



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

## Supplemental Material for Agenda No. 33

### Board of Directors

July 2, 2014

Location:

SANBAG Office  
1170 W. 3<sup>rd</sup> Street, (1<sup>st</sup> Floor Lobby)  
San Bernardino, CA

## DISCUSSION CALENDAR

### Transit/Commuter Rail

**33. Rail right-of-way grants of right of use templates, policies and procedures**

That the Board, acting as the San Bernardino County Transportation Authority:

1. Adopt Resolution No. 14-022, "Resolution of The San Bernardino County Transportation Authority Delegating Authority to the San Bernardino County Transportation Commission to Manage, Establish Policies, Grant Rights of Use, Adopt and Collect Fees and Charges Regarding the Authority's Rail Property, and to the Executive Director to transfer Rail Property to the Commission."

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

2. Approve and adopt proposed Policy No. 31602, "Rail Property Policy", setting forth policies, procedures, delegations of authority, and bases for imposing fees and charges, associated with ownership, management and grants of rights of use of Rail Property.

3. Conduct a public hearing to consider adopting Rail Property fees and charges.

4. Adopt Resolution No. 14-027, "Resolution of The San Bernardino County Transportation Commission Establishing Fees and Charges For Rail Property."

5. Approve and authorize the use and execution of the proposed templates for grants of rights of use and documents pertaining to the management of SANBAG Rail Property in accordance with Policy No. 31602, identified as Attachments 1 through 21, including any modifications as provided in Policy No. 31602.

*Attached are the document templates, attachments 1-21, associated with Policy 31602.*

Attachment 1

SANBAG Contract No.: C \_\_\_\_\_

Epic File No.: \_\_\_\_\_

Subdivision: \_\_\_\_\_

Milepost(s): \_\_\_\_\_

**SANBAG Contract No.** \_\_\_\_\_

**LEASE AGREEMENT**

**BETWEEN**

**SANBAG**

**AND**

---

Attachment 1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between the SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting solely in its capacity as \_\_\_\_\_ [insert capacity of SANBAG] hereinafter ("SANBAG"), and \_\_\_\_\_ [insert capacity of Tenant] ("Tenant"), upon and in consideration of the agreements, covenants, terms and conditions below.

PART I – BASIC LEASE PROVISIONS

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

Basic Lease Provisions

Part II  
Section Cross  
Reference

1. Parties.

SANBAG's Address:

1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715

Tenant's Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Basic Lease Provisions**

**Part II**  
**Section Cross**  
**Reference**

**2. Description of the Premises.**

§ 1.1

Premises Name: \_\_\_\_\_

Premises Address: \_\_\_\_\_

\_\_\_\_\_

Approximate area: \_\_\_\_\_ square feet; \_\_\_\_\_ acres

(See map/diagram in Exhibit "A".)

Description and Dimensions of Premises Area:

\_\_\_\_\_

\_\_\_\_\_

**3. Allowable Improvements and Uses. Tenant shall construct only the following improvements and conduct or permit only the following uses on the Premises:**

**Description of Permitted New Improvements:**

§1.3

\_\_\_\_\_

\_\_\_\_\_

**Use of the Premises:**

\_\_\_\_\_

\_\_\_\_\_

**Basic Lease Provisions**

**Part II**  
**Section Cross**  
**Reference**

4. **Term.** § 2.1

Commencement Date: \_\_\_\_\_

Term (check one):

- A. Month-to-month
- B. Until End Date: \_\_\_\_\_ (subject to termination pursuant to the terms of this License – see especially Standard Lease Provisions §2.2)
- C. Notice of Termination: No less than \_\_\_\_\_ days

5. **Rent.** § 3  
§ 3.1.1

- A. Initial Base Rent:  
\$ \_\_\_\_\_ per month:
  - i. payable monthly in advance
  - ii. payable annually in advance

B. Additional Rent: \$ \_\_\_\_\_ § 2.1.2

- C. Base Rent Adjustment Dates (check if applicable): § 3.2
  - 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 paragraph 3.2.1 of the Standard Lease Provisions.
  - ii. At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises.

6. **Security Deposit.** \$ \_\_\_\_\_ § 4

7. **Insurance Amount.** See Exhibit “B” § 10

8. **Broker and Broker’s License No:** § 26

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**IN WITNESS WHEREOF**, this Lease was duly executed in duplicate by the Parties identified in Item 1 of this Part I on the dates below, and is effective as of the date executed by SANBAG.

**SANBAG:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Tenant:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attachment 1

**PART II – STANDARD LEASE PROVISIONS**

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**PART II - STANDARD LEASE PROVISIONS**

**1. LEASE OF PREMISES**

- 1.1 **Lease of Premises.** SANBAG hereby leases to Tenant, and Tenant hereby hires from SANBAG certain premises described and consisting of approximately the area described in Item 3 of the Basic Lease Provisions, (the “Premises”) and shown in the map, legal description and/or site plan attached as Exhibit “A”. The Premises shall refer to the land shown on the site plan (the “Land”) plus all buildings and improvements now or hereafter located thereon, if any (collectively, the “Improvements”). 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.** Tenant acknowledges that it has inspected the Premises in its present condition, including all existing environmental conditions. Tenant accepts the Premises “as is” as suitable for the purpose for which the Premises are leased and assumes all risk with respect to present conditions of the Premises, whether patent or latent, including existing environmental conditions. Taking of possession by Tenant shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.
- 1.3 **Use.** The Premises shall be used only for the purposes specified in Item 3 of the Basic Lease Provisions, and for such other lawful purposes as may be directly incidental thereto. Tenant shall be responsible for and shall at its own cost and expense obtain any and all licenses and permits necessary for any such use. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance or would disturb or endanger any other persons. Tenant shall not permit the Premises to be used for any purpose or in any manner (including without limitation any method of storage) which would render the insurance thereon void or the insurance risk more hazardous.
- 1.4 **Quiet Enjoyment.** SANBAG represents and warrants that it has full rights and authority to enter into this Lease and that Tenant, upon paying the Rent herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from SANBAG, subject to the terms and provisions of this Lease and all matters of record.
- 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 Tenant. Tenant shall sign any of the aforementioned documents upon

## Attachment 1

request of SANBAG and failure to do so shall constitute a material breach of this Lease.

- 1.6 Delivery of Premises. If SANBAG cannot deliver the Premises by the Commencement Date, SANBAG shall not be deemed to be in default hereunder, nor shall SANBAG be liable for any loss or damage directly or indirectly arising out of or resulting from such failure. Tenant agrees to accept possession of the Premises at such time as SANBAG is able to tender the same, which date shall thenceforth be deemed the Commencement Date.

## 2. TERM, TERMINATION, AND SURRENDER

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

### 2.2 Termination

- 2.2.1 Convenience. If Item 4.B is checked, SANBAG may terminate this lease at any time without cause by giving the notice provided in Item 4.C of the Basic Lease Provisions, but in any event such notice shall be provided to Tenant no less than thirty (30) days and no more than one (1) year before termination.
- 2.2.2 Cause. SANBAG may terminate this Lease for cause in accordance with the provisions hereof, including, without limitation, Sections 8 (Default, Breach and Remedies) and 13 (Damage or Destruction). In addition, SANBAG reserves the right to, without notice and at Tenant's expense, terminate this License immediately upon discovery of any default set forth in Section 8.1(d), and immediately 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, Tenant 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 and/or other public uses (collectively and individually "Public Use"); and that Tenant's use of the Premises under this Lease is a temporary, interim use as to which Tenant has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to entering into this Lease, and provided that the Term specified in Item 4.B of this Lease is at least one year, SANBAG expressly reserves the right to terminate the Lease for any such Public Use by thirty (30) days written notice to Tenant. If the Term specified in Item 4.B of this Lease is at least one year, Tenant expressly acknowledges and agrees that:

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- (a) SANBAG may terminate this Lease for any Public Use, to be determined in the sole and absolute discretion of SANBAG's Executive Director, or designee;
- (b) Tenant shall **NOT** oppose 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 its 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 its facilities, Tenant shall reconstruct, alter, modify, relocate or remove its facilities, as required by SANBAG or any parties having operating rights over the Premises, at Tenant's sole cost and expense, within thirty (30) days after written notice from SANBAG; and
- (d) Tenant expressly assumes all risk of any future Public Use as determined by SANBAG and in the event SANBAG terminates this Lease and requires Tenant to vacate the Premises for any Public Use, Tenant shall not, as a result of such termination and vacation of the Premises, be entitled to:
  - (i) receive any 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) any compensation under the eminent domain law.

**2.2.4 Holding Over.** In the event that Tenant shall not immediately surrender the Premises to SANBAG in the condition required in Item 2.3 on the expiration date of the Term or earlier termination of this Lease, Tenant shall be deemed to be a month to month tenant upon all of the terms and provisions of this Lease, except the monthly Rent shall be twice the monthly Rent in effect during the last month of the Term. If Tenant shall hold over after the expiration date of the Term or earlier termination of this Lease, and SANBAG shall desire to regain possession of the Premises, then SANBAG may forthwith re-enter and take possession of the Premises without process or by any legal process in force in the State of California. Tenant shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such holding over.

**2.3 Surrender and Restoration of Premises.** Upon termination of this Lease in accordance with the terms hereof, Tenant shall surrender the Premises in as good condition as when received, reasonable wear and tear excepted, free of trash and rubbish, and free from all tenancies or occupancies by any person. Tenant shall remove all trade fixtures, furniture, equipment and other personal property installed in the Premises prior to the expiration or earlier termination of this Lease. Unless SANBAG elects to the contrary by written notice to Tenant delivered prior to the expiration or earlier termination of this Lease, Tenant shall remove at its sole cost all alterations, additions and Improvements made by Tenant to the Premises. Alterations, additions and Improvements remaining on the Premises that SANBAG elects by written notice to Tenant to acquire and retain at the expiration or earlier termination of this Lease shall

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become the property of SANBAG. Tenant shall, at its own cost, completely repair any and all damage to the Premises resulting from or caused by such removal. The provisions of Section 12 (Alterations) shall apply to such removal and repairs.

### 3. RENT

3.1 Rent. As consideration for the rights herein granted, Tenant agrees to pay to SANBAG the Rent specified in Item 5 of the Basic Lease Provisions, accruing from the Commencement Date and adjusted as set forth in Section 3.2. Rent for any fractional periods at the commencement or end of the Term shall be prorated, if applicable, on a daily basis.

3.1.1 Base Rent. If Item 5.A.i of the Basic Lease Provisions is checked, the first month's installment of Base Rent shall be due and payable upon execution of this Lease in the amount indicated as Initial Base Rent in Item 5.A of the Basic Lease Provisions. Thereafter, installments of Base Rent shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term. If Item 5.A.ii of the Basic Lease Provisions is checked, an amount equal to twelve (12) times the monthly Base Rent shall be due and payable, without demand, annually in advance for the convenience of both Parties, without affecting the Term of this Lease as specified in Section 2.1.

3.1.2 Additional Rent. If an amount is set forth in Item 5.B of the Basic Lease Provisions, then such amount shall be due and payable, without demand, as set forth therein.

### 3.2 Base Rent Adjustment

3.2.1 Annual CPI Adjustment. If Item 5.C.i of the Basic Lease Provisions is checked, then the Base Rent 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 Lease 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 Rent as of each Adjustment Date shall be the greater of the Base Rent 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 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

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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 Rental Adjustment.** If Item 5.C.ii of the Basic Lease Provisions is checked, then, at intervals of not less than three (3) years, Base Rent (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 Base Rent 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 Tenant 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.

**3.3 Late Charge.** Tenant acknowledges that late payment by Tenant of any payment owed to SANBAG under this Lease will cause SANBAG to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any installment of Rent or other payment due from Tenant is not received by SANBAG within five (5) days of when due, Tenant shall pay to SANBAG an additional sum of ten percent (10%) of the overdue Rent or other 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 Tenant. Acceptance of any late payment charge shall not constitute a waiver of Tenant'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 Lease, at law or in equity.

## 4. SECURITY DEPOSIT

Upon execution of this Lease and in addition to the payments described in Section 3, Tenant shall deposit with SANBAG upon execution of this Lease the sum provided in Item 6 of the Basic Lease Provisions ("Security Deposit"), which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the performance by Tenant of all of the terms, covenants, conditions and obligations under this Lease. Upon the occurrence of any event of default by Tenant, SANBAG may use the Security Deposit to the extent necessary to make good any arrears of Rent or other payments due SANBAG hereunder, all of which shall be deemed to be rent, and any other damage, injury, expense or liability caused by such event of default; and Tenant shall pay to SANBAG on demand the amount so applied in order to restore the Security Deposit to its original amount. Any remaining balance of the Security Deposit shall be returned by SANBAG to Tenant after termination of this Lease, provided all of Tenant's obligations under this Lease have been fulfilled.

## 5. TAXES

Tenant shall be liable for all taxes levied or assessed against real property, personal property, furniture, fixtures, and equipment located or placed on the Premises, whether owned by the Tenant, or otherwise, and Tenant also agrees to pay before delinquency any and all possessory

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interest taxes (as described in California Revenue and Taxation Code Section 107) due and arising from this Lease.

### 6. LIENS

Tenant will fully and promptly pay for all materials joined or affixed to the Premises, and fully and promptly pay all persons who perform labor upon the Premises. Tenant shall not suffer or permit to be filed or enforced against the Premises, or any part thereof, any mechanics', material men's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance, Work, activities, or operations of Tenant, or out of any other claim or demand of any kind. The term "Work" under this Lease means any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal, other than normal maintenance. Tenant shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises. Tenant 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. Tenant shall furnish evidence of payment upon request of SANBAG. Tenant 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 Tenant does not discharge any mechanic's lien or stop notice for works performed for Tenant, SANBAG shall have the right to discharge same (including by paying the claimant) and Tenant 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 Tenant of twenty five percent (25%) of the costs of the discharge of the 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 Lease.

### 7. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Tenant assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Improvements, the Premises and any other property of, or under the control or custody of, Tenant, which is on or near the Premises. Tenant's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Premises, accident or fire or other casualty on the Premises, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the Premises. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Tenant, on behalf of itself and its officers, directors, affiliates, employees, agents, independent contractors and subcontractors and anyone directly or indirectly employed by or for whose acts Tenant is liable (collectively, "Personnel") as a material part of the consideration for this Lease, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Tenant and/or its Personnel. **In that connection, Tenant waives the benefit of California Civil Code Section 1542, which provides as follows:**

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**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 Lease

### **8. DEFAULT, BREACH AND REMEDIES**

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

- (a) Tenant shall fail to pay any installment of the Rent herein reserved when due, or any other payment or reimbursement to SANBAG required herein when due;
- (b) Tenant or any guarantor of Tenant's obligations hereunder shall generally not pay its debts as they become due or shall admit in writing the inability to pay its debts or shall make a general assignment for the benefit of creditors; a receiver or trustee (or similar official) shall be appointed for all or substantially all of the assets of Tenant; or the filing of any voluntary petition by Tenant under the Bankruptcy Code, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of forty-five (45) days; or the attachment, execution or other judicial seizure or non-judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease or the Premises, if such attachment or other seizure remains undismissed or undischarged for a period of ten (10) business days after the levy thereof;
- (c) Tenant shall vacate all or a substantial portion of the Premises, whether or not Tenant is in default of the Rent or other charges due under this Lease;
- (d) Licensee shall create or maintain or allow any contractor or other person or entity to create or maintain on the premises any public nuisance or any condition on the Premises or SANBAG's adjacent right of way 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);  
or
- (e) Tenant shall fail to comply with any other term, provision or covenant of this Lease, and shall not cure such failure within three (3) days after written notice thereof to Tenant. Such notice shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure

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8.2 SANBAG Default. SANBAG shall not be in default under this Lease unless SANBAG fails to perform obligations required of SANBAG within sixty (60) days after written notice is delivered by Tenant 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.

### 8.3 SANBAG's Remedies

8.3.1 Termination. Upon the occurrence of Tenant's default and breach, SANBAG shall have the right, at any time, with or without notice or demand, to terminate this Lease, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Tenant 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 Lease, at law or equity by reason of Tenant's default or of such termination.

8.3.2 Corrective Measures. Should Tenant 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 necessary or appropriate corrective measures at Tenant's expense (including fees, costs and interest) which Tenant agrees to pay to SANBAG upon demand.

8.3.3 Damages upon Termination. Should SANBAG terminate this Lease pursuant to the provisions of Section 8.3.1 hereof, SANBAG, without limiting any other remedy, shall have all the rights and remedies of a landlord provided by Section 1951.2 of the California Civil Code, or any successor code section. Upon such termination, in addition to any other rights and remedies to which SANBAG may be entitled under applicable law, SANBAG shall be entitled to recover from Tenant: (a) the worth at the time of award of the unpaid Rent and all other amounts which had accrued at the time of termination, all of which shall be deemed to be rent; (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that the Tenant proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that the Tenant proves could be reasonably avoided; and (d) any other amount necessary to compensate SANBAG for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in clauses (a) and (b) shall be computed with interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in clause (c) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

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- 8.3.4 Continue Lease in Effect. SANBAG shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if SANBAG does not elect to terminate this Lease on account of any default by Tenant, SANBAG may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.
- 8.3.5 Computation of Rent for Purposes of Default. For purposes of computing unpaid Rent which would have accrued and become payable under this Lease after termination hereof, unpaid Rent shall consist of the Base Rent and additional Rent as described in Section 3.1 at the rate in effect when this Lease is terminated.
- 8.3.6 Costs. If SANBAG incurs any cost or expense occasioned by the default of Tenant (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, including without limitation, brokers' fees incurred by SANBAG in connection with re-letting the whole or any part of the Premises; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants; 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.
- 8.3.7 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.
- 8.3.8 SANBAG's Cure; Reimbursement by Tenant. If Tenant should fail to make any payment, take any required action or cure any default hereunder within the time herein permitted, SANBAG, without being under any obligation to do so and without thereby waiving such default, may make such payment, take such action and/or remedy such other default for the account of Tenant (and enter the Premises for such purpose), and thereupon Tenant shall be obligated to, and hereby agrees, to pay SANBAG, upon demand, all costs, expenses and disbursements (including reasonable attorneys' fees) incurred by SANBAG in making such payment or taking such remedial action.
- 8.4 Tenant's Remedies. Except as provided below, in the event of any default by SANBAG, Tenant's exclusive remedies shall be an action for specific performance or action for damages. Tenant hereby waives the benefit of any laws granting it the right to perform SANBAG's obligation, the right to place a lien upon the property of SANBAG and/or upon Rent due SANBAG, or the right to terminate this Lease or withhold Rent on account of any SANBAG default.

8.5 Sale of Premises. In the event of any sale or transfer of the Premises, the seller, transferor or assignor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of SANBAG thereafter to be performed and it shall be deemed and construed without further agreement between the Parties or their successors in interest or between the Parties and the purchaser, transferee or assignee on any such sale, transfer or assignment that such purchaser, transferee or assignee has assumed and agreed to carry out any and all agreements, covenants and obligations of SANBAG hereunder.

## 9. INDEMNIFICATION

- 9.1 Tenant, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG 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 Tenant, or its Personnel (as defined in Section 7, Assumption of Risk and Waiver) or invitees of Tenant in connection with the Premises or arising from the presence upon or performance of activities by Tenant or its Personnel with respect to the Premises, (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 Tenant or its Personnel, or (iii) non-performance or breach by Tenant of any term or condition of this Lease, in each case whether occurring during the Term of this Lease or thereafter.
- 9.2 The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Lease. Upon request of SANBAG, Tenant shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Lease.
- 9.3 Claims against the Indemnitees by Tenant or its Personnel shall not limit the Tenant's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for Tenant 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 Tenant set forth in this section shall survive the termination of this Lease.

## 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. Tenant'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 Tenant's policies.
- 10.2 **Tenant's Insurance Obligations.** Tenant, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Lease insurance as required by SANBAG in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". SANBAG reserves the right, throughout the Term of this Lease, to review and change the amount and type of insurance coverage it requires in connection with this Lease or Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work on the Premises, Tenant shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, SANBAG does not allow self-insurance, however, if Tenant can demonstrate assets and retention funds meeting SANBAG's self-insurance requirements, SANBAG may permit Tenant to self-insure, provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by SANBAG in its sole and absolute discretion. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Tenant under this Lease.
- 10.3 **Increases to Insurance.** If any increase in the fire and extended coverage insurance premiums paid by SANBAG is caused by Tenant's use and occupancy of the Premises, or if Tenant vacates the Premises and causes any increase in such premiums, then Tenant shall pay as additional Rent the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at Tenant's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

## 11. MAINTENANCE AND REPAIR

Tenant, at Tenant's sole expense, shall during the Term of this Lease maintain the Improvements in a first-class condition, shall maintain the Land in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises as necessary to keep the Premises in good order and condition, to SANBAG's satisfaction. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the Premises by Tenant or Tenant's employees, agents, customers, visitors, invitees, licensees, consultants, and contractors (collectively, "Tenant's Parties"), including but not limited to damage arising from any tests or investigations conducted upon the Premises, Tenant 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 Tenant or Tenant's Parties. Tenant shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SANBAG or the railroads with valid operating authority over SANBAG's lines.

## 12. ALTERATIONS

Except as otherwise provided herein, Tenant shall make no alterations, additions or Improvements to the Premises without obtaining the prior written consent of SANBAG in each instance. Tenant shall notify SANBAG in writing at least thirty (30) days prior to the commencement of any Work in or about the Premises and SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility. If SANBAG consents to the construction of Improvements by Tenant, all such Work shall be carried out in compliance with any and all SANBAG rules, regulations and requirements.

## 13. DAMAGE OR DESTRUCTION

- 13.1 Termination of Lease. If the entire Premises or any material portion thereof are damaged or destroyed such that it is difficult or impossible for Tenant to continue operating its business thereon, then either SANBAG or Tenant may cancel this Lease as of the date of damage or destruction by delivering written notice to the other within thirty (30) days following the damage or destruction. If this Lease is terminated, Tenant shall pay SANBAG all proceeds of insurance carried by Tenant (or an amount equal to the proceeds that would have been payable by insurance Tenant was required to carry under this Lease) attributable to the Land and Improvements and any items affixed thereto, other than Tenant's trade fixtures. If this Lease is not terminated, Tenant shall repair all damage to the Premises at Tenant's cost, whether or not sufficient insurance proceeds are available.
- 13.2 Loss Caused by Tenant or its Affiliates. If the Premises are wholly or partially damaged or destroyed as a result of the negligence or willful misconduct or omission of Tenant or any of Tenant's subtenants, contractors, permittees or invitees, Tenant shall forthwith diligently undertake to repair or restore all such damage or destruction at Tenant's sole cost and expense. This Lease shall continue in full force and effect without any abatement or reduction in Rent or other payments owed by Tenant, and this obligation of Tenant to repair or restore the Premises shall survive the cancellation of this Lease.
- 13.3 Exclusive Remedy. This Section 13 shall be Tenant's sole and exclusive remedy in the event of damage or destruction to the Premises, and Tenant waives and releases Tenant's rights under California Civil Code Sections 1932 and 1933(4). No damages, compensation or claim shall be payable by SANBAG for any inconvenience, any interruption or cessation of Tenant's business, or any annoyance, arising from any damage or destruction of all or any portion of the Premises.

#### 14. SIGNS

Tenant shall not, without SANBAG's prior written consent, erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from outside the Premises. All signs, decorations or advertising media visible from outside the Premises shall be subject to the prior written approval of SANBAG as to construction, method of attachment, size, shape, height, design, lighting, color and general appearance.

#### 15. UTILITIES

Tenant shall pay for all water, gas, heat, light, telephone, sewer and other utilities and services used on or from the Premises directly to the utility providing the same. If any utility company requires a license or permit from SANBAG to cross property of SANBAG other than the Premises before services will be provided, Tenant shall pay to SANBAG the sum of Two Hundred Fifty and No/100 Dollars (\$250.00), or such other sum as SANBAG may from time to time put into effect, to cover the expense of preparing and processing each such license or permit.

#### 16. ASSIGNMENT AND SUBLETTING

16.1 SANBAG's Consent. Tenant shall not assign all or any portion of its interest in this Lease, whether voluntarily, by operation of law or otherwise, and shall not sublet all or any portion of the Premises, including, but not limited to, sharing them, permitting another party to occupy them or granting concessions or licenses to another party, except with the prior written consent of SANBAG, which SANBAG may withhold in its reasonable discretion.

16.2 Fees. Tenant shall pay SANBAG's reasonable attorneys' fees incurred in evaluating any proposed assignment or sublease and documenting SANBAG's consent.

16.3 Procedure. Whenever Tenant has obtained an offer to assign any interest in this Lease or to sublease all or any portion of the Premises, Tenant shall provide to SANBAG the name and address of said proposed assignee or sublessee, the base rent and all other compensation, the proposed use by the proposed assignee or sublessee, the proposed effective date of the assignment or subletting, and any other business terms which are material to the offer and which differ from the provisions of this Lease ("Notice of Offer"). Tenant shall also provide to SANBAG the nature of business, financial statement and business experience resume for the immediately preceding five (5) years of the proposed assignee or sublessee and such other information concerning such proposed assignee or sublessee as SANBAG may require. The foregoing information shall be in writing and shall be received by SANBAG no less than sixty (60) days prior to the effective date of the proposed assignment or sublease. Within thirty (30) days of receiving a Notice of Offer for the proposed assignment or subletting, SANBAG shall either notify Tenant that SANBAG consents to the proposed assignment or subletting or withholds its consent for reasons to be specified in the notice. If SANBAG does not provide a notice granting its consent to Tenant within thirty (30) days of receiving a Notice of Offer, SANBAG shall be deemed to have

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withheld its consent to the proposed assignment or subletting, and SANBAG's reasons for such action shall be furnished to Tenant upon request.

- 16.4 **Profits.** If any interest in this Lease is assigned or all or any portion of the Premises are subleased, SANBAG shall have the right to condition its consent thereto upon SANBAG's receiving some or all the "profit" to be made from such assignment or subletting.
- 16.5 **Continuing Tenant Obligations.** Any such subleasing or assignment, even with the approval of SANBAG, shall not relieve Tenant from liability for payment of all forms of Rent and other charges herein provided or from the obligations to keep and be bound by the terms, conditions and covenants of this Lease.
- 16.6 **Waiver, Default and Consent.** The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to the assignment or subletting of the Premises. Any assignment or sublease without the SANBAG's prior written consent shall be voidable, at SANBAG's election, and shall constitute a default hereunder. Consent to any assignment or subletting shall not be deemed a consent to any future assignment or subletting.

### 17. COMPLIANCE WITH LAWS

Tenant 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. Tenant 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 the provisions of this Lease regarding alterations (Section 12), Tenant 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 are made necessary by the nature of Tenant's use of the Premises. Tenant 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 Tenant'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 Tenant) 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 Lease including compliance with applicable federal, state and local laws, regulations, rules and orders. Failure to submit to or cooperate with any inspection may result in termination of the License.
- 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

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Premises. Tenant shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.

18.3 Costs. Tenant 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. SANBAG may establish an inspection fee, which may be changed from time to time, as part of an inspection program. The user shall pay such fee for each such inspection. Failure to pay the fee may result in termination of the License.

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. Tenant 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 Lease, SANBAG, in its sole discretion, may require Tenant to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Tenant's and Tenant's Parties' business activities and prepare a report on Tenant's and/or Tenant's Parties' compliance with the provisions of this section. SANBAG may require Tenant 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 Lease, the cost of which shall be the sole responsibility of Tenant. Tenant 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 Tenant 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 Tenant 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 Hazardous Material expressly approved by SANBAG in writing as shown on Exhibit "C", Tenant shall not cause or permit, or allow any of Tenant'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.

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- 20.2 Tenant shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless SANBAG and its Indemnitees (as defined in Section 9) from and against all loss, liability, claim, damage, costs and expenses (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) Tenant's breach of any prohibition or provision of this section or (b) any release of Hazardous Material upon or from the Premises or contamination of the Premises or adjacent property (i) which occurs due to the use and occupancy of the Premises by Tenant or Tenant's Parties, or (ii) which is made worse due to the act or failure to act of Tenant or Tenant'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 Lease; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Lease.
- 20.4 In addition, in the event of any release or contamination of the Premises, Tenant, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the Premises and all affected adjacent property) 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 TENANT NOR TENANT'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 Lease at any time and for any reason, Tenant 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 thereover, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

## 22. CONDEMNATION

- 22.1 Total Taking. If the whole or any substantial part of the Premises, as determined by SANBAG, should be taken or damaged because of the exercise of the power of eminent domain, whether by condemnation proceedings or otherwise, including acts or omissions constituting inverse condemnation, or any transfer of the Premises or portion thereof in avoidance of the exercise of the power of eminent domain (collectively, a "Taking"), and the Taking would prevent or materially interfere with the use of the

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Premises for the purpose for which they are being used, as determined by SANBAG, this Lease shall terminate effective when the physical Taking of the Premises shall occur. Notwithstanding the foregoing, any cancellation of this Lease by SANBAG as provided in Section 2.2, for any reason, including but not limited to a decision by SANBAG to use the Premises itself or for any public purpose, shall not be a "Taking", and no rights shall accrue to Tenant under this Section 22 or otherwise.

22.2 Partial Taking. If part of the Premises shall be subject to a Taking and this Lease is not terminated as provided in Section 22.1 above, this Lease shall not terminate but the Rent payable hereunder during the unexpired portion of this Lease shall be reduced in proportion to the area of the Premises rendered unusable by Tenant.

22.3 Condemnation Award. The entire award or compensation for any Taking of the Premises, or any part thereof, or for diminution in value, shall be the property of SANBAG and Tenant hereby assigns its interest in any such award to SANBAG; provided, however, SANBAG shall have no interest in any separate award made to Tenant for loss of business or for the taking of Tenant's fixtures and improvements.

22.4 Exclusive Remedy. This Section 22 shall be Tenant's sole and exclusive remedy in the event of any Taking. Tenant hereby waives the benefits of California Code of Civil Procedure §1265.130.

### 23. SUBORDINATE RIGHTS

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

### 24. WATER, OIL AND MINERAL RIGHTS

SANBAG reserves all right, title or interest in water, oil, gas or other hydrocarbons, other mineral rights and air and development rights, together with the sole and exclusive right of

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SANBAG to sell, lease, assign or otherwise transfer the same, but without any right of SANBAG or any such transferee to enter upon the Premises during the Term except as otherwise provided herein.

### 25. BROKER'S FEES

Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the brokerage firm specified in Item 8 of the Basic Lease Provisions, if any, and Tenant agrees to indemnify and hold SANBAG harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

### 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 Lease 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 Lease 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 Lease 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 Lease as Tenant, then each shall be jointly and severally liable for all obligations of Tenant hereunder.

26.4 No Third Party Beneficiaries. This Lease 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 Lease, 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 Lease, 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 Tenant under

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this Lease, provided, however, that interest shall not be payable on late charges incurred by Tenant.

- 26.7 Captions. The captions included in this Lease are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Lease or any provision hereof, or in any way affect the interpretation of this Lease.
- 26.8 Survival of Obligations. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term of this Lease shall survive the expiration or earlier termination of this Lease, including without limitation all payment obligations with respect to Rent and all obligations concerning the condition of the SANBAG Property.
- 26.9 Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this Lease shall not invalidate this Lease, 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 Lease, 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 Lease. The subsequent acceptance of Rent hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Tenant of any provisions, covenant, agreement or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such Rent.
- 26.10 Effective Date/Nonbinding Offer. Submission of this Lease for examination or signature by Tenant does not constitute an offer or option for a lease, and it is not effective as a lease or otherwise until executed and delivered by both SANBAG and Lessee. Each individual executing this Lease on behalf of SANBAG or Tenant represents and warrants to the other Party that he or she is authorized to do so.
- 26.11 Entire Agreement; Amendments. This Lease, 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 Lease. The Parties each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by either SANBAG or Tenant, or anyone acting on behalf of SANBAG or Tenant, other than those contained in this Lease. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this Lease shall be binding upon the Parties unless they are in writing and executed by the Parties.
- 26.12 Attorneys' Fees. If either SANBAG or Tenant 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 Lease 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

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not a party to this Lease, but arising by reason of or related to any act or omission of Tenant or Tenant's Parties, Tenant 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.

- 26.13 Nondiscrimination. Tenant certifies and agrees that all persons employed by Tenant and/or Tenant's affiliates, subsidiaries, or holding companies, and any contractors retained by Tenant 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.
- 26.14 Further Acts. Tenant 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 Lease, including, at SANBAG's sole discretion, the relocation of its facilities and the lease granted hereby.
- 26.15 Time of Essence. Time is of the essence for this Lease.
- 26.16 Certificates. Tenant 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 Tenant, and an estoppel certificate stating that this Lease is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this Lease and such other matters pertaining to this Lease as may be requested by SANBAG.
- 26.17 Security Measures. Tenant 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. Tenant assumes all responsibility for the protection of Tenant, Tenant's Parties and their property from acts of third parties.
- 26.18 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 Lease.
- 26.19 No Recording. Tenant shall not record or permit to be recorded in the official records of the county where the Premises is located, this Lease, any memorandum of this Lease or any other document giving notice of the existence of this Lease or the lease granted hereby.

## Attachment 1

- 26.20 Flagmen. Where applicable, Tenant shall maintain, at Tenant's expense, competent flagmen to protect and control movement of vehicles and equipment of Tenant or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection.
- 26.21 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 Lease Provisions, the provisions in Exhibit "D" shall control.

**Attachment 1**

**Exhibit "A"**

**Site Plan of the Premises**

**[To Be Inserted]**

**Attachment 1**

**Exhibit "B"**

**Attachment 1**

**Exhibit "C"**

**Permitted Hazardous Material**

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

**Attachment 1**

**Exhibit "D"**

**Additional Provisions**

**[To Be Inserted]**

Attachment 2

**LEASE AMENDMENT**

For SANBAG Contract No. \_\_\_\_\_

THIS AMENDMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, between **San Bernardino Associated Governments**, acting solely in its capacity as [insert SANBAG capacity] ("SANBAG"), and \_\_\_\_\_, ("Lessee").

**RECITALS:**

SANBAG and Lessee are now parties to a contract dated \_\_\_\_\_, 20 \_\_\_\_, known to SANBAG as Contract No. \_\_\_\_\_, a true and correct copy of which is attached hereto as Attachment A, together with any and all modifications, supplements, and amendments thereto, being hereinafter referred to as the "Original Lease", the basic terms of which are provided in Part I thereunder.

The parties desire to modify the Original Lease as hereinafter provided, effective as of \_\_\_\_\_, 20 \_\_\_\_. Except as specifically amended by this Amendment, all other provisions of the Original Lease shall remain in full force and effect.

**(See following page(s) for Amendment Terms)**

Attachment 2

AMENDMENT TERMS:

It is mutually agreed that the Original Lease is hereby changed to read, as follows:

I. [PART, SECTION], is DELETED in its entirety, and is REPLACED as follows:

II. [PART, SECTION], is DELETED in its entirety, and is REPLACED as follows:

III. [PART, SECTION], is DELETED in its entirety, and is REPLACED as follows:

IV. [PART, SECTION], Address, is DELETED in its entirety, and is REPLACED as follows:

Attachment 2

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

SAN BERNARDINO ASSOCIATED GOVERNMENTS ("SANBAG")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE**

For SANBAG Contract No. \_\_\_\_\_

The parties to this Consent to Assignment and Assumption of Lease ("Agreement") are:

LANDLORD ("SANBAG"):

SAN BERNARDINO ASSOCIATED GOVERNMENTS,  
acting solely in its capacity as [insert SANBAG capacity]

TENANT ("ASSIGNOR"):

\_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_

**RECITALS**

Assignor is party to a lease with SANBAG dated \_\_\_\_\_ and known to SANBAG as Contract No. \_\_\_\_\_ (the "Lease"), relating to the use by Assignor of a portion of SANBAG's property (the "Premises") located at \_\_\_\_\_ in San Bernardino County, as described in the Lease, which Lease, together with any and all modifications, supplements and amendments thereto, whether or not referred to above, are attached as Exhibit "A" to this Agreement, and incorporated herein by reference; and

Assignor has agreed to the assignment to Assignee of all of the interest of Assignor in the Lease for use by Assignee exclusively for the purpose described in the Lease, such agreement, however, being subject to the consent of SANBAG as required by Lease; and

Assignor and Assignee hereby seek SANBAG's consent to such assignment, and in consideration therefore, agree to the terms and conditions set forth herein.

NOW, THEREFORE, SANBAG, Assignor and Assignee, for valid consideration hereby acknowledged and received, do hereby agree as follows:

1. Consent to Assignment. SANBAG hereby consents to the assignment by Assignor to Assignee of all of Assignor's interest in the Lease. As consideration for SANBAG's

consent, Assignor shall pay to SANBAG the sum of \_\_\_\_\_ (\$ \_\_\_\_\_).

2. **Further Assignment.** The parties hereto acknowledge and agree that Assignee shall not be permitted to further assign the Lease or any right or interest therein, nor sublease the Premises, or any portion thereof, without the prior written consent of SANBAG in each instance, which shall not be unreasonably withheld or delayed.
3. **Acknowledgement.** SANBAG hereby represents and warrants to Assignee that as of the date hereof, (a) the Lease has not been terminated by either Assignor or SANBAG and the Lease is in full force and effect; and (b) to the best of SANBAG's knowledge (i) except as included in the Lease attached hereto, there are no modifications, amendments, consents, arrangements, agreements or understandings, either oral or written, which modify, amend, or supplement the terms of the Lease; and (ii) Assignor is not in default under or in breach of the Lease, nor are there any events which, with the mere passage of time, would constitute a default or breach thereunder.
4. **Modification of Lease.** Nothing herein contained shall be construed to modify, waive, impair or affect any of the covenants, agreements, terms provisions or conditions contained in the Lease except as may be expressly provided herein.
5. **Indemnity.** Assignee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless Assignor and SANBAG, and their respective commissioners, officers, directors, members, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, successors and assigns (individually and collectively, "**Indemnified Parties**"), to the maximum extent allowed by law, from any 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) (collectively, "**Liabilities**"), incurred by or asserted against Assignor and/or SANBAG or their Indemnified Parties by reason of any breach by Assignee from and after the effective date hereof of any of Assignee's obligations under the Lease. Assignor, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless Assignee and SANBAG, and their respective Indemnified Parties, to the maximum extent allowed by law, from any Liabilities incurred by or asserted against Assignees and/or SANBAG or their Indemnified Parties by reason of any breach by Assignor of any of Assignor's obligations under the Lease. Assignor and Assignee, jointly and severally, shall indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and its Indemnified Parties, to the maximum extent allowed by law, from any Liabilities

incurred by or asserted against SANBAG or its Indemnified Parties, by reason of, or in any way related to, any contract, understanding or other agreement, whether oral or written, other than the Lease, that has been or shall be entered into by and between Assignor and Assignee relating to the Premises, and Assignor and Assignee agree that SANBAG shall have no obligations or liabilities whatsoever with respect to any such contract, understanding or other agreement.

6. Assignee's Obligations. Assignee hereby accepts said Assignment and assumes and agrees to observe and discharge all of the covenants, terms and conditions of the Lease.
  
7. Public Use. Pursuant to the terms of the Lease, Assignee 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 and/or other public uses (collectively and individually "Public Use"); and that Assignee's use of the Premises under the Lease and this Agreement is a temporary, interim use as to which Assignee has no right to nor expectation of use for any particular length of time. Assignee acknowledges and agrees that: a) Assignee was not an occupant of the Premises at the time SANBAG acquired it; b) Assignee is occupying the Premises on a rental basis for a short term or a period subject to termination when the Premises is needed for a public project within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, specifically Section 4601(B)(ii) of Title 42 of the United States Code; and c) therefore Assignee is not a displaced person entitled to relocation assistance under such Act. Nevertheless, as a condition to assignment of the Lease, and in addition to Assignee's acknowledgement and agreement set forth above, SANBAG expressly reserves the right to terminate the Lease and this Agreement for any such Public Use by thirty (30) days written notice to Assignee. Assignee expressly acknowledges and agrees that:
  - (a) SANBAG may terminate the Lease and this Agreement for any Public Use, to be determined in SANBAG's sole and absolute discretion;
  - (b) Assignee shall NOT oppose any Public Use when planned or implemented on or adjacent to the Premises;
  - (c) If SANBAG at any time, or from time to time, determines in its 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 its facilities, Assignee shall reconstruct, alter, modify, relocate or remove its facilities, as required by SANBAG or any parties having operating rights over the Premises, at Sublessee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and
  - (d) Assignee expressly assumes all risk of any future Public Use as determined by

SANBAG and in the event SANBAG terminates the Lease and this Agreement and requires Assignee to vacate the Premises for any Public Use, Assignee 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 the eminent domain law.

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

9. Notices. Assignee hereby acknowledges that its address for the receipt of any notice or document required or permitted to be delivered under the assignment or this Consent Agreement is:

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Attachment 3

10. Effective Date. This Agreement shall be effective as of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have executed this Agreement in triplicate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SANBAG

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LICENSEE/TENANT (“ASSIGNOR”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "A"

TO

CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE

Attachment 4

**CONSENT TO SUBLEASE**

For SANBAG Contract No. \_\_\_\_\_

The parties to this Consent to Sublease Agreement ("Agreement") are:

LANDLORD ("SANBAG"):

SAN BERNARDINO ASSOCIATED GOVERNMENTS,  
acting solely in its capacity as [insert SANBAG capacity]

TENANT ("SUBLESSOR"):

\_\_\_\_\_

SUBLESSEE:

\_\_\_\_\_

**RECITALS**

Sublessor is party to a certain lease with SANBAG dated \_\_\_\_\_ and known to SANBAG as Contract No. \_\_\_\_\_ (the "Lease"), relating to the use by Sublessor of a portion of SANBAG's property (the "Premises") located at \_\_\_\_\_ in San Bernardino County, as described in the Lease, which Lease, together with any and all modifications, supplements and amendments thereto, whether or not referred to above, are attached as Exhibit "A", and incorporated herein by reference; and

Sublessor has agreed to permit Sublessee to use exclusively for the purpose of \_\_\_\_\_, all or a portion of the Premises, such agreement, however, being subject to the consent of SANBAG as required by Lease; and

Sublessor and Sublessee hereby seek SANBAG's consent to such use, and in consideration therefor, agree to the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto, for valid consideration hereby acknowledged and received, do hereby agree as follows:

1. Consent to Sublease. SANBAG hereby consents to the granting by Sublessor to Sublessee of the right to use all or a portion of the Premises for the sole purpose set forth herein, subject to the terms, conditions and covenants contained in Lease. As

## Attachment 4

consideration for SANBAG's consent, Sublessor shall pay to SANBAG the sum of \_\_\_\_\_ (\$ \_\_\_\_\_).

2. **Further Sublease.** The parties hereto acknowledge and agree that neither Sublessor nor Sublessee shall be permitted to assign the sublease or sublet the Premises, or any portion thereof, without the prior written consent of the SANBAG in each instance, which shall not be unreasonably withheld or delayed.
3. **Acknowledgment.** SANBAG hereby represents and warrants to Sublessee that as of the date hereof, (a) the Lease has not been terminated by either Sublessor or SANBAG and the Lease is in full force and effect; and (b) to the best of SANBAG's knowledge (i) except as included in the Lease attached hereto, there are no modifications, amendments, consents, arrangements, agreements or understandings, either oral or written, which modify, amend, or supplement the terms of the Lease; and (ii) Sublessor is not in default under or in breach of the Lease, nor are there any events which, with the mere passage of time, would constitute a default or breach thereunder.
4. **No Modification of Lease.** Nothing herein contained shall be construed to modify, waive, impair or affect any of the covenants, agreements, terms, provisions or conditions contained in the Lease except as may be expressly provided herein. Moreover, nothing herein contained shall release Sublessor from any of its obligations under the Lease unless specifically set forth herein.
5. **Indemnity.** Sublessee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, and its commissioners, officers, directors, members, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, successors and assigns (individually and collectively, "**Indemnified Parties**"), from any 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) (collectively, "**Liabilities**"), incurred by or asserted against SANBAG by reason of any breach by Sublessee from and after the effective date hereof of any of Sublessee's obligations under the Lease. Sublessor shall indemnify, defend and hold SANBAG and its Indemnified Parties harmless from any Liabilities incurred by or asserted against SANBAG by reason of any breach by Sublessor of any of Sublessor's obligations under the Lease. Sublessor and Sublessee, jointly and severally, shall indemnify, defend and hold SANBAG and its Indemnified Parties harmless from any Liabilities incurred by or asserted against SANBAG by reason of, or in any way related to, any contract, understanding or other agreement, whether oral or written, other than the Lease, that has been or shall be entered into by and between Sublessor and Sublessee relating to the Premises, and Sublessor and Sublessee agree that SANBAG shall have no obligations or liabilities whatsoever with respect to any such contract, understanding or other agreement.
6. **Sublessor's Obligations.** Nothing herein contained shall release or relieve Sublessor from any obligation under the Lease, but Sublessor shall be and remain as fully responsible to

## Attachment 4

SANBAG for the acts and omissions of Sublessee as if such acts and omissions were the acts and omissions of Sublessor.

7. **Sublessee's Obligations.** Sublessee hereby expressly agrees to observe and be bound by all of the covenants, terms and conditions of Lease and this agreement so far as the same apply to the use and occupancy of the Premises by Sublessee.
8. **Public Use.** Pursuant to the terms of the Lease, Sublessee 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 and/or other public uses (collectively and individually "**Public Use**"); and that Sublessee's use of the Premises under the Lease and this Agreement is a temporary, interim use as to which Sublessee has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to sublease under the Lease, SANBAG expressly reserves the right to terminate the Lease and this Agreement for any such Public Use by thirty (30) days written notice to Sublessee. Sublessee expressly acknowledges and agrees that:
  - (a) SANBAG may terminate the Lease and this Agreement for any Public Use, to be determined in SANBAG's sole and absolute discretion;
  - (b) Sublessee shall **NOT** oppose any Public Use when planned or implemented on or adjacent to the Premises;
  - (c) If SANBAG at any time, or from time to time, determines in its 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 its facilities, Sublessee shall reconstruct, alter, modify, relocate or remove its facilities, as required by SANBAG or any parties having operating rights over the Premises, at Sublessee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and
  - (d) Sublessee expressly assumes all risk of any future Public Use as determined by SANBAG and in the event SANBAG terminates the Lease and this Agreement and requires Sublessee to vacate the Premises for any Public Use, Sublessee 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 the eminent domain law.
9. **Subordinate Rights.** This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the

Attachment 4

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

10. Notices. Sublessee hereby acknowledges that its address for the receipt of any notice or document required or permitted to be delivered under the sublease or this Agreement is:

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11. Effective Date. This Agreement shall be effective as of \_\_\_\_\_.

Attachment 4

IN WITNESS WHEREOF, the parties have executed this Agreement in triplicate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SAN BERNARDINO ASSOCIATED GOVERNMENTS (“SANBAG”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT (“SUBLESSOR”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SUBLESSEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment 4

EXHIBIT A

TO

CONSENT TO SUBLEASE

Attachment 5

**THREE DAY NOTICE TO PAY RENT OR QUIT (LEASE)**  
**Code Of Civil Procedure §§1161 And 1161.1**

Date:

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

RE: Premises located at \_\_\_\_\_

Dear :

PLEASE TAKE NOTICE that you have breached the written lease of the above-described Premises, between the San Bernardino Associated Governments, acting solely in its capacity as (insert SANBAG capacity) ("SANBAG") and \_\_\_\_\_, dated \_\_\_\_\_ and known to SANBAG as Contract No. \_\_\_\_\_ ("Agreement"), as set forth herein:

**FAILURE TO PAY RENT DUE UNDER AGREEMENT**

You have breached the Agreement by failing to pay rent in the [estimated] amount of: \_\_\_\_\_ and \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), representing the total amount of rent owing as of the date hereof.

**DEMAND TO PAY RENT OR QUIT**

Within THREE (3) DAYS of the service of this Notice upon you, you must PAY \$ \_\_\_\_\_ in [estimated] rent OR you must DELIVER UP POSSESSION OF THE PREMISES TO SANBAG. The payment must be made in cash, or by cashier's check or money order made payable to SANBAG. Personal and/or business checks will not be accepted.

**PAYMENT ADDRESS**

Payment shall be made to Epic Land Solutions, Inc. on behalf of SANBAG by mail or in person at the following address:

Epic Land Solutions, Inc.  
3850 Vine Street, Suite 200  
Riverside, California 92507

If the payment is made in person, the usual days and hours that person is available to receive the payment is 8:00 am to 5:00 pm, Monday through Friday, excluding holidays. If payment

**Attachment 5**

arrangements have previously been setup with electronic funds transfer, then payment may be made by electronic funds transfer.

**ELECTION OF FORFEITURE**

In the event that you do not pay the total amount of rent/fees owing, as specified above, or deliver up possession of the Premises, within the three (3) day period set forth herein, then SANBAG elects to terminate the Agreement, and will institute proceedings to forfeit the Agreement and to recover possession of the Premises and all amounts owing under the Agreement and as permitted by law.

**NO WAIVER OF RIGHTS BY ACCEPTANCE OF PARTIAL PAYMENT**

You are further advised that, in the event that SANBAG accepts a partial payment of the amounts owing set forth above, SANBAG does not waive any of its rights, including rights under Code of Civil Procedure § 1161.1, to commence and pursue a legal action to recover possession of the Premises and/or to recover the difference between the partial payment and the amount demanded in this Notice.

**SANBAG**

\_\_\_\_\_ Date

\_\_\_\_\_ By: (Insert name and title)

Attachment 6  
**NOTICE OF TERMINATION OF LEASE**

File No.: \_\_\_\_\_

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

RE: Lease Agreement, dated \_\_\_\_\_, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting solely in its capacity as (insert SANBAG capacity) (SANBAG) and \_\_\_\_\_ (Lessee) for the premises located at or near \_\_\_\_\_ in the City of \_\_\_\_\_, County of San Bernardino, California, and referred to as SANBAG Contract Number \_\_\_\_\_.

Dear \_\_\_\_\_:

YOU ARE HEREBY NOTIFIED THAT SANBAG as Licensor of the above described premises is terminating the month-to-month lease you hold pursuant to the above referenced Lease Agreement, effective on \_\_\_\_\_ (the "Termination Date"), pursuant to Article 2, Paragraph [2.2.1 Convenience] [2.2.2 Cause] [2.2.3 Public Use] of the Standard Lease Provisions of the Lease Agreement. [If terminating for Cause, specify the breach or breaches of the lease agreement constituting Cause; If terminating for Public Use, specify the public use necessitating the termination] You must do all of the following on or before the Termination Date:

- a. Cease entering upon or using the Premises.
- b. Remove all personal property from the Premises.
- c. Restore the Premises to its original condition to the satisfaction of SANBAG, including, but not limited to removing any improvements and/or obtaining SANBAG's permission to leave the improvements in place whereupon they will become the sole property of SANBAG.
- d. Relinquish any and all control over the Premises to SANBAG.

Failure to perform all of the obligations listed above by the Termination Date will cause SANBAG to institute legal proceedings against you for all damages and other relief to which SANBAG is entitled under the law and the Lease Agreement, including court costs and attorneys fees.

In the event you tender lease fee payments for any period after the Termination Date, the acceptance of such payments by SANBAG shall not constitute a rescission, waiver or extension of this notice. SANBAG will not accept any payment of lease fees for periods following the Termination Date, and upon your vacation of the premises, SANBAG will refund payments made for any period thereafter.

Pursuant to this Notice of Termination, there will be no extension or amendment except in writing and executed by SANBAG.

DATE: \_\_\_\_\_  
SANBAG

By: \_\_\_\_\_  
[Insert name and title of officer authorized to sign]

Attachment 7

**SANBAG Contract No.:** C \_\_\_\_\_

**Epic File No.:** \_\_\_\_\_

**Subdivision:** \_\_\_\_\_

**Milepost(s):** \_\_\_\_\_

**SANBAG Contract No.** \_\_\_\_\_

**LICENSE AGREEMENT**

**BETWEEN**

**SANBAG**

---

**AND**

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**LICENSE AGREEMENT**

This LICENSE AGREEMENT (“License”) is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting solely in its capacity as [insert capacity/entity of SANBAG] (“SANBAG”), and, \_\_\_\_\_, [insert capacity of licensee] (“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:

1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715

Licensee’s Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Basic License Provisions**

**2. Description of the Premises.**

§ 1.1

City/County: \_\_\_\_\_ Subdivision: \_\_\_\_\_

Address or Milepost Location:  
\_\_\_\_\_

Approximate area:

\_\_\_\_\_ square feet; \_\_\_\_\_ acres

See map/diagram in Exhibit "A".

Description and Dimensions of Premises Area:  
\_\_\_\_\_

**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 the Premises:  
\_\_\_\_\_  
\_\_\_\_\_

**4. Term.**

**Commencement Date:** \_\_\_\_\_

**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).

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**Basic License Provisions**

**Part II**  
**Section Cross**  
**Reference**

5. **Fees.** § 3
- A. **Administration Fee**: \$ \_\_\_\_\_ per year or portion thereof, payable annually in advance. § 3.1.1
- B. **Base Use Fee (check one)**:
- i. \$ \_\_\_\_\_ per month, payable monthly in advance § 3.1.2
- ii. \$ \_\_\_\_\_ per year, payable annually in advance
- C. **Additional Use Fee (check one)**:
- i. One-time fee: \$ \_\_\_\_\_
- ii. Other: \_\_\_\_\_ §3.1.3
- D. **Base Use Fee Adjustment Dates (check if applicable)**:
- i. *CPI Adjustment*. 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 Standard License Provisions. § 3.2  
§ 3.2.1
- ii. *Fair Market Rate Adjustment*. 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 Standard License Provisions. § 3.2.2
- iii. Other: \_\_\_\_\_ § 3.2.3
6. **Security Deposit (if any).** \$ \_\_\_\_\_ § 4
7. **Insurance Amount.** See Exhibit “B” §§ 10, 13

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IN WITNESS WHEREOF, this License was duly executed by the Parties identified in Item 1 of this Part I on the dates below, and is effective as the date executed by SANBAG.

LICENSEE:  
[insert name and capacity of Licensee]

SANBAG

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
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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- “C” Permitted Hazardous Material
- “D” Additional Provisions

**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 Improvements 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, whether patent or latent, including, without limitation, all 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.

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- 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. 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 Use 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

## Attachment 7

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. **Penalty:** 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 Penalty equal to twice the Base Use Fee in effect on the day prior to the Termination Date, plus twice any Additional Use Fee, 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. In the event that any Additional Use Fee is set as a percentage of revenues, or on some other variable basis, it shall be calculated based on the average for the prior twelve month period or if in effect less than one year, the monthly average from the effective date to the day prior to the Termination Date. Licensee shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such failure to terminate and restore.

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2.3. Termination of Use and Restoration of Premises. Upon the Termination Date, unless otherwise requested in writing by SANBAG prior to the Termination Date, 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 Administration and Use Fees specified in Item 5 of the Basic License Provisions, adjusted as set forth in Section 3.2.

3.1.1. Administration Fee. The Administration Fee set forth in Item 5.A of the Basic License Provisions shall be due and payable annually in advance prior to each anniversary of the execution date of this license.

3.1.2. Base Use Fee. If Item 5.B.i of the Basic License Provisions is checked, the first month's Base Use Fee noted therein shall be due and payable upon Licensee's execution of this License. Thereafter, the Base Use 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 Use 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 Use 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 of the Basic License Provisions.

3.1.3. Additional Use 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 by Licensee. 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. Use Fee Adjustment.

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- 3.2.1. Annual CPI Adjustment. If Item 5.D.i of the Basic License Provisions is checked, then the Base Use 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 Use Fee as of each Adjustment Date shall be the greater of the Base Use 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 (Bureau), 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 Use 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 any 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

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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 of the Basic License Provisions, 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 terms, 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 damages 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 as described in California Revenue and Taxation Code Section 107, 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', materialmen'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, Licensee shall pay an additional fee to SANBAG of twenty five percent (25%) of the costs of the discharge of the lien or stop notice in order to cover SANBAG's 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:

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- (a) Licensee shall fail to make any payment 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;
- (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; or
- (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 rights and 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.

## 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 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 Licensee acknowledges that any construction allowed on the Premises pursuant to this License is not being performed for SANBAG's benefit or on SANBAG's account and that this is an agreement allowing Licensee and/or its contractor(s) to enter upon SANBAG's Property as an accommodation within the meaning of California Civil Code Section 2782.1. Therefore, 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, unless caused solely by the gross negligence

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or willful misconduct of Indemnitees, and is in addition to any other rights or remedies which Indemnitees may have under the law or under this 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 Indemnitees 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, disability benefits or other employee benefits laws or insurance.
- 9.4. The indemnification and defense obligations of Licensee set forth in this section shall survive the termination and End Date 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 sole 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 employees, agents, customers, invitees, licensees, consultants, and contractors (collectively, "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, re-grading 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 fourteen (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,

## Attachment 7

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 in 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 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.

### 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 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. Licensee shall comply with all SANBAG policies, rules and regulations applicable to its properties. 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, including compliance with applicable federal, state and local laws, regulations, rules and orders. Failure to submit to or cooperate with any inspection may result in termination of the License.

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 or SANBAG Property, 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. SANBAG may establish an inspection fee, which may be changed from time to time, as part of an inspection program. The user shall pay such fee for each such inspection. Failure to pay the fee may result in termination of the License.

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.

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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 or End Date 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 rights 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, and to all Bonds issued by SANBAG and their Indentures. 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 or 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

## Attachment 7

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 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

## Attachment 7

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 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.

## Attachment 7

- 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.

**Attachment 7**

**Exhibit "A"**

**Premises**

**[To Be Inserted]**

**Attachment 7**

**Exhibit "B"**

**INSURANCE REQUIREMENTS**

**Attachment 7**

**Exhibit "C"**

**Permitted Hazardous Material**

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

**Attachment 7**

**Exhibit "D"**

**Additional Provisions**

**[To Be Inserted]**

Attachment 8

**LICENSE AMENDMENT**

For SANBAG Contract No. \_\_\_\_\_

THIS AMENDMENT, is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between San Bernardino Associated Governments, acting solely in its capacity as [insert SANBAG capacity] ("SANBAG"), and \_\_\_\_\_, ("Licensee").

**RECITALS:**

SANBAG and Licensee are now parties to a license agreement dated \_\_\_\_\_, 20\_\_\_\_, known to SANBAG as Contract No. \_\_\_\_\_, a true and correct copy of which is attached hereto as Attachment A and hereby incorporated by reference, together with any and all modifications, supplements, and amendments thereto, being hereinafter referred to as the "Original License", the basic terms of which are provided in Part I thereunder.

The parties desire to modify the Original License as hereinafter provided, effective as of \_\_\_\_\_, 20\_\_\_\_. Except as specifically amended by this Amendment, all other provisions of the Original License shall remain in full force and effect.

**(See following page(s) for Amendment Terms)**

Attachment 8

AMENDMENT TERMS:

It is mutually agreed that the Original License is hereby changed to read, as follows:

I. [PART, SECTION], is DELETED in its entirety, and is REPLACED as follows:

II. [PART, SECTION], is DELETED in its entirety, and is REPLACED as follows:

III. [PART, SECTION], is DELETED in its entirety, and is REPLACED as follows:

IV. [PART, SECTION], Address, is DELETED in its entirety, and is REPLACED as follows:

**Attachment 8**

**IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS (“SANBAG”)**

**By: \_\_\_\_\_**

**Name: \_\_\_\_\_**

**Title: \_\_\_\_\_**

**LICENSEE**

**By: \_\_\_\_\_**

**Name: \_\_\_\_\_**

**Title: \_\_\_\_\_**

Attachment 9  
**NOTICE OF TERMINATION OF LICENSE**

File No.: \_\_\_\_\_

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

RE: License Agreement, dated \_\_\_\_\_, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting solely in its capacity as (insert SANBAG capacity) (SANBAG) and \_\_\_\_\_ (Licensee) for the premises located at or near \_\_\_\_\_ in the City of \_\_\_\_\_, County of San Bernardino, California, and referred to as SANBAG Contract Number \_\_\_\_\_.

Dear \_\_\_\_\_:

YOU ARE HEREBY NOTIFIED THAT SANBAG as Licensor of the above described premises is terminating the month-to-month license you hold pursuant to the above referenced License Agreement, effective on \_\_\_\_\_ (the "Termination Date"), pursuant to Article 2, Paragraph [2.2.1 Convenience] [2.2.3 Public Use] of the Standard License Provisions of the License Agreement. [If terminating for Public Use, specify the public use necessitating the termination] You must do all of the following on or before the Termination Date:

- a. Cease entering upon or using the Premises.
- b. Remove all personal property from the Premises.
- c. Restore the Premises to its original condition to the satisfaction of SANBAG, including, but not limited to removing any improvements and/or obtaining SANBAG's permission to leave the improvements in place whereupon they will become the sole property of SANBAG.
- d. Relinquish any and all control over the Premises to SANBAG.

Failure to perform all of the obligations listed above by the Termination Date will cause SANBAG to institute legal proceedings against you for all damages and other relief to which SANBAG is entitled under the law and the License Agreement, including court costs and attorneys fees.

In the event you tender license fee payments for any period after the Termination Date, the acceptance of such payments by SANBAG shall not constitute a rescission, waiver or extension of this notice. SANBAG will not accept any payment of license fees for periods following the Termination Date, and upon your vacation of the premises, SANBAG will refund payments made for any period thereafter.

Pursuant to this Notice of Termination, there will be no extension or amendment except in writing and executed by SANBAG.

DATE: \_\_\_\_\_

SANBAG

By: \_\_\_\_\_  
[Insert name and title of officer authorized to sign]

**CONSENT TO ASSIGNMENT AND ASSUMPTION OF LICENSE**

For SANBAG Contract No. \_\_\_\_\_

The parties to this Consent to Assignment and Assumption of License ("Agreement") are:

LICENSOR ("SANBAG"):

SAN BERNARDINO ASSOCIATED GOVERNMENTS,  
acting solely in its capacity as [insert SANBAG capacity]

LICENSEE ("ASSIGNOR"):

\_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_

**RECITALS**

Assignor is party to a License with SANBAG dated \_\_\_\_\_ and known to SANBAG as Contract No. \_\_\_\_\_ (the "License"), relating to the use by Assignor of a portion of SANBAG's property (the "Premises") located at \_\_\_\_\_ in San Bernardino County, as described in the License, which License, together with any and all modifications, supplements and amendments thereto, whether or not referred to above, are attached as Exhibit "A" to this Agreement, and incorporated herein by reference; and

Assignor has agreed to the assignment to Assignee of all of the interest of Assignor in the License for use by Assignee exclusively for the purpose described in the License, such agreement, however, being subject to the consent of SANBAG as required by License; and

Assignor and Assignee hereby seek SANBAG's consent to such assignment, and in consideration therefore, agree to the terms and conditions set forth herein.

NOW, THEREFORE, SANBAG, Assignor and Assignee, for valid consideration hereby acknowledged and received, do hereby agree as follows:

1. Consent to Assignment. SANBAG hereby consents to the assignment by Assignor to Assignee of all of Assignor's interest in the License. As consideration for SANBAG's

## Attachment 10

consent, Assignor shall pay to SANBAG the sum of \_\_\_\_\_ (\$ \_\_\_\_\_).

2. **Further Assignment.** The parties hereto acknowledge and agree that Assignee shall not be permitted to further assign the License or any right or interest therein, nor sublicense or sublet the Premises, or any portion thereof, without the prior written consent of SANBAG in each instance, which shall not be unreasonably withheld or delayed.
3. **Acknowledgement.** SANBAG hereby represents and warrants to Assignee that as of the date hereof, (a) the License has not been terminated by either Assignor or SANBAG and the License is in full force and effect; and (b) to the best of SANBAG's knowledge (i) except as included in the License attached hereto, there are no modifications, amendments, consents, arrangements, agreements or understandings, either oral or written, which modify, amend, or supplement the terms of the License; and (ii) Assignor is not in default under or in breach of the License, nor are there any events which, with the mere passage of time, would constitute a default or breach thereunder.
4. **Modification of License.** Nothing herein contained shall be construed to modify, waive, impair or affect any of the covenants, agreements, terms provisions or conditions contained in the License except as may be expressly provided herein.
5. **Indemnity.** Assignee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless Assignor and SANBAG, and their respective commissioners, officers, directors, members, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, successors and assigns (individually and collectively, "**Indemnified Parties**"), to the maximum extent allowed by law, from any 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) (collectively, "**Liabilities**"), incurred by or asserted against Assignor and/or SANBAG or their Indemnified Parties by reason of any breach by Assignee from and after the effective date hereof of any of Assignee's obligations under the License. Assignor, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless Assignee and SANBAG, and their respective Indemnified Parties, to the maximum extent allowed by law, from any Liabilities incurred by or asserted against Assignees and/or SANBAG or their Indemnified Parties by reason of any breach by Assignor of any of Assignor's obligations under the License. Assignor and Assignee, jointly and severally, shall indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and its Indemnified Parties, to the maximum extent allowed by law, from any Liabilities

## Attachment 10

incurred by or asserted against SANBAG or its Indemnified Parties, by reason of, or in any way related to, any contract, understanding or other agreement, whether oral or written, other than the License, that has been or shall be entered into by and between Assignor and Assignee relating to the Premises, and Assignor and Assignee agree that SANBAG shall have no obligations or liabilities whatsoever with respect to any such contract, understanding or other agreement.

6. Assignee's Obligations. Assignee hereby accepts said Assignment and assumes and agrees to observe and discharge all of the covenants, terms and conditions of the License.
  
7. Public Use/Termination for Convenience. Pursuant to the terms of the License, Assignee hereby 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 and/or other public uses (collectively and individually "Public Use"); and that Assignee's use of the Premises under the License and this Agreement is a temporary, interim use as to which Assignee has no right to nor expectation of use for any particular length of time. Assignee acknowledges and agrees that: a) Assignee was not an occupant of the Premises at the time SANBAG acquired it; b) Assignee is occupying the Premises on a rental basis for a short term or a period subject to termination when the Premises is needed for a public project within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, specifically Section 4601(B)(ii) of Title 42 of the United States Code; and c) therefore Assignee is not a displaced person entitled to relocation assistance under such Act. Nevertheless, as a condition to assignment of the Lease, and in addition to Assignee's acknowledgement and agreement set forth above, SANBAG expressly reserves the right to terminate the License and this Agreement for any such Public Use, or for its own convenience, or for any other reason or purpose in SANBAG's sole and exclusive discretion, by thirty (30) days written notice to Assignee. Assignee expressly acknowledges and agrees that:
  - (a) SANBAG may terminate the License and this Agreement for any reason, to be determined in SANBAG's sole and absolute discretion;
  - (b) Assignee shall **NOT** oppose any Public Use when planned or implemented on or adjacent to the Premises;
  - (c) If SANBAG at any time, or from time to time, determines in its 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 its facilities, Assignee shall reconstruct, alter, modify, relocate or remove its facilities, as required by SANBAG or any parties having operating rights over the Premises, at Assignee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and
  - (d) Assignee expressly assumes all risk of any future Public Use as determined by SANBAG and in the event SANBAG terminates the License and this Agreement

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and requires Assignee to vacate the Premises for any Public Use, Assignee 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 the eminent domain law.

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

9. **Notices.** Assignee hereby acknowledges that its address for the receipt of any notice or document required or permitted to be delivered under the assignment or this Consent Agreement is:

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10. Effective Date. This Agreement shall be effective as of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have executed this Agreement in triplicate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SAN BERNARDINO ASSOCIATED GOVERNMENTS (“SANBAG”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LICENSEE (“ASSIGNOR”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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EXHIBIT "A"

TO

CONSENT TO ASSIGNMENT AND ASSUMPTION OF LICENSE

SANBAG Contract No.: C \_\_\_\_\_

Epic File No.: \_\_\_\_\_

Subdivision: \_\_\_\_\_

Milepost(s): \_\_\_\_\_

**SANBAG Contract No.** \_\_\_\_\_

**RIGHT-OF-ENTRY PERMIT**

**BETWEEN**

**SANBAG**

**AND**

---

**RIGHT OF ENTRY PERMIT**

This PERMIT ("Permit") is made and entered into as of \_\_\_\_\_ 20\_\_, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as \_\_\_\_\_ ("SANBAG") and \_\_\_\_\_, [insert capacity of Permittee] ("PERMITTEE").

**PART I – BASIC PERMIT PROVISIONS**

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

**Basic Permit Provisions**

**Part II**  
**Section Cross**  
**Reference**

1. **Parties.**

SANBAG's Address:  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715

Permittee's Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Contractor License Information and License # \_\_\_\_\_**

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

**Basic Permit Provisions**

**Part II**  
**Section Cross**  
**Reference**  
**§ 1**

**2. Description of the Premises.**

City/County: \_\_\_\_\_ Subdivision: \_\_\_\_\_

Address or Milepost Location:  
\_\_\_\_\_

Approximate area:

\_\_\_\_\_ square feet; \_\_\_\_\_ acres

See map/diagram in Exhibit "A".

Description and Dimensions of Premises Area:  
\_\_\_\_\_

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

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

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

**4. Term and Hours of Work/Operation.**

**§ 2**

Commencement Date: \_\_\_\_\_

End Date: \_\_\_\_\_ (Subject to earlier termination pursuant to the terms of this Permit– see especially Standard Permit Provisions §2.2)

**Basic Permit Provisions**

**Part II**  
**Section Cross**  
**Reference**  
§ 3

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

A. **Administration Fee:** : \$ \_\_\_\_\_, payable upon issuance of permit.

B. **Use Fee (check all that apply):**

- (i.) One-time fee: \$ \_\_\_\_\_
- (ii.) \$ \_\_\_\_\_ per day, payable in advance.
- (iii.) \_\_\_ percent (\_\_\_%) of the gross revenues from the use of the Premises during the Permit term.
- (iv.) Other:  
\_\_\_\_\_  
\_\_\_\_\_

6. **Security Deposit (if any).** \$ \_\_\_\_\_

§ 4

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

§ 10

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**IN WITNESS WHEREOF**, this Permit was duly executed by the Parties identified in Item 1 of this Part I on the dates below, and is effective as the date executed by SANBAG.

**SANBAG**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted, Acknowledged and Agreed to:

**PERMITTEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PART II – STANDARD PERMIT PROVISIONS**

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**Exhibits:**

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

**PART II - STANDARD PERMIT PROVISIONS**

**1. PERMIT TO USE; CONDITION OF PREMISES**

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

**2. TERM AND TERMINATION**

- 2.1 The term of this Permit shall commence upon the “Commencement Date” specified in Item 4 of the Basic Permit Provisions and shall continue until the “End Date” specified in Item 4 of the Basic Permit Provisions; provided, however, that SANBAG may revoke this Permit and deny further entry onto the Premises in accordance with the provisions hereof, including:
  - (a) Without cause and in SANBAG’s sole and absolute discretion, by providing Permittee with 24 hours’ prior notice; or
  - (b) Immediately and without notice upon any breach (Section 8) of this Permit by Permittee.

- (c) The day upon which termination of this Permit is effective in accordance with (a) or (b) above shall be known as the "Termination Date."

**2.2 Termination of Use and Restoration of Premises.** Upon the Termination Date, unless otherwise requested in writing by SANBAG prior to the Termination Date, Licensee, at its own cost and expense, shall immediately remove all personal property and equipment and restore the Premises as nearly as possible to the same state and condition as existed prior to the entry. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option (i) perform the same at Permittee's expense (including costs, interest, and fees), which Permittee agrees to pay to SANBAG on demand, and/or (ii) assume title and ownership of such personal property and equipment. No termination hereof shall release Permittee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Premises is restored.

**2.3 Penalty.** If Permittee fails to terminate use of the Premises and/or restore the Premises as required in Item 2.2 above, on or before the Termination Date or the date this Permit expires, then, in addition to any and all other remedies available to SANBAG under the terms of this Permit or at law or equity, Permittee shall pay a Penalty equal to twice the applicable Use Fee calculated and payable on a daily basis, for the number of days (partial days counting as whole days) from the Termination Date to the date that Permittee has terminated use and restored the Premises to the required condition. Licensee shall indemnify SANBAG against all liabilities, costs and damages, including reasonable attorneys' fees, sustained by SANBAG by reason of such failure to terminate and restore.

### **3. PAYMENTS**

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

**3.2. Late Charge.** Permittee acknowledges that late payment by Permittee of any Payment owed to SANBAG under this Permit will cause SANBAG to incur costs not contemplated by this Permit, the exact amount of such costs being extremely difficult and impracticable to determine. Therefore, if any Payment due from Permittee is not received by SANBAG within five (5) days of when due, Permittee shall pay to SANBAG an additional sum of ten percent (10%) of the overdue Payment as a late charge, up to a maximum amount of \$500 for each late payment. The Parties agree that

## Attachment 11

this late charge represents a fair and reasonable estimate of the administrative costs that SANBAG will incur by reason of a late payment by Permittee. Acceptance of any late payment charge shall not constitute a waiver of Permittee's default with respect to the overdue Payment, nor prevent SANBAG from exercising any of the other rights and remedies available to SANBAG under this Permit, at law or in equity. In addition, any payment not made within 15 days of when due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest legally allowable rate, whichever is lower, until paid in full.

### 4. SECURITY DEPOSIT

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

### 5. TAXES

Permittee shall be liable for and agrees to pay promptly and prior to delinquency any tax or assessment, including but not limited to any possessory interest tax as described in California Revenue and Taxation Code Section 107, levied or assessed by any governmental authority: (a) against the Improvements, the Premises and/or any personal property, fixtures, and/or equipment located or placed on the Premises, whether owned by the Permittee, or any person or entity acting for or at the request of Permittee; or (b) as a result of the Permittee's or the Improvements' operations.

### 6. LIENS

Permittee will fully and promptly pay for all materials joined or affixed to the Premises, and fully and promptly pay all persons who perform labor upon the Premises. Permittee shall not suffer or permit to be filed or enforced against the Premises, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance, Work, activities, or operations of Permittee, or out of any other claim or demand of any kind. The term "Work" under this Permit means any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal, other than normal maintenance. Permittee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises. Permittee shall pay or cause to be paid all such liens, claims or

demands, including sums due with respect to stop notices, together with attorney's fees incurred by SANBAG with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend SANBAG from any and all such obligations and claims, including attorney's fees. Permittee shall furnish evidence of payment upon request of SANBAG. Permittee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to SANBAG in compliance with applicable California law. If Permittee does not discharge any mechanic's lien or stop notice for works performed for Permittee, SANBAG shall have the right to discharge same (including by paying the claimant) and Permittee shall reimburse SANBAG for the cost of such discharge, as well as any associated costs and fees, within ten (10) business days after billing. In such circumstances, Licensee shall pay an additional fee to SANBAG of twenty five percent (25%) of the costs of the discharge of the lien or stop notice in order to cover SANBAG's administrative costs. SANBAG reserves the right at any time to post and maintain on the Premises such notices as may be necessary to protect SANBAG against liability for all such liens and claims. The provisions of this section shall survive the termination of this Permit.

## 7. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Permittee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the SANBAG Property, the Premises and any other property of, or under the control or custody of, Permittee, which is on or near the Premises. Permittee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Premises, accident or fire or other casualty on the Premises, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the Premises. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Permittee, on behalf of itself and its officers, directors, affiliates, employees, agents, independent contractors and subcontractors and anyone directly or indirectly employed by or for whose acts Permittee is liable (collectively, "Personnel") as a material part of the consideration for this Permit, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Permittee and/or its Personnel. **In that connection, Permittee waives the benefit of California Civil Code Section 1542, which provides as follows:**

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

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

## 8. BREACH AND REMEDIES.

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

## Attachment 11

- 8.1.1. Permittee shall fail to make any payment or any reimbursement to SANBAG required herein when due;
- 8.1.2. Permittee shall fail to comply with any other term, provision or covenant of this Permit, and shall not cure such failure within three (3) days after written notice thereof to Permittee; or
- 8.1.3. Permittee shall create or maintain, or allow any other person or entity to create or maintain, any public nuisance or any condition that fails to comply with any federal, state, SANBAG or rail operator specifications or safety regulations or that presents a danger to public safety or a safety hazard to any operations, personnel, passengers or property of SANBAG or any rail carrier operating upon the affected rail line(s) on the Premises or SANBAG's adjacent right of way.

8.2. SANBAG's REMEDIES. Upon the occurrence of Permittee's breach, or failure to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, SANBAG at its option may:

- 8.2.1. Revocation. Thereafter, with or without written notice or demand, SANBAG may immediately revoke and terminate this Permit at any time, and deny access to the Premises or any part thereof, and expel and remove therefrom by lawful means Permittee and any other person occupying the Premises, and again repossess and enjoy the Premises, without prejudice to any other remedies that SANBAG may have under this Permit, at law or equity by reason of Permittee's default or of such revocation and termination.
- 8.2.2. Corrective Measures. Perform any corrective measures deemed by SANBAG in its sole and absolute discretion to be necessary or appropriate to protect public health or safety, or SANBAG'S legitimate governmental or proprietary interests or the interests of its railroad operators, at Permittee's expense (including fees, costs and interest) which Permittee agrees to pay to SANBAG upon demand.
- 8.2.3. Costs. If SANBAG incurs any cost or expense occasioned by the default of Permittee (including but not limited to attorneys' fees and costs), then SANBAG shall be entitled to receive such costs together with interest on all funds SANBAG expends at the lesser of Eighteen Percent (18%) per annum or the maximum rate allowed by law, whichever is lower, including without limitation, brokers' fees incurred by SANBAG in connection with relicensing the whole or any part of the Premises; the costs of removing and storing Permittee's or other's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SANBAG and rail operators; and all reasonable expenses incurred by SANBAG in enforcing or defending SANBAG's rights and remedies, including reasonable attorneys' fees whether or not suit is actually filed.

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

## 9. INDEMNIFICATION

- 9.1. Permittee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all its capacities, and its 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 Permittee, or its Personnel (as defined in Section 7, Assumption of Risk and Waiver) or invitees of Permittee in connection with the SANBAG Property or the presence upon or performance of activities by Permittee or its Personnel with respect to the SANBAG Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Permittee or its Personnel, or (iii) non-performance or breach by Permittee or its Personnel of any term or condition of this Permit, in each case whether occurring during the Term of this Permit or thereafter.
- 9.2. The Permittee acknowledges that any construction allowed on the Premises pursuant to this Permit is not being performed for SANBAG's benefit or on SANBAG's account and that this is an agreement allowing Permittee and/or its contractor(s) to enter upon SANBAG's Property as an accommodation within the meaning of California Civil Code Section 2782.1. Therefore, the foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Permit. Upon request of SANBAG, Permittee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Permit.
- 9.3. Claims against the Indemnitees by Permittee or its Personnel shall not limit the Permittee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for Permittee or its Personnel under workers' compensation, disability benefits or other employee benefits laws or insurance.
- 9.4. The indemnification and defense obligations of Permittee set forth in this section shall survive the termination or expiration of this Permit.

## 10. INSURANCE

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

## 11. MAINTENANCE AND REPAIR

Permittee, at Permittee's sole expense, shall during the Term of this Permit maintain any improvements on the Premises in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisances, and shall perform all maintenance and clean-up of the Premises as necessary to keep the Premises in good order and condition, to SANBAG's sole satisfaction. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the Premises by Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees, consultants,

and contractors (collectively, "Permittee's Parties"), including but not limited to damage arising from any tests or investigations conducted upon the Premises, Permittee shall, at its own cost and expense, immediately repair all such damage and restore the SANBAG Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Permittee or Permittee's Parties. Permittee shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SANBAG or the railroads with valid operating authority over SANBAG's lines.

## **12. ALTERATIONS AND CONSTRUCTION**

Except as otherwise provided herein, Permittee shall make no alterations, additions or improvements to the Premises without obtaining the prior written consent of SANBAG in each instance. Any Work performed or caused to be performed by Permittee on the Improvements or the Premises shall be performed (a) at Permittee's sole cost and expense; (b) in accordance with any and all applicable permit requirements, laws, rules, regulations and safety requirements (including SANBAG's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such Work, and (ii) satisfactory to SANBAG. Prior to commencement of any Work on the Premises, Permittee shall submit Work plans to SANBAG for review and approval. Permittee shall notify SANBAG in writing at least fourteen (14) calendar days prior to the commencement of any Work in or about the Premises. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility. If SANBAG consents to the construction of improvements by Permittee, all such Work shall be carried out in compliance with any and all SANBAG rules, regulations and requirements. 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 Permittee performing Work on the Improvements or the Premises shall first be approved in writing by SANBAG and acquire all required right of entry permits and authorizations from SANBAG and any rail operator utilizing affected or adjacent railroad tracks. With respect to such Work, Permittee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by SANBAG, in the amounts and coverage specified on and issued by insurance companies as described in Exhibit "B". Additionally, Permittee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) may, for any reason, need to enter onto the Premises, to obtain and maintain in full force and effect during the Term of this Permit, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverage specified on, and issued by insurance companies as described in, Exhibit "B". SANBAG reserves the right, throughout the Term of this Permit, to review and change the amount and type of insurance coverage it requires in connection with this Permit or the Work to be performed on the Premises.

#### **14. REIMBURSEMENT**

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

#### **15. LANDSCAPING**

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

#### **16. MARKERS**

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

#### **17. COMPLIANCE WITH LAWS**

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

## 18. SANBAG'S RIGHT OF ACCESS

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

## 19. ENVIRONMENTAL ASSESSMENT

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

## 20. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY

- 20.1. Permittee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises to be in violation of any, Environmental Law

which is now or may hereafter become applicable to Permittee or the Premises. As used herein, "Environmental Law" means any federal, state or local environmental, health and/or safety-related laws, regulation, standard, decision of a court, permit or permit condition, currently existing or as amended or adopted in the future. Except for Hazardous Material expressly approved by SANBAG in writing as shown on Exhibit "C", Permittee shall not cause or permit, or allow any of Permittee's Parties to cause or permit, any Hazardous Material to be brought upon, stored, used, generated, treated or disposed of on or about the Premises. Any Hazardous Material on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Material" means any chemical, substance or material, including any mixture or solution, which by virtue of its properties or effects is potentially harmful to health, safety or property, or which is now or becomes in the future listed, defined or regulated in any manner under any Environmental Law as a hazardous or dangerous material or substance.

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

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

## 21. PERMITTEE'S COVENANTS

Permittee shall:

- (a) Deliver, at least five (5) days prior to any entry onto the Premises, written notice to SANBAG of its intention to enter the Premises, the proposed date and time of such entry and the nature, specific location and scope, of any proposed activity upon the

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Premises that are consistent with the terms of the Permit. Permittee may enter only on the dates and times specified in such notices.

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

### **22. BROKER'S FEES**

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

### **23. SUBORDINATE RIGHTS**

This Permit is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property or any portion thereof in the exercise of its powers and in the performance of its duties, including those as a public transportation body, and to SANBAG Bonds issued by SANBAG from time to time. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, operate, maintain, use and/or relocate existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property or any portion thereof. This Permit is subject to all licenses, leases, easements, reservations, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the Premises now or hereafter, and this Permit is executed and delivered by SANBAG

without any warranty of title, express or implied, and the words "grant' or "convey' as used herein shall not be construed as a warranty of title or as a covenant against the existence of any such title exception.

## 24. GENERAL PROVISIONS

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

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survive the expiration or earlier termination of this Permit, including without limitation all indemnity and defense obligations, all payment obligations with respect to Payments and all obligations concerning the condition of the SANBAG Property.

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

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Permittee's Parties, Permittee agrees to pay SANBAG's reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

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

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- 24.22. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Permittee shall maintain, at Permittee's expense, competent flagmen to protect and control movement of vehicles and equipment of Permittee or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection, including the rules and policies of SANBAG and/or any railroad operator having rights to utilize any affected or adjacent railroad tracks.
- 24.23. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard Permit Provisions, the provisions in Exhibit "D" shall control.

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**Exhibit "A"**

**Site Plan of Premises**

**{To Be Inserted}**

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Exhibit "B"

**INSURANCE REQUIREMENTS**

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**Exhibit "C"**

**Permitted Hazardous Material**

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

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**Exhibit "D"**

Additional Provisions

[To Be Inserted]

**SPECIAL RIGHT OF ENTRY  
PERMIT - RELEASE OF  
LIABILITY AND INDEMNITY  
AGREEMENT**

\_\_\_\_\_ (“**REQUESTOR**”) requests to go onto that certain property owned by the San Bernardino Associated Governments in its capacity (insert SANBAG capacity or entity) \_\_\_\_\_ (“**SANBAG**”) located at, \_\_\_\_\_ (the “**Property**”) for the purpose(s) of holding an event and/or conducting activities, as described on, and subject to the conditions set forth in, the attached Exhibit A, which is hereby incorporated herein. REQUESTOR desires to use the Property on (insert date) \_\_\_\_\_ commencing at (insert start time) and terminating at (insert end time) (the “**Term**”). Little or no benefit or profit will accrue to SANBAG from Requestor’s activities on the Property.

SANBAG hereby permits REQUESTOR to use the Property for the purposes stated above and activities incidental thereto during the Term subject to the terms and conditions of this Release of Claim and Indemnity Agreement (the “Agreement”).

In consideration of SANBAG permitting REQUESTOR to use the Property as provided herein, REQUESTOR HEREBY WAIVES, AND RELEASES SANBAG and its members, commissioners, officers, directors, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, successors and assigns, (“Indemnitees”) from, any liability or claim or demand against Indemnities for injury or death and for loss of or damage to their property, business or financial interests which occurs directly or indirectly in connection with or as a result of REQUESTOR’S presence on the Property, whether due to the negligence (whether active, passive, derivative, joint, concurring or comparative) of Indemnitees, or otherwise, unless caused solely by the gross negligence or willful misconduct of Indemnitees.

It is REQUESTOR’S intention that this release, if applicable, shall be effective as a bar to each and every claim and in furtherance of this intention, such release shall provide that REQUESTOR waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code, which provides:

**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 A SETTLEMENT WITH THE DEBTOR."**

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Requestor’s Initials

Further, REQUESTOR shall indemnify, defend and hold harmless SANBAG and its Indemnities, from and against all losses (including damage to property or injuries to or death of any person), liabilities, claims, demands, causes of action, damages, costs and expenses (including without limitation, any fines, penalties, judgments, litigation expenses, reasonable attorneys’ fees) direct or indirect, foreseen or unforeseen of any person, including employees of SANBAG, arising or resulting from REQUESTOR’S and REQUESTOR’S

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permittees' presence on the Property, whether due to the negligence (whether active, passive, derivative, joint, concurring or comparative) of SANBAG or its indemnities, or otherwise, unless caused solely by the gross negligence or willful misconduct of SANBAG or its Indemnitees.

REQUESTOR fully understands the foregoing and accepts all responsibility and assumes all risk of loss, damage, death or injury of any kind to any person or property, including employees of SANBAG. REQUESTOR shall use the Property in compliance with all applicable laws and regulations.

REQUESTOR further expressly understands that the permission granted herein shall automatically expire at the end of the Term and REQUESTOR shall have no further rights to be on the Property after the termination or expiration of this Agreement.

This Agreement shall be binding upon Requestor's successors, executors, administrators, heirs and assigns.

BY SIGNING BELOW, SIGNATOR REPRESENTS AND WARRANTS THAT HE/SHE (1) UNDERSTANDS THE TERMS OF THIS AGREEMENT AND ACCEPTS SUCH TERMS AS A CONDITION TO REQUESTOR'S USE OF THE PROPERTY AND (2) IS DULY AUTHORIZED TO EXECUTE AND DELIVER THIS AGREEMENT ON BEHALF OF REQUESTOR.

**SANBAG:**

**REQUESTOR:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment 12**

**EXHIBIT A**  
**(Description of Permitted Events and Activities; Conditions)**

NOTICE OF TERMINATION OF PERMIT

File No.: \_\_\_\_\_

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

RE: Right of Entry Permit (Permit), dated \_\_\_\_\_, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting solely in its capacity as (insert SANBAG capacity) (SANBAG) and \_\_\_\_\_ (Permittee) for the premises located at or near \_\_\_\_\_ in the City of \_\_\_\_\_, County of San Bernardino, California, and referred to as SANBAG Contract Number \_\_\_\_\_.

Dear \_\_\_\_\_:

YOU ARE HEREBY NOTIFIED THAT SANBAG is terminating the Right of Entry Permit you hold pursuant to the above referenced License Agreement, effective [on \_\_\_\_\_] [immediately] (the "Termination Date"), pursuant to Article 2, Paragraph [(a) (without cause)] [(b) (upon breach)], of the Standard License Provisions of the Permit. [If terminating for breach, specify the breach or breaches justifying the termination] You must do all of the following on or before \_\_\_\_\_:

- a. Cease entering upon or using the Premises.
- b. Remove all personal property from the Premises.
- c. Restore the Premises to its original condition to the satisfaction of SANBAG, including, but not limited to removing any improvements and/or obtaining SANBAG's permission to leave the improvements in place whereupon they will become the sole property of SANBAG.
- d. Relinquish any and all control over the Premises to SANBAG.

Failure to perform all of the obligations listed above by the Termination Date will cause SANBAG to institute legal proceedings against you for all damages and other relief to which SANBAG is entitled under the law and the Permit, including court costs and attorneys fees.

Pursuant to this Notice of Termination, there will be no extension or amendment except in writing and executed by SANBAG.

DATE: \_\_\_\_\_

SANBAG

By: \_\_\_\_\_  
[Insert name and title of officer authorized to sign]

Attachment 14  
Exhibit "B"

**INSURANCE REQUIREMENTS**

The holder of the permit, license or lease to which this Exhibit B is attached is hereinafter referred to as "User", and 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 User, its agents, representatives, employees or subcontractors as follows:

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

User shall maintain and provide proof of insurance coverage 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.
- Excess and/or Umbrella insurance coverage shall be in excess over the General Liability, Auto Liability & Workman'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

**Attachment 14**  
**Exhibit "B"**

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. 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 (including the San Bernardino Associated Government Joint Powers Authority; the San Bernardino County Transportation Commission, the San Bernardino County Transportation Authority, the San Bernardino County Congestion Management Agency, and the San Bernardino County Service Authority for Freeway Emergencies), contractors, consultants, authorized rail operators and agents ("Related Parties"); or the User 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 User; products and completed operations of the User; premises owned, occupied or used by the User; and automobiles owned, leased, hired or borrowed by the User. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, or its Related Parties.

Attachment 14  
Exhibit "B"

- b. For any claims related to this project, the User'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 User'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 User'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.
  - 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 User or User's employees or agents from waiving the right of subrogation prior to a loss or claim. User 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**

User 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, User may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

**Contractors and Subcontractors**

User shall include all contractors and subcontractors as insured parties 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 "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.

## Attachment 15

[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

## Attachment 15

Contractor's responsibility to contact Underground Alert and locate all underground facilities prior to the commencement of construction. At the same time, the contractor shall notify the operating railroad for signal and communications cables and conduits mark-outs. Contractor shall obtain permission from the owners of any fiber optic, gas, electrical, water, oil or other lines which may be impacted by work on or any use of the Premises by Contractor.

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

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

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

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

## Attachment 15

14. Boring of carrier or direct burial utilities by directional boring methods is prohibited.
15. Signs are not permitted on or along the perimeter of the Premises unless such signs were requested and approved under Contractor's original proposal and covered by the required insurance. The contractor shall install permanent signs identifying the location of pipes at the edge of the railroad right-of-way unless within a public grade crossing.
16. Contractor shall 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.
17. 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.
18. 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.
19. For pipelines carrying flammable or hazardous materials, the contractor shall adhere to special conditions stated in the Right of Entry (ROE) Agreement.
20. 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.
21. 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.
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

## Attachment 15

flagman and inspector present, the work will be halted and any casing installed will be abandoned in place, pressure grouted full, and capped to the satisfaction of SANBAG.

23. The contractor shall submit to SANBAG/SCRRA for review, drawings and calculations for any shoring that may affect or be influenced by the railroad tracks. All shoring designs shall comply with the requirements of, and be approved by, SANBAG and/or the affected operating railroad. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
24. Prior to commencement of work, the contractor shall submit to SANBAG/SCRRA for review, load calculations for the proposed jacking casing with applied load as defined by Cooper E-80 with a 50% added impact load. The calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
25. Should ground water or loose or unstable soils conditions be encountered during construction, the contractor shall immediately stop work, notify the railroad flagman, provide necessary structural support to track and other railroad structures, and notify the affected operating railroads and SANBAG. It shall be the responsibility of the contractor to make necessary corrections to the construction process to allow for said conditions.
26. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe". Said casing pipe shall be installed across the entire width of the railroad right-of-way and shall extend beyond the right of way a minimum of 10-feet. The top of the casing shall have a minimum depth of 6-feet below the top of tie and a minimum depth of 5-feet below ground surface including bottom of ditches and other low points within the railroad right-of-way. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG. Casing and carrier pipes shall be constructed to prevent leakage of any substance. When casing pipes are sealed at each end, vent pipes shall be installed. All casing pipes shall be installed with a minimum slope of 1%. Installation of casing pipes by open trenching is prohibited.
27. Abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full for the entire length of the pipe. Should there be no casing pipe; the abandoned pipe shall be pressure grouted full the entire length of the pipe. A SANBAG / SCRRA inspector must be present during the grouting process.
28. Casing jacking shall adhere to the following requirements:
  - 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.

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

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

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

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- 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.
- 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

Initials

**EXTENSION AGREEMENT**

This Extension Agreement is entered into by and between **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, acting solely in its capacity as [insert SANBAG capacity] ("**SANBAG**") and \_\_\_\_\_, [insert capacity of Permittee/Licensee/Lessee] ("**PERMITTEE**") ("**LICENSEE**") or ("**LESSEE**") with reference to the following facts:

A. Effective \_\_\_\_\_, 20\_\_, the parties entered into that certain [Permit, License or Lease], which expires on \_\_\_\_\_, 20\_\_.

B. Due to [explain reasons for need for extension] ("**PERMITTEE**") ("**LICENSEE**") or ("**LESSEE**") has requested an extension of the expiration date until \_\_\_\_\_, 20\_\_.

C. SANBAG, in its sole discretion, has determined that an extension is acceptable.

Now, therefore, the parties agree that:

1. The [Permit, License or Lease] is hereby extended to expire on \_\_\_\_\_, 20\_\_.
2. All other terms and conditions of the [Permit, License or Lease] remain in full force and effect.
3. In addition to the terms and conditions of the [Permit, License or Lease], [Permittee, Licensee or Lessee] shall comply with all of the following:

[insert any additional conditions or requirements, including any additional fees or costs to be imposed]

**IN WITNESS WHEREOF**, this [Permit/License/Lease] was duly executed by the Parties on the dates below, and is effective as the date executed by SANBAG.

**SANBAG**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Accepted, Acknowledged and Agreed to:

[**PERMITTEE/LICENSEE/LESSEE**]:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**WAIVER OF RELOCATION BENEFITS UNDER THE  
UNIFORM RELOCATION ACT**

1. \_\_\_\_\_ is presently a [Tenant/Licensee] of property owned by San Bernardino Associated Governments in its capacity as (insert SANBAG capacity or entity) ("SANBAG") as described in the [Lease/License], which is known to SANBAG as Contract No. \_\_\_\_\_.

2. [Tenant/Licensee] has been formally notified that the property may be [acquired, rehabilitated, demolished] in connection with a program or project to be carried out by SANBAG pursuant to a Public Use as that term is described in the [Lease/License], and that such action would make it necessary for [Tenant/Licensee] to be relocated from the property. [Tenant/Licensee] has been advised that such action would make [Tenant/Licensee] eligible for relocation payments and other relocation assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ("URA").

3. The nature and amounts of such payments and other assistance and benefits have been described to [Tenant/Licensee] in such a manner and in sufficient detail that [Tenant/Licensee] fully understands them.

4. In consideration thereof, [Tenant/Licensee] has determined not to claim the benefits available to it under the URA and hereby releases SANBAG from all legal obligations and liability regarding them. [Tenant/Licensee] does this freely, on the basis of its full understanding of all its rights under the law. [Tenant/Licensee] is under no duress or coercion by SANBAG and makes this decision without reservation or qualification.

5. This waiver shall expire on \_\_\_\_\_, unless the property has been acquired or the rehabilitation/demolition has commenced by that date.

Witness: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_

\_\_\_\_\_ (Seal)

Notary Public: \_\_\_\_\_

My Commission Expires On: \_\_\_\_\_

**THREE DAY NOTICE TO PERFORM CONTRACTUAL  
CONDITION/COVENANT OR QUIT**

Date:

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

RE: Premises located at \_\_\_\_\_

Dear : -

PLEASE TAKE NOTICE that you have breached the written (lease/license/permit) of the above-described Premises, between the San Bernardino Associated Governments, acting solely in its capacity as (insert SANBAG capacity) ("SANBAG") and \_\_\_\_\_, dated \_\_\_\_\_ and known to SANBAG as Contract No. \_\_\_\_\_ ("Agreement"), as set forth herein:

**FAILURE TO PERFORM CONDITION/COVENANT UNDER  
AGREEMENT**

You have breached the Agreement by

\_\_\_\_\_  
\_\_\_\_\_

**DEMAND TO PERFORM OR QUIT**

Within THREE (3) DAYS of the service of this Notice upon you, you must

\_\_\_\_\_  
\_\_\_\_\_

OR you must DELIVER UP POSSESSION OF THE PREMISES TO SANBAG.

**PAYMENT ADDRESS**

Verification of performance shall be made to Epic Land Solutions, Inc. on behalf of SANBAG by mail or in person at the following address:

Epic Land Solutions, Inc.  
3850 Vine Street, Suite 200  
Riverside, California 92507

**Attachment 18**

Verification may be made in person between 8:00 am to 5:00 pm, Monday through Friday, excluding holidays.

**ELECTION OF FORFEITURE**

In the event that you do not perform all of the conditions/covenants specified above, or deliver up possession of the Premises, within the three (3) day period set forth herein, then SANBAG elects to terminate the Agreement, and will institute proceedings to forfeit the Agreement and to recover possession of the Premises and all amounts owing under the Agreement and as permitted by law.

**NO WAIVER OF RIGHTS BY ACCEPTANCE OF PARTIAL PERFORMANCE**

You are further advised that, in the event that SANBAG accepts a partial performance of the conditions/covenants set forth above, SANBAG does not waive any of its rights to commence and pursue a legal action to recover possession of the Premises.

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Date

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By: (insert name and title)

**NOTICE OF DEFAULT/BREACH OF COVENANT OR CONDITION**

Date:

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn:

RE: Premises located at \_\_\_\_\_

Dear:

SANBAG Contract No. (the "Agreement"), to which you are a party, contains the following covenants and/or conditions:

[specify covenants and/or conditions under default or breach]

This is to provide you with notice that the San Bernardino Associated Governments, acting solely in its capacity as (insert SANBAG capacity) ("SANBAG") considers that you have breached the Agreement by failing to comply with the above covenants and/or conditions.

**DEMAND TO CURE BREACH**

The Agreement provides that SANBAG may terminate the Agreement immediately in the event of breach/default. However, as a courtesy, SANBAG will allow you thirty (30) days from the date of this notice to cure the breach by taking the following actions:

[specify actions necessary to cure default or breach]

If you fail to do so, SANBAG will exercise its termination rights under the Agreement. Nothing in this notice shall be deemed a waiver of any right or remedy of SANBAG, nor prevent SANBAG, in its sole discretion, from exercising any remedy available to it at any time, including, but not limited to, termination of the Agreement.

Notwithstanding the above, SANBAG may, without being under any obligation to do so and without thereby waiving such breach/default, take such action as is necessary to protect public health and safety and SANBAG's interests, and/or to remedy the breach/default for your account and demand reimbursement from you of all costs incurred for taking such remedial action.

By:

Title:

Attachment 20

**NOTICE OF BREACH FOR FAILURE TO OBTAIN/MAINTAIN INSURANCE**

Date:

Address:

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Attn:

RE: Premises located at \_\_\_\_\_

Dear:

SANBAG Contract No. (the "Agreement"), to which you are a party, requires that you obtain and maintain in full force and effect during the term of the Agreement insurance in the required amounts and coverages specified in Exhibit B of the Agreement. The Agreement also requires that you provide evidence of the required insurance in the form of insurance certificates or endorsements. You have failed to provide the required evidence of insurance.

This is to provide you with notice that the San Bernardino Associated Governments, acting solely in its capacity as (insert SANBAG capacity) ("SANBAG") considers that you have breached the insurance provisions of the Agreement by failing to provide evidence of the required insurance.

**DEMAND TO CURE BREACH**

The Agreement provides that SANBAG may terminate the Agreement immediately in the event of breach/default. However, as a courtesy, SANBAG will allow you ten (10) days from the date of this notice to cure the breach by providing evidence of the required insurance in the form of valid insurance certificates and/or endorsements as required by the Agreement. If you fail to do so, SANBAG will exercise its termination rights under the Agreement. Nothing in this notice shall be deemed a waiver of any right or remedy of SANBAG, nor prevent SANBAG, in its sole discretion, from exercising any remedy available to it at any time, including, but not limited to, termination of the Agreement.

Notwithstanding the above, SANBAG may, without being under any obligation to do so and without thereby waiving such breach/default, take action to acquire the required insurance for your account and demand reimbursement from you of all costs incurred for taking such remedial action.

By:

Title:

**NOTICE OF ILLEGAL TRESPASS AND DEMAND TO  
VACATE AND REMOVE PROPERTY**

Date: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTN: \_\_\_\_\_

RE: Premises Located at \_\_\_\_\_

Dear: \_\_\_\_\_:

YOU ARE HEREBY NOTIFIED THAT THE SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting solely in its capacity as (insert SANBAG capacity) ("SANBAG"), as owner of the above described premises, formally declares you an illegal trespasser upon its railroad right-of-way property identified above. Permission was not given for you to enter, or place improvements or personal property upon, or occupy the parcel, and you do so without the benefit of either an oral or written contract. You must immediately vacate the parcel and remove all improvements and personal property thereon within 24 hours of the date of this notice.

Failure to vacate the parcel within 24 hours will result in SANBAG filing legal proceedings against you to recover possession of the property and to seek a judgment for all damages to which the property owner is entitled under the law, including, but not limited to, cost of repair, rental value, court costs and attorney's fees. SANBAG also reserves the right to immediately and without notice abate any dangerous conditions created on its property by your trespass and seek a judgment against you for any costs incurred. Any personal property remaining on the property after 24 hours from this notice will be treated as abandoned property and be removed from the premises.

At times, unauthorized users attempt to assert that long-term unauthorized use gives them a right to continue to use the property (prescriptive rights). Under California Civil Code §1007, prescriptive rights cannot be created in railroad right of way.

If you have questions, please contact any one of the following persons:

At Epic Land Solutions, Inc., SANBAG's Property Manager:  
Duncan Robb (310) 561-3900  
Maureen Lucey-Smith (951) 321-1800

At SANBAG:  
Monica Morales, Transit Analyst (909) 884-8276

Sincerely,

[Insert name and title]