permits or leases required by any governmental authority for its use of the Premises, at its sole cost and expense. Subject to SANBAG's approval, Permittee shall at its own cost and expense install and construct all physical improvements to or needed to serve the Premises that are required by any federal, state or local building code or other law or regulation applicable to the Premises, or that are made necessary by the nature of Permittee's use of the Premises. Permittee shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at Permittee's sole expense.

18. SANBAG'S RIGHT OF ACCESS

- 18.1. Inspections. SANBAG shall have the right at any time (upon provision of reasonable notice of inspection to Permittee) or in case of emergency (without notice), to inspect the Premises in order to protect SANBAG's interests therein and to monitor compliance with this Permit and all applicable federal, state and local laws, regulations, rules and orders.
- 18.2. Tests. If, in SANBAG's sole judgment, any installation on, or use or condition of the Premises may have an adverse effect on the Premises, adjacent property or SANBAG's operations, SANBAG shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the Premises, as it determines to be necessary or useful to evaluate the condition of the Premises. Permittee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.
- 18.3. Costs. Permittee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective Work, maintenance and inspections thereafter.
- 18.4. Sale or Lease of Premises. SANBAG may at any time place on or about the Premises (including any improvements) any ordinary "for sale" and "for lease" signs. Permittee shall also permit SANBAG and its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours, to show the Premises to prospective tenants, purchasers or mortgagees.

19. ENVIRONMENTAL ASSESSMENT

Upon execution of this Permit, SANBAG may, in its sole discretion and if applicable, require Permittee to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Permittee's and Permittee's Parties' business activities and prepare a report on Permittee's and/or Permittee's Parties' compliance with the provisions of this section. SANBAG may, if applicable, require Permittee to cause a similar environmental assessment to be conducted on an annual basis, and/or upon or within one (1) year after the expiration or earlier termination of this Permit, the cost of which shall be the sole responsibility of Permittee. Permittee shall provide a copy of the report or reports from the consultant(s) promptly to SANBAG upon receipt, and upon request shall promptly provide to SANBAG a copy of all data, documents and other information prepared or gathered in connection therewith.

20. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY

- 20.1. Permittee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises to be in violation of any, Environmental Law which is now or may hereafter become applicable to Permittee or the Premises. As used herein, "Environmental Law" means any federal, state or local environmental, health and/or safety-related laws, regulation, standard, decision of a court, permit or permit

condition, currently existing or as amended or adopted in the future. Except for Hazardous Material expressly approved by SANBAG in writing as shown on Exhibit "C", Permittee shall not cause or permit, or allow any of Permittee's employees, agents, customers, visitors, invitees, licensees or contractors to cause or permit, any Hazardous Material to be brought upon, stored, used, generated, treated or disposed of on or about the Premises. Any Hazardous Material on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Material" means any chemical, substance or material, including any mixture or solution, which by virtue of its properties or effects is potentially harmful to health, safety or property, or which is now or becomes in the future listed, defined or regulated in any manner under any Environmental Law as a hazardous or dangerous material or substance.

20.2. Permittee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 9, Indemnification) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Permittee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Material upon or from the Premises or contamination of the Premises or adjacent property (i) which occurs due to the use and occupancy of the Premises by Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors, or (ii) which is made worse due to the act or failure to act of Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors.

20.3. The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Permit; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Permit.

20.4. In addition, in the event of any release on or contamination of the Premises, Permittee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the Premises and all affected adjacent property – whether or not owned by SANBAG) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover.

21. PERMITTEE'S COVENANTS

Permittee shall:

- (a) Deliver, at least five (5) days prior to any entry onto the Premises, written notice to SANBAG of its intention to enter the Premises, the proposed date and time of such entry and the nature, specific location and scope, of any proposed activity upon the Premises. Permittee may enter only on the dates and times specified in such notices.

- (b) Enter upon and use the Premises in such manner and at such time as shall not endanger or interfere with SANBAG's operations and in accordance with the regulations of SANBAG and instructions of SANBAG's representative. Permittee shall submit to SANBAG for approval all Work details and incidentals insofar as they affect SANBAG.
- (c) Provide and maintain, at Permittee's expense, from providers approved by SANBAG, competent flagmen to protect and control movement of vehicles and equipment of Permittee or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection.
- (d) Notify SANBAG within three (3) days after all entry onto the Premises hereunder is completed.
- (e) Keep all equipment, tools and materials stored at least twenty (20) feet from the center line of any operable track. Explosives or other highly inflammable substances will not be stored on the Premises without the prior approval of SANBAG's representative.
- (f) Reimburse SANBAG for all cost and expense incurred by SANBAG in connection with said entry onto the Premises, including without limitation the expense of furnishing such inspectors, watchmen and flagmen as SANBAG deems necessary and installation and removal of falsework beneath tracks.

22. BROKER'S FEES

Permittee agrees to indemnify and hold SANBAG harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Permittee with regard to obtaining this Permit.

23. SUBORDINATE RIGHTS

This Permit is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property or any portion thereof in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, operate, maintain, use and/or relocate existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property or any portion thereof. This Permit is subject to all licenses, leases, easements, reservations, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the Premises now or hereafter, and this Permit is executed and delivered by SANBAG without any warranty of title, express or implied, and the words "grant" or "convey" as used herein shall not be construed as a warranty of title or as a covenant against the existence of any such title exception.

24. GENERAL PROVISIONS

- 24.1. Notices. All notices and demands which either of the Parties is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to the other Party at its address set forth in the Basic Permit Provisions. Either of the Parties may change its address for the receipt of notice by giving written notice thereof to the other Party in the manner herein provided. Notices shall be effective only upon receipt by the Party to whom notice or demand is given.
- 24.2. Governing Law. This Permit shall be governed by the laws of the State of California.
- 24.3. Binding Effect. The terms, provisions and covenants and conditions contained in this Permit shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. If more than one person executes this Permit as Permittee, then each shall be jointly and severally liable for all obligations of Permittee hereunder.
- 24.4. No Third Party Beneficiaries. This Permit is not intended by either party to confer any benefit on any third party other than the constituent members of SANBAG, including without limitations any broker, finder, or brokerage firm.
- 24.5. Severability. If any term, covenant, condition or provision of this Permit, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Permit, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 24.6. Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG that is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due SANBAG as it accrues. Payment of such interest shall not excuse or cure any default by Permittee under this Permit, provided, however, that interest shall not be payable on late charges incurred by Permittee.
- 24.7. Captions. The captions included in this Permit are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Permit or any provision hereof, or in any way affect the interpretation of this Permit.
- 24.8. Survival of Obligations. All obligations of Permittee hereunder not fully performed as of the expiration or earlier termination of the Term of this Permit shall survive the expiration or earlier termination of this Permit, including without limitation all indemnity and defense obligations, all payment obligations with respect to Payments and all obligations concerning the condition of the SANBAG Property.

- 24.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this Permit shall not invalidate this Permit, nor shall it be considered a waiver by it of any other covenant or condition or of the same covenant or condition in another instance. To the extent patterns of practice between the Parties are inconsistent with the terms of this Permit, such patterns of practice shall not waive in part or in full SANBAG's right to insist upon strict accordance with any of the provisions of this Permit. The subsequent acceptance of Payments hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Permittee of any provisions, covenant, agreement or condition of this Permit, other than the failure of Permittee to pay the particular Payment so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such Payment.
- 24.10. Effective Date/Nonbinding Offer. Submission of this Permit for examination or signature by Permittee does not constitute an offer or option for a permit, and it is not effective as a permit or otherwise until executed and delivered by both SANBAG and Permittee. Each individual executing this Permit on behalf of SANBAG or Permittee represents and warrants to the other Party that he or she is authorized to do so.
- 24.11. Nontransferable Permit. This Permit and the permit granted herein are personal to Permittee. Permittee shall not assign or transfer (whether voluntary or involuntary) this Permit in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed. Any attempted act in violation of the foregoing shall be void and without effect and be a material breach of this Permit, which gives SANBAG the right to immediately terminate this Permit and seek all other available remedies for breach.
- 24.12. Entire Agreement; Amendments. This Permit, including all attached Exhibits, constitutes the entire agreement between the Parties and supersedes all prior verbal or written agreements and understandings between the Parties with respect to the items set forth in this Permit. The Parties each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by either SANBAG or Permittee, or anyone acting on behalf of SANBAG or Permittee, other than those contained in this Permit. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this Permit shall be binding unless in writing and duly executed by SANBAG.
- 24.13. Attorneys' Fees. If either SANBAG or Permittee commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with this Permit or the Premises, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith. If SANBAG becomes involved in any action, threatened or actual, by or against anyone not a party to this Permit, but arising by reason of or related to any act or omission of Permittee or Permittee's Parties, Permittee agrees to pay SANBAG's reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

- 24.14. Nondiscrimination. Permittee certifies and agrees that all persons employed by Permittee and/or Permittee's affiliates, subsidiaries, or holding companies, and any contractors retained by Permittee with respect to the Premises, are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.
- 24.15. Further Acts. Permittee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Permit.
- 24.16. Time of Essence. Time is of the essence for this Permit.
- 24.17. Certificates. Permittee agrees from time to time within ten (10) days after request of SANBAG, to deliver to SANBAG, or SANBAG's designee, all financial statements for the previous three (3) fiscal years of Permittee, and an estoppel certificate stating that this Permit is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this Permit and such other matters pertaining to this Permit as may be requested by SANBAG.
- 24.18. Security Measures. Permittee hereby acknowledges that the Payments payable to SANBAG hereunder do not include the cost of guard service or other security measures, and that SANBAG shall have no obligation whatsoever to provide same. Permittee assumes all responsibility for the protection of Permittee, Permittee's Parties and their property from acts of third parties.
- 24.19. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Permit.
- 24.20. No Recording. Permittee shall not record or permit to be recorded in the official records of the county where the Premises is located, this Permit, any memorandum of this Permit or any other document giving notice of the existence of this Permit or the right-of-way permit granted hereby.
- 24.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Permittee shall maintain, at Permittee's expense, competent flagmen to protect and control movement of vehicles and equipment of Permittee or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection, including the rules and policies of SANBAG

and/or any railroad operator having rights to utilize any affected or adjacent railroad tracks.

- 24.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard Permit Provisions, the provisions in Exhibit "D" shall control.

Exhibit "A"

Site Plan of Premises

[To Be Inserted]

Exhibit "B"

INSURANCE REQUIREMENTS FOR RIGHT-OF-ENTRY PERMIT

Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of SANBAG property hereunder by Permittee, its agents, representatives, employees or subcontractors.

Minimum Scope of Insurance (Check all applicable boxes)

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any tenant improvements or betterments.
- Insurance Services Office Railroad Protective Liability
- Contractor's Pollution Liability with coverage for:
 - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

Permittee shall maintain limits no less than:

- General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage.
- If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- Course of Construction: Completed value of the project.
- Property Insurance: Full replacement cost with no coinsurance penalty provision.
- Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- Contractors Pollution Liability: \$1,000,000 per occurrence/\$2,000,000 annual aggregate.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by SANBAG. At the option of SANBAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG, its officials, employees, members, affiliated entities, contractors, consultants, authorized rail operators and agents ("Related Parties"); or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Exhibit "B"

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SANBAG, its Related Parties are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Permittee; products and completed operations of Permittee; premises owned, occupied or used by Permittee; and automobiles owned, leased, hired or borrowed by Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, or its Related Parties.
2. For any claims related to this project, Permittee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG, or its Related Parties shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG, or its Related Parties.
4. Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG.

All insurance policies, including without limitation, Workers' Compensation and Employer's Liability policies, shall contain or be endorsed to include a waiver of subrogation in favor of SANBAG and its Related Parties.

Course of construction policies shall contain the following provisions:

1. SANBAG shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by SANBAG.

Verification of Coverage

Permittee shall furnish SANBAG with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the SANBAG before Work commences. As an alternative, Permittee may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Contractors and Subcontractors

Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by SANBAG.

Exhibit "C"

Permitted Hazardous Material

No hazardous material is permitted to be used or stored on the Premises

Exhibit "D"

ADDITIONAL REQUIREMENTS

The following Additional Requirements are imposed on the Tenant/Licensee/Permittee and all of its contractors, subcontractors, employees, laborers or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee, and are made part of the terms of the Lease/License/Permit to which this Exhibit D is attached ("Agreement").

As used hereinafter, the term "Contractor" shall include the Tenant/Licensee/Permittee and each and every one of its contractors, subcontractors, employees, laborers, agents or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee; and the term "railroad operator" or "operating railroad" shall mean Southern California Regional Rail Authority (SCRRA), Burlington Northern Santa Fe Railroad Railway Company (BNSF) and/or any other railroad company or rail carrier having operating rights over rail lines owned or controlled by SANBAG.

Contractor shall fully comply with each and every one of the Additional Requirements below which is in any way applicable to the type of use, construction, installation or facility allowed under the Contractor's Agreement and approved by SANBAG as required thereunder ("Permitted Use"). The inclusion of an Additional Requirement below that is not in any way applicable to the Contractor's Permitted Use shall not imply any right, permission or consent to expand the Permitted Use in any way.

1. Contractor agrees to execute and deliver to each railroad operator prior to commencing any work within the rail right-of-way, a railroad Right of Entry Agreement which will include agreement to abide by each railroad operator's rules and requirements for construction on railway property. Contractor shall secure approval from SANBAG and each railroad operator of the design of any structures and facilities prior to commencing work on their construction or installation.
2. Contractor will acquire and comply with any and all additional permits required by the railroad operator(s), affected public utilities and/or by any government agency having jurisdiction. Any permit fees, inspection fees, flagging fees, or costs associated with the use or maintenance of the Premise by any governmental agency, department, or organization, and any labor expenses for the installation or maintenance of any permitted improvements are the Contractor's sole responsibility. Fully conformed copies of all permits are to be provided to SANBAG. Additional permits required of the Contractor may include but are not limited to encroachment permits, Storm Water Pollution Prevention Plans, environmental permits, temporary use permits, regulatory permits and third party utility permits. Contractors shall have all original executed agreements and permits on hand while on site and will present them on demand of representative of SANBAG and/or the railroad operator(s). Prior to the commencement of work, the contractor shall submit to SANBAG for review and approval, a description of the work process including a detailed schedule of all work activities to be carried out on SANBAG property.

[For convenience only, SANBAG provides the following telephone numbers for inquiries and information: SCRRA's Right of Way Engineers Office - (909) 394-3418; BNSF's Roadmaster Office - (909) 386-4061]

3. Contractor at its sole cost and expense shall obtain and maintain, in full force and effect, insurance, as required by SANBAG and the railroad operator(s) during the entire construction period. The Contractor shall furnish copies of the insurance certificates to SANBAG and all affected railroad operators.
4. Contractor agrees to comply with instructions of SANBAG and each railroad operator's Employee-In-Charge (EIC) and other representatives in relation to the proper manner of protection of the tracks and the traffic moving thereon, pole lines, signals and other property of

Exhibit "D"

SANBAG or its member agencies, tenants or licensees at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operations of railroad operators or of SANBAG's track and other facilities.

5. Contractor will call the appropriate operating railroad to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate schedules, prior notification does not guarantee the availability of protective/flagging services for the proposed date of work. The SCRRA/BNSF flagman/EIC has sole authority to protect safe railroad operations and infrastructure, therefore, only they and their representatives are permitted to perform flagging operations within the railroad right-of-way. At all times the contractor shall follow the flagman/EIC's direction. Contractor's work may not proceed in the absence of a flagman in accordance with applicable rules. At no time shall any contractor be permitted to cross any track or place or maintain any personnel or equipment within the railroad right-of-way without the permission of the railroad flagman.

SCRRA's Flagging Office (213) 305-8424
BNSF's Flagging Office (909) 386-4061

6. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete SCRRA's/BNSF's Third Party Safety Training course, which is required for all work near or within the railroad right-of-way. Evidence of training must be supplied upon request of SANBAG and its representatives. No work may commence on the railroad right-of-way until this training has been completed. The contractor shall make the necessary arrangements for each equipment operator to have constant and direct radio contact with their foreman. The foreman will in turn have constant and direct contact with the SCRRA/BNSF flagman/EIC.
7. Contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines, structures and improvements. Contractor shall not damage, destroy or interfere with any existing encumbrances, licenses and rights (whether public or private), granted upon or relating to the railroad right-of-way. It shall be the Contractor's responsibility to contact Underground Alert and locate all underground facilities prior to the commencement of construction. At the same time, the contractor shall notify the operating railroad for signal and communications cables and conduits mark-outs. Contractor shall obtain permission from the owners of any fiber optic, gas, electrical, water, oil or other lines which may be impacted by work on or any use of the Premises by Contractor.

SCRRA Signal Department (909) 592-1346
BNSF Signal Department (909) 386-4051

8. **In case of signal emergencies or grade crossing problems, the contractor shall call the following emergency numbers.**

SCRRA Signal Emergency Department (888) 446-9721
BNSF Signal Emergency Department (909) 386-4051

9. Contractor shall prepare and submit traffic control plan for SANBAG/SCRRA approval for projects that will affect vehicular traffic at an existing highway-rail grade crossing.
10. If SANBAG or any of its associated rail entities or railroad operators deem it necessary in the future, to modify, or to build additional, track or tracks or other facilities in connection with the

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operation of its railroad, at the request of SANBAG, contractor shall modify, at its own expense, any or all of its permitted facilities to conform to the rail facilities.

11. Both Contractor and SANBAG acknowledge that the Premises is Licensed in "AS IS" condition and any track removal, grading, paving and fencing as may be necessary or required to meet Contractor's needs will be the sole responsibility and at the sole cost of the Contractor and subject to SANBAG's and any affected operating railroad's prior review and approval, which may be withheld in SANBAG's or the affected operating railroad's sole and absolute discretion. SANBAG or the affected operating railroad may require that any track removal and/or other work within the right-of-way be done by SANBAG or the railroad operator, respectively, but all such work shall remain at the sole cost of the Contractor, who may be required to deposit the estimated cost plus 25% in advance of the work, subject to refund or additional charge at the conclusion of the work. No permanent structures may be constructed on the premises without SANBAG's prior written approval. Contractor will be responsible for the removal of any or all permitted improvements upon termination of Agreement as directed by SANBAG.
12. Contractor shall pay for any and all utilities for its benefit, security and use.
13. SANBAG makes no warranties as to the suitability of the location for Contractor's intended use, and Contractor assumes all risks as to environmental compliance, zoning, visibility, or any other factors which may affect Contractor's intended use of the premises.
14. Boring of carrier or direct burial utilities by directional boring methods is prohibited.
15. Signs are not permitted on or along the perimeter of the Premises unless such signs were requested and approved under Contractor's original proposal and covered by the required insurance. The contractor shall install permanent signs identifying the location of pipes at the edge of the railroad right-of-way unless within a public grade crossing.
16. Contractor shall construct a temporary fence along the railroad right-of-way, or along the edge of pits closest to the track, on both sides of the pit, extending 50-feet in both directions from the pit, and measuring a minimum of 6-feet high. Fences are not required for work at grade crossings. Contractor shall pave the Premises area with asphalt or concrete, when requested, around the entire perimeter of the property as described in the Agreement in Part I and Exhibit "A". Contractor shall be responsible for total expense of fencing and asphalt.
17. Contractor shall not bring upon or use any import soil on the Premises in conjunction with any purposes allowed under this Agreement, until said import soil has been laboratory tested by a certified hazardous waste testing laboratory and the test results have been approved by SANBAG. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as clean soil to the reasonable satisfaction of SANBAG. All soil piles are to be placed on a barrier to prevent intermingling with surface soils.
18. Contractor shall keep the Premises free and clear of weeds, trash, vegetation, unauthorized vehicle parking and graffiti and from occupancy by transients/homeless persons or individuals. Contractor shall be fully responsible for all maintenance and maintenance of adjoining SANBAG property that is required or necessary in connection with Contractor's use of Premises.
19. Prior to commencement of construction, the contractor shall submit to SANBAG / SCRRA a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location and a milestone schedule.

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20. For pipelines carrying flammable or hazardous materials, the contractor shall adhere to special conditions stated in the Right of Entry (ROE) Agreement.
21. The jacking and receiving pits shall be constructed outside of the railroad right of way unless shown on the SANBAG approved plans and shall not be located between any track and the automatic signal gate arms. The contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG/SCRRA inspector has approved the layout will the Contractor be allowed to begin work.
22. All jack and bore operations within the railroad right-of-way shall be performed continuously on a 24-hour basis until work is completed with a SCRRA/BNSF flagman and SCRRA/BNSF inspector present at all times. Should work begin without the flagman and inspector present, the work will be halted and any casing installed will be abandoned in place, pressure grouted full, and capped to the satisfaction of SANBAG.
23. The contractor shall submit to SANBAG/SCRRA for review, drawings and calculations for any shoring that may affect or be influenced by the railroad tracks. All shoring designs shall comply with the requirements of, and be approved by, SANBAG and/or the affected operating railroad. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
24. Prior to commencement of work, the contractor shall submit to SANBAG/SCRRA for review, load calculations for the proposed jacking casing with applied load as defined by Cooper E-80 with a 50% added impact load. The calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
25. Should ground water or loose or unstable soils conditions be encountered during construction, the contractor shall immediately stop work, notify the railroad flagman, provide necessary structural support to track and other railroad structures, and notify the affected operating railroads and SANBAG. It shall be the responsibility of the contractor to make necessary corrections to the construction process to allow for said conditions.
26. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe". Said casing pipe shall be installed across the entire width of the railroad right-of-way and shall extend beyond the right of way a minimum of 10-feet. The top of the casing shall have a minimum depth of 6-feet below the top of tie and a minimum depth of 5-feet below ground surface including bottom of ditches and other low points within the railroad right-of-way. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG. Casing and carrier pipes shall be constructed to prevent leakage of any substance. When casing pipes are sealed at each end, vent pipes shall be installed. All casing pipes shall be installed with a minimum slope of 1%. Installation of casing pipes by open trenching is prohibited.
27. Abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full for the entire length of the pipe. Should there be no casing pipe; the abandoned pipe shall be pressure grouted full the entire length of the pipe. A SANBAG / SCRRA inspector must be present during the grouting process.
28. Casing jacking shall adhere to the following requirements:

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- a. This method shall be in accordance with the American Railway Engineering and Maintenance of Way Association recommended practices, Volume 1, Chapter 1, Part 4, "Earth Boring and Jacking Culvert Pipe Through Fills." This operation shall be conducted without hand-mining ahead of the pipe and without the use of any type of boring, auguring, or drilling equipment.
 - b. Bracing and backstops and jacks shall be designed and used with sufficient rating so that the jacking can progress without stoppage (except for adding lengths of pipe) until the leading edge of the pipe reaches the receiving pit.
 - c. During jacking, an earth plug 1.5 times the diameter of the casing shall be maintained at all times. Jacking operations shall be continuous on a non-stop, 24-hour per day basis until the jacking operation is completed.
29. Casing boring shall adhere to the following requirements:
- a. This method consists of pushing the pipe into the fill with a boring auger rotating within the pipe to remove the spoil. When augers or similar devices are used for casing replacement, the front of the pipe shall be provided with mechanical arrangements or devices that will positively prevent the auger from leading the casing so that there will be no unsupported excavation ahead of the casing. The auger and cutting head arrangement shall be removable from within the pipe in the event an obstruction is encountered. The over-cut by the cutting head shall not exceed the outside diameter of the pipe by more than one-half inch. The face of the cutting head shall be arranged to provide reasonable obstruction to the free flow of soft or poor material.
 - b. The use of water or other liquids to facilitate casing placement and /or spoil removal is prohibited.
 - c. Plans and descriptions of the auger stop arrangement to be used shall be submitted to SANBAG / SCRRA for approval prior to commencement of work.
 - d. Any method which employs simultaneous boring and jacking or drilling and jacking for pipes over 8-inches in diameter that does not adhere to the above requirements will not be permitted. For casings 8-inches and smaller in diameter, augering or boring without the same requirements may be considered if approved by SANBAG/SCRRA.
30. If an obstruction is encountered during installation of the casing pipe that will stop the forward action of the pipe, and it becomes evident that it is impossible to advance the pipe, operations will cease and the pipe shall be abandoned in-place and pressure grouted full before continuing with work. Location, length, and depth of abandoned casing pipes and carrier pipes shall be shown on the as-built drawings.
31. Bored or jacked installations shall have a bored-hole diameter essentially the same as the outside diameter of the casing plus the thickness of the protective coating. If voids should develop or if the bored-hole diameter is greater than the outside diameter of the casing pipe, plus coating, by more than approximately 1-inch, grouting or other methods as approved by SANBAG/SCRRA shall be employed to fill such voids.
32. Pressure grouting of the soils before or during jacking or boring may be required to stabilize the soil, control water, prevent loss of material, and prevent settlement or displacement of the ground and/or tracks. Grout shall be cement, chemical or other special injection material selected to accomplish the necessary stabilization. The grouting contractor shall be a specialist in the field with a minimum of 5-years continuous experience of successfully grouting soil. Materials to be used and the method of injection shall be prepared by a California licensed Geotechnical Engineer, or by an experienced and qualified company specializing in this work and submitted for

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approval by SANBAG/SCRRA prior to the commencement of work. Proof of experience and competency shall accompany the submission.

33. When water is known or expected to be encountered, pumps of sufficient capacity to handle the flow shall be maintained at the site and be constantly attended operationally on a 24-hour per day basis until the SANBAG/SCRRA inspector determines their operation can be safely halted. When dewatering, close observation shall be maintained to detect any settlement or displacement of track, ground, or facilities.
34. The dewatering system shall lower and maintain the ground water level a minimum of 2-feet below the invert at all times during construction by utilizing well points, vacuum well points, or deep wells to prevent the inflow of water or water and soil into the heading. Ground water observation wells may be required to demonstrate that the dewatering requirements are being complied with.
35. The proposed methods of dewatering shall be submitted to SANBAG/SCRRA prior to the commencement of work. The discharge from the dewatering operations in the vicinity of the railroad shall be carefully monitored. Should excessive fine soils particles, pollutants, or hazardous materials or fluids be observed at any time during the dewatering process, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG/SCRRA inspector.
36. All backfilling shall be at 90% relative dry compaction. For areas within or that affect the railroad right-of-way, the contractor shall submit a compaction report prepared by a California licensed Geotechnical Professional Engineer prior to release of any deposited fund balance.
37. The Contractor shall remove all temporary facilities constructed on the railroad right-of-way, debris, and other items not originally at the site prior to construction and shall notify SANBAG and any affected operating railroad that all construction has been completed. After as-builts have been received, SANBAG inspects the construction site and signs-off the work, SANBAG will release any unused deposit funds it holds. Contractor shall be responsible to arrange refunds due from any affected operating railroads.
38. A minimum of five feet (5') clearance is required above signal and communication lines for overhead crossings.
39. Poles for any use within the railroad right-of-way must be located fifty-feet (50') out from the centerline of the railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole locations adjacent to industry track must provide at least a ten foot (10') clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at the rate of 1.5 inches per degree of curved track.
40. Regardless of the voltage, un-guyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground-line plus ten feet (10'). If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.
41. Poles must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5 kV and higher) must be located off railroad right-of-way.

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- 42. Grade crossings or temporary grade crossing must not be installed under or within five-hundred feet (500') of the end of any railroad bridge, or three hundred feet (300') from the centerline of any culvert or switch area.
- 43. For overhead crossings, complete spanning of the property is encouraged with supportive structures and appurtenances located outside of the railroad property. For electric supply and communication lines, normally the crossing span shall not exceed one-hundred fifty-feet (150') with adjacent span not exceeding 1.5 times the crossing span length. For heavier type construction, longer spans will be considered.
- 44. To ensure that overhead crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of twenty-eight feet (28'). Electric lines must have a florescent ball marker on low wire over centerline track.
- 45. The utility owner will label the poles closest to the crossing with the owner's name and telephone number for emergency contact.
- 46. Overhead flammable and hazardous material lines are prohibited.
- 47. Because inductive interference from certain types of lines have the potential to disrupt the railroad signal and communication systems causing failures with the signals, communication, and at-grade crossing warning devices, SANBAG may require that an inductive coordination study be performed prior to approval of the permitted use at the expense of the utility owner for proposed electrical lines crossing tracks.
- 48. Joint-use construction is encouraged at locations where more than one utility or type of facility is involved. However, electricity and petroleum, natural gas or other flammable materials shall not be combined.

Contractor	SANBAG
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