



AGENDA

Commuter Rail and Transit Committee Meeting

April 17, 2014

10:00 a.m.

Location

SANBAG

1170 W. 3rd Street, (1st Floor Lobby)

San Bernardino, CA

Commuter Rail and Transit Committee Membership

Chair

Mayor Paul Eaton
City of Montclair

Mayor Pro Tem Larry McCallon
City of Highland

Vice Chair

Supervisor James Ramos
County of San Bernardino

Mayor L. Dennis Michael
City of Rancho Cucamonga

Mayor Peter Aguilar
City of Redlands

Mayor Ray Musser
City of Upland

Council Member Bill Jahn
City of Big Bear Lake

Council Member Richard Riddell
City of Yucaipa

Council Member Mike Leonard
City of Hesperia

Mayor Pro Tem Alan Wapner
City of Ontario

San Bernardino Associated Governments (SANBAG) is a council of governments formed in 1973 by joint powers agreement of the cities and the County of San Bernardino. SANBAG is governed by a Board of Directors consisting of a mayor or designated council member from each of the twenty-four cities in San Bernardino County and the five members of the San Bernardino County Board of Supervisors.

In addition to SANBAG, the composition of the SANBAG Board of Directors also serves as the governing board for several separate legal entities listed below:

The San Bernardino County Transportation Commission, which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.

The San Bernardino County Transportation Authority, which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.

The Service Authority for Freeway Emergencies, which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.

The Congestion Management Agency, which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.

As a Subregional Planning Agency, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.

Items which appear on the monthly Board of Directors agenda are subjects of one or more of the listed legal authorities. For ease of understanding and timeliness, the agenda items for all of these entities are consolidated on one agenda. Documents contained in the agenda package are clearly marked with the appropriate legal entity.

**San Bernardino Associated Governments
County Transportation Commission
County Transportation Authority
Service Authority for Freeway Emergencies
County Congestion Management Agency**

AGENDA

Commuter Rail and Transit Committee Meeting

**April 17, 2014
10:00 a.m.**

Location:

SANBAG Office
1170 West 3rd St., 1st Fl., San Bernardino

CALL TO ORDER – 10:00 a.m.
(Meeting Chaired by Mayor Paul Eaton)

- I. Pledge of Allegiance
- II. Attendance
- III. Announcements
- IV. Agenda Notices/Modifications – Marleana Roman

1. Possible Conflict of Interest Issues for the Commuter Rail and Transit Committee Meeting of April 17, 2014 Pg. 7

Note agenda item contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Committee Member abstentions shall be stated under this item for recordation on the appropriate item.

Consent Calendar

Consent Calendar items shall be adopted by a single vote unless removed by member request.

2. Attendance Register Pg. 8

A quorum shall consist of a majority of the membership of each SANBAG Policy Committee, except that all County Representatives shall be counted as one for the purpose of establishing a quorum.

Notes/Actions

Discussion Items

Transit/Commuter Rail

- 3. **Contracts granting certain licenses to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Charter Communications Operating, LLC** Pg. 10

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

- 1. Approve Contract No. R14085 with revised name Charter Communications Operating, LLC granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2. **Monica Morales**

This item was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013 and approved at the December 4, 2013 Board. After Charter’s legal review it was determined the agreement was created under the incorrect entity name and is being brought back to committee under this name revision. SANBAG General Counsel and Contract Administrator have reviewed this item and the License Agreements.

- 4. **Approve License Agreement to access/cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with William Lyon Homes, Inc.** Pg. 53

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

- 1. Approve License Agreement R14158 with William Lyon Homes, Inc. on the San Gabriel Subdivision, City of Upland, SANBAG mile post 100.8. **Monica Morales**

This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item and the contract.

- 5. **Burlington Northern Santa Fe Purchase Order for Downtown San Bernardino Passenger Rail Project** Pg. 96

That the Committee recommend the Board authorize the Executive Director, or his designee, to execute a Purchase Order in the amount of \$1,800,000 to Burlington Northern Santa Fe (BNSF) for track, signal, engineering, and flag protection work on BNSF’s Cajon Subdivision and San Bernardino Subdivision, and on the Redlands Branchline to accommodate the Downtown San Bernardino Passenger Rail Project. **Casey Dailey**

This item does not require legal review. This item is not scheduled for review by any other policy committee or technical advisory committee.

Discussion Items Continued....

Transit/Commuter Rail

6. Ontario Airport Rail Access Study Update

Pg. 98

Receive presentation and a status update on the Ontario Airport Rail Access Study. Justin Fornelli

This item is not scheduled for review by any other policy committee or technical advisory committee.

Transportation Fund Administration

7. Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Funding for the City of Needles

Pg. 99

That the Committee recommend the Board, acting as the San Bernardino Transportation Commission:

Approve Memorandum of Understanding No. C14159 with the City of Needles defining the roles and responsibilities for the administration of Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account Funds previously allocated to them. Vanessa Jezik

This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel has reviewed a draft of the MOU.

Comments from Committee Members

Public Comment

ADJOURNMENT

Additional Information

Acronym List

Pg. 106

Complete packages of the SANBAG agenda are available for public review at the SANBAG offices and our website: www.sanbag.ca.gov. Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

Meeting Procedures and Rules of Conduct

Meeting Procedures

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

Accessibility

The SANBAG meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is (909) 884-8276 and office is located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Agendas – All agendas are posted at 1170 W. 3rd Street, 2nd Floor, San Bernardino at least 72 hours in advance of the meeting, Staff reports related to agenda items may be reviewed at the SANBAG offices located at 1170 W. 3rd Street, 2nd Floor, San Bernardino and our website: www.sanbag.ca.gov.

Agenda Actions – Items listed on both the “Consent Calendar” and “Items for Discussion” contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.

Closed Session Agenda Items – Consideration of closed session items *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

Public Testimony on an Item – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a “Request to Speak” form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A “Request to Speak” form must be completed for *each* item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

Agenda Times – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

Public Comment – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board's authority. *Matters raised under “Public Comment” may not be acted upon at that meeting. “Public Testimony on any Item” still apply.*

Disruptive Conduct – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for meetings. Your cooperation is appreciated!*

**SANBAG General Practices for Conducting Meetings
of
Board of Directors and Policy Committees**

Attendance.

- The Chair of the Board or a Policy Committee (Chair) has the option of taking attendance by Roll Call or Self-Introductions. If attendance is taken by Roll Call, the Clerk of the Board will call out by jurisdiction or supervisorial district. The Member or Alternate will respond by stating his/her name. If attendance is by Self-Introduction, the Member or Alternate will state his/her name and jurisdiction or supervisorial district.
- A Member/Alternate, who arrives after attendance is taken, shall announce his/her name prior to voting on any item.
- A Member/Alternate, who wishes to leave the meeting after attendance is taken but before remaining items are voted on, shall announce his/her name and that he/she is leaving the meeting.

Basic Agenda Item Discussion.

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.
- The “aye” votes in favor of the motion shall be made collectively. Any Member who wishes to oppose or abstain from voting on the motion, shall individually and orally state the Member’s “nay” vote or abstention. Members present who do not individually and orally state their “nay” vote or abstention shall be deemed, and reported to the public, to have voted “aye” on the motion.

The Vote as specified in the SANBAG Bylaws.

- Each Member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

Amendment or Substitute Motion.

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he/she would like to amend the motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is not addressed until after a vote on the first motion.
- Occasionally, a motion dies for lack of a second.

Call for the Question.

- At times, a Member of the Board/Committee may “Call for the Question.”
- Upon a “Call for the Question,” the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair’s discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

The Chair.

- At all times, meetings are conducted in accordance with the Chair’s direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Chair.

Courtesy and Decorum.

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.



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

Minute Action

AGENDA ITEM: 1

Date: April 17, 2014

Subject: Information Relative to Possible Conflict of Interest

Recommendation: Note agenda items and contractors/subcontractors which may require member abstentions due to possible conflicts of interest.

Background: In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Contractor/Agents	Subcontractors
3	R14085	Charter Communications Operating, LLC <i>Beth Thompson</i>	None
4	R14158	William Lyon Homes, Inc. <i>Kevin Eads</i>	None
5	N/A	Burlington Northern Santa Fe <i>Greg J. Rousseau</i>	None

Financial Impact: This item has no direct impact on the budget.

Reviewed By: This item is prepared monthly for review by the Board of Directors and Policy Committee members.

*

Approved
 Commuter Rail and Transit Committee

Date: April 17, 2014

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

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

COMMUTER RAIL AND TRANSIT POLICY COMMITTEE ATTENDANCE RECORD – 2014

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Patrick Morris City of San Bernardino	X	X	X									
Paul Eaton City of Montclair	X	X										
James Ramos County of San Bernardino	X	X	X									
Peter Aguilar City of Redlands	X	X										
Bill Jahn City of Big Bear Lake	X	X	X									
Mike Leonard City of Hesperia	X	X	X									
Larry McCallon City of Highland	X	X	X									
L. Dennis Michael City of Rancho Cucamonga	X		X									
Ray Musser City of Upland	X	X	X									
Richard Riddell City of Yucaipa	X	X	X									
Alan Wapner City of Ontario	X		X									

X = Member attended meeting. Empty box = Member did not attend meeting. Crossed out box = Not a member at the time.

COMMUTER RAIL AND TRANSIT POLICY COMMITTEE ATTENDANCE RECORD – 2013

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Patrick Morris City of San Bernardino	X	X	X	X		X		X		X	X	
Paul Eaton City of Montclair	X		X			X				X	X	
James Ramos County of San Bernardino	X	X	X	X				X				
Peter Aguilar City of Redlands	X	X	X	X				X		X	X	
Bill Jahn City of Big Bear Lake		X		X				X		X	X	
Mike Leonard City of Hesperia	X	X	X	X		X					X	
Larry McCallon City of Highland	X	X	X	X		X				X		
L. Dennis Michael City of Rancho Cucamonga		X	X	X				X		X	X	
Ray Musser City of Upland	X	X		X		X				X	X	
Richard Riddell City of Yucaipa	X	X	X	X				X		X	X	
Alan Wapner City of Ontario	X	X	X			X		X				

X = Member attended meeting.

Empty box = Member did not attend meeting.

Crossed out box = Not a member at the time.



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

Minute Action

AGENDA ITEM: 3

Date: April 17, 2014

Subject: Contracts granting certain licenses to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Charter Communications Operating, LLC

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

1. Approve Contract No. R14085 with revised name Charter Communications Operating, LLC granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2.

Background: Between 1991 and 1993, San Bernardino Associated Governments (SANBAG) acquired the Baldwin Park branch line, the Pasadena Subdivision, and the Redlands branch line, all railroad rights-of-way, for its commuter rail program. Following the acquisition of these rail assets, in 1994, SANBAG contracted with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to provide property management services. During 2011, SANBAG went through a procurement process to bid the services provided by the LACMTA and on May 4, 2011, the Board awarded Contract No. C11206 to Epic Land Solutions.

Historically, the management services provided to SANBAG by 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

*

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.

CRTC1404a-mmm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R14085.docx>

property. To expedite the provision of these services, SANBAG provided the LACMTA 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 re-procured these services last year, 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.

In December 2013 the Board approved a License Agreement with Charter Communications, it was later identified the legal entity entering into this license agreement was Charter Communications Operating, LLC. The License Agreement with Charter Communications approved in December 2013 remains the same agreement in this agenda item, with only a name change being requested. The License Agreement is seeking an underground crossing on the San Gabriel Subdivision, approximately seventeen feet (17') easterly from the center line of Hellman Avenue in the City of Rancho Cucamonga; the approximate area is 560 square feet.

This License Agreement does allow SANBAG to terminate the License Agreement with thirty (30) days prior written notice. Additionally, in some instances an administrative fee is applicable and will be given to Epic for preparation of the License Agreements.

It is necessary to refine the boilerplate License Agreements. Staff is currently working with General Counsel to develop a policy governing future licenses, leases and agreements for SANBAG's right-of-way and property. Options would likely include a range from continuing to present each new or amended agreement to the Board for action or by creating boilerplate documents approved by the Board that could be executed by the Executive Director or his designee.

Financial Impact: Approval of this item will result in the payment of a \$1,500 one-time (1) administration fee to SANBAG by Charter Communications Operating, LLC.

Additionally Charter Communications Operating, LLC (R14085) will be charged an annual license fee of \$4,000.

All fees will be collected by Epic Land Solutions, Inc. 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. All staff time associated with preparation of this item and coordination of the license document is consistent with the current Fiscal Year 2013/2014 budget task 0377.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013 and approved at the December 4, 2013 Board. After Charter's legal review it was determined the agreement was created under the incorrect entity name and is being brought back to committee under this name revision. SANBAG General Counsel and Contract Administrator have reviewed this item and the License Agreements.

Responsible Staff: Monica Morales, Transit Specialist

CONTRACT SUMMARY SHEET

Contract No. R 14085 Amendment No. _____

By and Between

San Bernardino Associated Governments acting in its capacity as San Bernardino County Transportation Commission and Charter Communications Operating, LLC.

Contract Description License Agreement

Board of Director's Meeting Date: May 7, 2014
Overview of BOD Action: Approve Contract No. R14085 with Charter Communications Operating, LLC. granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW			
Original Contract Amount	\$	1,500 (one-time) + 4,000 (annually)	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$		Contingency Amendment
TOTAL CONTRACT VALUE	\$	5,500 +	TOTAL CONTINGENCY VALUE
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 5,500 +

Contract Start Date 5/7/14	Current Contract Expiration Date NA – until terminated	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0377</u> .				
<input type="checkbox"/> A Budget Amendment is required. How are we funding current FY? Rail Assets				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: Rail Assets				
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
Check all applicable boxes:	
<input type="checkbox"/> Retention? If yes, indicate % _____.	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ %	

Monica M. Morales
 Project Manager (Print Name)
Mitch Alderman
 Task Manager (Print Name)
Andrea Zureick
 Dir. of Fund Admin. & Programming (Print Name)
Jeffery Hill
 Contract Administrator (Print Name)
William Staworske
 Chief Financial Officer (Print Name)

<u>Monica Morales</u>	4/2/14
Signature	Date
<u>M. A. Alderman</u>	4/3/14
Signature	Date
<u>Andrea Zureick</u>	4/3/14
Signature	Date
<u>Jeffery Hill</u>	4/8/14
Signature	Date
<u>William Staworske</u>	4/28/14
Signature	Date

SANBAG Contract No.: R14085

Epic File No.: RSSB003769

Subdivision: San Gabriel Subdivision

Milepost(s): 98.2

SANBAG Contract No. R14085

LICENSE AGREEMENT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

CHARTER COMMUNICATIONS OPERATING, LLC

LICENSE AGREEMENT

This LICENSE AGREEMENT ("License") 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 SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION ("SANBAG"), and, CHARTER COMMUNICATIONS OPERATING, LLC, a Delaware limited liability company ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below.

PART I – BASIC LICENSE PROVISIONS

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

Basic License 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

Licensee's Address:

CHARTER COMMUNICATIONS OPERATING, LLC
4781 Irwindale Avenue
Irwindale, California 91760
Attn: Beth Thompson
626-430-3305
Beth.Thompson@charter.com

Copy To:

Charter Communications
12405 Powerscourt Drive
St. Louis, Missouri 63131
Attn: Legal Operations

Basic License Provisions

2. **Description of the Premises.**

§ 1.1

City/County: Rancho Cucamonga, San Bernardino County
Subdivision: San Gabriel Subdivision

Address or Milepost Location:
SANBAG Mile Post 98.2
SCRRA Mile Post 39.6

Approximate area:
560 square feet; 0.0128 acres

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

Description and Dimensions of Premises Area:

A transverse crossing of SANBAG's San Gabriel Subdivision in the City of Rancho Cucamonga located approximately seventeen feet (17") easterly from the center line of Hellman Avenue, southerly of Arrow Route, with the crossing measuring 10'x 560'.

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

§ 1.3

Description of Improvements and/or Facilities ("Improvements"):
Two (2) fiber optic cables in two (2) two inch (2") PVC casings

Use of the Premises:

Installation, operation, maintenance and repair of two (2) two inch (2") PVC conduits for fiber optic cable containing up to forty eight (48) fibers each, to be inserted in a previously existing twelve inch (12") casing pipe extending fifty six feet (56') across the right of way, and no other uses.

4. **Term.**

Commencement Date: May 7, 2014

Term (check one):

§ 2.1

- A. Month-to-month
 B. Until End Date: _____ (subject to termination pursuant to the terms of this License – see especially Standard License Provisions §2.2).

Basic License Provisions

Part II
Section Cross
Reference

5. **License Fees.** § 3
- A. **Administrative Fee: One time fee: \$1,500.00** § 3.1.1
- B. **Base License Fee (check one):**
- i. \$_____ per month, payable monthly in advance
 - ii. \$4,000.00 per year, payable annually in advance § 3.1.2
- C. **Additional License Fee (check one):**
- i. One-time fee: \$_____
 - ii. Other fees: \$_____, payable _____ § 3.1.3
- D. **Base License Fee Adjustment Dates (check if applicable):**
- i. Annually, effective on the first day of the anniversary month of the Commencement Date, based on the published Consumer Price Index (or its successor) (“CPI”) as defined in Section 3.2.1 of the General License Provisions. § 3.2 § 3.2.1
 - ii. At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises as set forth in Section 3.2.2 of the General License Provisions. § 3.2.2
 - iii. Other: _____
-
6. **Security Deposit (if any).** \$ _____ § 3.2.3 § 4
7. **Insurance Amount.** See Exhibit “B” §§ 10, 13

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: CHARTER
COMMUNICATIONS OPERATING LLC
A Delaware limited liability company
By: Charter Communications, Inc.,
Its Manager

SAN BERNARDINO ASSOCIATED
GOVERNMENTS, acting in its capacity as
SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION

By: _____
John H. Owen
Vice President / Regional

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 LICENSE PROVISIONS

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Exhibits:

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PART II - STANDARD LICENSE PROVISIONS

1. GRANT AND SCOPE OF LICENSE

- 1.1. Grant of License. SANBAG hereby grants a non-exclusive, revocable license to Licensee in, on, over, under, across and along the real property of SANBAG in the location shown in the diagram attached hereto as Exhibit A and described in Item 2 of the Basic License Provisions (the "Premises"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Improvements described in Item 3 of the Basic License Provisions, and any usual and necessary related appurtenances thereto (the "Improvements"), for the purposes described in Item 3 of the Basic License Provisions, together with rights for access and entry onto the Premises as necessary or convenient for the use of the Improvement and for no other purpose. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees, consultants and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SANBAG if necessary for the use of the Improvements or the Premises, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property."
- 1.2. Condition of Premises. Licensee acknowledges that it has inspected the Premises in its present condition, including without limitation, all existing environmental conditions. Licensee accepts the Premises "as is" as suitable for the purpose for which the Premises are licensed and assumes all risk with respect to all present conditions of the Premises, including, without limitation, existing environmental conditions. Taking of possession by Licensee shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.
- 1.3. Use. The Premises and the Improvements shall be used only for the purposes specified in Item 3 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto, and no other purpose. No change shall be made by Licensee in the use of the Premises, the Improvements or the commodity or product being conveyed through the Improvements (if any) without SANBAG's prior written approval.
- 1.4. Non-exclusive and Revocable Nature of License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the Premises. Licensee agrees that notwithstanding the Improvements made by Licensee to the Premises or other sums expended by Licensee in furtherance of this License, the license granted herein is fully revocable by SANBAG in accordance with the terms of this License.
- 1.5. Easements. SANBAG reserves to itself the right, from time to time, to grant such easements, rights and dedications that SANBAG deems necessary or desirable, and to

cause the recordation of parcel maps, easement agreements and covenants, conditions and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the Premises by Licensee. Licensee shall sign any of the aforementioned documents upon request of SANBAG and failure to do so shall constitute a material breach of this License.

2. TERM, TERMINATION AND SURRENDER

2.1. Term of License. The term of this License shall commence on the “Commencement Date” specified in Item 4 of the Basic License Provisions. If Item 4.A of the Basic License Provisions is checked, this License shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions. If Item 4.B of the Basic License Provisions is checked, then this License shall be a license for the term specified in said Item 4.B. The term of this License as provided above is referred to as the “Term.”

2.2. Termination.

2.2.1. Convenience. If Item 4.A is checked, this License shall continue in full force and effect on a month-to-month basis until terminated by either Party on thirty (30) days’ prior written notice. If Item 4.B is checked, this License shall continue in full force and effect until the End Date, unless SANBAG, acting by its Executive Directory or his or her designee, for any reason and in its sole and absolute discretion, determines that this License is no longer in SANBAG’s best interests. In which case, SANBAG may terminate this License on thirty (30) days’ prior written notice, but SANBAG shall also return to Licensee, within thirty (30) days after the termination, the pro-rata portion of any annual license fee paid by the Licensee for the portion of the agreed term that will not be used by Licensee.

2.2.2. Cause. SANBAG may terminate this License for cause in accordance with the provisions hereof, including, without limitation, Sections 24 (Abandonment), 8 (Default, Breach and Remedies) and 25.11 (Assignment). In addition, SANBAG shall have the right to immediately, without notice and at Tenant’s expense, terminate this License upon discovery of any default set forth in Section 8.1(d) and abate any such public nuisance and/or dangerous condition.

2.2.3. Public Use. In addition to any and all other termination rights of SANBAG described herein, Licensee hereby expressly recognizes and agrees that the Premises are located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually “Public Use”); and that Licensee’s use of the Premises under this License is a temporary, interim use as to which Licensee has no right to nor expectation of use for any particular length of time that may be terminated by SANBAG by thirty (30) days

written notice to Licensee as set forth in Section 2.2.1 above. Accordingly, as a condition to entering into this License, Licensee expressly acknowledges and agrees that:

- (a) SANBAG may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of SANBAG's Executive Director, or designee;
- (b) Licensee shall **NOT** object to, oppose, or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Premises;
- (c) If SANBAG's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, Licensee shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by SANBAG or any parties having operating rights over the Premises, at Licensee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and
- (d) Licensee expressly assumes all risk of any future Public Use as determined by SANBAG and in the event SANBAG terminates this License and requires Licensee to vacate the Premises for any Public Use, Licensee shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:
 - (i) relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and
 - (ii) compensation under any eminent domain or inverse condemnation law.

2.2.4. Holdover Fee: If Licensee fails to terminate use of the Premises and/or restore the Premises as required in Item 2.3 below, on or before the End Date specified in Item 4.B of the Basic License Provisions or the termination date established as otherwise provided in this License ("Termination Date"), then, in addition to any and all other remedies available to SANBAG under the terms of this License or at law or equity, Licensee shall pay a Holdover Fee equal to twice the Base License Fee in effect on the day prior to the Termination Date, calculated and payable on a monthly basis, for the number of months (partial months counting as whole months) from the Termination Date to the date that Licensee has terminated use and restored the Premises to the required condition. Licensee shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such holding over.

2.3. Termination of Use and Restoration of Premises. Upon termination of this License in accordance with the terms hereof, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove all alterations additions and Improvements made by Licensee to the Premises and restore the SANBAG Property as nearly as possible to the same state

and condition as existed prior to the construction, reconstruction or installation of said Improvements. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option (i) perform the same at Licensee's expense (including costs, interest, and fees), which Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Improvements. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Improvements are removed and the SANBAG Property is restored.

3. PAYMENTS

3.1. Fees. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the Administrative and License Fees specified in Item 5 of the Basic License Provisions, adjusted as set forth in Section 3.2.

3.1.1. Administrative Fee. The one time Administrative Fee set forth in Item 5.A shall be due and payable upon execution of this License.

[Note: SANBAG may require deposit in advance of preparing the License Agreement, in which case the amount deposited will be applied to the Administrative Fee 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 License Agreement in the event that the License Agreement is not consummated, per SANBAG's adopted policies and procedures.]

3.1.2. Base License Fee. If Item 5.B.i of the Basic License Provisions is checked, the first month's Base License Fee noted therein shall be due and payable upon execution of this License. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term. The Base License Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis. If Item 5.B.ii of the Basic License Provisions is checked, the annual License Fee amount, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, annually in advance on or before the anniversary month of the Commencement Date for the convenience of both Parties, without affecting the Term of this License as specified in Section 2.1.

3.1.3. Additional License Fee. If Item 5.C.i of the Basic License Provisions is checked, the one-time fee noted therein shall be due and payable upon execution of this License. If Item 5.C.ii of the Basic License Provisions is checked, the fee noted therein shall be due and payable as indicated in Item 5.C.ii.

3.2. License Fee Adjustment.

3.2.1. Annual CPI Adjustment. If Item 5.D.i of the Basic License Provisions is checked, then the Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the

Commencement Date occurs unless another date is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). If no adjustment is made at the annual anniversary date, an adjustment may nevertheless be made at a subsequent date and thereafter at not less than annual intervals. The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the month that is three (3) months prior to the month during which the particular Adjustment Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month containing the prior Adjustment Date or, if there has been no prior Adjustment, three (3) months prior to the first day of the anniversary month of the Commencement Date. As used in this section, the "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by SANBAG.

3.2.2. Fair Market Adjustment. If Item 5.D.ii of the Basic License Provisions is checked, then, at intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by Section 3.2.1, above) payable under this Section 3 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Premises as determined by SANBAG in good faith. Such increases shall be effective as of thirty (30) days after written notice from SANBAG to Licensee of such adjustment, or the date specified in such written notice, whichever is later. If no adjustment is made at any three (3) year interval, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

3.2.3. Other Adjustment. If Item 5.D.iii of the Basic License Provisions is checked, then, in addition to any adjustments required under Items 5.D.i and 5.D.ii, the adjustment set forth in 5.D.iii shall be applied in accordance with its terms.

3.3. Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this License will cause SANBAG to incur costs not contemplated by this License, the exact amount of such costs being extremely difficult and impracticable to determine. Therefore, if any payment due from Licensee is not received by SANBAG within five (5) days of when due, Licensee 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 Licensee. Acceptance

of any late payment charge shall not constitute a waiver of Licensee'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 License, 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 License and in addition to the payment described in Section 3, SANBAG may require Licensee to pay SANBAG a security deposit in the amount set forth in Item 6 of the Basic License 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 Licensee of all of the terms, covenants, conditions and obligations of this License. If at any time Licensee fails to keep and perform any of the term, covenants, and conditions of this License, 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 Licensee's default or breach. Within a reasonable time after termination of this License and after Licensee has vacated the Premises, SANBAG shall return, without interest, said deposit or portion remaining, if any, after deductions for any unpaid payments and any losses or damage sustained by SANBAG due to any breach or default by Licensee or any damage to the Premises or any failure to restore the Premises to the required condition.

5. TAXES

Licensee 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 by any governmental authority: (a) against the Improvements, the Premises and/or any personal property, fixtures or equipment located on or placed on the Premises, whether owned by Licensee or any person or entity acting for or at the request of Licensee; or (b) as a result of the Licensee's or the Improvements' operations.

6. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Improvements or Premises, and fully and promptly pay all persons who perform labor upon said Improvements or Premises. Licensee shall not suffer or permit to be filed or enforced against the Premises or the Improvements, 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 Licensee, or out of any other claim or demand of any kind. The term "Work" under this License means any construction, reconstruction, installation, restoration, alteration, repair, replacement, or removal, other than normal maintenance. Licensee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises or the Improvements. Licensee 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. Licensee shall furnish evidence of payment upon request of SANBAG. Licensee 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 Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, SANBAG shall have the right to discharge same (including by paying the claimant) and Licensee 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 Licensee 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 License.

7. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Improvements, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the Premises. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the SANBAG Property, accident or fire or other casualty on the SANBAG Property, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the SANBAG Property. 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. Licensee, on behalf of itself and its officers, directors, affiliates, employees, agents, independent contractors and subcontractors anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel"), as a material part of the consideration for this License, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Licensee and/or its Personnel. **In that connection, Licensee expressly 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 License.

8. DEFAULT, BREACH AND REMEDIES

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

- (a) Licensee shall fail to make any payment herein reserved when due, or any reimbursement to SANBAG required herein when due;

- (b) Licensee shall vacate all or a substantial portion of the Premises, whether or not Licensee is in default of the payment or other charges due under this License; or
- (c) Licensee shall fail to comply with any other term, provision or covenant of this License, and shall not cure such failure within three (3) days after written notice thereof to Licensee.
- (d) Licensee 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.

- 8.2.1. Termination. Upon the occurrence of Licensee's default and breach, SANBAG shall have the right, at any time, with or without notice or demand, to terminate this License, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Licensee and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that SANBAG may have under this License, at law or equity by reason of Licensee's default or of such termination.
- 8.2.2. Corrective Measures. Should Licensee default on, 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 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 Licensee's expense (including fees, costs and interest) which Licensee agrees to pay to SANBAG upon demand.
- 8.2.3. Costs. If SANBAG incurs any cost or expense occasioned by the default of Licensee (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 Licensee's or other occupant's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SANBAG, rail operators and future licensees; 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. Remedies Cumulative. All rights, privileges and remedies of the parties are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein

8.3. SANBAG Default and Licensee's Remedies. SANBAG shall not be in default under this License unless SANBAG fails to perform obligations required of SANBAG within sixty (60) days after written notice is delivered by Licensee to SANBAG specifying the obligation which SANBAG has failed to perform; provided, however, that if the nature of SANBAG's obligation is such that more than sixty (60) days are required for performance, then SANBAG shall not be in default if SANBAG commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Licensee's exclusive remedies shall be an action for specific performance or action for damages.

9. INDEMNIFICATION

9.1. Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all of its capacities, and its members, commissioners, officers, directors, employees, 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 Licensee, or its Personnel (as defined in Section 7, Assumption of Risk and Waiver) or invitees of Licensee in connection with the SANBAG Property or arising from the presence upon or performance of activities by Licensee 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 Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this License, in each case whether occurring during the Term of this License or thereafter.

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

9.3. Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee'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 Licensee 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 Licensee set forth in this section shall survive the termination of this License.

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. Licensee'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 Licensee's policies.

10.2. Licensee's Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this License insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described in, and meeting all other requirements set forth in, Exhibit "B". SANBAG reserves the right, throughout the Term of this License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, Licensee 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 Licensee under this License. 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 Licensee 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, Licensee 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 Licensee's use and occupancy of the Premises, or if Licensee vacates the Premises and causes any increase in such premiums, then Licensee shall pay as an additional fee the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at

Licensee's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

11. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall during the term of this License maintain the Improvements in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises and the Improvements as necessary to keep the Premises and the Improvements 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 Licensee or Licensee's Parties, including but not limited to damage arising from any tests or investigations conducted upon the Premises, Licensee 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 Licensee or Licensee's Parties. Licensee 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 and compliance with all applicable standards, specification and safety requirements.

12. ALTERATIONS AND CONSTRUCTION

Except as otherwise provided herein, Licensee 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 Licensee on the Improvements or the Premises shall be performed (a) at Licensee'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, Licensee shall submit Work plans to SANBAG for review and approval. Any such Work must be carried out pursuant to Work plans approved in writing by SANBAG. In addition, Licensee shall provide SANBAG with at least 14 calendar days' written notice prior to commencement of any Work on the Premises or the Improvements, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility unless otherwise requested by SANBAG, upon completion of any Work, Licensee shall restore the SANBAG Property to its condition immediately preceding the commencement of such Work.

13. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee 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, Licensee 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, Licensee 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 License, 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 License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises.

14. REIMBURSEMENT

Licensee 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 Licensee'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 License, 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 Licensee, 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 Licensee 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

Licensee 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. Licensee 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, Licensee 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 Licensee's use of the Premises. Licensee 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 Licensee'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 Licensee) 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 License 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. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.

18.3. Costs. Licensee 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 the Improvements) any ordinary "for sale" and "for lease" signs. Licensee 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 License, SANBAG may, in its sole discretion and if applicable, require Licensee to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Licensee's and Licensee's Parties' business activities and prepare a report on Licensee's and/or Licensee's Parties' compliance with the provisions of this section. SANBAG may, if applicable, require Licensee 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 License, the cost of which shall be the sole responsibility of Licensee. Licensee 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. Licensee 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 Licensee or the Premises. As used herein, "Environmental Law" means any federal, state or local environmental, health and/or safety-related law, regulation, standard, decision of a court, permit or permit conditions, currently existing or as amended or adopted in the future. Except for any Hazardous Material expressly approved by SANBAG in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Material to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. 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. Licensee 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) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Material upon or from the Improvements or the Premises or contamination of the SANBAG Property (i) which occurs due to the use and occupancy of the Improvements or the Premises by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.
- 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 License; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this License.
- 20.4. In addition, in the event of any release on or contamination of the Premises, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the SANBAG Property 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. UNDERGROUND STORAGE TANKS

21.1. NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE PREMISES UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SANBAG, WHICH APPROVAL MAY BE WITHHELD IN SANBAG'S SOLE DISCRETION.

21.2. At SANBAG's option, upon the termination of this License at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Material in, on, under and about the Premises, in accordance with the requirements of all Environmental Laws and to the satisfaction of SANBAG and any governmental authorities having jurisdiction, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

22. CONDEMNATION

In the event all or any portion of the Premises shall be taken or condemned for public use by a governmental agency or any other party having the power of eminent domain (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) only for the taking and damage to the Improvements. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. BROKER'S FEES

Licensee 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 Licensee with regard to obtaining this License.

24. SUBORDINATE RIGHTS

This License is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property 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 and use 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 on the Premises and in the vicinity of the Improvements, regardless of any effect or impact on the Improvements. Licensee shall bear all costs and losses it incurs associated with any modifications to the Improvements necessary to accommodate SANBAG's exercise of any right hereunder. This License is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SANBAG Property now or

hereafter. This License 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 a covenant against the existence of any such title exceptions.

25. ABANDONMENT

Should Licensee at any time abandon the use of the Improvements or the Premises, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this License shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SANBAG shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this License

26. GENERAL PROVISIONS

- 26.1. 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 License 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.
- 26.2. Governing Law. This License shall be governed by the laws of the State of California.
- 26.3. Binding Effect. The terms, provisions and covenants and conditions contained in this License 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 License as Licensee, then each shall be jointly and severally liable for all obligations of Licensee hereunder.
- 26.4. No Third Party Beneficiaries. This License 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.
- 26.5. Severability. If any term, covenant, condition or provision of this License, 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 License, 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.
- 26.6. 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 Licensee under this License, provided, however, that interest shall not be payable on late charges incurred by Licensee.

26.7. Captions. The captions included in this License are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this License or any provision hereof, or in any way affect the interpretation of this License.

26.8. Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this License shall survive the expiration or earlier termination of this License, including without limitation all indemnity and defense obligations, all payment obligations with respect to License Fees and all obligations concerning the condition of the SANBAG Property and the Improvements.

26.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this License shall not invalidate this License, 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 License, 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 License. The subsequent acceptance of payments hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Licensee of any provisions, covenant, agreement or condition of this License, other than the failure of Licensee to pay the particular payment so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such payment.

26.10. Effective Date/Nonbinding Offer. Submission of this License for examination or signature by Licensee does not constitute an offer or option for a license, and it is not effective as a license or otherwise until executed and delivered by both SANBAG and Licensee. Each individual executing this License on behalf of SANBAG or Licensee represents and warrants to the other Party that he or she is authorized to do so.

26.11. Assignment. This License and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this License in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and be a material breach of this License, which gives SANBAG the right to immediately terminate this License and seek all other available remedies for breach.

26.12. Entire Agreement; Amendments. This License, 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 License. The Parties each acknowledge that no representations,

inducements, promises or agreements, oral or written, have been made by either SANBAG or Licensee, or anyone acting on behalf of SANBAG or Licensee, other than those contained in this License. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this License shall be binding upon the Parties unless they are in writing and executed by the Parties.

- 26.13. Attorneys' Fees. If either SANBAG or Licensee 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 License 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 License, but arising by reason of or related to any act or omission of Licensee or Licensee's Parties, Licensee 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.
- 26.14. Nondiscrimination. Licensee certifies and agrees that all persons employed by Licensee and/or Licensee's affiliates, subsidiaries, or holding companies, and any contractors retained by Licensee 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.
- 26.15. Further Acts. Licensee 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 License, including, at SANBAG's sole discretion, the relocation of the Improvements and the license granted hereby.
- 26.16. Time of Essence. Time is of the essence for this License.
- 26.17. Certificates. Licensee 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 Licensee, and an estoppel certificate stating that this License is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this License and such other matters pertaining to this License as may be requested by SANBAG.
- 26.18. Security Measures. Licensee 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. Licensee assumes all responsibility for the protection of Licensee, Licensee's Parties and their property from acts of third parties.

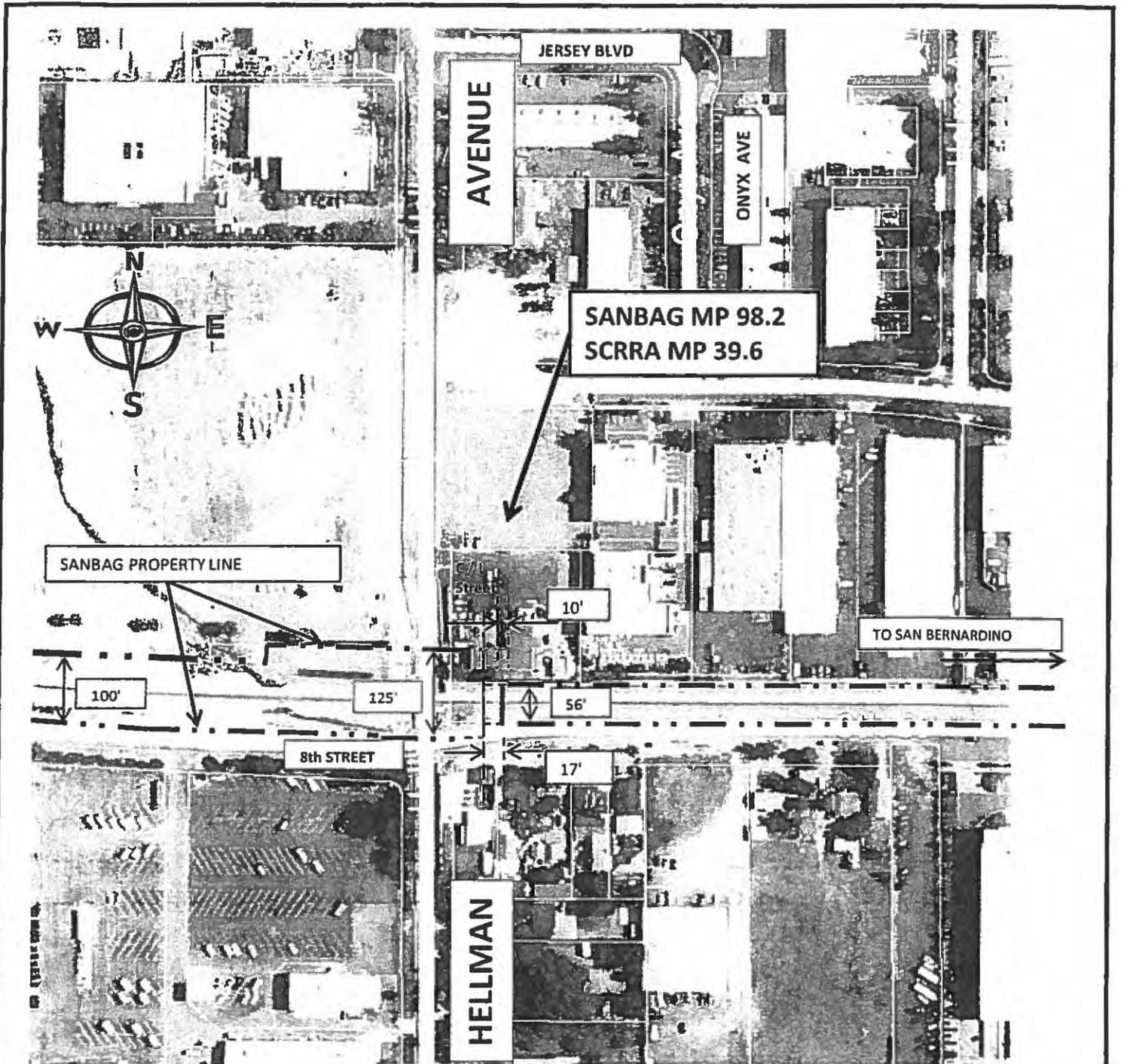
- 26.19. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment “under protest” and such 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 License.
- 26.20. No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the Premises are located, this License, any memorandum of this License or any other document giving notice of the existence of this License or the license granted hereby.
- 26.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Licensee shall maintain, at Licensee’s expense, competent flagmen to protect and control movement of vehicles and equipment of Licensee 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.
- 26.22. 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 License Provisions, the provisions in Exhibit “D” shall control.

Exhibit "A"

Premises

[To Be Inserted]

EXHIBIT "A"



2-2" FIBER OPTIC CABLE WITH UP TO 48 FIBERS EACH IN A CASING OWNED BY CITY OF RANCHO CUCAMONGA SEE RSSB003770 FOR CASING INFORMATION

APN: 0209-032-44

Date 09/17/2013

Branch/Line	Mile Post SCRR 39.6	Lessee/Licensee
San Gabriel Sub	SANBAG 98.2	CHARTER COMMUNICATIONS
County	Nearest Cross Street	SANBAG File Number
SAN BERNARDINO	HELLMAN AVE	RSSB003769 R14085
Area	City	Scale
560 SQ. FT.	RANCHO CUCAMONGA	1"=200'
Map Reference	Use	Thomas Guide Grid
SSB6	UG FIBER OPTIC	602 H4



SAN BERNARDINO ASSOCIATED GOVERNMENTS
 1170 W. 3rd Street, 2nd Floor
 San Bernardino, CA 92410-1715

Exhibit "B"

INSURANCE REQUIREMENTS FOR LICENSES

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

Scope of Coverages and Minimum Limits of Insurance (Check all applicable boxes)

Licensee shall maintain and provide proof of insurance coverages at least as broad as and with limits no less than the following:

- General Liability: Coverage: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Minimum limits: \$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, and
- Excess and/or Umbrella insurance coverage shall be in excess over the General Liability, Automobile Liability & Worker's Compensation of:
 - \$5,000,000 \$10,000,000
- Automobile Liability: Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto). \$1,000,000 per accident for bodily injury and property damage.
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. \$1,000,000 per occurrence for bodily injury or disease.
- Course of Construction: Providing coverage for "all risks" of loss in the completed value of the project.
- Property Insurance against all risks of loss to any tenant improvements or betterments.: Full replacement cost with no coinsurance penalty provision.
- Contractors 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.\$1,000,000 per occurrence \$2,000,000 annual aggregate.
- Railroad Protective Liability Insurance: Coverage: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SANBAG with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: \$2 million per occurrence, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A \$6 million annual aggregate shall apply.

Exhibit "B"

If providing coverage on the London claims-made form, the following provisions shall apply:

- a. The limits of liability shall be not less than \$3 million per occurrence, combined single limit. A \$9 million aggregate may apply.
- b. Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.
- c. If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:

It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SANBAG, or its designated representative, in SANBAG's sole and absolute discretion, where SANBAG's agreements and obligations with rail operators allow it.

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 the Licensee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Other Insurance Provisions

1. The general liability and automobile liability policies are to contain, or be endorsed to include, the following provisions:
 - a. SANBAG and Related Parties are to be covered as insured parties as respects: liability arising out of activities performed by or on behalf of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee; and automobiles owned, leased, hired or borrowed by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, or its Related Parties.
 - b. For any claims related to this project, the Licensee's insurance coverage shall be primary insurance as respects SANBAG, and its Related Parties. Any insurance or self-insurance maintained by SANBAG, or its Related Parties shall be excess of the Licensee's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG and its Related Parties.
 - d. The Licensee'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.

Exhibit "B"

- e. 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.
2. 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. No insurance coverage provided shall prohibit Licensee or Licensee's employees or agents from waiving the right of subrogation prior to a loss or claim. Licensee hereby waives all rights of subrogation against SANBAG and its Related Parties.
3. Additional Insured: All policies, except for Employer Liability/Worker's Compensation and Professional Liability policies, shall contain endorsements naming SANBAG and its Related Parties as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall not limit the scope of coverage for SANBAG or its Related Parties to vicarious liability but shall allow coverage for SANBAG and its Related Parties to the full extent provided by the policy.
4. Course of construction policies shall name SANBAG as loss payee.

Acceptability of Insurers

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

Verification of Coverage

Licensee shall furnish SANBAG with original certificates of insurance with endorsements as verifying coverage required by this Exhibit B. 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, Licensee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Licensee 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 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]

Exhibit "D"

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 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.

Exhibit "D"

SCRRRA 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.**

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

9. Contractor shall prepare and submit traffic control plan for SANBAG/SCRRRA 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 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.

Exhibit "D"

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 oil 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.
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.

Exhibit "D"

24. Prior to commencement of work, the contractor shall submit to SANBAG/SCRRRA 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 / SCRRRA inspector must be present during the grouting process.
28. Casing jacking shall adhere to the following requirements:
 - a. This method shall be in accordance with the American Railway Engineering and Maintenance of Way Association recommended practices, Volume I, 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

Exhibit "D"

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 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

Exhibit "D"

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.
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.

Exhibit "D"

- 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.

Licensee	SANBAG

Initials



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

Minute Action

AGENDA ITEM: 4

Date: April 17, 2014

Subject: Approve License Agreement to access/cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with William Lyon Homes, Inc.

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

1. Approve License Agreement R14158 with William Lyon Homes, Inc. on the San Gabriel Subdivision, City of Upland, SANBAG mile post 100.8.

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

*

Approved
 Commuter Rail and Transit Committee

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG	CTC	X	CTA	X	S	FE	CMA	
-----	-----	---	-----	---	---	----	-----	--

Check all that apply.

CRTC1404b-mmm

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/R14158.docx>

for utilities and street crossings of the right-of-way, and marketing surplus property. To expedite the provision of these services, SANBAG provided LACMTA 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.

William Lyon Homes, Inc. is seeking a license agreement for placement of temporary fencing on the perimeter of SANBAG right-of-way. The description of the premises is in the City of Upland, along the San Gabriel Subdivision; approximately 6,800 sq. ft. William Lyon Homes, Inc. is currently working on a project and the scheduled end date for this license agreement is October 1, 2015. With this license agreement William Lyon Homes will pay a one-time administration fee and a monthly license fee until the agreement ends or is terminated.

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 and a monthly License fee of \$700 per month to SANBAG by William Lyon Homes, Inc.

All fees will be collected by Epic Land Solutions, Inc. 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. All staff time associated with preparation of this item and coordination of the license document is consistent with the current Fiscal Year 2013/2014 budget task 0377.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have reviewed this item and the contract.

Responsible Staff: Monica Morales, Transit Specialist

CONTRACT SUMMARY SHEET

Contract No. R 14158 Amendment No. _____

By and Between

San Bernardino Associated Governments acting and William Lyon Homes, Inc.
 in its capacity as San Bernardino County
 Transportation Commission

Contract Description License Agreement

Board of Director's Meeting Date: May 7, 2014	
Overview of BOD Action: 1. Approve License Agreement R14158 with William Lyon Homes, Inc. onto the San Gabriel Subdivision, City of Upland, SANBAG mile post 100.8	
Is this a Sole-Source procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

CONTRACT OVERVIEW			
Original Contract Amount	\$	1,500 (one-time) + 700 (monthly)	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$		Contingency Amendment
TOTAL CONTRACT VALUE	\$	2,200 +	TOTAL CONTINGENCY VALUE
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 2,200 +

Contract Start Date 5/4/14	Current Contract Expiration Date 10/1/15	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>0377</u> .				
<input type="checkbox"/> A Budget Amendment is required. How are we funding current FY? Rail Assets				
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State Funds	<input checked="" type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: Rail Assets				
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
Check all applicable boxes:	
<input type="checkbox"/> Retention? If yes, indicate % _____.	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal _____ %	

Monica M. Morales	<i>Monica Morales</i> 4/2/14
Project Manager (Print Name)	Signature Date
<i>Mitch Alderman</i>	<i>M. A. Alkhrum</i> 4/3/14
Task Manager (Print Name)	Signature Date
<i>Andrea Zureick</i>	<i>Andrea Zureick</i> 4/3/14
Dir. of Fund Admin. & Programming (Print Name)	Signature Date
<i>Jeffery Hill</i>	<i>Jeffery Hill</i> 4/8/14
Contract Administrator (Print Name)	Signature Date
<i>William Stawarski</i>	<i>William Stawarski</i> 4/8/14
Chief Financial Officer (Print Name)	Signature Date

SANBAG Contract No.: R14158

Epic File No.: RSSB003774

Subdivision: San Gabriel Subdivision

Milepost(s): 100.8

SANBAG Contract No. R14158

LICENSE AGREEMENT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

WILLIAM LYON HOMES, INC.

LICENSE AGREEMENT

This LICENSE AGREEMENT ("License") 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 SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION ("SANBAG"), and, WILLIAM LYON HOMES, INC, a corporation of the State of California ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below.

PART I – BASIC LICENSE PROVISIONS

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

Basic License 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

Licensee's Address:

WILLIAM LYON HOMES, INC.
1265 Corona Point Court, Suite 105
Corona, California 92879

Attn: Kevin Eads, Project Manager
Telephone: 951-284-4910
Cell: 949-279-5893
Fax: 855-448-3615
E-mail: Kevin.eads@lyonhomes.com

Basic License Provisions

2. **Description of the Premises.**

§ 1.1

City/County: Upland, California, San Bernardino County
Subdivision: San Gabriel Subdivision

Address or Milepost Location:
SANBAG Mile Post 100.8
SCRRA Mile Post 37.3

Approximate area:
6,800 square feet; 0.156 acres

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

Description and Dimensions of Premises Area:

A parcel of land approximately five foot (5') wide and one thousand three hundred fifty eight feet (1,358') long

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

§ 1.3

Description of Improvements and/or Facilities ("Improvements"):
Use of property for placement of temporary fencing

Use of the Premises:
Placement of temporary fencing on the perimeter of San Gabriel Subdivision
Right of Way

4. **Term.**

Commencement Date: May 7, 2014

Term (check one):

A. Month-to-month

B. Until End Date: October 1, 2015 (subject to termination pursuant to the terms of this License – see especially Standard License Provisions §2.2).

§ 2.1

Basic License Provisions

Part II
Section Cross
Reference

5. **License Fees.** § 3
- A. **Administrative Fee: One time fee: \$1,500.00** § 3.1.1
- B. **Base License Fee (check one):**
- i. \$ 700.00 per month, payable monthly in advance
 - ii. \$ _____ per year, payable annually in advance § 3.1.2
- C. **Additional License Fee (check one):**
- i. One-time fee: \$ _____
 - ii. Other fees: \$ _____, payable _____ §3.1.3
- D. **Base License Fee Adjustment Dates (check if applicable):**
- i. Annually, effective on the first day of the anniversary month of the Commencement Date, based on the published Consumer Price Index (or its successor) ("CPI") as defined in Section 3.2.1 of the General License Provisions. § 3.2
§ 3.2.1
 - ii. At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises as set forth in Section 3.2.2 of the General License Provisions. § 3.2.2
 - iii. Other: _____ § 3.2.3
-
6. **Security Deposit (if any).** \$ _____ § 4
7. **Insurance Amount.** See Exhibit "B" §§ 10, 13

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: WILLIAM LYON HOMES

A California corporation

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

By:

Kevin Eads
Project Manager

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 LICENSE PROVISIONS

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Exhibits:

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PART II - STANDARD LICENSE PROVISIONS

1. GRANT AND SCOPE OF LICENSE

- 1.1. Grant of License. SANBAG hereby grants a non-exclusive, revocable license to Licensee in, on, over, under, across and along the real property of SANBAG in the location shown in the diagram attached hereto as Exhibit A and described in Item 2 of the Basic License Provisions (the "Premises"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Improvements described in Item 3 of the Basic License Provisions, and any usual and necessary related appurtenances thereto (the "Improvements"), for the purposes described in Item 3 of the Basic License Provisions, together with rights for access and entry onto the Premises as necessary or convenient for the use of the Improvement and for no other purpose. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees, consultants and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SANBAG if necessary for the use of the Improvements or the Premises, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property."
- 1.2. Condition of Premises. Licensee acknowledges that it has inspected the Premises in its present condition, including without limitation, all existing environmental conditions. Licensee accepts the Premises "as is" as suitable for the purpose for which the Premises are licensed and assumes all risk with respect to all present conditions of the Premises, including, without limitation, existing environmental conditions. Taking of possession by Licensee shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.
- 1.3. Use. The Premises and the Improvements shall be used only for the purposes specified in Item 3 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto, and no other purpose. No change shall be made by Licensee in the use of the Premises, the Improvements or the commodity or product being conveyed through the Improvements (if any) without SANBAG's prior written approval.
- 1.4. Non-exclusive and Revocable Nature of License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the Premises. Licensee agrees that notwithstanding the Improvements made by Licensee to the Premises or other sums expended by Licensee in furtherance of this License, the license granted herein is fully revocable by SANBAG in accordance with the terms of this License.
- 1.5. Easements. SANBAG reserves to itself the right, from time to time, to grant such easements, rights and dedications that SANBAG deems necessary or desirable, and to

cause the recordation of parcel maps, easement agreements and covenants, conditions and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the Premises by Licensee. Licensee shall sign any of the aforementioned documents upon request of SANBAG and failure to do so shall constitute a material breach of this License.

2. TERM, TERMINATION AND SURRENDER

2.1. Term of License. The term of this License shall commence on the “Commencement Date” specified in Item 4 of the Basic License Provisions. If Item 4.A of the Basic License Provisions is checked, this License shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions. If Item 4.B of the Basic License Provisions is checked, then this License shall be a license for the term specified in said Item 4.B. The term of this License as provided above is referred to as the “Term.”

2.2. Termination.

2.2.1. Convenience. If Item 4.A is checked, this License shall continue in full force and effect on a month-to-month basis until terminated by either Party on thirty (30) days’ prior written notice. If Item 4.B is checked, this License shall continue in full force and effect until the End Date, unless SANBAG, acting by its Executive Director or his or her designee, for any reason and in its sole and absolute discretion, determines that this License is no longer in SANBAG’s best interests. In which case, SANBAG may terminate this License on thirty (30) days’ prior written notice, but SANBAG shall also return to Licensee, within thirty (30) days after the termination, the pro-rata portion of any annual license fee paid by the Licensee for the portion of the agreed term that will not be used by Licensee.

2.2.2. Cause. SANBAG may terminate this License for cause in accordance with the provisions hereof, including, without limitation, Sections 24 (Abandonment), 8 (Default, Breach and Remedies) and 25.11 (Assignment). In addition, SANBAG shall have the right to immediately, without notice and at Tenant’s expense, terminate this License upon discovery of any default set forth in Section 8.1(d) and abate any such public nuisance and/or dangerous condition.

2.2.3. Public Use. In addition to any and all other termination rights of SANBAG described herein, Licensee hereby expressly recognizes and agrees that the Premises are located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually “Public Use”); and that Licensee’s use of the Premises under this License is a temporary, interim use as to which Licensee has no right to nor expectation of use for any particular length of time that may be terminated by SANBAG by thirty (30) days

written notice to Licensee as set forth in Section 2.2.1 above. Accordingly, as a condition to entering into this License, Licensee expressly acknowledges and agrees that:

- (a) SANBAG may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of SANBAG's Executive Director, or designee;
- (b) Licensee shall **NOT** object to, oppose, or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Premises;
- (c) If SANBAG's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, Licensee shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by SANBAG or any parties having operating rights over the Premises, at Licensee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and
- (d) Licensee expressly assumes all risk of any future Public Use as determined by SANBAG and in the event SANBAG terminates this License and requires Licensee to vacate the Premises for any Public Use, Licensee shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:
 - (i) relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and
 - (ii) compensation under any eminent domain or inverse condemnation law.

2.2.4. Holdover Fee: If Licensee fails to terminate use of the Premises and/or restore the Premises as required in Item 2.3 below, on or before the End Date specified in Item 4.B of the Basic License Provisions or the termination date established as otherwise provided in this License ("Termination Date"), then, in addition to any and all other remedies available to SANBAG under the terms of this License or at law or equity, Licensee shall pay a Holdover Fee equal to twice the Base License Fee in effect on the day prior to the Termination Date, calculated and payable on a monthly basis, for the number of months (partial months counting as whole months) from the Termination Date to the date that Licensee has terminated use and restored the Premises to the required condition. Licensee shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such holding over.

2.3. Termination of Use and Restoration of Premises. Upon termination of this License in accordance with the terms hereof, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove all alterations additions and Improvements made by Licensee to the Premises and restore the SANBAG Property as nearly as possible to the same state

and condition as existed prior to the construction, reconstruction or installation of said Improvements. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option (i) perform the same at Licensee's expense (including costs, interest, and fees), which Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Improvements. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Improvements are removed and the SANBAG Property is restored.

3. PAYMENTS

3.1. Fees. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the Administrative and License Fees specified in Item 5 of the Basic License Provisions, adjusted as set forth in Section 3.2.

3.1.1. Administrative Fee. The one time Administrative Fee set forth in Item 5.A shall be due and payable upon execution of this License.

[Note: SANBAG may require deposit in advance of preparing the License Agreement, in which case the amount deposited will be applied to the Administrative Fee 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 License Agreement in the event that the License Agreement is not consummated, per SANBAG's adopted policies and procedures.]

3.1.2. Base License Fee. If Item 5.B.i of the Basic License Provisions is checked, the first month's Base License Fee noted therein shall be due and payable upon execution of this License. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term. The Base License Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis. If Item 5.B.ii of the Basic License Provisions is checked, the annual License Fee amount, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, annually in advance on or before the anniversary month of the Commencement Date for the convenience of both Parties, without affecting the Term of this License as specified in Section 2.1.

3.1.3. Additional License Fee. If Item 5.C.i of the Basic License Provisions is checked, the one-time fee noted therein shall be due and payable upon execution of this License. If Item 5.C.ii of the Basic License Provisions is checked, the fee noted therein shall be due and payable as indicated in Item 5.C.ii.

3.2. License Fee Adjustment.

3.2.1. Annual CPI Adjustment. If Item 5.D.i of the Basic License Provisions is checked, then the Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the

Commencement Date occurs unless another date is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). If no adjustment is made at the annual anniversary date, an adjustment may nevertheless be made at a subsequent date and thereafter at not less than annual intervals. The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the month that is three (3) months prior to the month during which the particular Adjustment Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month containing the prior Adjustment Date or, if there has been no prior Adjustment, three (3) months prior to the first day of the anniversary month of the Commencement Date. As used in this section, the "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by SANBAG.

3.2.2. Fair Market Adjustment. If Item 5.D.ii of the Basic License Provisions is checked, then, at intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by Section 3.2.1, above) payable under this Section 3 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Premises as determined by SANBAG in good faith. Such increases shall be effective as of thirty (30) days after written notice from SANBAG to Licensee of such adjustment, or the date specified in such written notice, whichever is later. If no adjustment is made at any three (3) year interval, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

3.2.3. Other Adjustment. If Item 5.D.iii of the Basic License Provisions is checked, then, in addition to any adjustments required under Items 5.D.i and 5.D.ii, the adjustment set forth in 5.D.iii shall be applied in accordance with its terms.

3.3. Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this License will cause SANBAG to incur costs not contemplated by this License, the exact amount of such costs being extremely difficult and impracticable to determine. Therefore, if any payment due from Licensee is not received by SANBAG within five (5) days of when due, Licensee 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 Licensee. Acceptance

of any late payment charge shall not constitute a waiver of Licensee'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 License, 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 License and in addition to the payment described in Section 3, SANBAG may require Licensee to pay SANBAG a security deposit in the amount set forth in Item 6 of the Basic License 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 Licensee of all of the terms, covenants, conditions and obligations of this License. If at any time Licensee fails to keep and perform any of the term, covenants, and conditions of this License, 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 Licensee's default or breach. Within a reasonable time after termination of this License and after Licensee has vacated the Premises, SANBAG shall return, without interest, said deposit or portion remaining, if any, after deductions for any unpaid payments and any losses or damage sustained by SANBAG due to any breach or default by Licensee or any damage to the Premises or any failure to restore the Premises to the required condition.

5. TAXES

Licensee 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 by any governmental authority: (a) against the Improvements, the Premises and/or any personal property, fixtures or equipment located on or placed on the Premises, whether owned by Licensee or any person or entity acting for or at the request of Licensee; or (b) as a result of the Licensee's or the Improvements' operations.

6. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Improvements or Premises, and fully and promptly pay all persons who perform labor upon said Improvements or Premises. Licensee shall not suffer or permit to be filed or enforced against the Premises or the Improvements, 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 Licensee, or out of any other claim or demand of any kind. The term "Work" under this License means any construction, reconstruction, installation, restoration, alteration, repair, replacement, or removal, other than normal maintenance. Licensee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises or the Improvements. Licensee 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. Licensee shall furnish evidence of payment upon request of SANBAG. Licensee 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 Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, SANBAG shall have the right to discharge same (including by paying the claimant) and Licensee 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 Licensee 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 License.

7. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Improvements, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the Premises. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the SANBAG Property, accident or fire or other casualty on the SANBAG Property, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the SANBAG Property. 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. Licensee, on behalf of itself and its officers, directors, affiliates, employees, agents, independent contractors and subcontractors anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel"), as a material part of the consideration for this License, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Licensee and/or its Personnel. **In that connection, Licensee expressly 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 License.

8. DEFAULT, BREACH AND REMEDIES

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

- (a) Licensee shall fail to make any payment herein reserved when due, or any reimbursement to SANBAG required herein when due;

- (b) Licensee shall vacate all or a substantial portion of the Premises, whether or not Licensee is in default of the payment or other charges due under this License; or
- (c) Licensee shall fail to comply with any other term, provision or covenant of this License, and shall not cure such failure within three (3) days after written notice thereof to Licensee.
- (d) Licensee 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.

- 8.2.1. Termination. Upon the occurrence of Licensee's default and breach, SANBAG shall have the right, at any time, with or without notice or demand, to terminate this License, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Licensee and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that SANBAG may have under this License, at law or equity by reason of Licensee's default or of such termination.
- 8.2.2. Corrective Measures. Should Licensee default on, 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 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 Licensee's expense (including fees, costs and interest) which Licensee agrees to pay to SANBAG upon demand.
- 8.2.3. Costs. If SANBAG incurs any cost or expense occasioned by the default of Licensee (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 Licensee's or other occupant's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SANBAG, rail operators and future licensees; 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. Remedies Cumulative. All rights, privileges and remedies of the parties are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein

8.3. SANBAG Default and Licensee's Remedies. SANBAG shall not be in default under this License unless SANBAG fails to perform obligations required of SANBAG within sixty (60) days after written notice is delivered by Licensee to SANBAG specifying the obligation which SANBAG has failed to perform; provided, however, that if the nature of SANBAG's obligation is such that more than sixty (60) days are required for performance, then SANBAG shall not be in default if SANBAG commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Licensee's exclusive remedies shall be an action for specific performance or action for damages.

9. INDEMNIFICATION

9.1. Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all of its capacities, and its members, commissioners, officers, directors, employees, 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 Licensee, or its Personnel (as defined in Section 7, Assumption of Risk and Waiver) or invitees of Licensee in connection with the SANBAG Property or arising from the presence upon or performance of activities by Licensee 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 Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this License, in each case whether occurring during the Term of this License or thereafter.

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

9.3. Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee'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 Licensee 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 Licensee set forth in this section shall survive the termination of this License.

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. Licensee'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 Licensee's policies.

10.2. Licensee's Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this License insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described in, and meeting all other requirements set forth in, Exhibit "B". SANBAG reserves the right, throughout the Term of this License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, Licensee 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 Licensee under this License. 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 Licensee 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, Licensee 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 Licensee's use and occupancy of the Premises, or if Licensee vacates the Premises and causes any increase in such premiums, then Licensee shall pay as an additional fee the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at

Licensee's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

11. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall during the term of this License maintain the Improvements in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises and the Improvements as necessary to keep the Premises and the Improvements 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 Licensee or Licensee's Parties, including but not limited to damage arising from any tests or investigations conducted upon the Premises, Licensee 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 Licensee or Licensee's Parties. Licensee 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 and compliance with all applicable standards, specification and safety requirements.

12. ALTERATIONS AND CONSTRUCTION

Except as otherwise provided herein, Licensee 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 Licensee on the Improvements or the Premises shall be performed (a) at Licensee'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, Licensee shall submit Work plans to SANBAG for review and approval. Any such Work must be carried out pursuant to Work plans approved in writing by SANBAG. In addition, Licensee shall provide SANBAG with at least 14 calendar days' written notice prior to commencement of any Work on the Premises or the Improvements, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility. Unless otherwise requested by SANBAG, upon completion of any Work, Licensee shall restore the SANBAG Property to its condition immediately preceding the commencement of such Work.

13. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee 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, Licensee 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, Licensee 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 License, 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 License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises.

14. REIMBURSEMENT

Licensee 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 Licensee'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 License, 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 Licensee, 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 Licensee 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

Licensee 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. Licensee 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, Licensee 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 Licensee's use of the Premises. Licensee 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 Licensee'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 Licensee) 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 License 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. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.
- 18.3. Costs. Licensee 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 the Improvements) any ordinary "for sale" and "for lease" signs. Licensee 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 License, SANBAG may, in its sole discretion and if applicable, require Licensee to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Licensee's and Licensee's Parties' business activities and prepare a report on Licensee's and/or Licensee's Parties' compliance with the provisions of this section. SANBAG may, if applicable, require Licensee 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 License, the cost of which shall be the sole responsibility of Licensee. Licensee 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. Licensee 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 Licensee or the Premises. As used herein, "Environmental Law" means any federal, state or local environmental, health and/or safety-related law, regulation, standard, decision of a court, permit or permit conditions, currently existing or as amended or adopted in the future. Except for any Hazardous Material expressly approved by SANBAG in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Material to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. 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. Licensee 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) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Material upon or from the Improvements or the Premises or contamination of the SANBAG Property (i) which occurs due to the use and occupancy of the Improvements or the Premises by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.
- 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 License; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this License.
- 20.4. In addition, in the event of any release on or contamination of the Premises, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the SANBAG Property 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. UNDERGROUND STORAGE TANKS

21.1. NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE PREMISES UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SANBAG, WHICH APPROVAL MAY BE WITHHELD IN SANBAG'S SOLE DISCRETION.

21.2. At SANBAG's option, upon the termination of this License at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Material in, on, under and about the Premises, in accordance with the requirements of all Environmental Laws and to the satisfaction of SANBAG and any governmental authorities having jurisdiction, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

22. CONDEMNATION

In the event all or any portion of the Premises shall be taken or condemned for public use by a governmental agency or any other party having the power of eminent domain (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) only for the taking and damage to the Improvements. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. BROKER'S FEES

Licensee 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 Licensee with regard to obtaining this License.

24. SUBORDINATE RIGHTS

This License is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property 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 and use 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 on the Premises and in the vicinity of the Improvements, regardless of any effect or impact on the Improvements. Licensee shall bear all costs and losses it incurs associated with any modifications to the Improvements necessary to accommodate SANBAG's exercise of any right hereunder. This License is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SANBAG Property now or

hereafter. This License 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 a covenant against the existence of any such title exceptions.

25. ABANDONMENT

Should Licensee at any time abandon the use of the Improvements or the Premises, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this License shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SANBAG shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this License

26. GENERAL PROVISIONS

- 26.1. 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 License 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.
- 26.2. Governing Law. This License shall be governed by the laws of the State of California.
- 26.3. Binding Effect. The terms, provisions and covenants and conditions contained in this License 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 License as Licensee, then each shall be jointly and severally liable for all obligations of Licensee hereunder.
- 26.4. No Third Party Beneficiaries. This License 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.
- 26.5. Severability. If any term, covenant, condition or provision of this License, 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 License, 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.
- 26.6. 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 Licensee under this License, provided, however, that interest shall not be payable on late charges incurred by Licensee.

- 26.7. Captions. The captions included in this License are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this License or any provision hereof, or in any way affect the interpretation of this License.
- 26.8. Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this License shall survive the expiration or earlier termination of this License, including without limitation all indemnity and defense obligations, all payment obligations with respect to License Fees and all obligations concerning the condition of the SANBAG Property and the Improvements.
- 26.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this License shall not invalidate this License, 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 License, 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 License. The subsequent acceptance of payments hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Licensee of any provisions, covenant, agreement or condition of this License, other than the failure of Licensee to pay the particular payment so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such payment.
- 26.10. Effective Date/Nonbinding Offer. Submission of this License for examination or signature by Licensee does not constitute an offer or option for a license, and it is not effective as a license or otherwise until executed and delivered by both SANBAG and Licensee. Each individual executing this License on behalf of SANBAG or Licensee represents and warrants to the other Party that he or she is authorized to do so.
- 26.11. Assignment. This License and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this License in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and be a material breach of this License, which gives SANBAG the right to immediately terminate this License and seek all other available remedies for breach.
- 26.12. Entire Agreement; Amendments. This License, 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 License. The Parties each acknowledge that no representations,

inducements, promises or agreements, oral or written, have been made by either SANBAG or Licensee, or anyone acting on behalf of SANBAG or Licensee, other than those contained in this License. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this License shall be binding upon the Parties unless they are in writing and executed by the Parties.

- 26.13. Attorneys' Fees. If either SANBAG or Licensee 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 License 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 License, but arising by reason of or related to any act or omission of Licensee or Licensee's Parties, Licensee 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.
- 26.14. Nondiscrimination. Licensee certifies and agrees that all persons employed by Licensee and/or Licensee's affiliates, subsidiaries, or holding companies, and any contractors retained by Licensee 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.
- 26.15. Further Acts. Licensee 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 License, including, at SANBAG's sole discretion, the relocation of the Improvements and the license granted hereby.
- 26.16. Time of Essence. Time is of the essence for this License.
- 26.17. Certificates. Licensee 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 Licensee, and an estoppel certificate stating that this License is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this License and such other matters pertaining to this License as may be requested by SANBAG.
- 26.18. Security Measures. Licensee 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. Licensee assumes all responsibility for the protection of Licensee, Licensee's Parties and their property from acts of third parties.

- 26.19. 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 License.
- 26.20. No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the Premises are located, this License, any memorandum of this License or any other document giving notice of the existence of this License or the license granted hereby.
- 26.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Licensee shall maintain, at Licensee’s expense, competent flagmen to protect and control movement of vehicles and equipment of Licensee 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.
- 26.22. 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 License Provisions, the provisions in Exhibit “D” shall control.

Exhibit "A"

Premises

[To Be Inserted]

Exhibit "B"

INSURANCE REQUIREMENTS FOR LICENSES

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

Scope of Coverages and Minimum Limits of Insurance (Check all applicable boxes)

Licensee shall maintain and provide proof of insurance coverages at least as broad as and with limits no less than the following:

- General Liability:** Coverage: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Minimum limits: *\$1,000,000* 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, and
- Excess and/or Umbrella insurance coverage shall be in excess over the General Liability, Automobile Liability & Worker's Compensation of:**
 - \$5,000,000* *\$10,000,000*
- Automobile Liability:** Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto). *\$1,000,000* per accident for bodily injury and property damage.
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.** *\$1,000,000* per occurrence for bodily injury or disease.
- Course of Construction:** Providing coverage for "all risks" of loss in the completed value of the project.
- Property Insurance against all risks of loss to any tenant improvements or betterments.: Full replacement cost with no coinsurance penalty provision.**
- Contractors 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.*\$1,000,000* per occurrence *\$2,000,000* annual aggregate.
- Railroad Protective Liability Insurance:** Coverage: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SANBAG with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **\$2 million per occurrence**, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **\$6 million annual aggregate** shall apply.

Exhibit "B"

If providing coverage on the London claims-made form, the following provisions shall apply:

- a. The limits of liability shall be not less than \$3 million per occurrence, combined single limit. A \$9 million aggregate may apply.
- b. Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.
- c. If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:

It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SANBAG, or its designated representative, in SANBAG's sole and absolute discretion, where SANBAG's agreements and obligations with rail operators allow it.

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 the Licensee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Other Insurance Provisions

1. The general liability and automobile liability policies are to contain, or be endorsed to include, the following provisions:
 - a. SANBAG and Related Parties are to be covered as insured parties as respects: liability arising out of activities performed by or on behalf of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee; and automobiles owned, leased, hired or borrowed by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, or its Related Parties.
 - b. For any claims related to this project, the Licensee's insurance coverage shall be primary insurance as respects SANBAG, and its Related Parties. Any insurance or self-insurance maintained by SANBAG, or its Related Parties shall be excess of the Licensee's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG and its Related Parties.
 - d. The Licensee'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.

Exhibit "B"

- e. 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.
2. 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. No insurance coverage provided shall prohibit Licensee or Licensee's employees or agents from waiving the right of subrogation prior to a loss or claim. Licensee hereby waives all rights of subrogation against SANBAG and its Related Parties.
3. Additional Insured: All policies, except for Employer Liability/Worker's Compensation and Professional Liability policies, shall contain endorsements naming SANBAG and its Related Parties as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall not limit the scope of coverage for SANBAG or its Related Parties to vicarious liability but shall allow coverage for SANBAG and its Related Parties to the full extent provided by the policy.
4. Course of construction policies shall name SANBAG as loss payee.

Acceptability of Insurers

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

Verification of Coverage

Licensee shall furnish SANBAG with original certificates of insurance with endorsements as verifying coverage required by this Exhibit B. 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, Licensee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Licensee 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 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.

Exhibit "D"

[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 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

Exhibit "D"

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 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

Exhibit "D"

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 / SCRRRA a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location and a milestone schedule.
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/SCRRRA 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 SCRRRA/BNSF flagman and SCRRRA/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/SCRRRA 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

Exhibit "D"

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/SCRRRA 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 / SCRRRA inspector must be present during the grouting process.
28. Casing jacking shall adhere to the following requirements:
 - 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

Exhibit "D"

- 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 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.

Exhibit "D"

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.

Exhibit "D"

- 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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Initials



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

Minute Action

AGENDA ITEM: 5

Date: April 17, 2014

Subject: Burlington Northern Santa Fe Purchase Order for Downtown San Bernardino Passenger Rail Project

Recommendation: That the Committee recommend the Board authorize the Executive Director, or his designee, to execute a Purchase Order in the amount of \$1,800,000 to Burlington Northern Santa Fe (BNSF) for track, signal, engineering, and flag protection work on BNSF's Cajon Subdivision and San Bernardino Subdivision, and on the Redlands Branchline to accommodate the Downtown San Bernardino Passenger Rail Project.

Background: The Downtown San Bernardino Passenger Rail Project (DSBPRP) is an extension of Metrolink commuter rail passenger service. The extension is approximately one mile east from its current terminus at the existing Santa Fe Depot to new Metrolink commuter rail platforms at the proposed San Bernardino Transit Center (SBTC), near the intersection of Rialto Avenue and E Street in the City of San Bernardino. Included within the DSBPRP are new rail platforms at the SBTC and Depot, a pedestrian overpass, construction of a second track parallel to the existing track, grade crossing improvements, roadway closures, and drainage improvements.

Since the construction activities involve work on rail right-of-way owned or maintained by BNSF, a purchase order is needed to cover costs associated with BNSF staff completing track work, signal work, operational safety (flag)

*

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.

protection, and miscellaneous grade crossing signal and track support. The elements of work to be performed are:

- (1) Re-profile 3,264 track feet (TF) of 136 lb Continuously Welded Rail (CWR) and wood ties;
- (2) Install 125 TF of 136 lb CWR and wood ties;
- (3) Shift 286 TF of 136 lb CWR and wood ties;
- (4) Spike and remove one No. 11 turnout;
- (5) Install one, 136 lb jump-frog No. 11 turnout;
- (6) Provide miscellaneous grade crossing signal and track support.

BNSF has estimated the total cost for the work to be \$1,645,723. Staff is requesting the purchase order be issued in the amount of \$1,800,000 in the event of any unforeseen issues or circumstances that may arise. \$1,800,000 is included in the Fiscal Year 2013/2014 budget.

Financial Impact: This item is being funded from State Transit Assistance – County Population funding and is consistent with the Fiscal Year 2013/2014 Budget.

Reviewed By: This item does not require legal review. This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff: Casey Dailey, Transit Analyst



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

Minute Action

AGENDA ITEM: 6

Date: April 17, 2014

Subject: Ontario Airport Rail Access Study Update

Recommendation: Receive presentation and a status update on the Ontario Airport Rail Access Study.

Background: On July 11, 2013, the SANBAG Board of Directors awarded a professional services contract to HDR Engineering to complete a study reviewing options to provide rail connectivity to the Ontario Airport. This study is currently anticipated to be completed at the end of July 2014.

A presentation will be provided to the Committee summarizing the scope of the study and the progress completed to-date.

Some of the topics to be reviewed are:

- The evaluation criteria and methodology;
- Current origin/destination data;
- Alignment alternatives under review;
- Ridership forecasting methodology;
- Discussion of potential phased implementation of the preferred alternative.

Financial Impact: This item imposes no financial impact on the Fiscal Year 2013/2014 Budget.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff: Justin Fornelli, PE – Chief of Transit and Rail Programs

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Approved
Commuter Rail and Transit Committee

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	
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Check all that apply.
 CRTC1404-jrf



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

Minute Action

AGENDA ITEM: 7

Date: April 17, 2014

Subject: Proposition 1B Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA) Funding for SANBAG and the City of Needles

Recommendation: That the Committee recommend the Board, acting as the San Bernardino County Transportation Commission:

Approve Memorandum of Understanding No. C14159 with the City of Needles defining the roles and responsibilities for the administration of Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account Funds previously allocated to them.

Background: On February 3, 2010, the SANBAG Board approved an allocation to the transit operators from the Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) in the amount of \$70,286,423. The allocations provided capital funds to SANBAG and all of the transit operators throughout the county which includes Needles Area Transit.

AB 1072 and PTMISEA Guidelines require that operators submit to Caltrans a PTMISEA Program Expenditure Plan which contains a list of all projects the operator intends to fund with its share of PTMISEA for the life of the bond,

*

Approved
 Commuter Rail and Transit Committee

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG	CTC	X	CTA	SAFE	CMA
-----	-----	---	-----	------	-----

Check all that apply.

Commuter Rail and Transit Committee Agenda Item

April 17, 2014

Page 2

including the amount for each project and the year in which the funds will be requested. An amendment to the Expenditure Plan reallocates any unspent dollars to the projects that the operators currently need; it does not increase or decrease the amount of the original allocation approved in February 2010.

Under the California Public Utilities Code Section 99314, only certain agencies are eligible to apply for PTMISEA funds. Since the City of Needles is not eligible, SANBAG, acting as the Regional Transportation Planning Agency (RTPA), must serve as the project lead and recipient agency for the allocation previously approved for Needles Area Transit.

There are certain administrative and fiscal responsibilities associated with receiving PTMISEA Population Funds. Under the adopted guidelines for the PTMISEA grant program, the recipient of these funds is required to submit progress reports, fiscal and compliance audits and a close-out report once the project is complete. The purpose of the attached Memorandum of Understanding (MOU) is to identify the roles and responsibilities of SANBAG and the City of Needles with respect to the receipt of the PTMISEA Funds.

Financial Impact: This item is consistent with the adopted SANBAG Fiscal Year 2013/2014 Budget. The PTMISEA grant does not require matching funds.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel has reviewed a draft of the MOU.

Responsible Staff: Vanessa Jezik, Transportation Programming Analyst

CONTRACT SUMMARY SHEET

Contract No. C 14159 Amendment No. _____

By and Between

San Bernardino County Transportation Commission and City of Needles

Contract Description MOU defining roles and responsibilities in applying for and administering PTMISEA grant funds

Board of Director's Meeting Date: 5/7/2014
Overview of BOD Action: To approve the MOU between SANBAG and City of Needles.

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW			
Original Contract Amount	\$	200,000	Original Contingency Amount
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>
Current Amendment Amount	\$		Contingency Amendment
TOTAL CONTRACT VALUE	\$	200,000	TOTAL CONTINGENCY VALUE
TOTAL BUDGET AUTHORITY (contract value + contingency)			\$ 200,000

Contract Start Date 5/7/2014	Current Contract Expiration Date 5/6/2017	Revised Contract Expiration Date
Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain.		

FINANCIAL INFORMATION				
<input type="checkbox"/> Budget authority for this contract currently exists in Task No. _____. No, authority does not exist.				
<input type="checkbox"/> A Budget Amendment is required. Not required.				
How are we funding current FY? N/A - Staff expects to receive funding in FY15.				
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State Funds	<input type="checkbox"/> Local Funds	<input type="checkbox"/> TDA Funds	<input type="checkbox"/> Measure I Funds
Provide Brief Overview of the Overall Funding for the duration of the Contract: SANBAG is serving as a pass through agency for the City of Needles. The City of Needles is not eligible to receive the funding without SANBAG concurrence and participation.				
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable				

CONTRACT MANAGEMENT INFORMATION	
Check all applicable boxes:	
<input type="checkbox"/> Retention? If yes, indicate % _____. N/A	
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal ____ % N/A	

Vanessa Jezik		4-7-14
Project Manager (Print Name)		4/3/14
Task Manager (Print Name)	Andrea Zureide	4/3/14
Dir. of Fund Admin. & Programming (Print Name)		4/7/14
Contract Administrator (Print Name)		4/2/14
Chief Financial Officer (Print Name)		4/2/14

SANBAG AGREEMENT C14159
MEMORANDUM OF UNDERSTANDING
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION
AND
CITY OF NEEDLES

This Memorandum of Understanding (MOU) is entered into by and between the San Bernardino County Transportation Commission (“SANBAG”) and The City of Needles (“CITY”) for the purpose of defining the roles and responsibilities of the two parties with respect to the receipt of Proposition 1B Public Transportation Modernization, Improvement and Service Enhancement Account (“PTMISEA”) funds allocated to SANBAG pursuant to Government Code section 8879.55(a)(2), hereinafter referred to as “PTMISEA Population Funds”.

RECITALS

WHEREAS, CITY is a public entity operating Needles Area Transit; and

WHEREAS, SANBAG, acting as the Regional Transportation Planning Agency (“RTPA”), desires to work as a partner with CITY in ensuring the execution and completion of CITY’s projects funded by PTMISEA Population funds and included in the most recent SANBAG Board-approved PTMISEA Expenditure Plan for CITY; and

WHEREAS, SANBAG, must serve as a direct recipient for PTMISEA Population funds that are allocated to CITY by SANBAG due to the ineligibility of CITY to receive PTMISEA funds under State of California Public Utilities Code section 99314; and

WHEREAS, SANBAG acting as the RTPA is the recipient of PTMISEA Population funds and has identified the projects included in CITY’s PTMISEA Expenditure Plan eligible for funding as approved by the SANBAG Board on May 7, 2014; and

WHEREAS, this Memorandum of Understanding addresses the roles and responsibilities for the administration of the remaining PTMISEA grant program funds allocated to CITY by SANBAG; and

WHEREAS, the parties understand that the PTMISEA Population Funds applied for by SANBAG, on the behalf of CITY, will be sent directly to SANBAG; and

WHEREAS, the parties acknowledge that certain administrative and financial functions will be necessary in order for the PTMISEA Population Funds allocated to SANBAG to be used for capital projects to be completed by CITY.

NOW, THEREFORE, it is mutually understood and agreed by SANBAG and CITY as follows:

ARTICLE I. RESPONSIBILITIES OF SANBAG AND CITY

- A. CITY shall assist SANBAG in determining eligible capital projects and the amount of PTMISEA Population Funds allocated to SANBAG required for each eligible City of Needles project and PTMISEA application.
- B. CITY shall prepare and submit an invoice to SANBAG for the PTMISEA Population Funds upon project completion.
- C. CITY shall prepare, with assistance from SANBAG, all required grant progress reports and close out reports, in accordance with the PTMISEA guidelines developed by Caltrans. SANBAG will submit the progress reports and close out reports to Caltrans, on the behalf of CITY. Progress reports are to be submitted to Caltrans on a semi-annual basis. A Project Close-out Report is to be submitted at project completion.
- D. CITY shall, after receipt of any portion of the PTMISEA Population Funds made available from SANBAG and through the completion of the project, include any required fiscal and compliance audit requirements in the annual independent audit of CITY.
- E. CITY will prepare, with assistance from SANBAG, the application and documents required to apply for PTMISEA Population Funds. SANBAG will submit the application and required documents to Caltrans, on the behalf of CITY, in accordance with the schedule developed by Caltrans for the PTMISEA Population Funds for mutually agreed upon eligible projects.
- F. SANBAG shall include the receipt and disbursement of the PTMISEA Population Funds made available to CITY in its annual independent fiscal and compliance audit.
- G. CITY is responsible for ensuring the project is completed as described in the Allocation Request, or Corrective Action Plan approved by Caltrans if applicable, and ensuring compliance with all requirements included in the Certifications and Assurances document as described in Attachment A, included herein and made a part of this agreement.

ARTICLE II. GENERAL PROVISIONS

- A. Term of MOU: This MOU shall be effective upon execution by SANBAG. The MOU shall remain in effect until terminated by mutual written consent of both parties.
- B. The State of California Budget Act of 2013 re-appropriated the remaining PTMISEA Population Fund balances from the Fiscal Year 2007-2008 through to the Fiscal Year 2010-2011 appropriations to be available for allocation until June 30, 2014, and for encumbrance or liquidation until June 30, 2018. It has been the State of California's practice to extend the encumbrance or liquidation date one year with each budget act. However, there is no guarantee that the extension will continue to occur. The project for which the State of California allocated PTMISEA Population Funds shall commence within six months of the allocation. If the project fails to move forward within six months the State of California will require a Corrective Action Plan in accordance with the PTMISEA Guidelines. If the project continues to experience delays

the State of California may request that the PTMISEA Population Funds be reallocated to a different project.

C. Legal Authority: SANBAG and CITY warrant that they are duly authorized to execute this MOU on behalf of said parties and that, by so executing the MOU, the parties hereto are formally bound to the provisions of this MOU.

D. Assignment: Neither this MOU, nor any of the parties' rights, obligations, duties or authority under this MOU may be assigned in whole or in part by either party without the proper written consent of the other party in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to any assignment shall not be deemed consent to any subsequent assignment.

E. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this agreement.

F. Withdrawal and Termination: Any party may withdraw from this MOU upon thirty (30) days written notice to each party, providing that the notice of withdrawal sets for the effective date of the withdrawal and the reason for the withdrawal.

G. Notices: Any notices, requests, or demands made between the parties pursuant to this MOU are to be directed as follows:

The City of Needles
817 Third Street
Needles, CA 92363
Attn: Rick Daniels
City Manager
(760) 326-2113

San Bernardino Associated Governments
1170 W Third Street, 2nd Floor
San Bernardino, CA 92410
Attn: Mitch Alderman
Director of Transit and Rail Programs
(909) 884-8276

H. Severability: If any term, provision, covenant, or condition of this MOU is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this MOU shall not be affected thereby, and each term, provision, covenant or condition of this MOU shall be valid and enforceable to the fullest extent permitted by law.

I. Counterparts of MOU: This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

J. Force Majeure: Either party shall be excused from performing its obligations under this MOU during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage or a material act or omission by the other party, when satisfactory evidence of such cause is presented to the other party and provided further that such nonperformance is unforeseeable beyond the control and is not due to the fault of negligence of the party not performing.

K. The Recitals are incorporated into and made a part of this MOU.

In Witness Whereof, the Parties have executed this Memorandum of Understanding effective on the date executed by SANBAG.

SANBAG

CITY OF NEEDLES

W.E. Jahn
Board President

Rick Daniels
City Manager

Date

Date

Approved as to Form:

Approved as to Form:

Eileen Monaghan Teichert
SANBAG General Counsel

City Attorney
City of Needles

Date

Date

This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist SANBAG Board Members and partners as they participate in deliberations at SANBAG Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. SANBAG staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
S RTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 st Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

San Bernardino Associated Governments



MISSION STATEMENT

To enhance the quality of life for all residents, San Bernardino Associated Governments (SANBAG) will:

- Improve cooperative regional planning

- Develop an accessible, efficient, multi-modal transportation system

- Strengthen economic development efforts

- Exert leadership in creative problem solving

To successfully accomplish this mission, SANBAG will foster enhanced relationships among all of its stakeholders while adding to the value of local governments.

Approved June 2, 1993
Reaffirmed March 6, 1996